

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

GOLD COAST EAGLE
DISTRIBUTING, INC.,

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D03-992

UNEMPLOYMENT APPEALS
COMMISSION and SCOTT P.
SAWIN,

Appellees.

Opinion filed November 25, 2003.

An appeal from an order of the Unemployment Appeals Commission.

Brian Koji of Allen, Norton & Blue, P.A., Tampa, for Appellant.

John D. Maher, Deputy General Counsel, Unemployment Appeals Commission
Tallahassee, for Appellees.

PER CURIAM.

Appellant, Gold Coast Eagle Distributing, Inc. (Gold Coast), seeks review of
an order of Appellee, the Unemployment Appeals Commission (UAC), which affirmed

the appeals referee's dismissal of Gold Coast's appeal as untimely filed. We reverse and remand for further proceedings consistent with this opinion.

The claimant, Appellee Scott Sawin, was granted unemployment benefits by notice mailed August 12, 2002, after he was discharged from employment with Gold Coast. At a hearing on the determination, the appeals referee stated that although Gold Coast's notice of appeal was dated August 14, 2002, the appeals office did not receive the faxed notice of appeal within the time limitations set forth in Florida Administrative Code Rule 60BB-5.005(1). Gold Coast presented as evidence of a timely appeal a fax confirmation which reflected that its notice of appeal was successfully transmitted by fax to the appeals office on August 14, 2002. The appeals referee, however, found that it did not have jurisdiction to hear the case because the notice of appeal was not timely filed. The UAC affirmed the decision of the appeals referee.

We find that a fax confirmation is sufficient to create a question of fact as to whether a faxed notice of appeal was timely filed. Upon a party's submission of such evidence, the burden shifts to the appeals office to demonstrate that the appeal was not timely filed. See Langworthy v. Unemployment Appeals Comm'n and Communication Installation & Cisco, 28 Fla. L. Weekly D2579 (Fla. 2d DCA Nov. 7, 2003). Accordingly, we reverse and remand with directions for the appeals referee to conduct a hearing on the timeliness of the appeal consistent with this opinion.

See also Nickolan-Barron v. Florida Unemployment Appeals Comm'n, Case No. 1D03-0660 (Fla. 1st DCA Nov. 25, 2003).

BARFIELD, ALLEN and DAVIS, JJ., CONCUR.