

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

PROCEDURE: 60.35
Conduct of Hearing —
Subpoenas for Witnesses
and Documents.



DECISION OF COMMISSION

In the Matter of:

Alfred L. Carr
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Huyck Felt Corporation
Farmville, Virginia

Date of Appeal
to Commission: May 15, 1987
Date of Hearing: June 12, 1987
Place: RICHMOND, VIRGINIA
Decision No.: 28685-C
Date of Mailing: June 29, 1987
Final Date to File Appeal
with Circuit Court: July 19, 1987

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This is a matter before the Commission on appeal by the claimant from a decision of the Appeals Examiner (UI-87-1462), mailed April 10, 1987.

APPEARANCES

Claimant

ISSUES

Does the claimant have good cause to extend the statutory appeal period as provided in Section 60.2-620B of the Code of Virginia (1950), as amended?

Did the claimant leave work voluntarily without good cause as provided in Section 60.2-618.1 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On May 15, 1987, the claimant filed an appeal from the decision of the Appeals Examiner. That decision held that the claimant was disqualified from receiving benefits effective January

11, 1987. The basis for the disqualification was the Appeals Examiner's finding that the claimant left work voluntarily without good cause.

The Appeals Examiner's decision was mailed to the claimant's correct address on April 10, 1987. A notice on the first page of the Appeals Examiner's decision gave instructions for filing an appeal and stated that the final date for doing so was May 1, 1987.

The claimant received the decision of the Appeals Examiner shortly after it had been mailed. The claimant did not immediately file an appeal. On April 23, 1987, the claimant was hospitalized at the Southern Virginia Mental Health Institute in Danville, Virginia. He was subsequently detained at that institution pursuant to a civil mental temporary detention order that was ordered under the provisions of Section 37.1-67.1 of the Code of Virginia. While hospitalized, the claimant was diagnosed as having a schizophrenic disorder. He was discharged from the hospital on May 6, 1987. At the time of his discharge, his attending physician indicated that he was improved, but not recovered.

Following his discharge from the hospital, the claimant reviewed some of his mail and other papers in an attempt to get his business affairs in order. While doing this, he came across the Appeals Examiner's decision and noticed the appeal instructions. The claimant filed his appeal in person on May 15, 1987.

At the hearing before the Appeals Examiner, the claimant appeared and offered testimony concerning his separation from work. The claimant had requested the Commission to issue witness subpoenas for three individuals. These witnesses were Walter Hamlet, Steve Davis, and Willie Jackson. None of these three witnesses appeared at the Appeals Examiner's hearing to testify. The sheriff for Prince Edward County returned both copies of the subpoena for Walter Hamlet. The sheriff indicated that Walter Hamlet was not at the address provided, but a Nelson Hamlet was. There is no evidence in the Commission's file that the sheriff ever made a return of service with respect to the subpoenas for Messrs. Davis and Jackson.

OPINION

Section 60.2-620B of the Code of Virginia provides, in part, that a decision of the Appeals Examiner shall become final 21 days after it has been mailed to the last known addresses of the parties. The law also provides that for good cause shown the 21-day appeal period may be extended.

In interpreting this provision of the law, the Commission has held that an appellant has good cause to extend the appeal period if factors or circumstances beyond his control operated to prevent

him from filing an appeal within the statutory time period. However, the burden of proof is on the appellant to establish good cause. See Barnes v. Economy Stores, Inc., Decision No. 8624-C (November 22, 1976).

In this case, the claimant did receive the Appeals Examiner's decision shortly after it had been mailed. However, as a result of his hospitalization and subsequent detention pursuant to a court order, the claimant did not have the benefit of the full 21-day appeal period. His hospitalization covered the last nine days of the appeal period plus another five days afterwards. Further, the claimant's hospitalization was due to his mental illness which was subsequently diagnosed as being a schizophrenic disorder. Under these circumstances, the Commission is of the opinion that the claimant was precluded by circumstances beyond his control from filing an appeal within the statutory time limit. Further, the Commission is of the opinion that the claimant acted in a reasonably prompt manner in filing his appeal by May 15, 1987. Accordingly, the claimant has proven good cause to extend the appeal period. (Underscoring supplied)

Section 60.2-618.1 of the Code of Virginia provides a disqualification if the Commission finds that a claimant left his job voluntarily without good cause.

After reviewing the Commission's file in this case, including the evidence taken at the Commission hearing and that obtained by the Appeals Examiner, the Commission is of the opinion that the record is not sufficiently complete to enable a proper decision in this case. First, the claimant had requested witness subpoenas for three individuals who may have relevant, material evidence concerning his separation from work. No service was obtained on one of those individuals due to an erroneous name. With respect to the other witnesses, the sheriff did not make any return to the Commission concerning the service of the subpoenas. The Commission is satisfied that these witnesses have testimony which could be relevant and material. In the absence of the returns from the sheriff, it would be inappropriate to decide the merits of this case without again attempting to obtain their testimony. Accordingly, the case will be remanded to the Appeals Examiner for the purpose of taking the testimony of Willie Jackson, Steve Davis, and Nelson Hamlet. (Underscoring supplied)

At the hearing before the Commission, the claimant was able to present medical evidence that he had not previously submitted. This evidence might shed some light on the claimant's mental state on the day he quit his job. Therefore, copies of exhibits 1 through 7 that were admitted at the Commission hearing will be provided to the Appeals Examiner with instructions to introduce them into the record of the new hearing and to consider that evidence as well. Furthermore, the claimant should be permitted

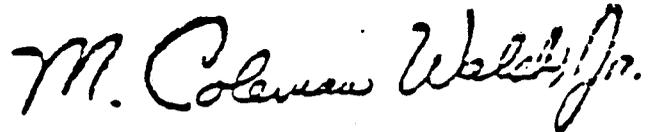
to introduce any medical testimony from his physician, his psychiatrist, or any other medical service provider that might establish what the claimant's mental state and condition was on the date of his separation from work.

DECISION

It is held that the claimant has proven good cause to extend the statutory appeal period set out in Section 60.2-620B of the Code of Virginia.

It is further held that the decision of the Appeals Examiner, Decision Number UI-87-1462, is hereby vacated. The case is remanded to the Chief Appeals Examiner with instructions to schedule another hearing for the purpose of taking additional evidence and testimony. The evidence taken at the Appeals Examiner's hearing on March 31, 1987, together with the evidence taken at the new hearing shall comprise the total record of this case upon which a decision should be made.

The Clerk of the Commission is instructed to transmit to the Clerk of Lower Authority Appeals copies of Commission Exhibits 1 through 7 so that they may be introduced into the record at the new hearing. The Clerk of Lower Authority is further instructed to issue the witness subpoenas to Nelson Hamlet, Steve Davis, and Willie Jackson at the addresses heretofore provided to the Commission.



M. Coleman Walsh, Jr.
Special Examiner