

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

	Decision No.:	1477-BR-91	
	Date:	Nov. 26, 1991	
Claimant:	Elizabeth Beasley	Appeal No.:	9115370
		S. S. No.:	
Employer:	Genesis Health Ventures	L. O. No.:	10
		Appellant:	CLAIMANT

Issue: Whether the claimant filed a timely appeal or had good cause for an appeal filed late, within the meaning of Section 8-806; whether the claimant was discharged for gross misconduct or misconduct, connected with her work, within the meaning of Section 8-1002 or 8-1003 of the Labor and Employment Article.

— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES

December 26, 1991

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

The last date for the claimant to appeal the Claims Examiner's determination was August 30, 1991. The claimant filed her appeal on the next following working day, September 3, 1991.

On appeal to the Board of Appeals, the claimant proffers that she did visit the location of the local office on August 30, 1991 with the intention of filing an appeal, but that she was deterred by a sign which stated that no claims would be taken after 3:00 p.m.

In the interest of the speedy adjudication of this case, and considering that the employer neither presented evidence nor cross-examined the claimant on this particular issue, the Board will accept the claimant's additional proffered evidence. The law requires the Board to decide these cases on the merits where possible. Since the claimant attempted to file her claim in person during normal business hours on the last date to file the appeal but was deterred and confused by a sign which, to her, meant that she was not allowed to come in and file an appeal, the Board concludes that the claimant did have good cause within the meaning of the law for filing her appeal one working day late.

Having reviewed the case, the Board will make a decision on the merits. The claimant was a nurse's aide for the employer from May 28, 1985 through July 23, 1991. She was considered by her employer to have a bad attitude. Only three specific incidents of actual conduct, however, were mentioned. The first occurred in 1985 or 1986 and was far too remote in time to be considered. The second occurred in 1989. The Board also concludes that this is too remote in time to reasonably justify a discharge that took place in 1991.

The actual incident that resulted in the claimant's termination took place in July of 1991. On that date, a co-worker commented that the claimant did not seem very cheerful that morning. The claimant responded that she did not wish to talk to that co-worker. The co-worker attempted to find out why, and the claimant curtly responded, telling the co-worker to go about her business. Based on this incident, and another incident of similar significance in 1989, the claimant was discharged.

The claimant had often been criticized for speaking loudly at work. No particular incidents of this, however, were shown at the hearing.

The Board concludes that the claimant's conduct does not rise to the level of misconduct within the meaning of Section 8-1002 or 8-1003 of the Labor and Employment Article. The Board has long ruled that, where an employee is discharged for an attitude problem, the employer has the burden of showing some concrete instances in which this attitude affected the claimant's work performance. Such concrete instances have not been shown in this case. What was shown amounted to, at most,

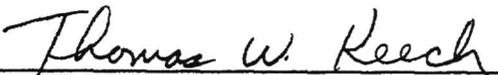
a passing incident of discourtesy to a fellow employee. This incident does not reflect well on the claimant's disposition, but it falls well short of amounting to any type of misconduct within the meaning of the law.

DECISION

The claimant filed an untimely appeal, but for good cause within the meaning of Section 8-806(e)(2) of the Labor and Employment Article.

The claimant was discharged, but not for any misconduct or gross misconduct within the meaning of Sections 8-1002 or 8-1003 of the Labor and Employment Article. No disqualification is imposed based upon her reasons for separation from Genesis Health Ventures. The claimant may contact her local office concerning the other eligibility requirements of the law.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

K:W

kbm

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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - CAMBRIDGE



Maryland

Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— D E C I S I O N —

	Date:	Mailed:	10/7/91
Claimant:	Elizabeth Beasley	Appeal No.:	9115370
		S. S. No.:	
Employer:	Genesis Health Ventures	L. O. No.:	10
		Appellant:	Claimant
Issue:	Whether the claimant was discharged for gross misconduct connected with the work, within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1002. Whether the appealing party filed a timely appeal or had good cause for an appeal filed late, within the meaning of MD Code, Labor and Employment Article, Title Section 806.		

— NOTICE OF RIGHT TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET. BALTIMORE. MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON October 22, 1991

— A P P E A R A N C E S —

FOR THE CLAIMANT:

Claimant - Present

FOR THE EMPLOYER:

Represented by:
Russell Milliner,
Director of Nursing

FINDINGS OF FACT

A Notice of Benefit Determination mailed to the parties provided that the last date to file an appeal was August 30, 1991. In this case, the claimant filed the appeal in person on September

3, 1991. She offers as a reason for late filing that even though she received the Benefit Determination and noted the appeal deadline, she believed that she had another job, and decided to contest that determination only after the job fell through. She learned of the determination on a Friday (August 30, 1991) and filed the first day after that the local office was open (September 3, 1991). The claimant had received the information booklet "What you Should Know About Unemployment Insurance In Maryland" at the time of filing.

CONCLUSIONS OF LAW

In Premick v. Roper Eastern (141-BR-83), the Board of Appeals conferred upon the Appeals Division its own jurisdiction granted pursuant to Article 95A, Section 7(c)(3) to rule upon the issue of timeliness of appeal as well as the issue of good cause in the filing of a late appeal. In the instant case, the evidence will support a conclusion that the appellant filed a late appeal for reasons which do not constitute good cause under the provisions of Article 95A, Section 7(c)(3) and legal precedent construing that action.

The claimant originally decided not to appeal the determination of the Claims Examiner, and changed her mind when she learned at the last minute she had no new job. This was an external personal circumstance which does amount to legal good cause for late filing of the appeal. Had the claimant mailed her written appeal on August 30, 1991, the fact it was postmarked that date would have made the appeal timely.

DECISION

It is held that the appellant did not file a valid and timely appeal within the meaning and intent of Article 95A, Section 7(c)(3).

The determination of the Claims Examiner (and any disqualification applied), remains effective and **unchanged**.

Henry M. Rutledge

Henry M. Rutledge
Hearing Examiner

Date of Hearing: 9/30/91
 ec/Specialist ID: 10167
 Cassette No: 9211
 Copies mailed on 10/7/91 to:
 Claimant
 Employer
 Unemployment Insurance - Cambridge (MABS)