

DECISION OF COMMISSION

In the Matter of:

Ethel M. Clayton
[REDACTED]

Date of Appeal
to Commission: October 12, 1993
Date of Review: November 10, 1993
Place: RICHMOND, VIRGINIA
Decision No.: 43840-C
Date of Mailing: November 19, 1993
Final Date to File Appeal
with Circuit Court: December 9, 1993

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This case is before the Commission on appeal by the claimant from Appeals Examiner's decision UI-9315562, mailed October 5, 1993.

ISSUE

Did the claimant have sufficient wages paid in covered employment during her base period so as to monetarily qualify for unemployment compensation under the provisions of Section 60.2-612(1) 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 monetary determination which held that the claimant had insufficient wages during the base period of her claim filed effective August 22, 1993; therefore she did not monetarily qualify for benefits.

Prior to filing her claim, the claimant last worked for Richard A. Ingram, T/A Rick's Restaurant and Lounge, in Gasburg, Virginia between April 20, 1992 and July 10, 1993, when the business closed. On August 24, 1993 she filed her claim in the Emporia office of the Commission. It was made effective the previous Sunday, August 22, 1993 with a base period being established as running from April 1, 1992 through March 31, 1993.

The employer reported paying the claimant wages totalling \$247.34 in the second quarter of 1992, \$931.41 in the third quarter of 1992, \$684.93 in the fourth quarter of 1992, and \$492.57 in the first quarter of 1991 for a total of \$2,356.25 during her base period. No wages from any other employment appeared on her monetary determination.

The claimant had actually worked for two other employers during her base period. These were both tobacco farmers, and she had worked beginning after Labor Day, 1992 for approximately two months until the tobacco season was over. One of these employers gave her a W-2 form for 1992 showing wages paid in the total amount of \$1,335.61. A record of the wages paid to the claimant from the other employer was not available at the hearing. The claimant recalled that she had worked alternately for these two employers along with approximately five migrant Mexican workers and family members of the farmers. A UIS Tax Representative had checked on these farmers and determined that neither were liable as agricultural employers.

OPINION

Section 60.2-612(1) of the Code of Virginia provides that in order for the an unemployed individual to be eligible to receive benefits for any week, she must have been paid wages in employment for employers during the two high quarters of her base period in an amount sufficient to meet the minimum qualifying requirements appearing in the "benefit table" in Section 60.2-602 of the Code.

Section 60.2-602 of the Code sets out the benefit table. It indicates that in order to qualify for the minimum benefit amount of \$65 for up to 12 weeks, a claimant must have been paid wages of at least \$3,250 in the two highest quarters of her base period.

In this case, despite the claimant's contention that she did not receive all the wages due her from Richard A. Ingram, it would appear that this was a problem associated at the very end of her employment well beyond the expiration of her base period on March 31, 1993. The best evidence available is that the wages reported to the Commission are correct and that the claimant's two highest quarters of earnings total approximately \$1,600, which is approximately half the amount necessary to meet the minimum qualifying requirements.

Section 60.2-210 of the Code defines the term "employer" as meaning any employing unit which has paid wages to any employee totalling at least \$1,500 in any calendar quarter in the current or preceding calendar year or has had at least one employee working for some portion of a day in each of 20 different weeks during the current or preceding calendar year. It is this section of the Code under which the claimant's employment for Richard A. Ingram was covered so as to require that unemployment insurance taxes be paid on her wages.

Although the claimant has presented evidence to indicate that she had additional earnings during her base period, it is clear from her description of her duties, that these wages were earned in agricultural

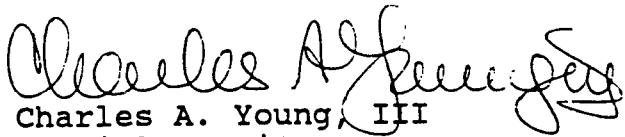
employment which is governed under Section 60.2-214 of the Code. In order for service performed by an individual in agricultural labor to be considered "employment" so as to subject the employer to the payment of unemployment insurance taxes, the employer must have paid wages of \$20,000 or more in agricultural labor during any calendar quarter of the current or preceding calendar year.

The claimant's wages from Lynch Farms of \$1,335.61 in 1992 provide a clue as to that employer's payroll. Based upon her testimony, these wages should be divided approximately equally between the third quarter of 1992 and the fourth quarter of 1992 since she worked only in the months of September and October. Assuming that she was as productive as the five migrant laborers she worked with, it would appear that the Lynch Farms agricultural payroll was approximately \$4,000 in each quarter which is far below the amount necessary to require that unemployment insurance taxes be paid. Inasmuch as the claimant has presented no evidence to indicate that the situation was significantly different with respect to working for the other farm, and in view of the UIS Tax Representative's statement to the effect that he had checked both employers and found them not to be liable, the Commission must conclude that the wages the claimant was paid for her agricultural labor during the base period of her claim were properly excluded from the term "employment", leaving her monetarily ineligible to qualify for benefits on her claim.

DECISION

The Decision of the Appeals Examiner is hereby affirmed.

It is held that the claimant had insufficient earnings during the base period of her claim filed effective August 22, 1993 to meet the minimum qualifying requirements to receive unemployment compensation.


Charles A. Young, III
Special Examiner