

DISTRICT OF COLUMBIA COURT OF APPEALS

DAPHNE L. BARBEE,)	
)	
Petitioner,)	
)	
v.)	No. 09-AA-469
)	
BRIGHT HORIZONS)	
CHILDREN’S CENTER,)	ES-P-08-111703
)	
Respondent.)	
_____)	

MOTION FOR SUMMARY REVERSAL

In a final order dated April 7, 2009, the Office of Administrative Hearings (“OAH”) dismissed petitioner Daphne Barbee’s administrative appeal from the denial of unemployment compensation benefits on the ground that it was untimely. Ms. Barbee hereby moves for summary reversal of that order. The record shows that Ms. Barbee’s administrative appeal was postmarked on October 20, 2008 and was therefore timely. The Administrative Law Judge’s contrary determination—based on a second “Southern Maryland” post mark, bearing an October 21, 2008 date, next to the original post mark—is not supported by substantial evidence and must be reversed. In an order dated May 29, 2009, this Court ordered OAH to file the administrative record within 60 days from the date of that order. Although the record is now two months overdue, OAH has not yet complied. There is no need for the Court to wait for the administrative record, however, if it agrees that the original envelope demonstrates that Ms. Barbee’s request for a hearing was indeed mailed on October 20, 2008.

The Solicitor General in the Office of the Attorney General conditionally consents to this motion: If the Court determines that the original envelope was postmarked October 20, then the Solicitor General agrees with Ms. Barbee that summary reversal is appropriate.

STATEMENT OF FACTS

A claims examiner at the Department of Employment Services (“DOES”) found Ms. Barbee disqualified from receiving benefits. The claim examiner certified that he mailed the claims determination to the claimant on October 8, 2008. Petitioner was required to file her administrative appeal with OAH “within 10 days after the mailing of notice” of the claims determination to her last-known address. D.C. Code § 51-111(b). October 18, 2008 fell on a Saturday; therefore, Ms. Barbee had until October 20, 2008 (the first business day after 10 calendar days) to file her administrative appeal with OAH. Final Order (attached as Exhibit 1) at 3; *see* 1 DCMR § 2811.3.

Under OAH rules, a request for a hearing appealing a determination regarding unemployment compensation “shall be filed with this administrative court in order for the case to be commenced before this administrative court.” 1 DCMR § 2805.8. Under OAH Rule 2899, “[f]iled means, unless otherwise specified”:

when the document is actually received by the Clerk of Court. Notwithstanding the foregoing definition, a document filed pursuant to 1 DCMR 2805 shall relate back for purposes of timeliness, if its envelope bears a United States Postal Service post mark, rather than a mark from a private postal meter.

1 DCMR § 2899. Thus, under OAH’s rules, the envelope was required to bear a U.S. Postal Service post mark reflecting a mailing date on or before the hearing request was due (October 20, 2008) in order for Ms. Barbee’s administrative appeal to be deemed timely filed.

On October 20, 2008, petitioner (or, more accurately, her husband) mailed her request for a hearing to OAH. OAH received the hearing request on October 22, 2008. Final Order at 4; *see*

Photocopy of envelope containing petitioner's request for a hearing (date stamped by OAH on October 22, 2008), attached hereto as Exhibit 2.¹

Administrative Law Judge ("ALJ") Calonette M. McDonald ruled that Ms. Barbee's administrative appeal was untimely on the ground that the envelope bears a U.S. post mark of October 21, 2008, *see* Final Order at 2, 4, and therefore dismissed Ms. Barbee's appeal without addressing the merits of her claim. *Id.* at 1, 4-6. On May 7, 2009, Ms. Barbee filed a timely petition for review in this Court.

As Ms. Barbee stated in her petition for review, attached as Exhibit 3 (without the accompanying attachments), the ALJ was confused by the two different dates on the envelope. The photocopy of the envelope contains both a Southern Maryland post office processing stamp, reflecting a date of October 21, 2008, and a separate U.S. Postal Service post mark, circular in shape, that overlays the postage stamp depicting Sleeping Beauty, in the upper right-hand corner of the envelope. The circular post mark can just barely be read on the photocopy to reflect a zip code of either 20013 or 20018; both zip codes are in Washington, D.C. No post mark date within this circular post office mark can be seen in the photocopy of the envelope. *See* Exhibit 2.

