

IN THE
SUPREME COURT OF THE UNITED STATES

JEANETTA CARTER,

Plaintiff-Appellant

v.

Case number: 17-7074

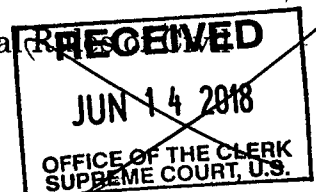
LABOR READY MID-ATLANTIC, INC.
c/o EQUIFAX WORKFORCE SOLUTIONS
also known as TALX CORPORATION
P.O. BOX 182366
COLUMBUS, OHIO 43218,

Defendants-Appellees

**MOTION FOR LEAVE TO IMMEDIATELY FILE PETITION FOR
REHEARING OUT OF TIME**

In accordance with the 28 United States Code § 452, the Plaintiff, Jeanetta Carter files a Motion for Leave to Immediately File Petition for Rehearing Out of Time.

The petition for a writ of certiorari for the above case is denied on February 20, 2018. The Plaintiff argues that the motion was consider timely and good in faith and the Plaintiff was to be allowed to correct her petition for rehearing, because the Plaintiff does postmark a Motion for New Trial on March 23, 2018, pursuant to the subsections, (a) (2) and (b) of the Rule 59 of the Federal Rules of Civil Procedure. A copy of the letter from the Clerk dated March 27, 2018, (See, Exhibit A), is being submitted only for review of the pertinent information in the original submission regarding the erroneous interpretation by the Clerk of the Court. The subsections, (a) (2) and (b) of the Rule 59 of the Federal



Procedure states after a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment; and a motion for a new trial must be filed no later than 28 days after the entry of judgment. Moreover, the Plaintiff is to have 28 days after the entry of judgment to file a petition for rehearing, according to the subsections, (a) (2) and (b) of the Rule 59 of the Federal Rules of Civil Procedure, and twenty-eight days after February 20, 2018, is March 20, 2018. Furthermore, the Rule 6 (d) of the Federal Rules of Civil Procedure, and the Rule 26 (c) of the Federal Rules of Appellate Procedure do add three additional days for filing documents. The Rule 6 (d) of the Federal Rules of Civil Procedure states when a party may or must act within a specified time after being served and service is made under Rule 5 (b) (2) (C) (mail), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added after the period would otherwise expire under Rule 6 (a). Also the Rule 26 (c) of the Federal Rules of Appellate Procedure states when a party may or must act within a specified time after being served, 3 days are added after the period would otherwise expire under Rule 26 (a), unless the paper is delivered on the date of service stated in the proof of service. For purposes of this Rule 26 (c), a paper that is served electronically is treated as delivered on the date of service stated in the proof of service. Therefore, the Plaintiff is able to postmark her documents on March 23, 2018.

The Rule 44.6 of the Rules of the Supreme Court of the United States affirms

if the Clerk determines that a petition for rehearing submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. A corrected petition for rehearing submitted in accordance with Rule 29.2 no more than 15 days after the date of the Clerk's letter will be deemed timely. The Plaintiff's motion is presented in a form that complied with the subsections, (a) (2) and (b) of the Rule 59 of the Federal Rules of Civil Procedure instead of the Rule 44 of the Rules of the Supreme Court of the United States. However, the Plaintiff does not receive a letter indicating the deficiency of the Rule 44 of the of the Federal Rules of Appellate Procedure from the Clerk and permitting her to submit a corrected petition for rehearing in accordance with the Rule 29.2 of the Rules of the Supreme Court of the United States no more than fifteen days after the date of the Clerk's letter.

