

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

EDDIE L RUSSELL
3419 FOSTER AVE.
ETTRICK VA 23803

Date Referred
or Appealed : 07/11/88
Claimant's SSN : ██████████
Date of Review : 07/27/88
Decision No. : 30679-C
Date Decision
Mailed : 08/24/88
Final Date to File
Appeal with Circuit Court: 09/13/88
(See Attached Notice)

IN THE MATTER OF:

CLAIMANT:
EDDIE L RUSSELL
3419 FOSTER AVE.
ETTRICK VA 23803

LAST 30-DAY EMPLOYING UNIT:
RICHARD T TRAYLOR
ROUTE 3, BOX 189
PETERSBURG VA 23803

---oOo---

This is a matter before the Commission as the result of an appeal filed by the employer from the Decision of Appeals Examiner (UI-8803125), mailed April 1, 1988.

ISSUE

Did the employer file an appeal from the Appeals Examiner's decision within the statutory time limit or have good cause for an extension of it as provided in Section 60.2-620 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The claimant had filed a claim for unemployment compensation effective January 24, 1988, indicating that he had been discharged from his last employment. After investigating the matter, the Deputy issued a Notice of Determination which qualified the claimant for benefits with respect to his separation from the employer's services. The employer then filed a timely appeal and a hearing before an Appeals Examiner was held in the Petersburg office of the Commission on March 22, 1988. As a result of that hearing, the Appeals Examiner issued Decision UI-8803125, which affirmed the Deputy's determination which qualified the claimant for benefits. This decision was

mailed to the employer's correct address on April 1, 1988, and it carried a final date for appeal of April 22, 1988. By letter dated July 11, which was delivered to the Petersburg office of the Commission on July 12, 1988, the employer filed an appeal from the Appeals Examiner's decision.

In the letter of appeal, the employer representative indicated that the appeal had not been filed prior to April 22, 1988, because there were criminal charges pending with respect to the incidents surrounding the claimant's separation and a new trial date had not been set by that time. He further asserted that after a new trial was held on June 14, 1988, the claimant, as part of a plea agreement, admitted that he had stolen funds belonging to the employer which contradicted testimony he gave at the Appeals Examiner's hearing on March 22, 1988. It was the employer's contention that the claimant had thus given false testimony under oath so as to obtain unemployment compensation which was not due to him.

OPINION

Section 60.2-620 of the Code of Virginia provides that an Appeals Examiner's decision shall become the final decision of the Commission unless an appeal is filed within 21 days of the date which it was mailed to the last known address of the party requesting the appeal. For good cause shown, the appeal period may be extended.

In the case of Barnes v. Economy Stores, Inc., Commission Decision 8624-C (November 22, 1976), the Commission held:

The aforementioned statute enunciates the statutory time limit in which an appeal from a decision of an Appeals Examiner must be filed. It allows an extension of that 14-day (subsequently extended to 21 days) time limit where good cause is shown. A reasonable construction of the good cause provision of that statute is that in order for good cause to be shown, the appellant must show some compelling and necessitous reason beyond his control which prevented him from filing an appeal within the enunciated time limit.

In the case at hand, the Appeals Examiner's decision was mailed to the employer's correct address where, presumably, it was received in due course and in time for an appeal to have been filed prior to the final date as shown upon it. The mere fact that a new trial date in the criminal proceedings pending against the claimant had not been set did not constitute circumstances beyond the employer's control, which prevented the filing of a further appeal to the Commission. This is because the employer could have filed a timely appeal and then asked for a postponement of the proceedings until such time as a decision was rendered in the criminal case. Accordingly, good cause cannot be found to extend the appeal period in this case and the Appeals Examiner's decision has become the final decision of the Commission, leaving no jurisdiction to consider the merits of the separation issue in this matter.

There is one other issue raised in the employer's letter of appeal which needs to be addressed, however. Even though the letter itself was not in the form of an affidavit alleging fraud on the part of the claimant, it is apparent that such an allegation has been made. The Supreme Court of Virginia has had occasion to set forth guidelines on this issue in the case of Jones v. Willard, 224 Va. 602 (1983), in which it was stated:

The judgment of a court, procured by intrinsic fraud, i.e., by perjury, forged documents, or other incidents of trial related to issues material to the judgment, is voidable by direct attack at any time before the judgment becomes final; the judgment of a court, procured by extrinsic fraud, i.e., by conduct which prevents a fair submission of the controversy to the court, is void and subject to attack, direct or collateral, at any time. (Citations omitted)

The same rules apply with equal logic to a decision of the Commission. If the Commission's decision was procured by intrinsic fraud, its decision is voidable until it becomes final. If the Commission's decision was procured by extrinsic fraud, then its decision is void, the claim must be considered ab initio, and a new decision must be rendered.

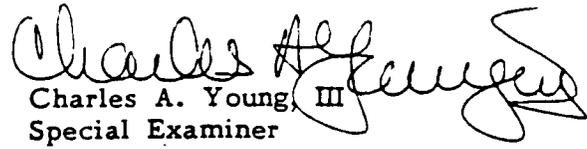
Here, the employer is alleging that the claimant gave false statements under oath at the Appeals Examiner's hearing, which, if proven, would amount to intrinsic fraud. Nevertheless, since the Appeals Examiner's decision has become final, it is no longer subject to attack on these grounds.

There is yet another issue which bears further examination in this case. Section 60.2-618.4 of the Code of Virginia provides a disqualification for 52 weeks beginning with the date of the determination or decision, if the Commission finds that an individual, within 36 calendar months immediately preceding such determination or decision, has made a false statement or representation knowing it to be false, or has knowingly failed to disclose a material fact in order to obtain unemployment compensation. Thus, while the allegations raised by the employer cannot affect the decision with respect to the claimant's separation, the Commission will refer the matter for a further investigation to determine if the claimant may have made false statements in order to obtain unemployment compensation at any time during the past 36 months.

DECISION

The Decision of Appeals Examiner, which qualified the claimant for unemployment compensation effective January 24, 1988, has become the final decision of the Commission since no appeal was filed within the statutory time limit and good cause has not been shown for an extension of it.

This matter is remanded to the Investigation Unit to determine if the claimant may have made false statements or withheld material facts in order to obtain unemployment compensation at any time during the past thirty-six months.


Charles A. Young, III
Special Examiner