



DECISION OF COMMISSION

In the Matter of:

Wesley C. Saunders

Date of Appeal
to Commission: July 15, 1988
Date of Review: July 28, 1988
Place: RICHMOND, VIRGINIA
Decision No.: 030674C
Date of Mailing: August 24, 1988
Final Date to File Appeal
with Circuit Court: September 13, 1988

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This is a matter before the Commission as the result of an appeal filed by the claimant from the Decision of Appeals Examiner (UI-8805881), mailed July 14, 1988.

ISSUE

When did the claimant make a claim for benefits 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?

FINDINGS OF FACT

The claimant filed a timely appeal from the Appeals Examiner's decision which affirmed a monetary determination declaring him eligible for unemployment compensation in the amount of \$167.00 per week for up to 26 weeks based upon his claim filed effective June 12, 1988.

The claimant has been employed by Simplimatic Engineering of Lynchburg, Virginia for some time and was still employed there at the time of the hearing before the Appeals Examiner.

During one of the last two weeks in May, 1988, he was unemployed because the employer shut down to conduct an inventory.

The claimant had been injured and had been out on disability since April 1, 1988. On May 20, 1988, representatives of the Lynchburg office of the Commission went to the employer's plant to pre-file claims for unemployment compensation for those individuals who would be out of work due to the inventory. The claimant was not there that day because he had still not returned from his disability leave. Even though instructions were left with members of the company's personnel department to the effect that anyone who was to be off during inventory week and who had not been able to file a claim should come into the local office in person during the week they were laid off in order to file, the claimant never received this word. Instead, it was not until Tuesday, June 14, 1988 that he reported to the Lynchburg local office of the Commission to file his claim.

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.C.3 of the Rules and Regulations Affecting Unemployment Compensation provides that all total or part-total 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 in cases where the Commission is at fault due to representative giving inadequate or misleading information to an individual about filing a claim, where filing was delayed due to circumstances attributable to the Commission, and 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.

In the case at hand, it is apparent that the claimant did not receive any inadequate or misleading information from a Commission representative concerning the filing of his claim, inasmuch as he was not present when representatives came to the plant where he worked and he did not even report to the Commission until Tuesday, June 14, 1988, at which time his claim was promptly taken. Additionally, it cannot be said that

circumstances attributable to the Commission caused him to delay in filing his claim inasmuch as every effort was made to notify the employer's personnel department to have anyone whose claim was not taken at the plant report in person during the week of the inventory in order to receive credit for it. While it is unclear if the claimant was actually aware in advance that there was to be a shutdown for inventory, even assuming that he did not know and that he was thus prevented by circumstances beyond his control from filing his claim in advance or reporting to the Lynchburg local office during the week he was not to be working, this would still make no difference in his case. This is because the third noted exception only applies in cases involving additional or reopened claims. In this case, where the claimant was filing a new claim, the Commission has no choice but to make it effective Sunday, June 14, 1988, the first day of the week in which he actually reported to a Commission local office to file it. (Underscoring supplied)

DECISION

The decision of the Appeals Examiner is hereby affirmed.

It is held that the claimant is qualified for unemployment compensation in the amount of \$167.00 per week for up to 26 weeks based upon his claim filed effective June 12, 1988.


Charles A. Young, III
Special Examiner