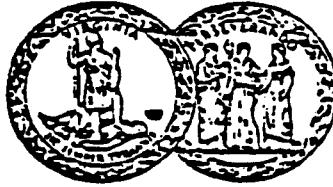


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



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

DECISION OF COMMISSION

In the Matter of:

Mark Harlow
████████████████████

Wes-Way Sprinkler Co.
Mechanicsville, Virginia

Date of Appeal
to Commission: October 1, 1984

Date of Review: June 5, 1985

Place: RICHMOND, VIRGINIA

Decision No.: 24193-C

Date of Mailing: July 1, 1985

Final Date to File Appeal
with Circuit Court: July 21, 1985

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This is a matter before the Commission on appeal by the employer from the Decision of Appeals Examiner (No. UI-84-6868), mailed September 21, 1984.

ISSUE

Did the claimant receive a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment based upon the work of such individual during the weeks for which he claimed benefits as provided in Section 60.1-48.1 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The employer filed a timely appeal from the Decision of the Appeals Examiner which declared the claimant eligible for benefits from January 1, 1984, through January 14, 1984.

The claimant filed a claim for unemployment compensation benefits effective January 1, 1984. Based upon wages during the base period, the claimant qualified for benefits at the rate of \$138 per week for seventeen weeks.

The claimant had filed a claim for worker's compensation based upon an accident of March 28, 1983. On December 1, 1983, the Department of Workman's Compensation, Industrial Commission of Virginia, awarded the claimant benefits in the amount of \$253 per week under Section 65.1-56 of the Code of Virginia for 25 percent loss of the use of his right leg. The employer argues that the claimant should be denied benefits for this period inasmuch as he is receiving a periodic payment based upon his prior work.

OPINION

Section 60.1-48.1 of the Virginia Unemployment Compensation Act provides:

"The weekly benefit amount payable to an individual for any week which begins after September 30, 1979, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual, including payments received by such individual in accordance with §§ 65.1-54 or 65.1-55 of the Code of Virginia, shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such week."

Benefits paid under Sections 65.1-54 and 65.1-55 of the Code of Virginia are paid when the individual is incapacitated for work resulting from an injury. Unemployment compensation benefits payable under Title 60 of the Code are for a period in which the individual suffers a loss of income due to being temporarily unemployed through no fault of his own. It should be noted that benefits payable under Section 65.1-56 of the Code of Virginia are for an incapacity due to the loss of, or the loss of the use of, appendages or other parts of the body which would continue for indeterminate periods, and not for an incapacity to work and earn wages.

When viewing Section 60.1-48.1 of the Code of Virginia, it is understandable that the General Assembly of Virginia included payments made pursuant to Section 65.1-54 and 65.1-55 as being deductible from benefits since those payments were made due to the individual's incapacity to work. Since the General Assembly did not see fit to include payments made under Section 65.1-56 of the Code as being deductible from unemployment compensation benefits, the

Commission will not assume that these payments should be deducted simply because they are periodic payments based upon the previous work of the claimant. (Underscoring supplied)

It is, therefore, concluded that during the period January 1, 1984, through January 14, 1984, the claimant was not receiving periodic payments based upon the work which are subject to deduction under Section 60.1-48.1 of the Virginia Unemployment Compensation Act.

DECISION

The Decision of Appeals Examiner is hereby affirmed. It is held the claimant is eligible for benefits from January 1, 1984, through January 14, 1984, without reduction for payments made subject to Section 65.1-56 of the Code of Virginia.


Edwin R. Richards
Special Examiner