

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

MISCELLANEOUS: 95.15.
Construction with Reference
to Other Statutes.



DECISION OF COMMISSION

In the Matter of

Randall Richardson, Claimant
~~_____~~

Sapphire Mining Corporation
Vansant, Virginia

Date of Appeal

To Commission: December 13, 1984

Date of Hearing: February 8, 1985

Place: RICHMOND, VIRGINIA

Decision No.: 24522-C

Date of Decision: February 8, 1985

Date of Mailing: February 15, 1985

Final Date to File Appeal

with Circuit Court: March 7, 1985

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This is a matter before the Commission on appeal by the claimant from the Decision of Appeals Examiner (No. UI-84-8417), mailed December 6, 1984.

APPEARANCES

Attorney for the Claimant

ISSUE

Did the claimant register for work and continue to report as directed to a Commission local office in accordance with such regulations as the Commission may prescribe as provided in Section 60.1-52 (e) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The Findings of Fact of the Appeals Examiner are hereby adopted by the Commission. These findings are as follows:

"The claimant filed a timely appeal from a determination of the Deputy which declared him ineligible for unemployment compensation from September 9, 1984 through October 20, 1984.

The claimant had filed his claim for unemployment compensation on an additional basis, effective August 12, 1984. On September 11, 1984, the Deputy issued a notice of determination which disqualified the claimant for unemployment compensation, effective August 12, 1984, for having voluntarily left his last thirty day employment without good cause. The claimant filed a timely appeal from this determination and a hearing was held before an Appeals Examiner on October 4, 1984. This resulted in the Appeals Examiner's decision UI-84-7320, which reversed the Deputy's determination and declared the claimant qualified for benefits. This decision was mailed to the claimant on October 11, 1984, and received approximately October 15, 1984.

In the meantime, the claimant had returned to work for a short period of time and then became unemployed again, filing another additional claim, effective September 9, 1984. He was then given a Claimant Questionnaire form covering the weeks ending September 15, and September 22, 1984, with instructions to report back to the Cedar Bluff office of the Commission on Thursday, September 27, 1984, at 11:00 a.m. The claimant did not report at that date or time and it was not until October 25, 1984, that he actually returned the Claimant Questionnaire form claiming benefits for those weeks.

The Deputy's determination from which the claimant appealed carried the following note below the final date for appeal:

'If any appeal is filed from this determination the claimant should continue to report to the Local Office on his regular reporting day in order to receive credit for each week in case the determination contained herein is reversed or revised as a result of the appeal.'

The claimant was also given a Notice of Intrastate Appeal which informed him:

'The claimant should continue to file claims in accordance with instructions given him as long as he is unemployed and feels he is entitled to benefits.'

The Claimant Questionnaire which the claimant was given specifically informed him:

'Failure to report as scheduled may result in loss of benefits unless you are working.'

It was the claimant's contention that he was misled by the Commission representative who took his additional claim, effective September 9, 1984, inasmuch as he was supposed to wait until his appeal was decided before anything further could be done in his case. The claimant's wife, who was a witness to the conversation he had with the claims representative recalled it this way:

'He asked her when would he hear something about the money he had not yet received. She said that as far as she knew, there was nothing that could be done because it was in appeals status.'

The claimant's wife was then asked if any other questions were asked of the claims representative. Her response was:

'No, not that I recall.'

OPINION

Section 60.1-52 (e) of the Code of Virginia provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he has registered for work and thereafter has continued to report at an employment office in accordance with such regulations as the Commission may prescribe, except that the Commission may, by regulation, waive or alter either or both the requirements of this subsection as to such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this title.

In addition to the statutory authority, the Commission has promulgated certain regulations which govern a claimant's registration for work as well as the procedures to follow to continue a claim series. Regulation VIII C.3 of the Rules and Regulations Affecting Unemployment Compensation provides that all total or part total unemployment claims, initial or additional, shall be effective on the Sunday of the week in which an individual reports to a Commission local office or a location designated by the Commission to file a claim. There are exceptions to this rule as set out in the regulation. The two exceptions which may arguably be applicable here are:

- (1) When the Commission is at fault due to a representative of the Commission giving inadequate or misleading information to an individual about filing a claim; and
- (2) When the filing is delayed due to circumstances attributable to the Commission.