The undersigned counsel went to OAH's clerk's office to view the original envelope. The circular post office mark on top of the Sleeping Beauty stamp is red. In the writing in the circular ring, the words "Washington" and "station" and either "20013" or "20018" can be made out. More importantly, the circular post office mark contains a date stamp of "OCT 20," reflecting that Ms. Barbee's administrative appeal was indeed timely mailed. The date stamp is difficult to see. To view it, the envelope should be held upside down. Then the stamp "OCT 20"

¹ As discussed below, to resolve this motion it will be necessary for the Court to order OAH to provide the original envelope to the Court. The envelope was marked at the OAH hearing as Exhibit 302. *See* OAH Final Order at 2, 4.

can be read in the approximate center of the circle. To assist the Court, counsel has drawn a red circle on Exhibit 4 (which is otherwise identical to Exhibit 2) in the area of the Washington, D.C. post mark where the date stamp appears, upside down.

Counsel for Ms. Barbee conferred with Todd Kim, the Solicitor General in the Office of the Attorney General, seeking his consent, on behalf of DOES, to this motion for summary reversal. At Mr. Kim's request, an official of DOES examined the original envelope and was unable to confirm that it bore an October 20, 2008 post mark date. The Solicitor General agrees, however, that this Court should examine the original envelope for itself and that if the Court observes the "OCT 20" stamp, summary reversal is appropriate.²

ARGUMENT

The standard for summary reversal in this Court has long been settled. A party seeking summary reversal must "demonstrate[e] both that his remedy is proper and that the merits of his claim so clearly warrant relief as to justify expedited action." *United States v. Allen*, 408 F.2d 1287, 1288 (D.C. Cir. 1969); accord *Oliver T. Carr Mgt., Inc. v. Nat'l Delicatessen, Inc.*, 397 A.2d 914, 915 (D.C. 1979); *In re M.L. DEJ*, 310 A.2d 834, 836 (D.C. 1973). The Court has elaborated on this standard by stating that the movant must show "that the legal basis of the decision on review is narrow and clear-cut, and must demonstrate that the facts of the case are uncomplicated and undisputed." *Jackson v. District of Columbia Bd. of Elections & Ethics*, 770 A.2d 79, 80 (D.C. 2001) (citing *Oliver T. Carr Mgt.*, 397 A.2d at 915). The standard for summary reversal is satisfied in this case.

² After the Solicitor General informed the undersigned counsel that the DOES official could not make out the "OCT 20" post mark date, she asked another employee at the Legal Aid Society to examine the original envelope. That employee confirmed that he observed an upside down "20" in the area of the Washington, D.C. post mark indicated in red on Exhibit 4. He was unable to make out the "OCT."

Here, the legal basis for the decision on review is “narrow and clear-cut.” Ms. Barbee’s administrative appeal would indisputably be timely filed if the envelope in which she mailed the appeal bore a U.S. Postal Service post mark of October 20, 2008. Regardless of additional processing of the envelope by the U.S. postal service—apparently in Maryland on October 21—a U.S. Postal Service post mark of “OCT 20” in Washington, D.C. reflects that Ms. Barbee’s envelope was mailed on October 20.³ The ALJ refused to consider the Washington, D.C. post mark with the October 20 date. She simply asserts, without even acknowledging that there is any issue, that the request for a hearing “bears a USPS postmark of October 21, 2008.” Final Order at 4; *see also id.* at 2. That conclusion is wrong. The issue is black-and-white, and there is no reason to make petitioner wait longer to process her appeal for safety-net benefits.

Moreover, the facts of this case are “uncomplicated” and in no reasonable sense can be called “disputed.” Although the ALJ looked at the more easily viewed Maryland post office processing stamp of October 21 and pronounced Ms. Barbee’s administrative appeal untimely, the October 20 Washington, D.C. post mark refutes the ALJ’s assertion regarding when petitioner’s appeal was mailed. Similarly, this Court has granted a motion for summary reversal where the trial court had dismissed a petition on the ground that it had not been filed by the State of Connecticut, when the record “clearly show[ed]” that the State of Connecticut did in fact file the petition. *District of Columbia v. R.F.*, No. 86-93, 1986 D.C. App. LEXIS 358 (D.C. May 30, 1986). Summary reversal is appropriate in this case because “no benefit will be gained from further briefing and argument of the issues presented.” *Taxpayers Watchdog, Inc. v. Stanley*, 819

³ As a Washington Post article explains, after the anthrax attacks of 2001, the U.S. Postal Service began shifting outgoing Washington, D.C. mail to suburban Maryland for processing. Darragh Johnson, *D.C.’s Identity Lost in the Mail: City Using Md. Postmark After ‘01 Anthrax Scare*, Wash. Post, Dec. 5, 2007, at B01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/12/04/AR2007120402176.html>.

