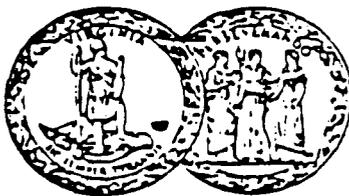


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

James S. Williams
████████████████████

U. S. Army
Indianapolis, Indiana

Date of Appeal
to Commission: January 4, 1993
Date of Review: March 9, 1993
Place: RICHMOND, VIRGINIA
Decision No.: 41251-C
Date of Mailing: March 19, 1993
Final Date to File Appeal
with Circuit Court: April 8, 1993

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This case is before the Commission on appeal by the claimant from Appeals Examiner's decision UCX-9218826, mailed December 11, 1992.

ISSUE

Should the claimant's weekly benefit amount be reduced due to his receipt of a governmental or other pension, retirement or retired pay, annuity or any other similar periodic payment based upon his previous work with respect to the week or weeks for which benefits were claimed as provided in Section 60.2-604 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The claimant filed a timely appeal from the Appeals Examiner's decision which affirmed an earlier Deputy's determination and held that his weekly benefit amount should effectively be reduced from \$208 to \$12 between October 4 and October 17, 1992.

Prior to filing his claim, the claimant last served in the U. S. Army between May, 1981 and September 30, 1992. His rank was that of a captain.

Due to the needs to downsize the military, the decision was made to offer certain members an incentive to resign. The claimant was one of

those eligible, and he had the option of taking a lump sum payment or a Voluntary Separation Incentive (VSI) equal to the number of years of service times 2.5 percent of his last pay rate to be paid out on an annual basis. The first payment of \$10,225.50 was made at his separation date and he will be receiving that sum on every anniversary thereafter for 21 more years.

The claimant remains in the reserves so as to be subject to recall to active duty for 22 years (Commission Exhibit 6). The orders by which he was reassigned to be processed out of the military (Commission Exhibit 6), contain the following information:

Soldiers who receive VSI/SSB (the latter being the lump sum payment) based on service in the Armed Forces, and subsequently qualify under Title 10 or 14 USC for retired or retainer pay shall have deducted an amount equal to the total amount of VSI/SSB paid not previously recouped. This amount will be recouped from each payment of retired or retainer pay until the total amount deducted is equal to the total amount of VSI/SSB received.

The claimant's annual VSI payment of \$10,225.50 when divided by the 365 days between the date of the first payment and the date the second payment is due (1992 was a leap year; however February 29, 1992, occurred prior to the claimant's separation from military service) works out on a daily basis to slightly over \$28.00. When this is multiplied by the seven days in a week, the weekly amount of his VSI payment is \$196.11. Upon filing his claim for benefits, effective October 4, 1992, the claimant was found monetarily qualified in the amount of \$208.00 per week due to his base period military wages.

OPINION

As a preliminary matter, the Commission feels constrained to point out that additional information which the claimant included along with his letter appeal actually has no bearing on his case at all. It is a copy of a communication by which the narrative reason for separation as listed on block 28 of the federal form DD214 should be changed from "voluntary-miscellaneous" to "early separation program-strength reduction." Apparently, the prior language was causing some problems with officers who resigned their commissions in order to take advantage of the voluntary incentive program with respect to their initial qualification for benefits. Such did not happen in the case of the claimant inasmuch as his separation form (Commission Exhibit 5), does not contain the "voluntary-miscellaneous" designation in block 28. There is no question concerning his monetary qualification for benefits, which is what the memorandum was intended to address. Accordingly, it will not be considered in arriving at a decision in this case.

Section 60.2-604 of the Code of Virginia provides that the weekly benefit amount payable for an individual for any week which begins in a period for which the individual receives a governmental or other pension, retirement or retired pay, annuity or any other similar periodic payment under a plan maintained or contributed to by a base period or chargeable employer based upon the previous work of such individual shall be reduced, but not below zero by an amount equal to the amount of such pension, retirement or retired pay, annuity or other payment which is reasonably attributable to such week.

Even before the law was amended to limit the pension offset to a base period or chargeable employer, this particular provision of the Code was found to be constitutional and not to contravene federal law in the case of Watkins v. Cantrell, 736 F.2d 933 (4th Cir. 1984).

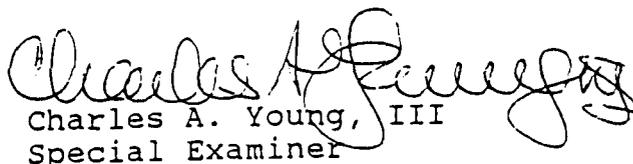
Although the claimant argues that the VSI payments he receives should not be considered as a pension because it is not payable for the rest of his life and does not incorporate a medical or dental plan, this makes no difference. His entitlement is based upon his prior military service, and the payments are periodic in that he will receive 22 of them, each a year apart. Although it is apparent that this is not military retirement, the fact that the payments would be recouped if the claimant is recalled to active duty and later becomes eligible for a regular military pension clearly establishes their true nature. The Commission finds ample evidence that the VSI payments the claimant received beginning with his separation date amount to a governmental pension or "similar periodic payment" from a chargeable employer so as to require a reduction of his weekly benefit entitlement.

The two weeks in question, those from October 4, 1992 through October 17, 1992, began within the period for which the claimant had already received his first \$10,225.50 annual payment. Inasmuch as the amount of that payment reasonably attributable to those two weeks comes out to \$196.11 each, his weekly benefit amount for those weeks should be reduced by this amount.

DECISION

The decision of the Appeals Examiner is hereby affirmed.

It is held that although the claimant is eligible for unemployment compensation between October 4, 1992 and October 17, 1992, his weekly benefit amount must be reduced by \$196.11, which represents that portion of his governmental pension or similar periodic payment based upon his previous work which is reasonably attributable to each week.


Charles A. Young, III
Special Examiner