

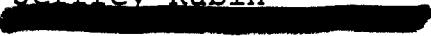
COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

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ORDER

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IN THE MATTER OF

Jeffrey Rubin


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§ Appeal from Examiner
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§ Date of Appeal: December 11, 1985
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§ Order No.: 26287-C
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§ Date of Mailing: January 24, 1986
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§ Place: Richmond, Virginia
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This matter comes before the Commission as the result of the claimant's appeal from the Decision of the Appeals Examiner (UI-85-6426), mailed December 13, 1985, which held that he had been overpaid benefits in the amount of \$150.00 and is liable to repay such sum to the Commission.

The claimant filed a claim for unemployment compensation effective February 24, 1985. Thereafter, he was paid \$150.00 for the claim week which ended March 9, 1985. On April 11, 1985, the Deputy issued a determination which held the claimant disqualified for benefits effective February 24, 1985, because he was discharged for misconduct in connection with his employment. Following the claimant's appeal, that determination was affirmed by the Appeals Examiner by Decision No. UI-85-3415 on May 16, 1985. The Decision of the Appeals Examiner was appealed on May 20, 1985, and on October 11, 1985, the Commission issued a decision, (25196-C), which affirmed the disqualification. Thereafter, the claimant filed a petition for review and the matter is now pending before the Fairfax County Circuit Court.

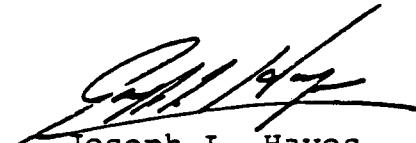
In the meantime, an overpayment determination which held the claimant liable to repay \$150.00 to the Commission was issued on April 11, 1985. The claimant appealed that determination which was affirmed by the Appeals Examiner by Decision UI-85-6426 dated December 13, 1985. In his letter of appeal from the overpayment decision, the claimant indicated that it would not be appropriate

to consider the matter of his overpayment until the Circuit Court issued its decision concerning his disqualification for benefits.

Section 60.1-132 of the Code of Virginia (1950), as amended, provides in pertinent part that any person who has received any sum as benefits to which he was not entitled shall be liable to repay such sum to the Commission. It is implicit in this statute that a finding of non-entitlement and liability for repayment cannot be made until the determination or decision which provided the basis for such a finding has become final.

It should be noted that, until recently, the Agency had refrained from issuing any overpayment determinations until the determination or decision which caused a claimant to be disqualified or ineligible to receive benefits had become final. (See generally, Francis G. Angerman v. BHW Carpentry, Commission Decision No. 20456-C, dated February 1, 1983.) In the absence of legislation or a Commission decision to the contrary, the Commission's past practices as exemplified by Angerman, supra, should continue to be followed. Adherence to the aforementioned administrative practice has correctly prohibited a finding that a claimant was not entitled to benefits under Virginia Code Section 60.1-132 until the determination or decision denying benefits had become final pursuant to Virginia Code Sections 60.1-61, 60.1-62, 60.1-64, or 60.1-67.1.

The Commission is of the opinion that a timely appeal of a Deputy's determination, Appeals Examiner's Decision, Commission Decision, or decision of a court of competent jurisdiction operates to stay any overpayment determination or collection effort until the determination or decision becomes final. In this case, since the issue of the claimant's disqualification for benefits is being reviewed by the Fairfax County Circuit Court, the overpayment determination issued on April 11, 1985, as well as the Decision of the Appeals Examiner, (UI-85-3415), dated May 16, 1985, were premature and are hereby vacated without prejudice. (Underscoring supplied)


Joseph L. Hayes
Special Assistant
Commission Appeals