

COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of

Ginger L. Ardizzone  
[REDACTED]

Date of Appeal  
To Commission: February 27, 1978

Date of Hearing: May 24, 1978

Decision No.: 10619-C

Date of Decision: August 2, 1978

Place: Richmond, Virginia

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This is a matter before the Commission on appeal by the claimant from a decision of the Appeals Examiner (No. UI-78-144), dated February 12, 1978.

ISSUE

Did the claimant file her appeal within the statutory appeal period as provided in Section 60.1-61 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT AND OPINION

The claimant filed a claim effective July 27, 1975. She claimed and received benefits for the claim weeks ending August 2, 1975 through January 24, 1976. Although she did receive benefits for such period of time, there was no written determination by the Deputy concerning her eligibility for benefits during such period.

On August 23, 1977, a Deputy's determination was issued which held that the claimant had received vacation pay which was allocated to the period from July 27, 1975 through August 6, 1975 by the employer. That determination further held that in view of such vaca-

tion pay, and in view of the fact that the claimant had received benefits from July 27, 1975 through August 9, 1975, the claimant was overpaid benefits in the amount of \$112.00 for that two-week period.

The aforementioned Deputy's determination was written over two years after the claim weeks in issue. The Deputy's determination was mailed to the claimant's last known address. The claimant had previously left that address and moved to the State of Washington. The claimant's parents, who continued to reside in Virginia subsequent to the claimant's move, were in transit moving to Washington at the time the Deputy's determination was rendered. That determination was forwarded to her father who eventually forwarded the determination to the claimant. The claimant initiated her appeal from that determination and the Examiner subsequently held that the appeal was untimely.

Section 60.1-61 of the Virginia Unemployment Compensation Act provides in part that:

...a deputy...shall promptly examine the claim and, on the basis of facts found by him, shall... determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable, and the maximum duration thereof...

\* \* \*

Notice of determination upon a claim shall be promptly given to the claimant by delivery thereof or by mailing such notice to the claimant's last known address.... The deputy shall promptly notify the claimant of any decision made by him at any time which in any manner denies benefits to the claimant for one or more weeks.

That section further provides that unless either the claimant or the employing unit, within fourteen days after notification was mailed, files an appeal from such determination or decision, such determination or decision shall be final.

Subsequent to the claimant's initial claim for benefits on July 28, 1975, the Deputy issued a monetary determination on August 4, 1975 which held that the claimant was monetarily eligible for a weekly benefit amount of \$56.00 for a duration of twenty-six weeks. In so doing, the Deputy met the statutory obligation set forth in the first paragraph of Section 60.1-61 of the Act as quoted above. Notice of this determination was promptly given to the claimant by mailing in accordance with the statute.

The claimant claimed and received benefits for the claim weeks ending August 2, 1975 through January 24, 1976. Although there was no written decision awarding such benefits, it is patently obvious that the Deputy examined the claim, found it valid, and authorized payment of benefits. The benefit check itself could be said to be an implicit notice of the determination or decision of the Deputy that the claimant was eligible.

Since no appeal was taken within fourteen days from such "determination," it became final pursuant to the provisions of Section 60.1-61 of the Act. Obviously the claimant was entitled to benefits pursuant to the implicit unwritten decision of the Deputy to pay such claim. Since there is no decision of the Deputy that the claimant was ineligible for benefits, the payment of benefits was apparently proper and no overpayment existed.

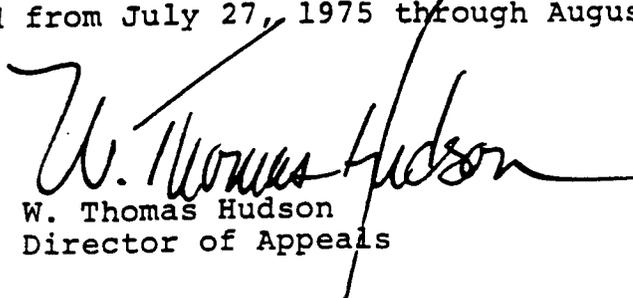
It would be unconscionable in our opinion to hold, as a Deputy did in 1977, that the claimant was overpaid. Section 60.1-61 of the Act mandates that the notice of determination of the claim shall be promptly given to the claimant. The Deputy is further mandated by such section to promptly notify the claimant of any decision to deny benefits. Although the claimant was promptly notified that she was monetarily qualified for benefits, there was no notification, other than the receipt of benefits, of a determination on the claimant's eligibility for the period claimed from July 27, 1975 through August 9, 1975. The Deputy's determination dated August 23, 1977 which held the claimant overpaid can in no way be construed as a prompt notification upon the claim.

We are of the opinion that promptness is a statutory requirement which must be met. The failure of the written Deputy's determination in the present case to meet such promptness requirement is a fatal defect. It would be unconscionable to award benefits by an unwritten decision, then over two years later, state such benefits were overpaid with no warning to the claimant. It should be noted that the General Assembly in creating a disqualification in Section 60.1-58(d) for one who makes a false statement or representation to obtain or increase any benefits under the Unemployment Compensation Act provided for a twenty-four month statute of limitations. A fortiori where there is no allegation of fraud, there should be a bar to limit any action not commenced within a reasonable time. We feel such a bar is provided in the statutory requirement that there be prompt notification of the determination upon a claim. Since the Deputy's determination dated August 23, 1977 was not a prompt determination of the claim for benefits for the weeks ending August 2 and August 9, 1975, it is the opinion of the Commission that such determination is void for having failed to meet the promptness requirement.

In view of the fact that the Commission has found that the determination of the Deputy is void, inquiry into whether the claimant filed an appeal from such determination within the statutory time limit is obviated.

DECISION

The decision of the Deputy which held that the claimant was overpaid benefits for the period from July 27, 1975 through August 9, 1975 is hereby declared void.

  
W. Thomas Hudson  
Director of Appeals