

COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION

PROCEDURE: 10.2  
Timeliness of Appeals --  
Presumption of Delivery.



DECISION OF COMMISSION

In the Matter of:

Gary Johnson  
[REDACTED]

Standard Drug Company, Inc.  
Richmond, Virginia

Date of Appeal  
to Commission: December 8, 1988  
Date of Hearing: January 13, 1989  
Place: RICHMOND, VIRGINIA  
Decision No.: 31303-C  
Date of Mailing: January 20, 1989  
Final Date to File Appeal  
with Circuit Court: February 9, 1989

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This is a matter before the Commission on appeal by the claimant from the Decision of Appeals Examiner (UI-8801571), mailed February 12, 1988.

APPEARANCES

Claimant  
Employer Representative

ISSUE

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

FINDINGS OF FACT

On January 20, 1988, the claimant filed a timely appeal from a Notice of Deputy's Determination which held that he was disqualified from receiving unemployment insurance benefits. Upon receiving that appeal, the Appeals Section

issued a Notice of Intrastate Appeal on January 25, 1988. This notice was mailed to the employer and to the claimant at his correct address, 1025 Decatur Street, Richmond, Virginia 23224. Thereafter, the Appeals Section issued a Notice of Appeal Hearing on January 28, 1988, advising the claimant and the employer that an Appeals Examiner's hearing would be conducted at 9:00 a.m. on Tuesday, February 9, 1988. This Notice of Appeal Hearing was also mailed to the claimant at the Decatur Street address. The claimant did not appear for that hearing, but an employer representative did appear and testified concerning the circumstances surrounding the claimant's separation from work. On February 12, 1988, the Appeals Examiner issued his decision which affirmed the disqualification previously imposed by the Deputy. This decision was also mailed to the claimant at 1025 Decatur Street, Richmond, Virginia 23224. The caption on the first page of that decision is a notice which states as follows:

"This decision becomes final unless appealed in writing by any party named setting forth the grounds upon which the appeal is sought either at the office where the claim was filed or by mail to the Appeals Section, Virginia Employment Commission, P. O. Box 1358, Richmond, Virginia 23211, not later than midnight of March 04, 1988."

On December 8, 1988, the claimant reported to the local office of the Virginia Employment Commission and filed an appeal from the decision of the Appeals Examiner. He reported to the office that day because he had received a notification that the Commission mailed to him at his Decatur Street address to advise that his benefit year would expire in the near future. The Notice of Appeal, Notice of Appeal Hearing, and the Decision of the Appeals Examiner were all mailed to the claimant's correct, last known address and were not returned by the post office as being undeliverable.

The claimant lives at the Decatur Street address with his mother. There have been occasions in the past where the claimant has experienced difficulty receiving his mail and has received mailed at his home that was addressed to someone else. The claimant made no effort at all to contact the Commission between January 20, 1988 and December 8, 1988 because he thought that the Commission had "washed their hands" of his case.

OPINION

Section 60.2-620B of the Code of Virginia provides that an Appeals Examiner's decision shall become the final decision of the Commission unless an appeal is filed within twenty-one days of the date which it was mailed to the last known address of the party requesting the appeal. For good cause shown, the appeal period may be extended.

In the case of Barnes v. Economy Stores, Inc., Commission Decision 8624-C, (November 22, 1976), it was held:

"The aforementioned statute enunciates the statutory time limit in which an appeal from a decision of an Appeals Examiner must be filed. It allows an extension of that 14-day (subsequently extended to 21 days) time limit where good cause is shown. A reasonable construction of the good cause provision of that 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."

This case presents an issue concerning whether the claimant received the decision issued by the Appeals Examiner. Under Virginia law, proof of mailing of a letter which was properly addressed and posted raises a presumption that the letter was received by the addressee. See, Hartford Fire Ins. Co. v. Mutual Savings & Loan Co., 193 Va. 269, 68 S.E.2d 541 (1952); The Law of Evidence in Virginia (3rd Ed.) Section 114. While this presumption is not conclusive, denial of receipt by the addressee creates a question of fact that must be resolved by the fact finder. See, Manassas Park Dev. Co. v. Offutt 203 Va. 382, 124 S.E.2d 29 (1962).

In this case, the claimant has denied that he received the Appeals Examiner's decision. However, the Commission is not persuaded that the claimant failed to receive the Appeals Examiner's decision. First, the claimant testified that three separate documents that were mailed by the Commission to his correct address were not received. Those documents were the Notice of Intrastate Appeal, the Notice of Hearing, and the Appeals Examiner's decision. None of those three documents were ever returned by the postal service to the Commission as being undeliverable. While the Commission might be able to accept that one document that was correctly addressed and mailed was not received, the proposition that three such documents were

never received is, under these circumstances, simply incredible. Second, the claimant's conduct in failing to contact the Commission to inquire about his claim for a period of nearly eleven months raises a credibility question. It would appear that if the claimant had not received any communications concerning his claim for benefits and appeal, that he would have made some contact with the Commission to determine the status of his case, especially in light of his testimony that he had experienced difficulty with his mail. While the Commission does not doubt that the claimant was told that he would receive a written response from the Commission after filing his appeal, his failure to take any action at all is far more consistent with an individual who failed to attend the hearing, and upon receiving an unfavorable decision elected to discontinue pursuing the matter. It is simply inconceivable that the claimant would have waited nearly eleven months before contacting the Commission concerning his appeal.

Finally, the evidence establishes that the claimant resides with his mother. Although he testified that his mother knew he was looking for some correspondence from the Commission, that testimony is insufficient to rebut the presumption of receipt. It is possible that his mother received the Appeals Examiner's decision and set it aside, misplaced it or otherwise failed to bring it to the claimant's attention.

For these reasons, the Commission must conclude that the claimant has failed to rebut the presumption that he did receive the Appeals Examiner's decision. His failure to rebut that presumption leaves the Commission no alternative but to find that he has failed to prove good cause for extending the appeal period. Therefore, the claimant's appeal must be dismissed pursuant to the provisions of Regulation VR 300-01-4.3A3 of the Rules and Regulations Affecting Unemployment Compensation.  
(Underlining supplied)

#### DECISION

The claimant's appeal is hereby dismissed since it was not filed within the twenty-one day appeal period and good cause for extending the appeal period has not been proven. Since the Appeals Examiner's decision has become final, the Commission has no authority to reconsider the issues addressed in that decision.

*M. Coleman Walsh, Jr.*  
M. Coleman Walsh, Jr.  
Special Examiner