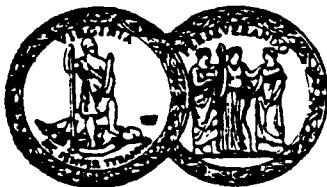


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



MISCELLANEOUS - 95.25
Construction of statutes -
Retroactive operation

DECISION OF COMMISSION

In the Matter of

Robert L. Orgo, Claimant
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A. R. S. Builders, Inc.
Matteson, Illinois

Employer

Date of Appeal
To Commission: April 8, 1978

Date of Review: November 1, 1978

Decision No.: 11180-C

Date of Decision: November 3, 1978

Place: Richmond, Virginia

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This is a matter before the Commission on appeal by the claimant from the decision of the Appeals Examiner (No. UI-78-1549), dated March 30, 1978.

ISSUE

Did the claimant make a claim for benefits in accordance with such regulations as the Commission may prescribe as provided in Section 60.1-52(f) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT AND OPINION

The claimant appealed from a decision of the Appeals Examiner which stated that the claim for benefits initiated by the claimant on January 23, 1978, should be predated to Sunday, January 22, 1978. The claimant previously had established an initial claim in Virginia effective January 9, 1977. After exhausting the benefits to which he was entitled under that claim, he had filed an extended benefits claim. He claimed extended benefits through July 23, 1977, exhausting all benefits to which entitled except for a balance of \$52. In filing his January 23, 1978 claim, the claimant reported that he had last worked for A. R. S. Builders, Inc., from June 13, 1977, through December 31, 1977. In late December, 1977, the claimant filed a claim for benefits in the State of Pennsylvania because his employment with A. R. S. Builders, Inc., had been in that state. In furnishing separation information to the Pennsylvania Agency, the employer showed that the claimant had worked from some date in June, 1977, to December 23, 1977, and in the quarter ending June 30, 1977, had been paid gross wages of \$325. During the quarter ending September 30, 1977, he had been paid gross wages of \$4825. The Pennsylvania Agency then attempted to establish a combined-wage claim with wages which the claimant had previously earned in Virginia. This effort was

unsuccessful because the wages which were requested for transfer from Virginia had already been used in a prior claim. After initiating his claim in Pennsylvania, the claimant had contacted the Lebanon, Pennsylvania, Local Office on December 31, 1977, and again on January 7, 1978, in an attempt to resolve his entitlement to benefits. The claimant then was instructed to file a claim in the State of Virginia, which he did on January 23, 1978.

Section 60.1-52(f) of the Virginia Unemployment Compensation Act provides that in order to be eligible for benefits, a claimant must make a claim in accordance with such regulations as the Commission may prescribe. Regulation VIII of Rules and Regulations Affecting Unemployment Compensation issued by the Virginia Employment Commission provides that a claim shall be backdated to the Sunday prior to the first day he files his claim and registers for work at an employment office. The regulation also provides, however, that an exception shall be made to this rule when a previous claim was filed against a wrong liable state. Inasmuch as the claim filed by this claimant against the State of Pennsylvania was invalid, it is concluded that the Virginia claim initiated on January 23, 1978, should be backdated and accepted as an additional claim for extended benefits to which he would have been entitled prior to the ending of his benefit year on January 7, 1978, and that a new claim in a new benefit year beginning January 8, 1978, should be established. (Underscoring supplied)

DECISION

The decision of the Appeals Examiner is hereby reversed. The claim filed by the claimant on January 23, 1978, is accepted by the Commission as an additional extended benefits claim effective January 1, 1978, and a new initial claim for benefits effective January 8, 1978.

The Deputy is directed to determine the claimant's entitlement to benefits based on these amended claim dates.

The Deputy also is directed to determine whether or not the claimant was improperly paid benefits from June 13, 1977, the date he started to work for A. R. S. Builders, Inc., through July 23, 1977, the date on which payments on his extended benefits claim ended.


Gene Pitts
Special Examiner