In addition, a copy of the letter from the Clerk dated May 21, 2018, (**See, Exhibit B**), is being sent that advised the Plaintiff to file a motion for out of time. This Court clearly does have the power, in its discretion and in the interests of justice, to consider a petition for rehearing filed outside the formal limits imposed by Rule 44.2. See United States v. Ohio Power Co., 353 U.S. 98 (1957) (granting certiorari out-of-time so that the "case might be disposed of consistently with [] companion cases"); id. at 99 ("We have consistently ruled that the interests in finality of litigation must yield where the interests of justice would make unfair the strict application of our rules."); Gondeck v. Pan Am World Airways, Inc., 382 U.S. 25, 2627 (1965) (granting

untimely petition for rehearing where “intervening circumstances of substantial . . . effect” merits grant of certiorari after deadline to file for rehearing). Also this Court does find that the interest of justice and substantial intervening circumstances did exist to warrant granting out-of-time petitions for rehearing when an intervening case dictated changing the outcome. E.g. Simmons v. Sea-Land Servs., Inc. 462 U.S. 1114 (1983), granting rehearing, vacating and remanding for reconsideration in light of Pallas Shipping Agency, Ltd. v. Duris, 461 U.S. 529 (1983); Florida v. Rodriguez, 461 U.S. 940 (1983), same, in light of Florida v. Royer, 460 U.S. 491 (1983). Of particular interest is United States v. Booker, 543 U.S. 220 (2005), in light of which, it is reported, fourteen petitions for rehearing were granted. See Gressman, et. al. Supreme Court Practice § 15.6(a) (Ninth Ed. 2007). Booker involved the important right to a jury trial. This case involves the right to effective trial counsel, one at least equally important as the right to trial by jury decided in Booker.

Respectfully submitted,


Jeanetta Carter, Plaintiff-Appellant

Jeanetta Carter
5211 Arlington Avenue, Newport News, VA 23605
Telephone: 804-304-6087 / E-mail address: jeacarter60@yahoo.com

PROOF OF SERVICE)

STATE OF VIRGINIA)

City of Newport News)

I, Jeanetta Carter, hereby certify that I am the plaintiff-appellant herein, that I served the within Motion for Leave to Immediately File Petition for Rehearing Out of Time on June 11, 2018, by placing one copy thereof in a sealed envelope plainly addressed to the following:

**Daniel M. Schieble, Esq.
VSB# 23503
Anne C. Lahren, Esq.
VSB# 73125
Pender & Coward, P.C.
222 Central Park Ave., Suite 400
Virginia Beach, VA 23462**

and the original copy thereof to:

**Supreme Court of the United States
Office of the Clerk
1 First Street, NE
Washington, DC 20543**



Jeanetta Carter, Plaintiff-Appellant

Exhibit "A"

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

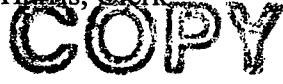
March 27, 2018

Jeanetta Carter
5211 Arlington Avenue
Newport News, VA 23605

No: 17-7074

Dear Ms. Carter:

The papers pertaining to the above-entitled case that were postmarked March 23, 2018 and received March 27, 2018 are herewith returned. The petition for a writ of certiorari was denied February 20, 2018, and the time for filing a petition for rehearing has expired. This case is considered closed in this Court, and no further consideration by this Court is possible. See Rule 44 of the Rules of this Court.

Sincerely,
Scott S. Harris, Clerk
By: 

M. Blalock
(202) 479-3023

Enclosures

Exhibit "B"

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

May 21, 2018

Jeanetta Carter
5211 Arlington Avenue
Newport News, VA 23605

No: 17-7074

Dear Ms. Carter:

The petition for rehearing in the above-entitled case was postmarked March 23, 2018 and received March 27, 2018 and is herewith returned as out-of-time.

Pursuant to Rule 44 of the Rules of this Court, a petition for rehearing must be submitted within 25 days after the decision of the Court. As the petition for writ of certiorari was denied on February 20, 2018, the petition for rehearing was due on or before March 17, 2018.

You may resubmit your petition for rehearing with a motion to file it out-of-time.

Sincerely,
Scott S. Harris, Clerk

By:

M. Blalock
(202) 479-3023

Enclosures

**IN THE
SUPREME COURT OF THE UNITED STATES**

JEANETTA CARTER,

Plaintiff-Appellant

v.

