

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF APPEALS EXAMINER

Decision No.: UI-74-593

MISCELLANEOUS: 340.15
Overpayments - Nonfraudulent

Date: March 21, 1974

ISSUE

Did the claimant receive benefits to which he was not entitled?

FINDINGS OF FACT

The claimant appealed from a determination of the Deputy, which held he had been overpaid benefits in the amount of \$350.00 for which he was liable to repay to the Commission.

The claimant had filed a claim for benefits effective November 26, 1972. The Deputy held him eligible for benefits without disqualification and, after giving him credit for a waiting period week, paid the claimant benefits in the amount of \$70.00 for the five claim weeks ending January 6, 1973. As a result of an appeal of the Deputy's determination filed by the employer, the Appeals Examiner issued a decision holding the claimant disqualified for benefits effective November 26, 1972, due to acts that were the cause of his separation from his last employment. The claimant appealed the decision of the Appeals Examiner, and the Commission, after a hearing, issued a decision dated March 27, 1973, affirming the action of the Appeals Examiner. The claimant did not appeal from the March 27, 1973, decision of the Commission and it became final.

At the hearing on the claimant's appeal of the Deputy's overpayment determination, the claimant stated that he did not believe it should be held that he owed the Commission any money, because he had received the benefits when he was unemployed and making aggressive efforts to find work. The claimant also pointed out that he had made no false statements in applying for the benefits and he had received them from the Commission in good faith.

OPINION

Section 60.1-132 of the Virginia Unemployment Compensation Act provides that any person who has received any sum as benefits under the Virginia Unemployment Compensation Act to which he is not entitled shall be liable to repay such sum to the Commission for the fund.

The claimant in this case did receive \$350.00 in benefits based upon a valid claim and there certainly was no fraudulent act on his past which resulted in his receiving these benefits. It must be held, however, that an overpayment of the benefits exists inasmuch as the claimant did not appeal the Commission's affirmation of the decision that he was disqualified from receiving benefits effective as of the date of the initiation of his claim. (Underscoring supplied)

DECISION

The determination of the Deputy is hereby affirmed. It is held that the claimant was overpaid benefits in the sum of \$350.00 which should be repaid to the Virginia Employment Commission for the fund.

NOTE: This decision was affirmed by the Commission in Decision No. 6277 -C dated May 10, 1974.