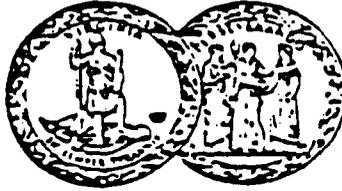


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Wayne T. Forehand
[REDACTED]

J. B. Denny Company
Virginia Beach, Virginia
(Last 30-Day Employing Unit)

Insulation Specialties, Inc.
Hopewell, Virginia
(Subsequent Employing Unit)

Date of Appeal
to Commission:

July 30, 1993

Date of Review:

August 20, 1993

Place: RICHMOND, VIRGINIA

Decision No.:

43213-C

Date of Mailing:

September 10, 1993

Final Date to File Appeal

with Circuit Court: September 30, 1993

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This case came before the Commission no appeal by the claimant from a Decision of Appeals Examiner (UI-9312305), mailed August 5, 1993.

ISSUES

Does the claimant have good cause to reopen the Appeals Examiner's hearing as provided in Regulation VR 300-01-4.2I of the Regulations and General Rules Affecting Unemployment Compensation?

Did the Notice of Deputy's Determination comply with the promptness requirements of the statute as provided in Sections 60.2-619(A) and 60.2-619(C) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

By letter postmarked July 30, 1993, the claimant requested a reopening of the appeals hearing that was scheduled for 1:00 p.m. on July 27, 1993. The claimant's reopening request was received by the Commission on August 9, 1993, four days after the Appeals Examiner's decision had been mailed. Consequently, the claimant's request for a reopening was treated as an appeal from that decision in accordance with the Commission's regulations.

On March 18, 1992, the claimant filed an interstate claim for benefits. That claim was given an effective date of March 15, 1992. When he filed the claim, the claimant identified J. B. Denny Company as his last 30-day employer, and Insulation Specialties, Inc., as a subsequent employing unit for whom he had worked less than 30 days. Based upon that claim, the claimant was paid \$3,328.00 of benefits for the period of March 15, 1992 through July 4, 1992.

On June 4, 1993, the Interstate Deputy issued a determination which disqualified the claimant from receiving benefits, effective March 15, 1992. That disqualification was based upon the Deputy's conclusion that the claimant had voluntarily left his job with Insulation Specialties, Inc., under circumstances that would not constitute good cause.

Insulation Specialties, Inc., returned a separation report to the Commission which was dated by a company representative on December 1, 1992. This report was date stamped as being received by the Interstate Claims Section on February 10, 1993. The Deputy's Phone Power Report notes reflect that both employers were contacted on May 12, 1993, to obtain information regarding the claimant's separation from work. The only Phone Power Report in the file regarding any contact with the claimant was dated February 25, 1992. That contact was apparently made when the claimant originally filed a claim for benefits after being laid off for lack of work for J. B. Denny Company on February 2, 1992.

OPINION

Section 60.2-619(A) (1) of the Code of Virginia provides as follows:

A representative designated by the Commission as a deputy, shall promptly examine the claim. On the basis of the facts found by him, the deputy shall either:

a. 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; or

b. Refer such claim or any question involved therein to any appeal tribunal or to the Commission, which tribunal or Commission shall make its determination in accordance with the procedure described in Section 60.2-620. (emphasis supplied)

Section 60.2-619(C) of the Code of Virginia provides, in pertinent part, as follows:

Notice of determination upon a claim shall be promptly given to the claimant by delivering or mailing such notice to the claimant's last known address. In addition, notice of any determination which involves the application of the provisions of Section 60.2-618, together with the reasons therefor, shall be promptly given in the same manner to the most recent thirty-day employing unit by whom the claimant was last employed and any subsequent employing unit which is a party. . . . 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. (emphasis supplied)

Promptness is a mandatory requirement under the provisions of Section 60.2-619 of the Code of Virginia. With the exception of fraud cases arising under the provisions of Section 60.2-618(4) of the Code of Virginia, there is no specific time limit setting forth when a Deputy's determination will be considered to be prompt. Nevertheless, the retroactive application of a disqualification or finding of ineligibility to a period of time for which benefits have already been paid should be done as soon as possible after the facts to support such a determination are made known to the agency.

The first case that addressed this issue was the case of In re Ardizzone, Commission Decision 10619-C (August 2, 1978). In that case, the claimant filed an untimely appeal from a Notice of Deputy's Determination, which was issued on August 23, 1977. That determination held that the claimant was ineligible to receive benefits for the period of July 27, 1975 through August 6, 1975, and was overpaid benefits in the amount of \$112 for those two weeks. In analyzing this issue the Commission stated:

It would be unconscionable in our opinion to hold, as a deputy did in 1977, that the claimant was overpaid. Section 60.1-61 (the predecessor to Section 60.2-619) 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 of 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. (emphasis supplied)

Based upon that analysis, the Commission found that the Deputy's determination was void ab initio because its failure to meet the promptness requirement of the statute was a fatal defect. As a result, the Commission also concluded that the issue of whether the claimant had filed a timely appeal was obviated. In the cases of Randolph v. Huff-Cook, MBA, Commission Decision 25734-C (July 11, 1986), Crone v. Kitchens Equipment Company, Commission Decision 18398-C (July 1, 1982), and Melton v. Monroe Systems for Business, Inc., Commission Order 38616-C (June 26, 1992), delays of seven months, 13 months, and 14 months, respectively, were found to be violative of the promptness requirement of the statute.

Here, the Notice of Deputy's Determination was mailed nearly 15 months after the claimant filed his claim for benefits, and 11 months after the Commission had authorized the payment of more than \$3,000.00 in unemployment insurance benefits. This inordinate delay did not comply with the promptness requirement set out in Sections 60.2-619(A) and 60.2-619(C) of the Code of Virginia. Therefore, the Deputy's determination is fatally defective.

Accordingly, the Notice of Deputy's Determination mailed June 4, 1993, is hereby declared void ab initio. Since that determination was void, there is no need to address the issue regarding whether the claimant had good cause to reopen the Appeals Examiner's hearing.

DECISION

The Notice of Deputy's Determination, which held that the claimant was disqualified from receiving benefits, effective March 15, 1992, is hereby declared void ab initio. Therefore, the Appeals Examiner's decision (UI-9312305), and the claimant's appeal therefrom are hereby vacated and stricken from the Commission's docket.

M. Coleman Walsh, Jr.
M. Coleman Walsh, Jr.
Special Examiner