

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

MISCELLANEOUS: 95.15
Construction of Statutes —
Construction with Reference
to Other Statutes.



DECISION OF COMMISSION

In the Matter of

Doctor B. Odham

Date of Appeal

To Commission: August 9, 1984

Date of Hearing: October 3, 1984

Place: RICHMOND, VIRGINIA

Decision No.: 23920-C

Date of Decision: October 5, 1984

Date of Mailing: October 12, 1984

Final Date to File Appeal

with Circuit Court: November 1, 1984

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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-84-5459), mailed July 27, 1984.

APPEARANCES

Attorney for the Claimant

ISSUE

Did the claimant receive any sum as benefits to which he was not entitled as provided in Section 60.1-132 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The claimant filed a claim for unemployment compensation effective October 22, 1982, and was found monetarily entitled to \$97.00 per week.

The Deputy issued a determination which determined that the claimant was separated from his employment for reasons which would not be disqualifying. The employer appealed the determination and the Appeals Examiner's decision, dated January 20, 1983, affirmed the Deputy's determination. This decision was appealed to the Commission, and the Commission in Decision #21109-C, dated May 13, 1983, reversed the Deputy's determination disqualifying the claimant effective October 24, 1982. The Commission decision was subsequently affirmed by the Circuit Court of Smyth County on September 30, 1983.

The claimant received benefits from October 24, 1982 through April 9, 1983 in the amount of \$2,231, the total benefit amount payable on the claim for unemployment compensation. The final payment being paid on this claim on April 19, 1983.

OPINION

Section 60.1-132 of the Virginia Unemployment Compensation Act provides:

"Any person who has received any sum as benefits under this title to which he was not entitled shall be liable to repay such sum to the Commission. In the event the claimant does not refund the overpayment, the Commission shall deduct from any future benefits such sum payable to him under this title or the overpayment may be collectible without interest by civil action in the name of the Commission."

The claimant argued that only those benefits received after the Commission decision was issued which reversed the Appeals Examiner's decision and the Deputy's determination should be overpaid. He reasoned that at the time he received benefits, he was entitled to them based upon the determination of the Deputy and the decision of the Appeals Examiner and, therefore, he should not be overpaid. In support of this position, the claimant's counsel cited the following portion of Section 60.1-61 of the Code of Virginia:

"Notwithstanding any other provision of this chapter, benefits shall be paid promptly in accordance with a determination or redetermination under this chapter, or a decision of an appeals tribunal, the Commission, the Board of Review or a review in court under subsection 60.1-67.1 and 60.1-69 upon the issuance of such determination, redetermination, or decision (regardless of the pendency of the period to file an appeal, or petition for judicial review that is provided with respect thereto in this chapter, or the pendency of any such appeal or review), unless or

until such determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modifying or reversing determination or decision." (Underscoring supplied)

The argument in this case regarding the application of Section 60.1-61 is not new to this Commission and in the case of Harvey Siman v. City of Norfolk, Decision EB-62, dated September 22, 1981, which was affirmed by the City of Norfolk, Docket #C-81-1642, March 10, 1982, the facts are almost identical. In Siman the Commission stated:

"The consistent administrative practice of this Commission has been to impose disqualifications retroactively until the effective date of the claim and the General Assembly has not seen fit to amend the statute in question, had it intended that any other result be reached in such cases. The presumption in such a case is, obviously, that the legislature implicitly adopts the interpretation of the agency."

In two very similar cases, Tony C. Withrow v. Bartlett Tree Company and Virginia Employment Commission and James E. Duncan v. Tennessee Valley Authority and Virginia Employment Commission, the 29th Judicial Circuit Court in affirming Commission Decision #16405-C, dated April 16, 1982, and UCFE-721, dated April 16, 1982, had this to say concerning similar arguments.

"This Court is cognizant of the requirements set out in California Department of Human Resources Development v. JAVA, 402 U.S. 121, 91 S. ct. 1347, 281L ed. 2d. 666 (1971), holding that benefits could not be withheld after an initial determination favorable to the claimant even though the losing employer had filed an appeal. The logic involved in this landmark unemployment case was not to deprive an unemployed claimant who was in dire need of assistance during a long period of appeals. Naturally this has resulted in overpayments which is all the more reason for a statute such as Section 60.1-132 enabling the Virginia Employment Commission to recover benefits to which a claimant was not entitled and investing in the Commission the authority to enter an order directing such repayments.

Therefore, this court is of the opinion that Section 60.1-61 of the Code of Virginia provides the time


and manner of paying benefits to those then deemed eligible and each decision made thereunder relates back to the merits of the original claim and is not inconsistent with Section 60.1-132 which enables the Commission to obtain repayment of excessive benefits paid to one not entitled to receive the same."

(Underscoring supplied)

In the case now before the Commission, the claimant received benefits when he was determined entitled to them by a determination. However, the subsequent disqualification retroactive to October 24, 1982, automatically made any benefits paid to him subsequent to that date overpaid. It is, therefore, concluded that the claimant did receive benefits in the amount of \$2,231 to which he was not entitled and he is liable to repay such to the Commission.

DECISION

The decision of the Appeals Examiner is hereby affirmed. It is held the claimant is overpaid unemployment compensation benefits in the amount of \$2,231 and is liable to repay the sum to the Commission.


Edwin R. Richards
Special Examiner