



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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JUDGES

January 20, 2023

Natasha L. Eid

Petitioner, Pro Se

Elizabeth B. Peay
202 North Ninth Street
Richmond, Virginia 23219
Senior Assistant Attorney General
Counsel for Respondent

Re: Natasha L. Eid v. Virginia Employment Commission
CL-2022-14032

Dear Petitioner and Counsel:

This case came before the Court on January 6, 2023, for a hearing on the Petition for Judicial Review filed by Natasha L. Eid. Having taken the matter under advisement and after reviewing the arguments submitted, the Court affirms the decision of the Virginia Employment Commission.

BACKGROUND

Pursuant to Va. Code § 60.2-625(A), the only facts before the Court are those found by the Virginia Employment Commission (the "Commission"), if supported by evidence and in the absence of fraud. Fraud has not been alleged in this case. The facts before the Court are those found by the Commission at pages 51-53 of the record, set out below.

Natasha L. Eid (the "Petitioner") filed an initial claim for unemployment benefits with the Commission in January 2020. That claim had a benefit year end date of January 9, 2021. In

OPINION LETTER

mid-January 2021, Petitioner realized she was no longer able to file weekly claims and tried to contact the Commission, but she was unsuccessful. Petitioner was not aware her benefit year had ended. Petitioner engaged in various efforts to contact the Commission, including speaking to the office of her House of Delegates representative. Petitioner received a response from the Commission in April 2021, whereupon she filed a new benefits claim.

In addition, Petitioner filed a timely appeal seeking to backdate the effective date of her claim to January 10, 2021, the day after her previous benefit year ended. The Commission scheduled an Appeals Examiner hearing on the backdating issue for December 15, 2021. On October 28, 2021, the Commission mailed notice of this hearing (the “Notice”) to Petitioner at her address of record. The Notice advised Petitioner of the date of the hearing and that it would be held via telephone conference. The Notice further provided: “If you desire to participate in this hearing, you must call us AFTER YOU RECEIVE THIS NOTICE, and provide the telephone number where you can be reached on the day of the hearing....IF YOU DO NOT FOLLOW THESE INSTRUCTIONS, YOU WILL NOT BE CALLED.” The Notice also informed Petitioner that the hearing may be the only opportunity to present evidence with respect to the claim.

Petitioner did not register for the hearing as set forth in the Notice. As a result, Petitioner did not participate in the hearing. The Appeals Examiner conducted a brief non-appearance hearing to enter exhibits into the record and concluded the proceeding, denying Petitioner’s request to backdate her claim (VEC Decision No. UI-2139329) (the “First Decision”). This First Decision was mailed to Petitioner on January 18, 2022. The First Decision set out the means to file an appeal and advised that the deadline to do so was February 17, 2022. Petitioner filed her appeal on August 4, 2022.

In her appeal letter of August 4, 2022, Petitioner attributes the delay in her appeal to faulty information she received from the Commission. Specifically, on February 3, 2022, a customer relations manager with the Commission told Petitioner that everything was being taken care of and Petitioner did not need to do anything further. On April 20, 2022, the customer relations manager told Petitioner that her appeal was pending.

On May 3, 2022, the customer relations manager admitted to giving Petitioner incorrect information and stated that there was not a pending appeal of the First Decision. In an email to Petitioner dated May 4, 2022 (the “May 4 Email”), the customer relations manager explicitly explained that Petitioner needed to file an appeal now and request permission to present evidence showing good cause for the filing of the appeal beyond the deadline of February 17, 2022. Petitioner attributes the delay in filing her appeal of the First Decision (*i.e.*, the period between the May 4 Email and August 4, 2022) to Petitioner working with the customer relations manager for several months to rectify issues of fraud on her account.

On September 13, 2022, the Commission issued a decision (VEC Decision No. UI-133509-C) (the “Second Decision”) denying Petitioner’s appeal of the First Decision on the basis that the appeal was not timely filed and good cause was not shown to extend the statutory appeal

period to August 4, 2022. Petitioner thereafter filed her Petition for Judicial Review with the Court, seeking review of the Second Decision.¹

