

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF APPEALS EXAMINER

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Decision No.: UI-73-1243

MISCELLANEOUS: 60.05
Benefit Computation Factors
-- General.

Date: July 26, 1973

ISSUE

Has the claimant purged his ineligibility for benefits for the current benefit year by being employed for remuneration by an employing unit for thirty days subsequent to being paid benefits during his immediate benefit year?

FINDINGS OF FACT

The claimant appealed from a determination of the Deputy which declared him ineligible for benefits from June 3, 1973, through June 16, 1973, because he had not worked for an employer for remuneration during thirty days, whether or not such days were consecutive, subsequent to the beginning of the immediate preceding benefit year during which he received benefits.

Although duly notified of the hearing in connection with his appeal, the claimant did not appear or in any way respond to the Notice of Hearing. The envelope in which the notice was mailed to his last known address according to the Commission's records has not been returned by the U. S. Postal Service.

The Local Office records show that the claimant was last regularly employed by the Oman Construction Company, and for whom he last worked on May 31, 1972, when he was laid off for lack of work.

He filed a claim for benefits effective June 4, 1972, which established a benefit year ending June 2, 1973. After serving his waiting period, the claimant was paid benefits for twenty-two consecutive weeks through the week ending November 11, 1972. He then reported to the Local Office where he had secured employment with Haley, Chilsom & Morris, Inc., and had begun work on November 13, 1972.

He reopened his claim for benefits effective December 17, 1972, and was then paid benefits for four additional weeks, through the week ending January 13, 1973. This exhausted his entitlement to benefits for the benefit year ending June 2, 1973. On June 3, 1973, the claimant again filed for benefits, giving as his last employer the concern for whom he had begun work on November 13, 1972. Separation information from this employer showed that the claimant had worked from November 13, 1972, through December 16,

1972, or a total of twenty-four work days, and was separated due to the completion of the job. The work which the claimant performed for this employer was on interstate highway construction at Rocky Gap, Virginia.

In filing his appeal, the claimant stated that he had worked for a total of thirty or thirty-one days for this employer, including one Sunday, in which he had worked seven hours.

OPINION

Section 60.1-52.2 of the Virginia Unemployment Compensation Act provides that no individual may receive benefits in a benefit year unless, subsequent to the beginning of the immediate preceding benefit year during which he received benefits, he performed services for an employing unit for remuneration during thirty (30) days, whether or not such days were consecutive.

The records before the Appeals Examiner show that this claimant exhausted his entitlement to benefits during the benefit year ending June 2, 1973, during the claim week ending January 13, 1973. He worked for Haley, Chilsom & Morris, Inc., subsequent to June 2, 1973, from November 13, 1972, through December 16, 1972. Information received from this employer was that the claimant had worked for a total of twenty-four days. While the claimant, in his appeal, stated that he had worked a total of thirty or thirty-one days, he did not appear at the hearing to substantiate this contention. It is to be noted from the calendar that the period of November 13th, through December 16, inclusively, is a total of thirty-four calendar days, and which includes four weekends including Saturdays and Sundays, for a total of eight days.

In addition, it is to be noted that this claimant was performing work for an employer engaged in highway construction, and it is fairly obvious that there would be days during the period of time that he was employed that work could not be performed because of weather conditions. Even by assuming that the claimant worked each and every day during the week for the period indicated he could not have accumulated as many as thirty working days unless he had worked at least two Saturdays and two Sundays during this period.

Inasmuch as the claimant has presented no additional evidence to substantiate his contention that he had worked thirty days for this employer, and since the records do not substantiate such contention, the Appeals Examiner is of the opinion that the claimant has failed to show that he has performed services for remuneration for thirty days subsequent to the beginning of the immediate preceding benefit year in which he received benefits.
(Underscoring supplied)

DECISION

The determination of the Deputy is affirmed. It is held that the claimant did not meet the eligibility requirements of the Act from June 3, 1973, through June 16, 1973, the claim weeks before the Appeals Examiner.

NOTE: This decision was affirmed by the Commission in Decision No. 6070-C dated August 27, 1973.