

The claimant had filed a claim for regular unemployment insurance benefits effective October 5, 1980 when a new benefit year began for him. The claimant was paid benefits on the EB claim in the amount of \$74.00 per week from August 31, 1980 through October 4, 1980, for a total of \$385.00. The claimant was paid a weekly benefit amount of \$74.00 on his regular UI claim for the period October 5, 1980 through December 27, 1980, for a total of \$888.00. Since the claimant received \$385.00 on the EB claim and \$888.00 on the UI claim after the effective date of the disqualification imposed by the Appeals Examiner's decision on October 21, 1980, the Deputy, and later the Appeals Examiner in a subsequent decision, determined that the claimant had been overpaid benefits in the total amount of \$1,273.00.

Counsel for the claimant argues that it was improper for the Commission to deny benefits to the claimant for weeks paid prior to the date that the decision of the Appeals Examiner on the merits became final, November 14, 1980. In support of his position, counsel cites the following provision of Section 60.1-61 of the Code of Virginia:

"Notwithstanding any other provision of this chapter, benefits shall be paid promptly in accordance with the determination or redetermination under this chapter . . . regardless of the pendency of the period to file an appeal or petition for judicial review that is provided with respect thereto in this chapter, or the pendency of any such appeal or review, unless and until such determination, redetermination or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modifying or reversing redetermination or decision . . ." (Emphasis supplied)

OPINION

In view of the fact that the claimant was paid benefits in the amount of \$1,273.00 subsequent to the effective date of his disqualification for benefits, August 31, 1980, the Commission has no alternative than to hold that the claimant was overpaid benefits in the amount of \$1,273.00. The claimant's argument regarding the applicability of Section 60.1-61 of the Code to the present case is novel, yet unconvincing; the phrase relied upon in the statute states that subsequent to a redetermination or decision, benefits shall be paid or denied for weeks of unemployment thereafter in accordance with that decision. The statute is silent as to the manner in which benefits shall be paid or denied for weeks of unemployment prior to the subsequent redetermination or decision,

and these are the weeks at issue in the present case. The consistent administrative practice of this Commission has been to impose disqualifications retroactively to the effective date of the claim and the General Assembly has not seen fit to amend the statute in question had it intended that any other result be reached in such cases. The presumption in such a case is obviously that the legislature implicitly adopts the interpretation of the agency. Accordingly, it is the opinion of the Commission that the disqualification imposed by the Examiner's decision retroactively to the effective date of the claim for benefits effective August 31, 1980 meant that the claimant was not entitled to receive benefits at all subsequent to that date. Accordingly, the overpayment to this claimant was correctly determined based on all weeks paid subsequent to August 31, 1980.

DECISION

It is held that the claimant is overpaid benefits in the amount of \$1,273.00, which he is liable to repay to the Commission.

Kenneth H. Taylor
Special Examiner

AFFIRMED BY THE CIRCUIT COURT OF THE CITY OF NORFOLK -- C-81-1642.
ORDER ENTERED MARCH 10, 1982.