F.2d 294, 298 (D.C. Cir. 1987). Furthermore, expedited review is particularly important here, where Ms. Barbee has been denied her right to a hearing regarding vital safety-net benefits.

As the Court has done in other cases in which it has found that OAH erred as a matter of law in dismissing an unemployment compensation administrative appeal as untimely, the Court should reverse the OAH final order and remand the case to OAH with instructions that it treat Ms. Barbee's administrative appeal as timely and consider the merits of her claim for unemployment compensation benefits. *See, e.g., Wright-Taylor v. Howard Univ. Hosp.*, 974 A.2d 210, 211, 218 (D.C. 2009); *Gomez v. Consol. Eng'g Servs., Inc.*, 943 A.2d 1167, 1168-69 (D.C. 2008); *Coto v. Citibank FSB*, 912 A.2d 562, 567 (D.C. 2006); *Calhoun v. Wackenhut Servs.*, 904 A.2d 343, 348 (D.C. 2006).

Ms. Barbee respectfully urges the Court to order OAH to provide the original envelope to the Court immediately—even before the rest of the administrative record is prepared—so that the Court can see for itself, without further delay, that the ALJ has committed clear and indisputable error and remand this case to OAH for proceedings on the merits of petitioner's appeal.

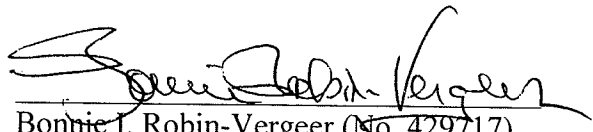
In any event, regardless of the visibility of the Washington, D.C. post mark date, petitioner submits that OAH erred in dismissing her administrative appeal as untimely. Accordingly, if the Court denies this motion for summary reversal, petitioner will submit a brief in the ordinary course after OAH files the administrative record.

CONCLUSION

For the foregoing reasons, petitioner Daphne Barbee respectfully requests that this Court reverse OAH's final order and remand to OAH with instructions that it treat petitioner's administrative appeal as timely and consider the merits of her claim for unemployment compensation benefits.

Dated: September 30, 2009

Respectfully submitted,



Bonnie I. Robin-Vergeer (No. 429717)
Legal Aid Society of the District of Columbia
1331 H Street, N.W., Suite 350
Washington, D.C. 20005
(202) 628-1161
Fax (202) 727-2132

Counsel for Petitioner Daphne L. Barbee

EXHIBIT 1

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

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS
2009 APR -7 P 3: 16

DAPHNE L. BARBEE
Appellant/Claimant

v.

BRIGHT HORIZONS CHILDREN'S CENTER
Appellee/Employer

Case No.: ES-P-08-111703

FINAL ORDER

I. INTRODUCTION

A. Summary

Appellant/Claimant Daphne L. Barbee applied for unemployment compensation benefits from the District of Columbia Department of Employment Services. A Claims Examiner found Claimant disqualified from receiving benefits. Claimant has appealed the Claims Examiner's Determination. This appeal raises two issues: 1) whether the request for appeal was timely filed within the 10 day statutory time limit, providing this administrative court with subject matter jurisdiction, District of Columbia Unemployment Compensation Act ("Act"), D.C. Official Code § 51-111(b); and 2) whether Appellee/Employer Bright Horizons Children's Center discharged Claimant for "misconduct," as defined in the Act, D.C. Official Code § 51-110(b). Based upon the evidence in the case, I find that the appeal was not timely filed and I dismiss the case without addressing the merits. Claimant remains disqualified from receiving benefits.

B. Proceedings in this Case

This administrative court issued a Scheduling Order and Notice of In-Person Hearing on December 17, 2008, scheduling the hearing for January 7, 2009, at 12:30 p.m. Both parties appeared for the hearing. Employer was represented at the hearing by Deborah Koshansky. Claimant appeared at the hearing and testified on the issue of timeliness only. Fred Barbee, Claimant's husband, also appeared and provided testimony on timeliness. No exhibits were admitted into evidence. I relied upon court records labeled as Exhibits 300, 301, and 302 to determine jurisdiction.

II. FINDINGS OF FACT

The Claims Examiner certified that the Determination was "mailed to the claimant and to the employer named herein at the above addresses on 10/08/2008." Exhibit 300. The Determination and the Notice of Appeal Rights were sent to Claimant's last-known and correct address: 145 R Street, NE, Washington, D.C. 20002. Exhibit 300. The Determination was received by Claimant at that address.

