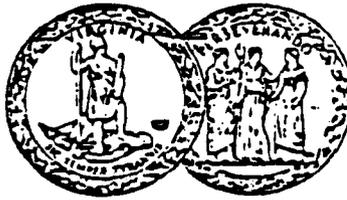


COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Paul W. McClure  
████████████████████

Dabney Lancaster Community  
College  
Clifton Forge, VA

Date of Appeal  
to Commission: April 5, 1985

Date of Review: September 3, 1985

Place: RICHMOND, VIRGINIA

Decision No.: 25026-C

Date of Mailing: September 30, 1985

Final Date to File Appeal  
with Circuit Court: October 20, 1985

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This matter comes before the Commission by way of an appeal by the claimant from the Decision of the Appeals Examiner (UI-85-1762), mailed March 15, 1985.

ISSUE

Did the claimant receive wages at his customary wage rate after reinstatement to his job, and is he liable to repay any sum to the Commission as provided in Section 60.1-133 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The Findings of Fact of the Appeals Examiner are adopted by the Commission with the following correction.

In the second paragraph, line two, the date, "January 30, 1984", should read "January 30, 1983."

OPINION

Section 60.1-133 of the Virginia Unemployment Compensation Act provides:

"Whenever the Commission finds that a discharged employee has received back pay at his customary wage rate from his employer after reinstatement such employee shall be liable to repay the benefits, if any, paid to such person during the time he was unemployed. In any case in which under this section an employee is liable to repay benefits to the Commission, such sum shall be collectible without interest by civil action in the name of the Commission."

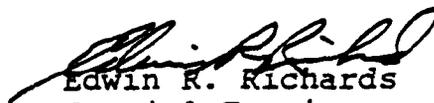
In the present case, the claimant's argument that there should be some statute of limitation involved is without merit. The aforementioned Section of the Code specifically notes:

"Whenever the Commission finds that a discharged employee has received back pay... " (Underscoring supplied.)

There is no mention in the aforementioned Section of the Code as to any time limitation in which the Commission may find that an employee has received back pay after reinstatement. Any back pay received after reinstatement, therefore, automatically renders any benefits paid the claimant during the period for which he was unemployed overpaid. The evidence in the record clearly shows that the claimant received back pay at his customary wage rate for the period in which he was receiving unemployment benefits and that he was reinstated by the employer. Therefore, this claimant has received benefits in the amount of \$3,192 that he is liable to repay to the Commission.

#### DECISION

The Decision of the Appeals Examiner is hereby affirmed. It is held the claimant is overpaid unemployment compensation in the amount of \$3,192 and he is liable to repay such sum to the Commission.

  
Edwin R. Richards  
Special Examiner