



DECISION OF COMMISSION

In the Matter of

Richard E. George
[REDACTED]

Kentucky Fried Chicken
Norfolk, VA 23504

Employer

Date of Appeal
To Commission: December 19, 1979

Date of Hearing: April 3, 1980

Decision No.: 13353-C

Date of Decision: April 10, 1980

Place: Richmond, Virginia

This is a matter before the Commission on appeal by the employer from the Decision of Appeals Examiner (No. UI-79-8618), dated November 29, 1979.

ISSUE

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

FINDINGS OF FACT AND OPINION

The Deputy had issued a determination holding that the claimant was not subject to a disqualification effective September 23, 1979, as a result of the separation from his last employment with Kentucky Fried Chicken. The determination was mailed to both the claimant and employer on October 18, 1979. It carried a final appeal date of November 1, 1979. The employer's copy of the determination was mailed to the employer's business where the claimant last worked which was located at 5951 East Virginia Beach Boulevard, Norfolk, Virginia 23504. The envelope in which the determination was received, was not opened at the facility where the claimant last worked but was forwarded in accordance with the employer's policy to the District Office for action. The responsible individual at the District Office received the determination on Friday, November 2, 1979. He immediately called Reed, Roberts, Associates, Incorporated, the employer's representative for unemployment tax matters, and requested that an appeal be filed. The representative's appeal letter to the Commission was dated and posted November 5, 1979.

The employer had moved the District Office to a new location in October, 1979. The post office had been advised on October 22, 1979, that mail should be forwarded to the new address after October 29, 1979. The employer was in the process of moving the office from October 25, 1979, and attributed the delay in receipt of the notice to the move. The employer also argues that the determination was not properly mailed since it was not addressed to the District Office which is the employing unit as contemplated by the statute rather than the work site.

Section 60.1-61 of the Virginia Unemployment Compensation Act provides that a Deputy's determination becomes final if it is not appealed within fourteen days from the mailing of such decision to the claimant or employing unit; provided further however that for good cause shown, the fourteen day period may be extended.

The Commission has considered and ruled upon an employing unit's address to which Deputy's determinations must be mailed by a prior decision:

"The Commission is further of the opinion that the requirements 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." (See William O. Watson vs. Norfolk Police Department, Commission Decision No. 12455-C, dated September 20, 1979)

It has been repeatedly held that in order to demonstrate good cause to extend the appeal period, the appellant must show compelling and necessitous circumstances beyond his control which prevented the filing of an appeal within the statutory time limit.

Although the employer in this case does feel that the particular circumstances in which the employer handles his mail and the coincident moving of the District Office prevented a timely appeal, these circumstances were within the employer's power to control. It is evident also that the Deputy's determination was duly received within the appeal period by the employer's facility at the place where the claimant last worked. (Underscoring supplied)

It must be concluded therefore that good cause has not been shown for extending the appeal period and the Commission is without jurisdiction to consider the merits of the case.

DECISION

The Decision of the Appeals Examiner is hereby affirmed.

It is held that the Deputy's determination holding the claimant not subject to a disqualification effective September 23, 1979, has become final since the appeal was not filed within the statutory time limit and good cause has not been shown for extending the appeal period.


Eugene Pitts
Special Examiner