On October 22, 2008, Claimant appealed the Claims Examiner's Determination.¹ Exhibits 301 and 302. Claimant's appeal was mailed in an envelope bearing a United States Postal Service ("USPS") postmark of October 21, 2008. Exhibit 302.

III. CONCLUSIONS OF LAW AND DISCUSSION

The appeal was not timely filed. To be timely, an appellant's request for hearing must be filed with this administrative court within 10 days of service of the Determination of the Claims

¹ 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.

Examiner. D.C. Official Code § 51-111(b); *Gosch v. D.C. Dep't of Employment Servs.*, 484 A.2d 956, 957 (D.C. 1984).

Claimant testified that the address on the Claims Examiner's Determination was her correct address.² If proper notice has been provided, "[t]he ten day period provided for [administrative] appeals under the Unemployment Compensation Act . . . is jurisdictional, and failure to file within the period prescribed divests the agency of jurisdiction to hear the appeal." *Chatterjee v. Mid Atl. Reg'l Council of Carpenters*, 946 A.2d 352, 354 (D.C. 2008) (quoting *Lundahl v. D.C. Dep't of Employment Servs.*, 596 A.2d 1001 (D.C. 1991), and *Calhoun v. Wackenhut Servs.*, 904 A.2d 343, 345 (D.C. 2006); *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 a death in the family). Appellate jurisdictional requirements cannot be waived. *Customers Parking, Inc. v. District of Columbia*, 562 A.2d 651, 654 (D.C. 1989).

Claimant provided no evidence that the Determination was mailed on a date other than the date certified by the Claims Examiner. Exhibit 300. I find that the Claims Examiner's Determination was mailed on October 8, 2008. Therefore, the parties had until October 20, 2008 (first business day after 10 calendar days), to file an appeal. OAH Rule 811.3. OAH Rule 2805.8 provides:

Any request for a hearing under this rule appealing a determination regarding unemployment compensation shall be filed with this administrative court in order for the case to be commenced before this administrative court.

² The certificate of service suffers from none of the defects identified by the District of Columbia Court of Appeals in *Rhea v. Designmark Servs.*, 942 A.2d 651 (D.C. 2008). The certificate of service states that the Determination was mailed "to the claimant and to the employer named herein at the above addresses on 10/08/2008." Claimant received the Determination at her last-known address.

(Emphasis added.) The issue then becomes the date upon which such a request is filed with this administrative court. Under OAH Rule 2899, “Filed” means: “unless otherwise specified, when the appeals document is actually received by the Clerk of the Court.” In this instance, the Clerk of the Court received Claimant’s appeal document through the mail on October 22, 2008. OAH Rules provide an exception that the filing date of an unemployment appeal may relate back to the USPS postmark for purposes of timeliness.

The request for hearing, although received by this administrative court through the mail on October 22, 2008, bears a USPS postmark of October 21, 2008. *See* Exhibit 302. While the Rules of this administrative court provide that the postmark date may be considered the relevant date in an unemployment case, a postmark date after the 10-day statutory deadline does not make an otherwise untimely appeal timely. The postmark date in this case was one day after the 10-day statutory deadline. The request for hearing was untimely filed.

It was Claimant’s burden to provide the evidence that will allow this administrative court to determine whether there is jurisdiction to hear the appeal. *Georgiades v. Martin-Trigona*, 729 F.2d 831, 833 n.4 (D.C. Cir. 1984); OAH Rule 2820.3. The Scheduling Order specifically identified that issue as critical to establishing this administrative court’s authority to hear the appeal:

ORDERED, that since current information indicates that there are serious questions concerning the timeliness of the appeal, that issue will be considered at the hearing. Appellant should follow the instructions above and provide any documents regarding the mailing of the claims determination, such as an envelope and the filing of the appeal, that the Appellant wants this administrative court to consider.

Scheduling Order at 2 (emphasis in original).