ANALYSIS

I. Standard of Review

The applicable standard of judicial review by the Circuit Court is set forth in Va. Code § 60.2-625. In reviewing a Commission decision, the evidence must be considered in the light most favorable to the finding made by the Commission. *Virginia Emp. Comm'n v. Peninsula Emergency Physicians, Inc.*, 4 Va. App. 621, 626 (1987). The Commission's finding of facts, "if supported by evidence and in the absence of fraud, are conclusive." *Lee v. Virginia Emp. Comm'n*, 1 Va. App. 82, 85 (1985); *see also* Va. Code § 60.2-625(A). Questions of credibility and the weight to be given to controverted facts are a factual matter reserved to the Commission. *Virginia Emp. Comm'n v. Gantt*, 7 Va. App. 631, 635 (1989), *opinion adopted on reh'g en banc*, 9 Va. App. 225 (1989). The fact that there is contrary testimony in the record "is of no consequence if there is credible evidence to support the [C]ommission's findings." *Dollar Gen. Store v. Cridlin*, 22 Va. App. 171, 177 (1996) (quoting *Wagner Enters., Inc. v. Brooks*, 12 Va. App. 890, 894 (1991)). A reviewing court is confined to questions of law and can only set aside a decision of the Commission "if, considering the record as a whole, a reasonable mind would necessarily come to a different conclusion." *Craft v. Virginia Emp. Comm'n*, 8 Va. App. 607, 609 (1989) (emphasis in original); *see also* Va. Code § 60.2-625(A).

II. Petitioner's Appeal

Pursuant to Va. Code § 60.2-620(B), the decision of a Commission Appeals Examiner is final unless an appeal is properly filed within thirty days of the date that the decision was mailed to the claimant. This appeal period may be extended for "good cause shown." *Id.*

The thirty-day appeal period of the First Decision expired on February 17, 2022. Petitioner filed her appeal on August 4, 2022. Petitioner was required to demonstrate good cause as to why the deadline should be extended to accommodate her late appeal. *See* Va. Code § 60.2-620(B).

Petitioner's grievance is that her delay in filing the appeal was caused by faulty information she received from the Commission. The Commission acknowledges that Petitioner received inaccurate information on February 3, 2022, and April 20, 2022. However, Petitioner received correct information and instruction on how to perfect her appeal in the email on May 4, 2022. The Commission avows that good cause would have existed to extend the deadline if Petitioner had noted her appeal within a reasonable time after the May 4 Email. In its Second Decision, the Commission nonetheless denied Petitioner's appeal on the basis that good cause

¹ At the hearing held before the Court on January 6, 2023, Petitioner noted that the Court-set briefing schedule gave her only eight days to file a brief in support of her Petition. However, Petitioner declined to seek a continuance and decided to proceed with the hearing.

was not shown for the additional extension past May 4, to the actual filing date of August 4, 2022. In particular, the Commission concluded that Petitioner's efforts to resolve other issues on her claim did not prevent her from filing an immediate appeal once notified that she needed to do so by the May 4 Email.

Given the standard of review, the Court is unable to conclude that the Commission lacked a sufficient basis in the record to reach this decision. The additional delay until August amounted to a requested extension of 169 days, compared to an extension of approximately 77 days had Petitioner noted her appeal shortly after the May 4 Email. Notwithstanding the Commission's notable communication failures, the last 92 days of the delay are attributable to Petitioner rather than the Commission. Petitioner's efforts to resolve other unrelated issues on her claim did not prevent her from filing an appeal once she learned that she needed to do so on May 4, 2022.

CONCLUSION

Reviewing the evidence in the light most favorable to the finding made by the Commission, the Court finds that there is sufficient evidence in the record to support the Commission's ruling. The decision of the Commission is affirmed.

A copy of the Circuit Court's Order is enclosed.

Sincerely,



Stephen C. Shannon
Judge, Fairfax County Circuit Court
19th Judicial Circuit of Virginia

Enclosure

OPINION LETTER

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

NATASHA L. EID)	
)	
Petitioner,)	
)	
v.)	Case No. CL-2022-14032
)	
VIRGINIA EMPLOYMENT COMMISSION)	
)	
Respondent.)	

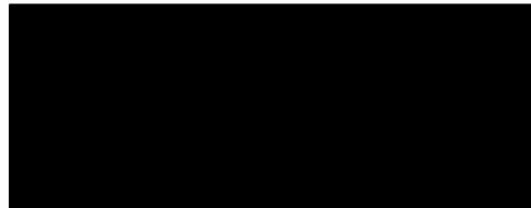
ORDER

THIS MATTER came before the Court on January 6, 2023, upon Petitioner’s Petition for Judicial Review.

IT APPEARING that the Court has written a Letter Opinion dated January 20, 2023, on its finding that there is sufficient evidence in the record to support the decision of Respondent, the Virginia Employment Commission; it is therefore

ORDERED that the decision of the Virginia Employment Commission is AFFIRMED.

ENTERED this 20th day of January 2023.



JUDGE STEPHEN C. SHANNON

ENDORSEMENT OF THIS ORDER IS WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE SUPREME COURT OF VIRGINIA.