



DECISION OF COMMISSION

In the Matter of:

Lois B. Brown

Date of Appeal to Commission: July 6, 1989
Date of Review: July 25, 1989
Place: RICHMOND, VIRGINIA
Decision No.: 32196-C
Date of Mailing: August 17, 1989
Final Date to File Appeal with Circuit Court: September 6, 1989

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This matter comes before the Commission as the result of an appeal filed by the claimant from the Decision of Appeals Examiner (UI-8810054), mailed June 15, 1989.

ISSUE

What is the claimant's maximum total benefit amount as provided in Section 60.2-607 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On July 6, 1989, the claimant filed a timely appeal from the Appeals Examiner's decision which amended a reprocessed monetary determination of the Deputy. The reprocessed monetary determination found that the claimant was monetarily eligible to receive a maximum benefit amount of \$4,008, based upon a weekly benefit amount of \$167, for a maximum of twenty-four weeks. The Appeals Examiner amended this determination to find that the claimant was monetarily eligible for one additional week of benefits, bringing her maximum benefit amount to \$4,175.

Prior to filing her claim for benefits, the claimant last worked for the Clifton Forge-Waynesboro Telephone Company. She was

laid off from this company effective December 19, 1986. The claimant was paid severance pay by the employer in the amount of \$357.81 weekly for the period of December 21, 1986 through June 20, 1987. The claimant was paid \$357.81 on December 31, 1986. Thereafter, the claimant was paid \$715.62 twice a month from January 16, 1987 through June 19, 1987. A final severance pay payment of \$357.81 was made by the employer on July 2, 1987.

The claimant filed her claim for benefits, effective July 12, 1987. Based upon the effective date of her claim, the base period for determining her monetary entitlement to receive benefits was April 1, 1986 through March 31, 1987. During the second quarter of 1986, the claimant had wages totalling \$4,327.76. During the third quarter of 1986, she had total wages of \$5,283.70. During the fourth quarter of 1986, she had total wages of \$5,610.79, which included the first severance pay payment that was made December 31, 1987. During the first quarter of 1987, the claimant had \$715.62 of wages. Her total earnings during the base period amount to \$15,937.87.

The employer erroneously reported that the claimant had wages of \$4,293.72 during the first quarter of 1987. This figure was the total amount of severance pay paid to the claimant during the first three months of 1987.

OPINION

Section 60.2-607 of the Code of Virginia provides as follows:

The maximum total amount of benefits payable to any individual during any benefit year shall be determined from the "Benefit Table" shown in Section 60.2-602 but shall not exceed twenty-six times such individual's weekly benefit amount, except when benefits are paid pursuant to the provisions of Section 60.2-610 or Section 60.2-611. Such determination shall be based only upon wages paid for insured work during such individual's base period. The Commission shall maintain a separate account of each individual who is paid wages for insured work. After the expiration of each calendar quarter the Commission shall credit each individual's account with the wages paid to him for insured work in such calendar quarter. (Emphasis added)

The resolution of the issue before the Commission depends upon the amount of the severance pay paid to the claimant that can be treated as wages for the purpose of determining her monetary

entitlement. Both the statute and the regulations provide meaningful guidance on this issue. The term "wages" is defined in Section 60.2-229 of the Code of Virginia as meaning:

. . . all remuneration payable for personal services, including commissions, bonuses, tips, back pay, dismissal pay, severance pay and any other payments made by an employer to an employee during his employment and the next thirty days thereafter and the cash value of all remuneration payable in any medium other than case. (Emphasis added)

Regulation VR 300-01-1.1 of the Rules and Regulations Affecting Unemployment Compensation provides the following definition of severance and dismissal pay:

"Severance and dismissal pay" means for the purposes of taxation and benefits, all payments made by an employer at or within thirty days of an employee's separation. Such payments may be allocated by the employer for up to thirty days following separation, and will in such cases be deemed to have been paid in those weeks covered by the allocation. If no allocation is made by the employer, such payments will be deemed allocated to the last day of work.

The Commission has consistently interpreted the provisions of Section 60.2-229 to include as wages only that amount of severance pay that is paid at the time of separation and the next thirty days thereafter. Regardless of what period of time a particular installment of severance pay might cover, the key element under the statute is when the payments were made. If the payments were made within thirty days of separation, they constitute wages. Any payment of severance pay made more than thirty days from the date of separation are not wages. This interpretation is supported by the definition of severance pay that was included in the Rules and Regulations Affecting Unemployment Compensation when they were revised, effective July 1, 1987. Accordingly, only the severance pay paid to the claimant on December 31, 1986 and January 16, 1987 constitute wages. (Underscoring supplied)

In the present case, the claimant's two high quarters of wages totalled \$10,894.49 and her total wages were \$15,937.87 for the base period. When these figures are compared with the table contained in Section 60.2-602 of the Code of Virginia in effect at the time the claim was filed, the claimant was monetarily entitled to received \$167 per week for a maximum of twenty-four weeks,

resulting in a maximum benefit amount of \$4,008. Accordingly, the Commission concludes that the claimant's maximum monetary entitlement to benefits based upon her claim filed, effective July 12, 1987, is \$4,008.

The Commission recognizes that the confusion over the claimant's maximum benefit amount was not due to any fault on her part. The situation initially arose when the employer, through a misunderstanding of how much severance pay constituted wages, reported all of the severance pay paid to the claimant as wages. If the figures originally reported by the employer truly reflected wages earned by the claimant, then she would have been entitled to a maximum benefit amount of \$4,342, or an additional one week of benefits. However, the fact that the employer made a mistake in reporting the amount of wages the claimant earned does not permit the Commission to disregard the specific provisions of the statute and regulations which are applicable here.

DECISION

The decision of the Appeals Examiner is hereby amended. It is held that the claimant is entitled to receive twenty-four weeks of benefits and a weekly benefit amount of \$167, with her maximum benefit amount totalling \$4,008.

The case is remanded to the local office Deputy with instructions to take such further action as may be necessary and appropriate.



M. Coleman Walsh, Jr.
Special Examiner