



DECISION OF COMMISSION

In the Matter of:

Wesley A. Shaner
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I.S.N.
Bethesda, Maryland

Date of Appeal

to Commission: April 9, 1990

Date of Hearing: June 4, 1990

Place: RICHMOND, VIRGINIA

Decision No.: 33552-C

Date of Mailing: June 22, 1990

Final Date to File Appeal
with Circuit Court: July 12, 1990

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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-9003041), mailed March 23, 1990.

APPEARANCES

None

ISSUE

Did the claimant register for work and continue to report at an employment office in accordance with such regulations as the Commission may prescribe in accordance with the provisions of Section 60.2-612.5 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The claimant filed a timely appeal from the Appeals Examiner's decision which affirmed an earlier Deputy's determination and declared him ineligible for benefits between December 17, 1989, and January 20, 1990.

The claimant had filed his claim for unemployment compensation, effective November 19, 1989. Commission records reflect that he certified for and was paid benefits for four weeks through December 16, 1989. His claim form for the two weeks ending December 16, 1989, was received on December 19, 1989, and a new claim form covering the next two weeks was then sent out to him the same day.

The claimant completed this claim form for the two weeks ending December 30, 1989, and mailed it back to the Commission approximately January 2, 1990. On this form he indicated that he had undergone minor surgery in the week ending December 23, 1989. As a result, his claim for the two weeks in question was not paid and he was sent notice that he should report to his local office in order to answer additional questions concerning those weeks. He recalled receiving this notice some time between January 8, and January 12, 1990; however, the record fails to disclose that he was ever given a specific date and time when he had to report. It was not until January 25, 1990, that he finally did so, and he was then issued claim forms to cover the entire period of time in question.

OPINION

Section 60.2-612.5 of the Code of Virginia provides that, in order to be eligible for benefits, an individual must have registered for work and continued to report at an employment office in accordance with such regulations as the Commission may prescribe.

Regulation VR 300-01-3.1.1C(4) of the Rules and Regulations Affecting Unemployment Compensation provides that:

An individual shall be deemed to have reported at the proper time if he claims benefit rights within twenty-eight days after the calendar week ending date of his last continued claim filed, or the calendar date on which the initial claim was filed. If the twenty-eighth day falls upon a date when the local unemployment insurance office is closed, the final date for late filing shall be extended to the next day the office is open. Failure to file within the time limit shall automatically suspend the claim series and the claimant must file an additional or reopened claim in accordance with subdivision C3 of this section in order to begin a new claim series.

In the present case, the Appeals Examiner began the twenty-eight day period as of December 16, 1989, the date of the last continued claim week which was filed without any problems. The Commission must find that this was incorrect, since the claimant

Under the doctrine enunciated in the case of Richardson v. Sapphire Mining Corporation, Commission Decision 24522-C (February 3, 1985), this case is properly considered as one involving the filing of a claim rather than reporting as directed. A claimant for partial unemployment compensation who has a week of total unemployment has come to the end of his or her partial claim series and must file a reopened claim on a total basis.

In the case at hand, the claimant was given adequate instructions as to what to do in the "Unemployment Insurance Handbook for Claimants" which she received when she first filed her claim. Therefore, exception "a" would not be applicable to her case. Likewise, her failure to file her claims any sooner was not due to circumstances attributable to the Commission so as to fall within exception "c."

Despite this, the Commission is of the opinion that exception "g" would be applicable here. The claimant had reason to believe that she would be working on Saturday, May 26, 1990; therefore, there was no need for her to report in order to claim partial benefits for that week. Once she found out on Saturday morning that she would not be working, she was placed in a situation where she knew or should have known that she was no longer considered as a partially unemployed individual. Nevertheless, at this point there was no way she could report in that week, since the Commission local office would no longer be open. A similar situation existed with respect to her claim for the following week. Inasmuch as she did report on Monday, June 4, the Commission must conclude that she has established good cause to have her claim backdated to include both weeks in question. (Underscoring supplied)

Section 60.2-612.7 of the Code of Virginia provides that in order to be eligible for benefits for a particular week, a claimant must be able to work, available for work, and actively seeking and unable to find suitable work during that week.

Regulation VR 300-01-4.3.1.1D provides that normally, all claimants whose unemployment is total or part-total must make an active search for work by contacting prospective employers in an effort to find work during each week claimed. A claimant who is temporarily unemployed with an expected return to work date within a reasonable period of time may be considered attached to his regular employer so as to meet the requirement that he be actively seeking and unable to find suitable work if he performs all suitable work which his regular employer has for him during the week or weeks claimed while attached.

This claimant is properly considered as having been in an attached total status with respect to the two weeks at hand. This means that she would be considered eligible for the first week since she attempted to work as scheduled on Saturday, only to be told that work was no longer available. For the second week, she was not meeting all eligibility requirements because she was sick and unable to work on the two days that work was available for her.