DECISION OF COMMISSION

In the Matter of:

Teresa Hobson

Date of Appeal to Commission: April 18, 1986
Date of Review: May 6, 1986
Place: RICHMOND, VIRGINIA
Decision No.: 26931-C
Date of Mailing: May 9, 1986
Final Date to File Appeal with Circuit Court: May 29, 1986

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This is a matter before the Commission on appeal by the claimant from the Decision of Appeals Examiner (UI-86-2339), mailed April 11, 1986.

ISSUE

Did the claimant receive any sum as benefits to which she was not entitled and is she liable to repay such sum to the Commission as provided in Section 60.1-132 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The claimant filed a timely appeal from the Appeals Examiner's decision which declared her to be overpaid unemployment compensation in the amount of $280.00 and liable to repay such sum to the Commission.

The claimant had filed for unemployment compensation effective December 9, 1984, indicating that she had become unemployed when the company she worked for was sold. She did state that she had collected severance pay from the new company for twelve weeks, beginning August 27, 1984, however, she had not mentioned the fact
that the new company had also offered her a job, which she had
turned down. She was then paid unemployment compensation in the
amount of $280.00 for the weeks of December 9, 1984, through
December 29, 1984.

It was later discovered that the claimant, in fact, turned
down an offer of employment from the company which bought out her
old employer in August of 1984. The Deputy then issued a Notice
of Determination, which disqualified her for benefits effective
December 9, 1984. The claimant's appeal from this determination
was found to be non-timely by Commission Decision No. 26930-C,
and the Deputy's determination, therefore, became final.

**OPINION**

Section 60.1-132 of the Virginia Unemployment Compensation
Act provides:

"Any person who has received any sum as benefits
under this title to which he was not entitled shall
be liable to repay such sum to the Commission. In
the event the claimant does not refund the overpay-
ment, the Commission shall deduct from any future
benefits such sum payable to him under this title
unless the overpayment occurred due to administrative
error, in which case the Commission shall deduct only
fifty percent of the payment amount for any future
week of benefits claimed, rounded down to the next
lowest dollar until the overpayment is satisfied.
Administrative error shall not include decisions
reversed in the appeals process. In addition, the
overpayment may be collectible without interest by
civil action in the name of the Commission."

Here, the Appeals Examiner concluded that administrative error
was involved because the claimant had disclosed at the time she
filed her claim the fact that she had received severance pay from
the company which bought out the one for which she worked. The
Commission does not agree with this analysis. The fact that the
claimant may have received severance pay from a successor corpora-
tion does not logically imply that there must have been an offer of
work extended by that company. Indeed, it is quite logical to
conclude that the action of a successor corporation in offering
severance pay to the employees of the predecessor is being taken
because those individuals are being laid off or replaced by others
from the new company. The reason why this claimant was overpaid
is because she failed to disclose to the Commission the fact that
the successor corporation specifically offered her a job, which she
refused. This is not administrative error. (Underscoring supplied)
Inasmuch as the claimant did receive $280.00 after the effective date of her disqualification, that sum has become benefits to which she was not entitled and she is liable to repay such sum to the Commission.

DECISION

The Decision of Appeals Examiner is hereby affirmed and amended.

It is held that the claimant is overpaid unemployment compensation in the amount of $280.00 and is liable to repay such sum to the Commission. It is further held that the overpayment is not the result of administrative error.

Charles A. Young, III
Special Examiner