Case number: 17-7074

**LABOR READY MID-ATLANTIC, INC.
c/o EQUIFAX WORKFORCE SOLUTIONS
also known as TALX CORPORATION
P.O. BOX 182366
COLUMBUS, OHIO 43218,**

Defendants-Appellees

AMENDED CORRECTED INFORMAL PETITION FOR REHEARING

Pursuant to the subsection, (6) of the Rule 44 of the Rules of the Supreme Court of the United States, the Plaintiff, Jeanetta Carter moves the court to set aside the verdict and to grant her a rehearing for the following reasons:

1. The verdict is contrary to the law.

The Court of Appeals for the Seventh Circuit affirmed in part and reversed in part. Williams v. Faulkner, 837 F.2d 304 (1988). In its view, the District Court had wrongly equated the standard for failure to state a claim under Rule 12 (b) (6) with the standard for frivolousness under § 1915 (d). The frivolousness standard, authorizing sua sponte dismissal of an *in forma pauperis* complaint “only if the petitioner cannot make any rational argument in law or fact which would entitle him or her to relief,” is a “more lenient” standard than that of Rule 12 (b) (6), the court stated. 837 F.2d at 307. The Circuit Court had wrongly decided the

requirements of the Rule 1:4 (d) of the Rules of the Supreme Court of Virginia that requires that every pleading shall state the facts on which the party relies in numbered paragraphs, and it shall be sufficient if it clearly informs the opposite party of the true nature of the claim, when the Defendants' joint demurrer alerted the Plaintiff about the Defendants' defense and the Plaintiff submitted an answer to the joint demurrer of the Defendants that enable her to respond by opposing the motion to dismiss on legal grounds and by simplifying her factual allegations so as to conform with the requirements of a valid legal cause of action. Exhibits 1, page 2 and 2 did clearly confirm the claims such as defamation and tortious interference with economic opportunity and contractual relations that were present in Welch v. Kennedy Piggly Wiggly Stores, Inc., 63 B.R. 888 (W.D. Va. 1986) and negligence that was present like in the case of Getz v. Robert Welch, Inc., 428 U.S. 323 (1974): Actual malice is not necessary for defamation of private person, if negligence is present. The Defendants made a provable false statement about the Plaintiff and violated a regulation for a Federal program that is overseen by individual states and that should not had been viewed as frivolous (See, Exhibits 1, page 2 and 2). Unless there is "*indisputably absent any factual or legal basis for the wrong asserted in the complaint, the trial court, "[I]n a close case," should permit the claim to proceed at least to the point where responsive pleadings are required. Ibid. (citation omitted).*

Evaluated under this frivolousness standard, the Court of Appeals held, Williams' Eighth Amendment claims against two of the defendants had been

wrongly dismissed. Although the complaint failed to allege the level of deliberate indifference necessary to survive a motion to dismiss under Rule 12 (b) (6), at this stage of the proceedings, the court stated, “we cannot state with certainty that Williams is unable to make any rational argument in law or fact to support his claim for relief” against these defendants. 837 F.2d at 308. Accordingly, the Court of Appeals reversed and remanded these claims to the District Court. On September 8, 2016, the Circuit Court was not certain that the Plaintiff was unable to make any rational argument in law or fact to support her claim for relief against the Defendants.

Rule 12 (b) (6) authorizes a court to dismiss a claim on the basis of a dispositive issue of law. Hishon v. King & Spalding, 467 U.S. 69, 467 U.S. 73 (1984); Conley v. Gibson, 355 U.S. 41, 355 U.S. 45-46 (1957). This procedure, operating on the assumption that the factual allegations in the complaint are true, streamlines litigation by dispensing with needless discovery and factfinding. What Rule 12 (b) (6) does not countenance are dismissals based on a judge’s belief of a complaint’s factual allegations. District court judges looking to dismiss claims on such grounds must look elsewhere for legal support.

Close questions of federal law, including claims, have on a number of occasions arisen on motions to dismiss for failure to state a claim, and have been substantial enough to warrant this Court’s granting review, under its certiorari jurisdiction, to resolve them. See, e.g., Estelle v. Gamble, 429 U.S. 97 (1976); McDonald v. Santa Fe Trail Transportation Co., 427 U.S. 273 (1976); Bivens

v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971); Jones v. Alfred Mayer Co., 392 U.S. 409 (1968). It can hardly be said that the substantial legal claims raised in these cases were so defective that they should never have been brought at the outset. To term these claims frivolous is to distort measurably the meaning of frivolousness both in common and legal parlance. Indeed, we recently reviewed the dismissal under Rule 12 (b) (6) of a complaint based on 42 U.S.C. § 1983, and found by a 9-to-0 vote, that it had, in fact, stated a cognizable claim – a powerful illustration that a finding of a failure to state a claim does not invariably mean that the claim is without arguable merit. See Brower v. Inyo County, 489 U.S. 593 (1989). That frivolousness in the § 1915 (d) context refers to a more limited set of claims than does Rule 12 (b) (6) accords, moreover with the understanding articulated in other areas of law that not all unsuccessful claims are frivolous.

