

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

Decision No.: 6251-C

Date: April 10, 1974

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This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UI-74-431), dated March 6, 1974.

ISSUE

Did the claimant file his appeal within the statutory time limit as provided by Section 60.1-62 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The Appeals Examiner rendered a decision dated March 6, 1974, which held that the claimant was disqualified because he was discharged for misconduct in connection with his work. This decision was mailed to the claimant on March 7, 1974, and stated that the claimant had until March 17, 1974, in which to file an appeal to the Commission.

The claimant filed his appeal to the Commission in person on March 20, 1974. This was three days after his appeal rights had expired.

Section 60.1-62 of the Code of Virginia (1950), as amended, provides that a claimant must file an appeal from the Appeals Examiner's decision within ten days of the mailing of such decision. The facts show that the claimant did not file his appeal within the statutory time limit. The decision of the Appeals Examiner has, therefore, become final.

DECISION

The decision of the Appeals Examiner, which disqualified the claimant effective December 9, 1973, because he was discharged for misconduct in connection with his work has become final.

NOTE: This decision was affirmed by the Circuit Court of the County of Henrico on August 26, 1974. The court had this to say:

The statutory time limit is ' . . . within ten days after the date of notification or mailing of such decision . . . '

Petitioner argues that the date of notification is not the same thing as the date of mailing. This is true, because the statute speaks of 'notification or mailing' and both words must be presumed to have some meaning. Giving reasonable meaning to each word leads to the view that 'notification' means the giving of notice by any means other than by mail, and that 'mailing' means the giving of notice by mail. I think it only fair to construe 'mailing' to require that the notice mailed be delivered in a reasonable time. Thus, 'notification' means delivery of notice by means other than by mail and notice delivered by mail but in which the delivering of mail to the address is delayed to such an extent that there is no reasonable time to appeal within the time stated in the notice.

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Here, the petitioner at the April 10th hearing admitted living at 2304 Williamsburg Road, the address to which the March 7th decision was mailed. Proof of mailing is prima facie proof of receipt. 14 M.J., Notice, Section 3; 58 Am.Jur 2d, Notice, Section 27. Petitioner is not sure how long he had the decision before he filed appeal on March 20. He says he thought about the decision but did not realize that he had to appeal by March 27. The March 20 appeal was filed in person.

There is no evidence that the mailing to petitioner was delayed in transit or that it was not received in the ordinary course of events. While the Assistant Commissioner made no specific finding that petitioner received the notice in reasonable time to comply with the march 17 deadline, there is no evidence to the contrary. While this statute should be liberally construed, liberal construction does not permit the disregard of clear statutory provisions. (Underscoring supplied)