

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

PROCEDURE: 60.2
Conduct of Hearing --
Notice of Hearing.



DECISION OF COMMISSION

In the Matter of

William O. Watson
[REDACTED]

Norfolk Police Department
Norfolk, VA 23504

Employer

Date of Appeal
To Commission: June 25, 1979

Date of Hearing: September 14, 1979

Decision No.: 12455-C

Date of Decision: September 20, 1979

Place: Richmond, Virginia

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This is a matter before the Commission on appeal by the employer from the Decision of Appeals Examiner (No. UI-79-3868), dated June 15, 1979.

ISSUE

Did the employer file his appeal within the statutory time limit or has good cause been shown to extend the appeal period as provided in Section 60.1-61 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT AND OPINION

The Local Office Claims Deputy issued a Notice of Deputy's Determination which was mailed to all parties on December 26, 1978. This determination held the claimant not subject to disqualification effective December 3, 1978, pursuant to Section 60.1-58 (b) of the Code of Virginia. The determination stated on its face that it would become final unless further appeal was initiated not later than January 9, 1979. This determination was mailed to the address where the claimant was last employed. An Employer's Report of Separation and Wage Information had been mailed to the same address and promptly returned by the employer. No appeal was filed from the aforementioned determination of the Deputy until the employer received a quarterly reimburseable billing as a result of benefits paid to this claimant. By letter dated March 13, 1979, the employer was informed again that this claimant had been determined eligible for benefits. By letter dated May 3, 1979, the employer appealed this determination.

The employer argues, through its attorney, that it operates a number of divisions but for the purposes of unemployment compensation is deemed a single employing unit. Since this is the case, the employer contends that all correspondence relating to unemployment compensation matters should be mailed to a single address. That address being 908 City Hall Building, Norfolk, Virginia 23510.

Section 60.1-61 of the Virginia Unemployment Compensation Act provides in pertinent part that:

"Unless the claimant or any such employing unit, within fourteen calendar days after the delivery of such notification, or within fourteen calendar days after such notification was mailed to his last known address, or within fourteen days after such notification was mailed to the last known address of an interstate claimant, files an appeal from such determination or decision, such determination or decision shall be final; provided, however, that for good cause shown the fourteen-day period may be extended."

The Commission has set forth the standard to be applied to the "good cause" provision of the aforementioned section of the Act when it said that:

"A reasonable construction of the good cause provision of the statute is that in order for good cause to be shown the appellant must show some compelling and necessitous reason beyond his control which prevented him from filing an appeal within the enunciated statutory time limit. Where such a reason is shown which clearly demonstrates that it was impossible or impractical for the appellant to initiate his appeal within the statutory time limit, the extension may be granted in order to obtain fundamental fairness rather than reaching an unconscionable result. The burden of showing such compelling and necessitous reasons must necessarily fall upon the party seeking an extension of the 14-day period." (See George J. Barnes v. Economy Stores, Inc., Commission Decision No. 8624-C, dated November 22, 1976)

The record in this case is noticeably void of any competent evidence or testimony to the effect that the determination of the Deputy was not received at the Norfolk Police Department. It is, therefore, logical to conclude that it was received there but not forwarded to the proper personnel unit as was done in the case of the Report of Separation and Wage Information.

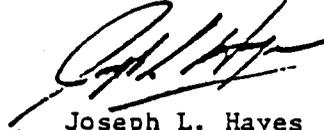
To extend a finding of good cause for the late filing of an appeal to a clerical or administrative error or oversight was not contemplated by the interpretative language cited above. Such a reason falls far short of rising to the level of being "compelling and necessitous" or "impossible or impractical" which is required.

The Commission is further of the opinion that the requirement set forth in Section 60.1-61 of the Code of Virginia that the most recent employing unit by whom the claimant was last employed should receive notice of any determination involving the application of the provisions of Section 60.1-58 of the Code has been satisfied when such determination has been mailed to the address where the claimant last performed services provided the employing unit continues to maintain a business at that location at the time the notice is mailed. To require the Commission to do otherwise would impose an unreasonable administrative burden upon the Agency.

In view of the above, the Commission must conclude that the employer's appeal was not filed within the statutory time limit and that he has not shown good cause for the late filing thereof. The Commission is, therefore, without jurisdiction to consider the merits of the employer's case.

DECISION

The Decision of the Appeals Examiner is hereby affirmed. It is held that the employer's appeal was not filed within the statutory appeal period and he has not shown good cause for its extension.



Joseph L. Hayes
Special Examiner