Our conclusion today is consonant with Congress' overarching goal in enacting the *in forma pauperis* statute: "to assure equality of consideration for all litigants." Coppedge v. United States, 369 U.S. 438, 369 U.S. 447 (1962); see also H.R.Rep. No. 1079, 52d Cong., 1st Sess., 1 (1892). Under Rule 12 (b) (6), a plaintiff with an arguable claim is ordinarily accorded notice of a pending motion to dismiss for failure to state a claim and opportunity to amend the complaint before the motion is ruled upon. These procedures alert him to legal theory underlying the defendant's challenge, and enable him meaningfully to respond by opposing the motion to dismiss on legal grounds or by clarifying his factual allegations so as to

conform with the requirements of a valid legal cause of action. This adversarial process crystallizes the pertinent issues and facilitates appellate review of a trial court dismissal by creating a more complete record of the case. The Circuit Court did not allow the Plaintiff to amend the complaint before the joint demurrer was ruled on. When reasonable persons could view alleged conduct in this manner and the other elements of the tort are properly pleaded, the controversy must be resolved at a trial on the merits of the claim, rather than by a circuit court on demurrer. See Burroughs v. Keffer, 272 Va. 162, 168, 630 S.E.2d 297, 301 (2006); Chapman v. City of Virginia Beach, 252, Va. 186, 191, 475 S.E.2d 798, 804 (1996); Womack, 215 Va. at 342, 210 S.E. 2d at 148. The Circuit Court was shown the documents that proved that the Defendants committed the defamation, intentional infliction of emotional distress, tortious interference with economic opportunity and contractual relations, and negligence; yet, it sustained a joint demurrer.

According to the Eastern District of Virginia courts, when considering the sufficiency of the allegations in a pro se complaint, the court applies “less stringent standards than [those applied to] formal pleadings drafted by lawyers.” Haines v. Kerner, 404 U.S. 519, 520 (1972); see also Branham v. Meachum, 77 F.3d 626, 628-29 (2d Cir. 1996). Furthermore, the court should interpret the plaintiff’s complaint “to raise the strongest arguments [it] suggest[s].” Burgos v. Hopkins, 14 F.3d 787, 790 (2d Cir. 1994). The Circuit Court should had applied less stringent standards to the Plaintiff’s complaint, because the Plaintiff did provide

evidence of the defamation and the tortious interference with economic opportunity and contractual relations (**See, Exhibits 1, page 2 and 2**). The Circuit Court should had interpret the Defendants, Labor Ready Mid-Atlantic, Inc. c/o Equifax Workforce Solutions also known as Talx Corporation made a false statement about the Plaintiff (defamation) and violated the rule of a Federal program (tortious interference with economic opportunity and contractual relations) and the Defendants' negligence was intentionally to inflict emotional distress.

2. The verdict is contrary to the weight of the evidence.

The motion to set aside the verdict and grant a new trial was a matter of federal procedure, governed by Rule of Civil Procedure 59 and not subject in any way to the rules of state practice. On such a motion it is the duty of judge to set aside the verdict and grant a new trial, if he is of opinion that the verdict is against the clear weight of the evidence, or is based upon evidence which is false, or will result in a miscarriage of justice, even though there may be substantial evidence which would prevent the direction of *353 a verdict. The exercise of this power is not in derogation of the right of trial by jury but is one of the historic safeguards of that right. Smith v. Times Pub. Co., 178 Pa. 481, 36 A. 296, 35 L.R.A. 819; Bright v. Enyon 1 Burr. 390; Mellin v. Taylor 3 B.N.C. 109, 132 Eng. Reports 351. The matter was well put by Mr. Justice Mitchell, speaking for the Supreme Court of Pennsylvania in Smith v. Times Publishing Co., supra [178 Pa. 481, 36 A. 298], as follows: "The authority of the common pleas in the control and revision of excessive verdicts through means of new trials was firmly settled in

