

**- DECISION -**

Claimant:  
ALFRED G HARRIS

Decision No.: 1238-BR-13

Date: April 24, 2013

Appeal No.: 1239754

S.S. No.:

Employer:  
FRU-CON CONSTRUCTION LLC

L.O. No.: 65

Appellant: Claimant

Issue: Whether the appealing party filed a timely appeal of the Notice of Benefit Determination within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 806.

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**- NOTICE OF RIGHT OF APPEAL TO COURT -**

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to file the appeal can be found in many public libraries, in the Maryland Rules of Procedure, Title 7, Chapter 200.

The period for filing an appeal expires: May 24, 2013

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**REVIEW OF THE RECORD**

After a review of the record, the Board adopts the hearing examiner's findings of fact and conclusions of law.

The General Assembly declared that, in its considered judgment, the public good and the general welfare of the citizens of the State required the enactment of the Unemployment Insurance Law, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of individuals unemployed through no fault of their own. *Md. Code Ann., Lab. & Empl. Art., §8-102(c)*. Unemployment compensation laws are to be read liberally in favor of eligibility, and disqualification provisions are to be strictly construed. *Sinai Hosp. of Baltimore v. Dept. of Empl. & Training, 309 Md. 28 (1987)*.

The Board reviews the record *de novo* and may affirm, modify, or reverse the findings of fact or conclusions of law of the hearing examiner on the basis of evidence submitted to the hearing examiner, or evidence that the Board may direct to be taken, or may remand any case to a hearing examiner for purposes it may direct. *Md. Code Ann., Lab. & Empl. Art., §8-510(d); COMAR 09.32.06.04*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*.

There is a rebuttable presumption that a letter properly addressed will be delivered to the address in due course. *Border v. Grooms, 267 Md. 100 (1972)*. Testimony that the addressee did not receive the letter does not conclusively rebut the presumption of receipt. Instead, the trier of fact must consider that evidence along with all of the other evidence in the case to determine whether the individual mailed the letter and whether the addressee subsequently received it. *Bock v. Insurance Comm'r of State, 84 Md. App. 724 (1990)*.

*Md. Code Ann., §8-806(e)* provides, in essence, that either a claimant, an employer or the Agency has 15 days after the date of mailing of the benefit determination to file a timely appeal. *COMAR 09.32.11.01(B)(1)*. *COMAR 09.32.11.01(B)(2)* provides that an appeal is considered filed on the earlier of the following: (a) the date that the document is delivered in person to any local employment office; or (b) that date on which it is postmarked by the U.S. Postal Service; or (c) the date on the appeal itself when the envelope has an illegible postmark; or (d) the date an appeal is received by facsimile or electronic mail.

The filing date is on the date when an appeal or petition for review is received by facsimile transmission at any office of the Department of Labor, Licensing and Regulation. *COMAR 09.32.11.01(B)(2)(d)*. *Robinson v. Kernan Hospital, Inc., 197-BR-95*. Appeals filed after the 15 day deadline may be considered provided the appealing party meets its burden of demonstrating good cause for the late filing. *COMAR 09.32.11.01(B)(3)*; *Cooper v. Holy Cross Hospital, 328-BR-86*; *Taylor v. AT&T Company, 1019-BH-92*. The failure of an authorized representative to file a timely appeal does not give a party good cause for a late appeal under §8-806. *Noel v. Government Employees Insurance Company, 1042-BR-89*.

Even an appeal filed one day late may not be for good cause. *Brown v. Winchester and Woods, Inc., 643-BR-89*; *Simon v. Varelli, 920-BH-88*.

The claimant filed an appeal regarding a separate issue in a different matter he was involved in. He did not intend to file an appeal on this case. He agreed with the benefit determination in the instant case and thus, had no intention to appeal the matter. The claimant's appeal is late without good cause.

The Board finds based on a preponderance of the credible evidence that the claimant failed to meet his burden of demonstrating that he filed a late appeal for good cause within the meaning of §8-806. The decision shall be affirmed for the reasons stated herein and in the hearing examiner's decision.

## DECISION

It is held that the claimant did not file a timely appeal within the meaning and intent of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 806(e).

The Hearing Examiner's decision is affirmed.



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Clayton A. Mitchell, Sr., Associate Member



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Donna Watts-Lamont, Chairperson

VD/mr

Copies mailed to:

ALFRED G. HARRIS

FRU-CON CONSTRUCTION LLC

MARIA NOBLE

FRU-CON CONSTRUCTION LLC

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

ALFRED G HARRIS

SSN #

**Claimant**

vs.

FRU-CON CONSTRUCTION LLC

**Employer/Agency**

Before the:

**Maryland Department of Labor,  
Licensing and Regulation**

**Division of Appeals**

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 767-2421

Appeal Number: 1239754-1239755

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

January 08, 2013

**For the Claimant:** PRESENT

**For the Employer:** PRESENT , BRAD SMITH

**For the Agency:**

**ISSUE(S)**

Whether this appeal was filed timely within the meaning of Section 806 of the Labor and Employment Article.