The Court of Appeals has held that information provided orally by DOES personnel can render ambiguous a Claimant’s notice of appeal rights. *Calhoun v. Wackenhut Servs.*, 904 A.2d 343

(D.C. 2006); *McDowell v. Southwest Distrib.*, 899 A.2d 767 (D.C. 2006). In such cases, ambiguous notice may be “inadequate as a matter of law to trigger the operation of the statutory time limitations. . . .” *Calhoun*, 904 A.2d at 345 n.3 (quoting *Montgomery v. D.C. Dep’t of Employment Servs.*, 723 A.2d 399, 400 (D.C. 1999)). In this case, there was no evidence at all in the record that Claimant was given misleading advice from any government employee prior to the expiration of the 10-day time period. Claimant presented no evidence here to suggest that the notice given regarding appeal rights was ambiguous in any way. *McDowell*, 899 A.2d at 768-69. Notice was not ambiguous in this case.

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*, 484 A.2d at 957 (holding no jurisdiction to consider an appeal where the time prescribed for filing has expired and noting that the 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.” *Chatterjee v. Mid Atl. Reg’l Council of Carpenters*, 946 A.2d 352, 355 (D.C. 2008); *Lundahl v. D.C. Dep’t of Employment Servs.*, 596 A.2d 1001 (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 pointed out in *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.”

Therefore, I find that Claimant did not file her appeal within the 10-day statutory time period. D.C. Official Code § 51-111(b). 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.

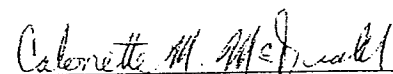
The Determination of the Claims Examiner that Claimant is disqualified from receiving benefits remains unchanged.

IV. ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, it is, this 7th day of April 2009:

ORDERED, that the appeal by Appellant/Claimant Daphne L. Barbee is **DISMISSED** for lack of jurisdiction; and it is further

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


Calonette M. McDonald
Administrative Law Judge

**PETITION FOR REVIEW
(APPEAL RIGHTS)**

THIS ORDER IS A FINAL ORDER. IF YOU WISH TO APPEAL THIS ORDER, YOU HAVE 30 CALENDAR DAYS FROM THE DATE IT IS MAILED TO YOU TO FILE A PETITION FOR REVIEW WITH THE D.C. COURT OF APPEALS.

Pursuant to D.C. Official Code § 2-1831.16(c)-(e), any party suffering a legal wrong or adversely affected or aggrieved by this Order may obtain judicial review by filing an original and six copies of a petition for review with the District of Columbia Court of Appeals at the following address:

Clerk
District of Columbia Court of Appeals
H. Carl Moultrie I Courthouse
500 Indiana Avenue, NW
Sixth Floor
Washington, DC 20001

The petition for review, (and required copies) may be mailed or delivered in person to the Clerk of the Court of Appeals, and must be received by the Clerk of the Court of Appeals within 30 calendar days of the mailing date of this Order, pursuant to D.C. App. R. 15(a)(2).

There is a fee of \$100 for filing a petition for review. Persons who are unable to pay the filing fee may file a Motion and Affidavit to proceed without the payment of the filing fee. Such motion and affidavit should be filed with the petition for review. Information on petitions for review to the Court of Appeals can be found in Title III of the Rules of the District of Columbia Court of Appeals, which are available in the Office of the Clerk of the Court of Appeals or online at www.dcappeals.gov.

If you are a member of the United States Armed Forces on active duty, you may have certain rights under the Servicemembers Civil Relief Act 50 U.S.C.S. Appx. § 501 *et seq.* If you qualify for these rights and you have **LOST** this case because you were not present, you **MAY** be able to have this case reopened. If you think you may qualify under this law, you must notify this court promptly to ensure that your rights are protected.

Certificate of Service:

By First Class Mail (Postage Paid):

Daphne L. Barbee
145 R Street, NE
Washington, DC 20002

By Inter-Agency Mail

Dorothy Jones
Department of Employment Services
609 H Street, NE
Washington, DC 20002

Bright Horizons Children's Center
ATTN: Human Resources
P.O. Box 9177
Watertown, MA 02471-9177

I hereby certify that on April 1st,
2009, this document was caused to be
served upon the above-named parties
and upon DOES at the addresses listed
and by the means stated.

