

**Testimony before the District of Columbia Council  
Committee on Housing and Workforce Development  
Marion Barry, Chairperson  
Hearing**

**Re: "The Unemployment Compensation Administrative Modernization  
Amendment Act of 2009," Bill 18-420 &  
"The Unemployment Compensation Reform Act of 2009," Bill 18-455  
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**November 23, 2009**

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On behalf of the Legal Aid Society of the District of Columbia, I testify here today in strong support of the two bills before this committee today. These bills are good public policy, the right thing to do, and will have a significant stimulative effect on the economy.

Although we support these bills in their entirety, today's testimony will focus on two very important timing provisions, one of which is already in the bill and another which we propose as an amendment. In particular, we support the provision in the bill that would increase from 10 to 15 days the statutory deadline for claimants and other parties to file an administrative appeal from an adverse claims determination. In addition, we recommend adding the following sentence to Section 2 of the bill: "**The 15-day appeal period may be extended if the claimant or any party to the proceeding shows excusable neglect or good cause.**" We are attaching a proposed redline of the bill as Exhibit 1 to this testimony.

These important amendments are long-overdue. The D.C. Court of Appeals has long construed the 10-day appeal deadline as absolute (with various exceptions when valid, unambiguous notice of the claims determination has not been provided to the claimant). To illustrate the rigidity of the deadline: Thirty-five years ago, the court held that a claimant's appeal, filed just three days late, was barred, even though the reason the claimant had filed late was because his wife had just died. *See Gaskins v. District Unemployment Comp. Bd.*, 315 A.2d 567 (D.C. 1974). The Office of Administrative Hearings (OAH), which hears the administrative appeals from unemployment compensation determinations, has taken the Court's cue and has treated the 10-day filing deadline with equal strictness.

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<sup>1</sup> The Legal Aid Society was formed in 1932 to "provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs." Legal Aid is both the oldest and largest general civil legal services program in the District of Columbia. Legal Aid's primary issue areas are family law / domestic violence, housing, public benefits, and consumer law. Legal Aid also has an appellate practice which covers broader areas of poverty law, including unemployment insurance appeals. Over the last 75 plus years, tens of thousands of the District's most vulnerable residents have been served by Legal Aid staff and volunteers.

The Legal Aid Society has represented a number of claimants in the D.C. Court of Appeals who have petitioned for review from decisions by OAH dismissing their unemployment administrative appeals as untimely. We also regularly review new unemployment compensation filings in the D.C. Court of Appeals. From that experience, we have come to appreciate that the current 10-day administrative appeal deadline set out in D.C. Code § 51-111(b) is both too short and too inflexible and that the deadline frequently has been draconian in consequences for claimants in need of this critical safety-net benefit.

Let me provide you with a few examples. Some come from case law, some from cases Legal Aid has handled, and others from our review of pending petitions for review in the D.C. Court of Appeals.

- In *Wright-Taylor v. Howard University Hospital*, 974 A.2d 210 (D.C. 2009), the claimant challenged the dismissal of her appeal by the Office of Administrative Hearings as untimely. The claimant testified that she mailed her request for a hearing, which initiates the appeal, within the 10-day deadline, but OAH did not receive the request, so it could not verify from the postmark that the appeal was timely mailed. Because OAH treated the 10-day deadline as absolute, it rejected the appeal as untimely even though it found the claimant's testimony about the mailing to be credible.

The D.C. Court of Appeals ruled for the claimant on other grounds relating to a defect in the notice and thus did not need to decide whether the claimant's testimony about the mailing was sufficient. A "good cause/excusable neglect" exception in the statute would have given OAH the latitude to allow the appeal where the request for a hearing was lost in the mail.

- In *Rhea v. Designmark Service, Inc.*, 942 A.2d 651 (D.C. 2008), the claimant filed her appeal *one day* after the appeal deadline had passed. She explained that her appeal was late because she had not received the original decision by the claims examiner. She arranged with DOES to have the decision reissued, but she did not receive the reissued decision until the day her appeal was due. She faxed her appeal the following day. OAH dismissed her appeal as untimely.

The D.C. Court of Appeals sent the case back to OAH for additional factfinding regarding when and if the original claim determination was mailed to the claimant. The extensive delay involved in requiring the claimant to seek review in the D.C. Court of Appeals to reinstate her administrative appeal and then to engage in further factfinding regarding when and if the claim determination was actually mailed could have been avoided if a "good cause/excusable neglect" exception allowed OAH the flexibility to allow a late appeal when a claimant credibly testifies that she did not receive the claims determination or received it late.

