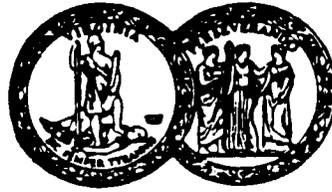


COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of

Lewis C. Crone, Jr., Claimant  
[REDACTED]

Kitchins Equipment Company  
Chesapeake, Virginia

Date of Appeal

To Commission: March 31, 1982

Date of Hearing: June 1, 1982

Decision No.: 18398-C

Date of Decision: July 1, 1982

Place: Richmond, Virginia

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This matter comes before the Commission on appeal by the claimant from the decision of the Appeals Examiner (UI-82-2300), dated March 18, 1982.

ISSUE

Has the claimant performed services for an employer for remuneration during thirty days, whether or not such days are consecutive, subsequent to the beginning of the immediate preceding benefit year during which he received benefits as provided in Section 60.1-52.2 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The claimant filed an initial claim for benefits effective January 20, 1980, giving Kitchins Equipment Company of Chesapeake, Virginia as his most recent thirty-day employing unit. The claimant was awarded benefits and exhausted his claim during that benefit year.

The claimant filed a new claim for benefits effective January 18, 1981, again giving Kitchins Equipment Company as his most recent thirty day employing unit. The claimant had not performed services for any employer for remuneration for as many as thirty days subsequent to receiving benefits in the first benefit year. Notwithstanding this fact, the claimant was paid benefits on his 1981 claim in the amount of \$122.00 a week for a duration of 26 weeks.

On February 19, 1982, the Deputy rendered a determination which held that the claimant was ineligible for benefits from January 18, 1981 through October 17, 1981 based upon the provisions of Section 60.1-52.2 of the Code of Virginia.

The claimant argues that the Commission should be estopped from now declaring him ineligible for benefits in the second benefit year since they had awarded him benefits at the time and he had made full disclosure of all relevant facts to them at that time.

OPINION

Section 60.1-52.2 of the Virginia Unemployment Compensation Act provides:

"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 service for an employer as defined in Section 60.1-12 for remuneration during thirty days, whether or not such days were consecutive."

Notwithstanding the statutory prohibition cited above that: "No individual may received benefits, etc.", the fact is that the claimant was allowed to draw benefits in the subsequent year without thirty-day employment after the filing of the claim in the immediate preceding benefit year. The issue presented by the case, therefore, is not whether the claimant may now be precluded from drawing benefits but whether the Commission can now hold the claimant ineligible for the benefits by a decision rendered some thirteen months after the claim was filed and paid. For the reasons to follow, the Commission is of the opinion that the claimant may not be held ineligible for benefits.

In the case of Ginger L. Ardizzone, Commission Decision 10619-C (August 2, 1978), the Commission held that an overpayment determination which was rendered some two years after the claim had been found to be valid and was paid, violated the promptness standards set forth in Section 60.1-61 of the Act. The Commission cited the following language:

" . . . a Deputy . . . shall promptly examine the claim and, on the basis of facts found by him, shall . . . determine whether or not such claim was 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."

The Commission concluded that the Deputy had made an unwritten determination of eligibility as evidenced by the fact that benefit checks were issued to the claimant after the claim was examined. The Commission stated:

"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 . . . "

Although the delay in the Deputy's determination was thirteen months in the present case as contrasted to two years in the Ardizzone case, the Commission is of the opinion that the reasoning set forth in that case does apply and that thirteen months is simply not a prompt determination in accordance with the statute. It is concluded, therefore, that the claimant may not now be held ineligible for benefits on a claim which was determined valid and paid in 1981.

DECISION

The decision of the Appeals Examiner which held the claimant ineligible for benefits from January 18, 1981 through October 17, 1981, is hereby reversed.

  
Kenneth H. Taylor  
Special Examiner