England before the foundation of this colony, and has always existed here without challenge under any of our constitutions. It is a power to examine the whole case on the law and the evidence, with a view to securing a result, not merely legal, but also not manifestly against justice, a power exercised in pursuance of a sound judicial discretion, *without which the jury system would be capricious and intolerable tyranny*, which no people could long endure. This court has had occasion more than once recently to say that it was *a power the courts ought to exercise unflinchingly*.” (Italics supplied).

The Defendants, Labor Ready Mid-Atlantic, Inc. c/o Equifax Workforce Solutions also known as Talx Corporation was fully responsible for creating the falsified information in the defamation lawsuit against them and three other claims such as intentional infliction of emotional distress, tortious interference with economic opportunity and contractual relations, and negligence filed by the Plaintiff from its bad faith.

The weight of evidence is based on the believability or persuasiveness of evidence. Exhibits 1, page 2 and 2 made the allegations such as defamation and tortious interference with economic opportunity and contractual relations believable and persuasive. The level of stress that come with challenging the miscarriage of justice was enough to convince the legal system that it was more than likely the Plaintiff endured emotional distress from the Defendant’s unnecessary negligence. Moreover, Exhibits 1, page 2 and 2 referred to the measure of credible proof in regards to the dispute in question. Therefore, the Circuit Court’s decision rendered

against the weight of the evidence and this Court should on this ground, grant a new trial.

3. The Plaintiff is denied a fair and impartial trial, because there is abuse of process by counsel and abuse of discretion by the Court.

Under Virginia law, “[t]o sustain a cause of action for abuse of process, a plaintiff must plead and prove: (1) the existence of an ulterior purpose; and (2) an act in the use of the process is not proper in regular prosecution of the proceedings.”

Donohue Const. Co., Inc. v. Mount Vernon Assocs., 235 Va. 531, 539, 369

S.E.2d 857, 862 (citing Mullins v. Sanders, 189 Va. 624, 633, 54 S.E.2d 116,

121 (1949); Glidewell v. Murray-Lacy, 124 Va. 563, 570, 98 S.E. 665, 668

(1919)). On July 18, 2016, the Plaintiff notified the Defendants about a hearing on

the 12th day of September, 2016, that was set to schedule a trial date for a civil

lawsuit against them and provided her mailing address (See, Exhibit 3). A joint

demurrer was filed on July 20, 2016, by the Defendants in which the pleading was

sent to an address that was not provided at any time during the legal proceeding,

that was not occupied by the Plaintiff, and that was not a mailing address for the

Plaintiff (See, Exhibits 4 and 5). As is also reflected in the language in Beck,

“[t]he distinctive nature of malicious abuse of process lies perversion of regularly-

issued process to accomplish some ulterior purpose for which the procedure was not

intended.” Id. (citing Glidewell, 124 Va. at 569, 98 S.E. at 667). The

Defendants committed malicious abuse of process, because they continued to send

pertinent information such as the joint demurrer and the notice of hearing for the

joint demurrer for the legal proceeding to an address that was not provided to the Court and was not in the Court's record as a mailing address for the Plaintiff (See, Exhibits 4, 5, and 6).

"Malicious prosecution differs from abuse of process in that malicious prosecution lies for 'maliciously causing process to issue,' Glidewell, 124 Va. at 570, 98 S.E. at 667-68, while abuse of process 'lies for the improper use of process after it has been issued,' id." Donohue, 235 Va. at 540, 369 S.E.2d at 862. The Defendants used improperly the joint demurrer to delay the Plaintiff in preparing her defense for the civil suit and influenced the Court to believe that the Plaintiff had sufficient time to prepare her defense. The Plaintiff had to obtain a copy of the demurrer from the Court to progress in the legal proceeding. A major delay was created for the Plaintiff and the Plaintiff had only about a week before the hearing for the joint demurrer to submit her indisputable answer (answer was submitted on September 1, 2016) to the demurrer (See, Exhibit 6). After the Defendants sent the demurrer to the incorrect address, the Defendants requested the Court to sustain the joint demurrer, dismiss the case with prejudice, and order that the Defendants be compensated for attorney's fees and cost on September 8, 2016, (See, Exhibit 7).