- Many other claimants have gone through similar experiences as the claimant in *Rhea*. Legal Aid currently represents a claimant in the D.C. Court of Appeals who filed her administrative appeal one day late. She did so because she did not receive the claim determination from DOES, and so she did not know she had any decision to appeal. She received a claim card on Day 11 that indicated that she was not going to receive unemployment benefits, and after running back and forth between DOES and OAH, she obtained a copy of her claims determination and appealed that same day—one day after the deadline. OAH dismissed her appeal as untimely. An exception for “excusable neglect/good cause” would have obviated the need for this prolonged delay while this claimant pursues her petition for review with the D.C. Court of Appeals.
- Our review of pending petitions for review in the D.C. Court of Appeals has revealed many compelling cases in which appeals, dismissed as untimely, could and should have been allowed to proceed if only the statute provided the necessary flexibility. One claimant was hospitalized for some of the 10-day appeal period and filed the appeal just a few days late. Another claimant was out of town and unable to retrieve his mail until the end of the appeal period. Another claimant went to two different U.S. Post Offices to mail her appeal, before the 10-day deadline had elapsed, but neither had a working photocopier. Finally, she mailed her appeal from UPS, which had a functioning copier, but because the envelope did not bear a postmark from the U.S. Postal Service, OAH treated the appeal as untimely. With greater flexibility in the statute, these claimants could and should have received hearings on the merits of their claims for benefits.
- Unfortunately, the rigidity with which deadlines are treated with respect to the appeals seeps into the way claimants are treated with respect to other deadlines. One of the most compelling examples is one in which Legal Aid represented the claimant, in *Frausto v. U.S. Department of Commerce*, 926 A.2d 151 (D.C. 2007). There, the claimant missed her scheduled hearing at OAH because there had been a fire in her home a few days earlier, the claimant had been taken to the hospital for treatment of smoke inhalation, and she was unable to return to her home until the scheduled hearing date. Despite the fact that the claimant called the clerk’s office the morning of the hearing to request a continuance, OAH conducted the hearing without the claimant and found her ineligible to receive unemployment benefits. OAH also denied the claimant’s subsequent motion for relief from the final order, in which she explained why she had missed the hearing.

The D.C. Court of Appeals found that OAH had abused its discretion in denying that motion for relief. Although adopting an exception to the appeal deadline might not directly address the situation of a missed hearing, it would help create a culture in which OAH is more likely to be flexible in its treatment of claimants who have good reasons for missing deadlines.

In amending the statute both to increase the appeal period from 10 to 15 days and to allow late appeals for “excusable neglect or good cause,” the District of Columbia would be bringing its

Unemployment Compensation Act in line with the approaches taken by its neighboring states of Maryland and Virginia. Maryland allows a claimant or employer to file an administrative appeal of the claims determination within 15 days and permits that deadline to be extended for “good cause.” Virginia allows 30 days—both to file the initial administrative appeal and the second-level administrative appeal. Both 30-day appeal periods may be extended for “good cause.” It is also notable that California, with its large population and the fourth highest unemployment rate in the country (12.5% in October, according to U.S. Department of Labor figures released last Friday), not only provides for a 20-day administrative appeal period, but specifically allows the 20-day appeal period to be extended “for good cause, which shall include, but not be limited to, mistake, inadvertence, surprise, or excusable neglect.”

We believe that amending the District of Columbia’s Unemployment Compensation Act to provide for similar flexibility would be a welcome and significant change, allowing claimants who have good reasons for having filed their administrative appeals late to be given a hearing to determine if they are eligible for the critical benefits they need to meet life’s most basic needs.

In conclusion, we strongly support B-420 and B-455 but propose a technical amendment that would further the goals of the legislation and help unemployment claimants receive the benefits they deserve. We are happy to work with the Council on these important matters.

## **Unemployment Compensation Reform Act of 2009, B18-0455**

### **Proposed language to add to bill (amending the bill's current Sec. 2):**

Sec. 2. D.C. Official Code § 51-111(b) is amended to read:

“Promptly after an individual has filed a claim for benefits, an agent of the Director designated by it for such purpose shall make an initial determination with respect thereto which shall include a determination with respect to whether or not such benefit may be payable, and if payable, the week with respect to which payments will commence, the maximum duration thereof, and the weekly benefit amount, except that in any case in which the payment or denial of benefits will be determined by the provisions of § 51-110(e), the agent shall promptly transmit such claim to an appeal tribunal which shall make a decision thereon after such investigation as it deems necessary, and after affording the parties opportunity for fair hearing in accordance with subsection (e) of this section, and the claimant and interested parties shall be given notice thereof and permitted to appeal therefrom to the Director and the courts as is provided in this subchapter for notice of, and appeals from, decisions of appeal tribunals. An initial determination may, for good cause, be reconsidered. The claimant and other parties to the proceedings shall be promptly notified of the initial determination or any amended determination and the reasons therefor. Benefits shall be denied or, if the claimant is otherwise eligible, paid promptly in accordance with such initial determination except as hereinafter otherwise provided. The Director shall promptly notify the claimant and any party to the proceeding of its determination, and such determination shall be final within **15** days after the mailing of notice thereof to the party's last-known address or in the absence of such mailing, within **15** days of actual delivery of such notice. **The 15-day appeal period may be extended if the claimant or any party to the proceeding shows excusable neglect or good cause.** If an appeal tribunal affirms an initial

determination allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken. If, subsequent to such initial determination, benefits with respect to any week for which a claim has been filed are denied for reasons other than matters included in the initial determination, the claimant shall be promptly notified of the denial and the reasons therefor, and may appeal therefrom in accordance with the procedure herein described for appeals from initial determinations.”