

DECISION OF COMMISSION

In the Matter of:
Sherry L. Newsome
Orvis
Roanoke, Virginia

Date of Appeal to Commission: July 31, 1990
Date of Review: August 20, 1990
Place: RICHMOND, VIRGINIA
Decision No.: 34196-C
Date of Mailing: September 12, 1990
Final Date to File Appeal with Circuit Court: October 2, 1990

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This case comes before the Commission on appeal by the claimant from Appeals Examiner's Decision UI-9007235, mailed July 10, 1990.

ISSUES

Did the claimant make a claim for unemployment compensation in accordance with such regulations as the Commission may prescribe as provided in Section 60.2-612.6 of the Code of Virginia (1950), as amended?

Was the claimant able to work, available for work, and actively seeking and unable to find suitable work during the week or weeks for which benefits were claimed as provided in Section 60.2-612.7 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 her to be ineligible for benefits between May 20, 1990 and June 2, 1990, for having failed to make a claim for benefits in accordance with such regulations as the Commission may prescribe.

The claimant had filed a partial claim for unemployment compensation, effective March 4, 1990, after the hours on her regular job had been reduced significantly. She then certified for and claimed benefits for a number of weeks through May 19, 1990. She had been given a copy of the "Unemployment Insurance Handbook for Claimants" which contained a special section dealing with claimants for partial unemployment insurance. It informed her that she was expected to work all hours that her regular employer had work available for her and that any week in which she did not work at all, she had to report to her local office in order to file a total claim for benefits.

For the week ending May 26, 1990, the claimant was scheduled to work only on Saturday, May 26. She reported to work on that day, only to be told that she was not needed. Since she knew that she was scheduled to work Friday and Saturday of the following week, she assumed that she would just add the week ending May 26, on the partial claim form which her employer would give her.

The claimant became sick during the week ending June 2, to the point where she was unable to work the two days she was scheduled. She did call in to the employer to state this fact and the following Monday, June 4, 1990, she reported to her local office in an attempt to claim benefits for the two previous weeks.

OPINION

Section 60.2-612.6 of the Code of Virginia provides that in order to be eligible for benefits for a particular week, a claimant must have made a claim for benefits in accordance with such regulations as the Commission may prescribe.

Regulation VR 300-01-3.1.1C3 provides that all initial total or part-total unemployment claims shall be effective on the Sunday of the week in which an individual reports to a Commission local office or a location designated by the Commission to file a claim. Exceptions are provided as follows:

- a. The Commission is at fault due to a representative of the Commission giving inadequate or misleading information to an individual about filing a claim; . . .
- c. Filing delayed due to circumstances attributable to the Commission; . . .
- g. With respect to reopened or additional claims only, when the claimant can show circumstances beyond his control which prevented or prohibited him from reporting earlier.

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.

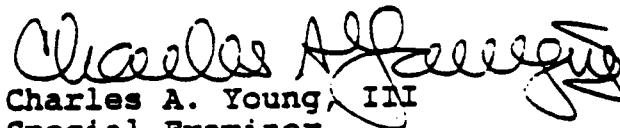
This claimant is properly considered as having been in an attached total status with respect to the two weeks at hand. This means that she would be considered eligible for the first week since she attempted to work as scheduled on Saturday, only to be told that work was no longer available. For the second 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.

DECISION

The decision of the Appeals Examiner is hereby amended.

It is held that the claimant was meeting the eligibility requirements of the Code with respect to the week of May 20, 1990 through May 26, 1990.

It is held that the claimant was not meeting the eligibility requirements of the Code with respect to the week of May 27, through June 2, 1990.


Charles A. Young, III
Special Examiner

NOTICE TO CLAIMANT

IF THE DECISION STATES THAT YOU ARE DISQUALIFIED, YOU WILL BE REQUIRED TO REPAY ALL BENEFITS YOU MAY HAVE RECEIVED AFTER THE EFFECTIVE DATE OF THE DISQUALIFICATION. IF THE DECISION STATES THAT YOU ARE INELIGIBLE FOR A CERTAIN PERIOD, YOU WILL BE REQUIRED TO REPAY THOSE BENEFITS YOU HAVE RECEIVED WHICH WERE PAID FOR THE WEEK OR WEEKS YOU HAVE BEEN HELD INELIGIBLE. IF YOU THINK THE DISQUALIFICATION OR PERIOD OF INELIGIBILITY IS CONTRARY TO LAW, YOU SHOULD APPEAL THIS DECISION TO THE CIRCUIT COURT. (SEE NOTICE ATTACHED)