In addition, Regulation VIII C.4 of the Rules and Regulations Affecting Unemployment Compensation provides that an individual who, for reasons found to constitute good cause, is unable to report as directed in Section C.2 of this Regulation and has otherwise satisfied the eligibility requirements shall be deemed to have reported at the proper time if he claims benefit rights within twenty-eight days after the date of his last claim filed.

In the present case, the claimant received specific instructions to report to the Commission's office at 11:00 a.m. on September 27, 1984. In addition, three separate documents advised the claimant concerning certain benefit rights. The Deputy's determination from which he appealed advised the claimant to continue reporting to the Commission's local office on his regular reporting day in order to receive credit for each week in the event the determination was reversed or modified. The Notice of Intrastate Appeal which was mailed to him instructed him to continue to file claims in accordance with instructions given him as long as he is unemployed and feels he is entitled to receive benefits. Furthermore, the claimant questionnaire that the claimant was given specifically advised him that his failure to report as scheduled may result in the loss of benefits unless he was working.

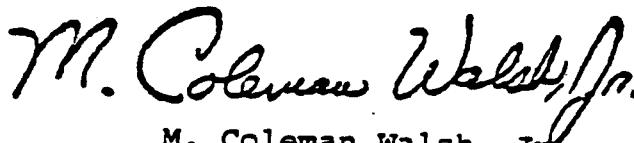
Against these specific instructions from the Commission, the claimant has contended that he was misled by a Commission representative who responded to a question. That question and answer, as testified to by the claimant's wife, is recited in the Findings of Fact of the Appeals Examiner and need not be repeated here. However, the Commission is of the opinion that the information provided to the claimant in response to his specific question was complete and was neither inaccurate nor misleading. The claimant had asked only when he could expect to hear something concerning benefits he had not yet received. The answer given to him, which was the correct answer, was that nothing could be done until the appeals case had been resolved. This statement does not contradict the specific written instructions given the claimant and although he may have been confused, that confusion was not attributable to any inaccurate, incomplete or misleading statements made by a Commission representative. Furthermore, there were no acts or omissions attributable to the Commission which caused any delay in the filing of the continued claims for benefits for the weeks in question.

Therefore, the Commission is of the opinion that the claimant failed to report to the Commission as directed and that he did not have good cause for his failure to report. Furthermore, since the claimant did not report to the Commission until October 26, 1984, which was more than twenty-eight days after the filing of his claim during the week beginning September 9, 1984, the Commission is precluded by regulation from extending the period of time within which a continued claim for benefits could be filed. For these reasons, the Commission concludes that the claimant has not satisfied the eligibility requirements of the Act for the period of September 9, 1984, through October 20, 1984, the claim weeks before the Commission.

During the course of this appeal, it became apparent that there was some confusion initially over which provision of the Act was applicable to this situation. The Deputy initially had ruled under the provisions of Section 60.1-52 (f) of the Code of Virginia in finding that the claimant was ineligible to receive benefits. The Appeals Examiner correctly changed this to the issue which arises under the provisions of Section 60.1-52 (e) of the Code. Section 60.1-52 (f) of the Code provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he has made a claim for benefits in accordance with such regulations as the Commission may prescribe. In interpreting this provision, the Commission has held that the term "claim for benefits" refers to that claim for benefits which initiates a new claim series. Included in this category would be new claims, additional claims, and those claims which a claimant may file resuming a claim series after having abandoned a prior claim series. The provisions of Section 60.1-52 (e) specifically refer to the continued reporting at an unemployment office in accordance with such regulations prescribed by the Commission. Because of that language and the fact that claimants actually claim individual weeks of benefits on a week-to-week basis has caused the Commission to interpret any cases involving the filing of the continued claims within a claim series as an issue which arises under the provisions of Section 60.1-52 (e) of the Code. (Underscoring supplied)

DECISION

The Decision of Appeals Examiner which held that the claimant was ineligible to receive benefits during the period of September 9, 1984, through October 20, 1984, is hereby affirmed.



M. Coleman Walsh, Jr.
Special Examiner