The Supreme Court of Virginia stated, "We have consistently held that the decision to permit amendments of pleadings rest within the sound discretion of the circuit court." Adkins v. Dixon, 253 Va. 275, 279, 482 S.E.2d 797, 800 cert. denied, 522 U.S. 937, 118 S. Ct. 348, 139 L.Ed.2d 270 (1997); Brown v. Brown,

244 Va. 319, 324, 422 S.E.2d 375, 378 (1992). When deciding whether to grant a motion to amend a motion for judgment to increase an ad damnum clause, a circuit court must consider whether the defendant will be prejudiced and whether such prejudice will affect the defendant's ability to have a fair trial. The circuit court must also consider the plaintiff's right to be compensated fully for any damages caused by the defendant's acts or omission. The Supreme Court of Virginia mentioned also, "On appeal, our review of the circuit court's decision to grant or deny a motion to amend a motion for judgment to increase the ad damnum clause is limited to the issue whether the circuit court abuse its discretion." **See Hetland v. Worcester Mut. Ins. Co., 231 Va. 44, 46, 340 S.E.2d 574, 575 (1986)**.

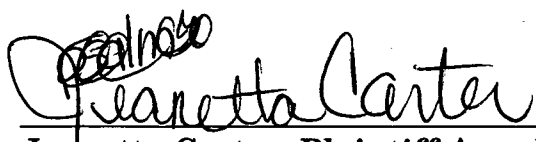
On September 8, 2016, the Plaintiff requested a continuance and leave to amend the motion for judgment to increase each ad damnum clause (**See, Exhibit 6**). At that time, September 12, 2016, was the date set to schedule a trial date (**See, Exhibit 3**). The Defendants failed to explain, and the record did not show, how they would have been prejudiced had the Circuit Court permitted the Plaintiff to increase the amount of each ad damnum clause, when a trial date had not been set. And, Rule 1:8 mandated that leave to amend should be liberally granted in furtherance of the ends of justice. **Mortarino v. Consultant Engineering Services, Inc., 251 Va. 289, 295-96, 467 S.E. 2d 778, 782 (1996)**.

The Circuit Court abused its discretion by denying the Plaintiff's September 8, 2016, request to amend her motion for judgment to increase each ad damnum clause because there is no evidence that the Defendants would have suffered any

prejudice, and the amendment would had been in furtherance of the ends of justice (See, Exhibit 7). Peterson v. Castano, 260 Va. 299, 303, 534 S.E.2d 736, 738 (2000). Given the facts of this case, the defendants do not have good grounds to demonstrate prejudice. The Virginia Supreme Court has previously held that it is not an abuse of discretion to grant such an amendment on the eve of trial. See Bell v. Kirby, 226 Va. 641, 646, 311 S.E.2d 799, 802 (1984) (holding no abuse of discretion to grant amendment to double ad damnum two days before trial). Therefore, there is no abuse of discretion to grant such an amendment more than four months before the trial. The Plaintiff acknowledged, as the Defendants observed, that a court must control its docket to avoid unnecessary delay to the litigants. And, the Plaintiff expected that courts would adjudicate cases in a timely manner. However, a litigant's right to a fair trial must not be made subordinate to the judiciary's effort to control its dockets.

WHEREFORE, the Plaintiff respectfully requests that the Court enter an Order: (a) granting its petition and (b) deeming the Amended Corrected Informal Petition for Rehearing filed as of the date of such Order.