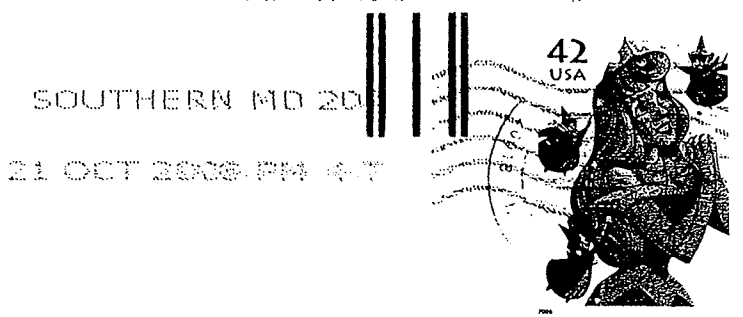
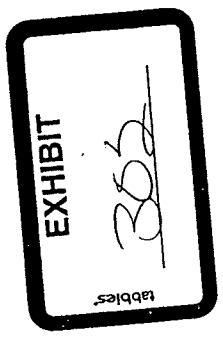

Clerk/Deputy Clerk

EXHIBIT 2

D.L. Barbee
145 RST. N.E.
Washington, D.C. 20002

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2008 OCT 22 P 3:33

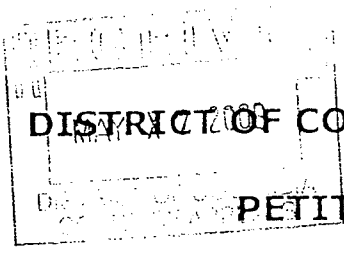


SOUTHERN MD 20

21 OCT 2008 PM 4:7

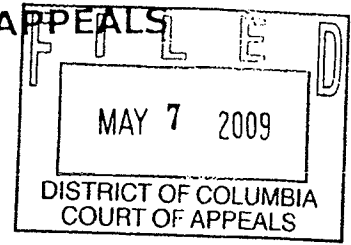
Office of Administrative
Hearings
941 N. Capitol St. N.E Suite
9100
Washington, D.C. 20002

EXHIBIT 3



DISTRICT OF COLUMBIA COURT OF APPEALS

PETITION FOR REVIEW



APPEAL NO. 09-AA-469

Daphne L. Barbee

Your Name

PETITIONER,

v.

ES-P-08-111703

D.C. Department of Employment Services

Agency Name

Agency No.

RESPONDENT.

I, Daphne L. Barbee, wish to appeal to the

District of Columbia Court of Appeals from the decision or order of the D.C. Office of

Administrative Hearings entered on the 7th day of April, 20 09.

Statement of the Nature of the Proceedings and Grounds Relied On (continue on reverse side if needed):

I disagree with OAH's decision and believe that my appeal was timely. The judge became confuse over the different dates on the envelop, and she denied me the opportunity to give an explanation to why the post office had stamped two dates. One date is the post mark stamp, and the other date is the post office processing stamp.

~~Name, address and telephone number of all other parties (attach separate petition on reverse side if needed).~~ I also have included different examples.

Daphne L. Barbee
Signature of Petitioner or Attorney

Daphne L. Barbee
Printed Name Petitioner or Attorney

145 R Street N.E. Washington, D.C.
Address 20002

(202) 635-4891
Telephone

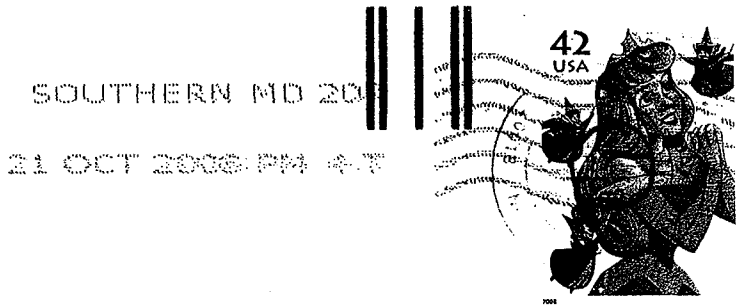
NOTE: Attach a copy of the decision/order issued by the District of Columbia agency from which this appeal is taken.

EXHIBIT 4

D.L. Barbee
145 RST. N.E.
Washington, D.C. 20002

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2008 OCT 22 P 3:33



Office of Administrative
Hearings
941 N. Capitol St. N.E Suite
9100
Washington, D.C. 20002

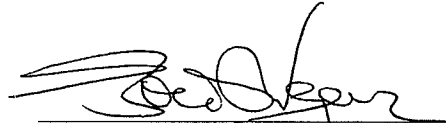
CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2009, I caused a true and correct copy of the foregoing Motion for Summary Reversal to be served by first-class mail, postage prepaid,

on:

Katherine Bierma Pregel
Little Mendelson PC
1150 17th Street, N.W., Suite 900
Washington, D.C. 20036

Todd S. Kim, Solicitor General
Office of the Attorney General for the District of Columbia
441 4th Street, N.W.
Suite 600 South
Washington, D.C. 20001



Bonnie I. Robin-Vergeer