

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 North Capitol Street, NE, Suite 9100
Washington, D.C. 20002
TEL: (202) 442-8167
FAX: (202) 442-9451

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF ADMINISTRATION

Appellant/Employer,

v.

LAURA JONES

Appellee/Claimant

Case No.: ES-P-05-102632

FINAL ORDER

I. INTRODUCTION

This is an appeal by Appellant/Employer Executive Office of the President, Office of the Administration ("Executive Office of the President") of a Claims Examiner's Determination served August 25, 2005, holding Appellee/Claimant Laura C. Jones eligible for unemployment benefits. This appeal raises the issues whether Appellant's request for appeal was filed within the ten-day statutory time limit, providing this administrative court with subject matter jurisdiction as specified in the District of Columbia Unemployment Compensation Act ("Act"), D.C. Code, 2001 Ed. §51-111(b), and if so, whether Appellant discharged Appellee for cause constituting "misconduct" as defined in 7 District of Columbia Municipal Regulations ("DCMR") 312, pursuant to the Act, D.C. Code, 2001 Ed. § 51-110(b).

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This administrative court issued a Scheduling Order and Notice of In-Person Hearing on November 8, 2005, scheduling the hearing for November 22, 2005, at 12:30 p.m. Appellant Executive Office of the President was represented by Rachel Leonard, Esq. Appellee/Claimant appeared and was represented by Matthew Fogg. During the hearing, Appellant's Exhibits 100 through 105, and 109 through 113 were admitted.¹

II. FINDINGS OF FACT

Appellant/Employer appealed the Claims Examiner's August 25, 2005, Determination on September 20, 2005.² The appeal was mailed in an envelope bearing a United States Postal Service postmark dated September 16, 2005.

The envelope containing the Determination was received by Appellant on September 2, 2005. It was immediately sent to an off-site location to be opened, screened and tested for contaminants by the United States Secret Service. The Determination was then delivered to Appellant Executive Office of the President on September 8, 2005. The Determination was delivered to Appellant's Human Resources Division on September 8, 2005. The Determination was forwarded to the Office of General Counsel by Human Resources on September 16, 2005.

III. CONCLUSIONS OF LAW AND DISCUSSION

The appeal was not timely filed. The appeal was filed more than ten days after service of the Claims Examiner's Determination. D.C. Official Code § 51-111(b); *Gosch v. District of*

¹ Hereinafter referred to as "Exh." and number.

² Nothing in the record below indicates any issue has been raised or preserved concerning factors under D.C. Official Code § 51-109; e.g., base period eligibility, availability for work, etc.

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Columbia Dep't of Employment Servs., 484 A.2d 956, 957 (D.C. 1984). The parties had until September 6, 2005³ (the first business day after ten days) to file an appeal. OAH Rule 2811.3. Appellant's appeal was filed in this administrative court fourteen days after the ten-day deadline. Although the envelope in which the appeal was sent bore a United States Postal Service postmark, it was postmarked September 16, 2005; ten days late. OAH Rule 2811.3.

Appellant Executive Office of the President argues that it should be entitled to additional time in which to file its appeal. Ever since September 11, 2001 and the 2001 anthrax attacks, the mail of the Executive Office of the President is subject to extensive screening. The mail is sent to an off-site location where it is opened, screened, and tested for contaminants. This process, handled by the United States Secret Service, takes two or three days. Therefore, Appellant Executive Office of the President argues, the time limit should be waived or extended.

This argument appears to have merit on its face. Appellant Executive Office of the President received the August 25, 2005 Determination on September 2, 2005. The envelope containing the Determination was screened and tested at the off-site location and delivered to Appellant Executive Office of the President on September 8, 2005. However, the Determination then sat, without action, for an additional eight days, before it was forwarded to the Office of General Counsel. As soon as the Office of General Counsel received the Determination, it immediately filed the appeal.

Because the time limits for filing appeals with administrative courts are mandatory and jurisdictional, this administrative court would have to conclude that the notice to Appellant

³ The envelope containing the Determination was actually postmarked August 26, 2005. Exh. 100. Because of the ensuing Labor Day Holiday, the additional day does not change the deadline for the appeal.

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Executive Office of the President supplied by DOES was not reasonably calculated to provide this particular Appellant an opportunity to contest the decision due to the extenuating circumstances of the extensive and off-site mail screening. *See Zollicoffer v. D.C. Public Schools*, 735 A.2d 944, 946 (D.C. 1999). But because Appellant Executive Office of the President had the Determination for eight days without acting on it, this court does not find it necessary to perform the analysis. Most parties, both Claimants and Employers, have less than eight days to appeal once they receive the Determination. Therefore, the delay in Appellant Executive Office of the President's filing its appeal was caused not by the extensive screening process (2-3 days) but by its own inaction (8 days).⁴

The issue of subject matter jurisdiction is a serious one, reflecting the legislature's determination as to what the outer bounds of this administrative court's authority is to hear and decide cases. This administrative court must adhere to these limits and is without authority to waive them. *Gosch v. D.C. Dep't of Employment Servs.*, 484 A.2d 956, 957 (D.C. 1984) (holding no jurisdiction to consider an appeal where the time prescribed for filing has expired and noting Supreme Court has approved even shorter time limits in the face of due process challenges).

The District of Columbia Court of Appeals has long held that, if proper notice has been provided, the "ten day period for . . . appeals under the Unemployment Compensation Act . . . is jurisdictional, and failure to file within the period prescribed divests [an administrative tribunal] of jurisdiction to hear the appeal." *Lundahl v. D.C. Dep't of Employment Servs.*, 596 A.2d 1001

⁴ Other agencies with similar extensive mail screening procedures (for example, the Supreme Court) have made arrangements with DOES to receive Determinations by facsimile. Such arrangements would eliminate this Appellant's mail delays.

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(D.C. 1991) (citing cases); *Gaskins v. D.C. Unemployment Comp. Bd.*, 315 A.2d 567 (D.C. 1974) (no jurisdiction to consider an untimely appeal even where notice of claims determination was received by appellant in aftermath of death in family). Appellate jurisdictional requirements cannot be waived. *Customers Parking, Inc. v. District of Columbia*, 562 A.2d 651, 654 (D.C. 1989). Such jurisdictional requirements vindicate important legislative policies in preventing staleness and promoting repose where a matter has already been heard and decided by a lower tribunal. Further, as the Fourth Circuit has recently pointed out, *Gayle v. United Parcel Service*, 401 F.3d 222 (4th Cir. 2005), courts also enforce these limits as “haphazard waiver of time limits would increase the probability of inconsistent results where one claimant is held to the limitation, and another is not.” 401 F. 3d at 226, quoting *Terry v. Bayer Corp.*, 145 F.3d 28, 40 (1st Cir. 1998).

Based upon the record evidence, this administrative court does not have jurisdiction. Because “in order to act [this][tribunal] must have jurisdiction[,]” *Slater v. Biehl*, 793 A.2d 1268, 1271 (D.C. 2002), and it does not, this appeal must be dismissed.

The Determination of the Claims Examiner that Appellee/Claimant is eligible for benefits remains unchanged.


IV. ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, it is, this 11th day of January, 2006:

ORDERED, that the appeal by Appellant/Employer Executive Office of the President of the Claims Examiner’s Determination is **DISMISSED** as untimely; and it is further

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ORDERED, that the appeal rights of any person aggrieved by this Order are stated below.


Wendy Hartmann Moore
Administrative Law Judge