Respectfully submitted,



Jeanetta Carter, Plaintiff-Appellant

Jeanetta Carter
5211 Arlington Avenue, Newport News, VA 23605
Telephone: 804-304-6087 / E-mail address: jeacarter60@yahoo.com

PROOF OF SERVICE)

STATE OF VIRGINIA)

City of Newport News)

I, Jeanetta Carter, hereby certify that I am the plaintiff-appellant herein, that I served the within Motion for Leave to File Amended Pleading on June 29, 2018, by placing one copy thereof in a sealed envelope plainly addressed to the following:

**Daniel M. Schieble, Esq.
VSB# 23503
Anne C. Lahren, Esq.
VSB# 73125
Pender & Coward, P.C.
222 Central Park Ave., Suite 400
Virginia Beach, VA 23462**

and the original copy thereof to:

**Supreme Court of the United States
Office of the Clerk
1 First Street, NE
Washington, DC 20543**


Jeanetta Carter
Jeanetta Carter, Plaintiff-Appellant



Exhibit #1

COMMONWEALTH of VIRGINIA

Virginia Employment Commission

December 3, 2014

Post Office Box 1358
703 East Main Street
Richmond, Virginia 23218-1358

CLAIMANT

Jeanetta Carter
952 17th Street
Newport News VA 23607

EMPLOYER

Labor Ready Mid-Atlantic, Inc.
c/o Equifax Workforce Solutions
P. O. Box 182366
Columbus OH 43218-2366

Re: Jeanetta Carter
S. S. No. xxx-xx-7143

v.
Labor Ready Mid-Atlantic, Inc.

Commission Decision No. UI-116011-C

Enclosed is a copy of the Commission Decision in this case. In the event you are the adversely affected party and desire to appeal further, please carefully read the **NOTICE** on the reverse of this letter which explains the procedure for appealing to Court.

Sincerely,


Norma C. Turner
Clerk of the Commission
Administrative Law Division

Enclosure

/pma

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Jeanetta Carter

S. S. No. ***-**-7143

Labor Ready Mid-Atlantic, Inc.
c/o Equifax Workforce Solutions
Columbus, Ohio

Date of Appeal

to Commission: October 22, 2014

Date of Review: November 26, 2014

Place: RICHMOND, VIRGINIA

Decision No.: 116011C

Date of Mailing: December 3, 2014

Final Date to File Appeal with
Circuit Court: January 2, 2015

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This case came before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-1416112), mailed September 26, 2014.

ISSUES

Does the claimant have good cause to reopen the Appeals Examiner's hearing as provided in 16 VAC 5-80-20(I) of the Virginia Administrative Code (1994), as amended?

Did the claimant leave work voluntarily without good cause as provided in Section 60.2-618(1) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On October 22, 2014, the claimant filed a timely appeal from the Appeals Examiner's decision that disqualified the claimant for benefits, effective July 6, 2014. The basis for that decision was the Appeals Examiner's conclusion that the claimant left work voluntarily without good cause.

The claimant was duly notified in writing at her correct, last-known address of the time and date for the hearing before an Appeals Examiner (See, Exhibit 1). However, the claimant failed to comply with the instructions contained in the Notice of Telephonic Hearing to register to participate in the hearing. (See, Exhibit A1). The claimant did not call in during the time allotted for the hearing and did not request a postponement.

The Notice of Telephonic Hearing sent to the parties states, immediately below the hearing date and time:

If you desire to participate in this hearing, you must call us AFTER YOU RECEIVE THIS NOTICE, and provide the telephone number where you can be reached on the day of the hearing. You must do this even if you have given us a phone number previously. Call us at (804) 786-3020 or, toll-free at 1-800-552-4500 to leave your number. You must call us as soon as possible and not later than noon on the business day before the hearing. IF YOU DO NOT FOLLOW THESE INSTRUCTIONS, YOU WILL NOT BE CALLED (See, Exhibit 1).

In her appeal to the Commission, the claimant did not explain why she did not register to participate in the hearing or request a postponement. The Commission will treat the claimant's appeal as a request to reopen the hearing.

OPINION

The Commission notes that, in the Appeals Examiner's Decision, the issue of Section 60.2-528.1 of the Code was addressed and ruled on. This issue concerns whether or not the employer responded promptly and adequately to a written request for information about a claim. The Commission will not address this issue because it was not appealed by either party.

