



**ABLE & AVAILABLE: 250
Incarceration or other
legal detention**

DECISION OF COMMISSION

In the Matter of:

Herman Christian
████████████████████

Commonwealth of Virginia
Department of Mental Health
and Retardation
Burkeville, Virginia

Date of Appeal
to Commission: February 17, 1994

Date of Hearing: April 27, 1994

Place: RICHMOND, VIRGINIA

Decision No.: 44994-C

Date of Mailing: May 2, 1994

Final Date to File Appeal
with Circuit Court: May 22, 1994

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This case came before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-9402988), mailed February 10, 1994.

APPEARANCES

Attorney for Claimant

ISSUE

Was the claimant imprisoned or confined in jail during the weeks he claimed benefits as provided in Section 60.2-612(10) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On February 17, 1994, the claimant filed a timely appeal from the Appeals Examiner's decision which held that he was ineligible to receive benefits for the period of September 26, 1993, through November 20, 1993. That decision was based upon the Appeals Examiner's conclusion that the claimant had been imprisoned or confined in jail during those claim weeks.

The findings of fact are supported by the evidence in the record. Accordingly, they are adopted by the Commission with the following additions.

The claimant filed his initial claim for benefits on July 30, 1993. He did so because he had been suspended by the employer in light of a charge that had been placed against him for violating the provisions of Section 18.2-266 of the Code of Virginia. After filing that claim, the claimant was approved to conduct his job search by using resumes.

OPINION

Section 60.2-612(10) of the Code of Virginia provides that an unemployed individual shall be eligible to receive benefits for any week only if the Commission finds that he is not imprisoned or confined in jail.

During the claim weeks in question, the claimant was confined in jail by virtue of being convicted of driving under the influence in violation of state law. That period of incarceration began on September 28, 1993, and extended through November 17, 1993. Regardless of the fact that the claimant may have been actively seeking work from jail by mailing resumes, that is not the issue before the Commission. The claimant is ineligible for benefits because he was confined in jail during the claim weeks in question. The specific statute that governs this case is clear and unambiguous.

Counsel for the claimant contended that this statute should not be applied in cases where a claimant had demonstrated an active search for work and was unrestrictively able to work and available for work. Assuming, without deciding, that the claimant met these eligibility requirements which are set out in Section 60.2-612(7) of the Code of Virginia, that would not be relevant or material. If the General Assembly had intended the language of Section 60.2-612(10) to be limited in effect as suggested by counsel for the claimant, it would have been a simple matter to add a phrase to accomplish that purpose. The conclusion urged by the claimant's attorney could only be reached by interpreting the statute in a manner that would be clearly inconsistent with its plain language.

Therefore, the Commission concludes that the claimant was not eligible to receive benefits for the weeks in question because he was confined in jail. Consequently, the Appeals Examiner's decision must be affirmed.

DECISION

The Appeals Examiner's decision is affirmed. The claimant is ineligible to receive benefits for the period of September 28, 1993, through November 20, 1993, the claim weeks before the Commission.

M. Coleman Walsh, Jr.
M. Coleman Walsh, Jr.
Special Examiner

NOTICE TO CLAIMANT

IF THE DECISION STATES THAT YOU ARE DISQUALIFIED, YOU WILL BE REQUIRED TO REPAY ALL BENEFITS YOU MAY HAVE RECEIVED AFTER THE EFFECTIVE DATE OF THE DISQUALIFICATION. IF THE DECISION STATES THAT YOU ARE INELIGIBLE FOR A CERTAIN PERIOD, YOU WILL BE REQUIRED TO REPAY THOSE BENEFITS YOU HAVE RECEIVED WHICH WERE PAID FOR THE WEEK OR WEEKS YOU HAVE BEEN HELD INELIGIBLE. IF YOU THINK THE DISQUALIFICATION OR PERIOD OF INELIGIBILITY IS CONTRARY TO LAW, YOU SHOULD APPEAL THIS DECISION TO THE CIRCUIT COURT. (SEE NOTICE ATTACHED)