**PREAMBLE**

Appeal Numbers 1239754 and 1239755, were consolidated for purposes of hearing and decision. Only this one consolidated decision which addresses the issues in each of the appeals is being issued.

**FINDINGS OF FACT**

Notices of Benefit Determinations were mailed to the parties in these cases. Both determinations had an appeal deadline of November 15, 2012. In these cases, the appeal was filed by mail and postmarked on November 24, 2012. The appellant, Alfred G. Harris, did not previously file an appeal in these cases because he understood and agreed with the benefit determinations. When the appellant filed his November

24, 2012 appeal, it was his intention to only appeal a separate issue with regard to Section 8-1001 of the Maryland Unemployment Insurance Law.

### CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-806(e) provides, in essence, that either a claimant or employer has 15 days after the date of the mailing of the benefit determination to file a timely appeal. COMAR 09.32.11.01(B) provides that an appeal is considered filed on the earlier of the following: (a) the date that is delivered in person to any office of the Department of Labor, Licensing and Regulation ("DLLR") that accepts appeals, or (b) the date on which it is postmarked by the U. S. Postal Service. Appeals filed after that date shall be deemed late and the determination shall be final, unless the appealing party meets the burden of demonstrating good cause for late filing. COMAR 09.32.11.01B(3) provides that "the period for filing an appeal from the Claims Specialist's determination may be extended by the Hearing Examiner for good cause shown." Good cause means due diligence in filing the appeal. Francois v. Alberti Van & Storage Co., 285 Md. 663 (1979) and Matthew Bender & Co. v. Comptroller of the Treasury, 67 Md. App. 693, 509 A.2d 702 (1986).

There is rebuttable presumption in law that a letter properly posted will be delivered to the address in due course. Border v. Grooms, 267 Md. 100 (1972).

### EVALUATION OF EVIDENCE

The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the Facts on the credible evidence as determined by the Hearing Examiner.

In the instant case, the appellant filed a late appeal within the meaning of Section 8-806 because that appeal was tendered after the deadline date. Once an appeal has been filed late, the burden is on the appealing party to show by credible evidence that good cause exists. Cooper v. Holy Cross Hospital, 328-BR-86. In this case, the appellant has not met this burden. The appellant failed to file a timely appeal because he agreed with the benefit determinations and chose not to appeal them. The appellant still agrees with the determinations and did not intend to appeal either of them. When an appellant fails to file a timely appeal because he agrees with the determination, there is no good cause for filing a late appeal. See Dahlheimer v. Tracor Hydronautics, Inc., 39-BR-89. Therefore the late-filed appeal in this case will not be permitted.

### DECISION

IT IS HELD THAT the appellant filed a late appeal without good cause within the meaning and intent of Md. Code Ann., Labor & Emp. Article, Section 8-806(e).

The determination of the Claim Specialist is unchanged.

*J. Nappier*

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J. Nappier, Esq.  
Hearing Examiner

### **Notice of Right to Request Waiver of Overpayment**

The Department of Labor, Licensing and Regulation may seek recovery of any overpayment received by the Claimant. Pursuant to Section 8-809 of the Labor and Employment Article of the Annotated Code of Maryland, and Code of Maryland Regulations 09.32.07.01 through 09.32.07.09, the Claimant has a right to request a waiver of recovery of this overpayment. This request may be made by contacting Overpayment Recoveries Unit at 410-767-2404. If this request is made, the Claimant is entitled to a hearing on this issue.

**A request for waiver of recovery of overpayment does not act as an appeal of this decision.**

**Esto es un documento legal importante que decide si usted recibirá los beneficios del seguro del desempleo. Si usted disiente de lo que fue decidido, usted tiene un tiempo limitado a apelar esta decisión. Si usted no entiende cómo apelar, usted puede contactar (301) 313-8000 para una explicación.**

### **Notice of Right of Further Appeal**

Any party may request a further appeal either in person, by facsimile or by mail with the Board of Appeals. Under COMAR 09.32.06.01A(1) appeals may not be filed by e-mail. Your appeal must be filed by January 23, 2013. You may file your request for further appeal in person at or by mail to the following address:

Board of Appeals  
1100 North Eutaw Street  
Room 515  
Baltimore, Maryland 21201  
Fax 410-767-2787  
Phone 410-767-2781

**NOTE:** Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing : December 27,2012  
CH/Specialist ID: USB7J  
Seq No: 001  
Copies mailed on January 08, 2013 to:  
ALFRED G. HARRIS  
FRU-CON CONSTRUCTION LLC  
LOCAL OFFICE #65  
MARIA NOBLE  
FRU-CON CONSTRUCTION LLC