



*Pavian, Inc. v. Hickey, et al.*, 874 N.E.2d 670 (Mass. App. Ct. 2007):  
Massachusetts' "Postmark Rule" in Administrative Review of  
Unemployment Decisions

Recently, the Massachusetts Appeals Court issued a decision striking down the "postmark rule" used by the Board of Review ("Board"), that state's independent appellate body for unemployment insurance ("UI") appeals. See *Pavian, Inc. v. Hickey, et al.*, 70 Mass. App. Ct. 477, 874 N.E.2d 670, *review granted*, 450 Mass. 1104, 878 N.E.2d 566 (2007). The postmark rule states that appeals to the Board are deemed "received" as of the date of the postmark, rather than the date of actual receipt.

The Board, which has appealed this decision to the Massachusetts Supreme Judicial Court, has compiled the following information about its UI appeal caseload:<sup>1</sup>

**Number of Appellants who are Claimants versus Number who are Employers**

- Approximately two-thirds (63%) of appellants are claimants.
- Slightly more than one-third (37%) of appellants are employers.

**Likelihood of Obtaining a Reversal on Appeal     2007 data only**

- In 2007 claimants had almost a 1-in-4 chance (21% success rate) of obtaining a reversal on appeal to the Board.
- In 2007 employers had an 8% success rate on appeal to the Board.

**Parties' Representation in Appeals to the Board**

- Approximately 14% of claimants are represented on appeal to the Board.
- Approximately 40% of employers are represented on appeal to the Board, and this number is increasing.
  - This is likely due to the growth of the payroll processing industry.

**Method of Delivery of Appeals to the Board     2007 data only**

- Approximately 80% of all appeals to the Board are submitted by postal mail.
  - Essentially all claimant appeals are submitted by postal mail.
- Approximately 20% of all appeals arrive by facsimile ("fax").
  - Almost all faxed appeals to the Board are from employers, and faxed appeals account for approximately 50% of all employer appeals.
- Approximately 1-2% of all appeals to the Board are delivered in hand.

<sup>1</sup> Letter from Chairman of the Board of Review, John A. King, February 15, 2008. Unless otherwise noted, all data refers to the 2006 and 2007 calendar years.



### Mailed Appeals Received “Late” but Postmarked within the Statutory Period

#### Significant Minority of All Appeals

- In 2006 approximately 330, or 14%, of all appeals to the Board submitted by postal mail were postmarked within the statutory period (i.e., 30 days) but received late. As such, these appeals were deemed timely, per the Board’s postmark rule.
  - The monthly percentage of these types of appeals reached a high of 15% in the month of January and remained at or above 12% for 5 months during the year.
- In 2007, this number was approximately 250, or 10%.

#### Time in Transit

- While the Massachusetts Supreme Judicial Court has previously noted that delivery via postal mail usually takes between 2 and 5 days, *see Falmouth v. Civil Service Commission*, 447 Mass. 814, 817 n.3, 857 N.E.2d 1052 (2006), data collected by the Board during December 2006 and January 2007 established that mailed appeals spent anywhere between 1 and 9 days in transit. See Table: Time in Transit.

Table: Time in Transit

	<b>December 2006</b>	<b>January 2007</b>
<b>Days in Transit</b>		
1 day	65%	56%
2 days	16%	18%
3 days	16%	22%
4 days	1.5%	2%
5 days or more	1.5%	2%
	<i>(maximum 6 days)</i>	<i>(maximum 9 days)</i>