The Virginia Administrative Code, 16 VAC 5-80-20(I), provides that an Appeals Examiner's hearing may be reopened upon a showing of good cause. In the case of Engh v. United States Instrument Rentals, Commission Decision 25239-C (July 12, 1985), the Commission held:

In order to show good cause to reopen a hearing, the party making such a request must show that he was prevented or prohibited from participating in

It is established that the burden is upon the employer to produce evidence which establishes a prima facie case that the claimant left his employment voluntarily. The employer assumes the risk of non-persuasion in showing a voluntary leaving. Once a voluntary leaving is shown, the burden of coming forward with evidence sufficient to show that there are circumstances which compel the claimant to leave his employment and that such circumstances amount to good cause as set out in the Unemployment Compensation Act, devolves upon the claimant.

The employer has provided a preponderance of evidence to establish that the claimant voluntarily left her employment. The claimant ceased reporting for work for an extended period of time. Pursuant to its policy, the employer reasonably concluded that the claimant was no longer interested in employment. In addition, the claimant filed a claim for unemployment benefits, thereby severing the employment relationship, pursuant to the holding in Rosser. Therefore, the burden of proof now shifts to the claimant to establish good cause for leaving her employment.

In interpreting the meaning of the phrase "good cause," the Commission has consistently limited it to those factors or circumstances that are so substantial, compelling, and necessitous as would leave a claimant no reasonable alternative other than quitting work. Accord, Phillips v. Dan River Mills, Inc., Commission Decision 2002-C (June 15, 1955); Lee v. Virginia Employment Commission, 1 Va. App. 82, 335 S.E.2d 104 (1985). In any case arising under this statute, the claimant bears the burden of proving good cause for leaving work. Kerns v. Atlantic American, Inc., Commission Decision 5450-C (September 20, 1971).

In the case of Lee v. V.E.C. & G.S.A., 1 Va. App. 82, 335 S.E.2d 104 (1985), the Virginia Court of Appeals affirmed the following standard for establishing good cause for voluntarily leaving work:

The Commission has adopted and held firmly to the premise that an employee, who for some reason becomes dissatisfied with his work, must first pursue every available avenue open to him whereby he might alleviate or correct the condition of which he complains before relinquishing his employment. ... He must take those steps that

Exhibit # 2

MID-ATLANTIC INC
300045

ER, JEANETTA
\$50.75

1015 "A" ST TACOMA WA 98402
Advice Date : 6/26/2014
Social Security No: XXX-XX-7143
Net Pay : \$44.24

Telephone : 1-877-733-0430
Advice Number: 8073503073
Pay Period: 6/26/2014 to 6/26/2014

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Decision No. UI-116011C

PERIOD EARNINGS

THIS PERIOD TAXES

THIS PERIOD DEDUCTIONS

5	FEDERAL WH	\$1.17		
INGS		\$50.75	MED EE	\$0.74
			SOC SEC EE	\$3.15
			VIRGINIA WH	\$1.45
			TOTAL TAXES	\$6.51

HOURS BY JOB ASSIG		NMENT Rate	Reg
V	Primary Address	Phone	\$7.25 7.00
	2100 56TH ST., HAMPTON, VA, 23661	330-576-4651	7.00
TOTAL HOURS			

INGS : \$4006.50

THANK YOU FOR WORKING WITH LABOR READY (WWW.LABORREADY.COM) PLEASE VERIFY

ATTENTION:

YOUR PAYMENT HAS BEEN MADE TO YOUR PAYCARD AND IS FUNDED IMMEDIATELY. THEREFORE, PLEASE USE YOUR PAYCARD WITH NO FEES - VISIT YOUR NEAREST BANK TO RECEIVE 100% OF YOUR PAYMENT.

NOTICE TO CLAIMANT

IF YOU ARE DISQUALIFIED, YOU WILL BE ELIGIBLE FOR BENEFITS YOU MAY HAVE RECEIVED AFTER THE QUALIFICATION PERIOD. IF THE DECISION STATES THAT YOU ARE DISQUALIFIED FOR A CERTAIN PERIOD, YOU WILL BE REQUIRED TO REPAY THE BENEFITS YOU HAVE RECEIVED WHICH WERE PAID FOR THE PERIOD YOU WERE HELD INELIGIBLE. IF YOU THINK THE DECISION OF INELIGIBILITY IS CONTRARY TO LAW, YOU MAY APPEAL TO THE CIRCUIT COURT.