

NOT FINAL UNTIL TIME EXPIRES  
TO FILE REHEARING MOTION  
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
THIRD DISTRICT  
JANUARY TERM, A.D. 2004

ROBERTO S. RODRIGUEZ,

\*\*

Appellant,

\*\*

vs.

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CASE NO. 3D03-2571

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FLORIDA UNEMPLOYMENT APPEALS  
COMMISSION, et al.,

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LOWER TRIBUNAL  
CASE NO. UAC 03-8957

\*\*

Appellees.

Opinion filed March 31, 2004.

An appeal from the Florida Unemployment Appeals Commission.

Roberto S. Rodriguez, in proper person.

John D. Maher (Tallahassee), for appellee.

Before GERSTEN, FLETCHER, and SHEPHERD, JJ.

PER CURIAM.

Roberto S. Rodriguez appeals from a final order of the  
Unemployment Appeals Commission confirming the dismissal of his

internal appeal<sup>1</sup> as untimely. However, in the "aviso de apelacion" Rodriguez states: "Yo nunca recibí la notificación por correo." ("I am appealing because I never received the notice<sup>2</sup> in the mail.") The Commission's document entitled "Dismissal of appeal due to lack of jurisdiction" contains the appeal referee's findings of fact as to untimeliness. It does not include a finding as to Rodriguez' contention of non-receipt of the notice. Under this circumstance, a remand to the agency to hold a hearing to determine the issue of receipt is required. See Holmes v. City of West Palm Beach, 627 So. 2d 52 (Fla. 4<sup>th</sup> DCA 1993).

The order appealed is therefore reversed and the cause is remanded for the required hearing.

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to the appeals referee

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of the initial determination that Rodriguez was not entitled to unemployment benefits