



DECISION OF COMMISSION

In the Matter of:

David L. Purvis
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Date of Appeal
to Commission: April 18, 1994
Date of Hearing: June 6, 1994
Place: RICHMOND, VIRGINIA
Decision No.: 45419-C
Date of Mailing: June 13, 1994
Final Date to File Appeal
with Circuit Court: July 3, 1994

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This case came before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-9405180), mailed April 11, 1994.

APPEARANCES

None

ISSUE

Should the Commission deduct and withhold from any unemployment compensation benefits payable to the claimant monies owed for child support obligations as provided in Section 60.2-608 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On April 18, 1994, the claimant filed a timely appeal from the Appeals Examiner's decision which held that \$135.00 per week must be deducted from his weekly benefit amount and paid to the Division of Child Support Enforcement in accordance with Section 60.2-608 of the Code of Virginia.

The claimant filed a claim for benefits that was effective January 9, 1994. The Deputy issued a monetary determination which found that the claimant was monetarily eligible to receive a weekly benefit amount of \$208.00 for a maximum duration of 26 weeks.

On February 28, 1994, the Department of Social Services Division of Child Support Enforcement caused a Withholding of Earnings to be served on the Virginia Employment Commission. Upon receipt of the Withholding of Earnings, the Commission was required to withhold from the claimant's weekly benefit amount \$138.47 or 65% of his disposable earnings, whichever was less. The Commission began withholding the sum of \$135.00 from the claimant's weekly benefit amount. This represented 65% of the claimant's weekly benefit amount.

On March 9, 1994, the Deputy issued a Notice of Child Support Intercept Deduction which informed the claimant of the action that the agency would be taking with respect to the Withholding of Earnings it had received. The claimant filed a timely appeal from that notification, which resulted in an appeals hearing that was held on April 7, 1994. At that hearing, the claimant submitted as part of his evidence a sketch order that had been presented to the Juvenile Domestic Relations District Court for Buckingham County. Under the terms of this decree, the claimant would have been obligated to pay \$350.00 per month for spousal and child support. Of that amount, \$150.00 was allocated to current child support and \$100.00 was allocated for spousal support. The remaining \$100.00 was allocated "towards maintaining insurance on the parties (sic) infant child and for said child's clothing and medical expenses."

The claimant informed the Appeals Examiner that this decree had been entered by the court; however, a certified copy of the order was not provided to the Commission. In addition, the Commission has not been notified by the Division of Child Support Enforcement of any modification in the Withholding of Earnings.

The Commission scheduled a hearing for 2:45 p.m. on January 6, 1994. The purpose of that hearing was to afford the claimant an opportunity to present additional evidence and testimony and argument with respect to his appeal from the Appeals Examiner's decision. Written notice of the Commission hearing was mailed to the claimant's correct address on May 17, 1994. The claimant did not appear for the hearing or respond to the hearing notice.

OPINION

Section 60.2-608(B) of the Code of Virginia provides:

The Commission shall deduct and withhold the following from any unemployment compensation payable to such an individual:

2. The amount, if any, determined pursuant to an agreement submitted to the Commission under Section 454(20)(B)(i) of the Social Security Act by the state or local child support enforcement agency unless the provisions of subdivision 3 of this subsection are applicable; or
3. Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as defined in Section 462(e) of the Social Security Act, properly served upon the Commission.

In this case, the Commission is required by law to deduct from the claimant's unemployment compensation the lesser amount of \$138.47 or 65% of his weekly benefit amount. Once the Commission has been properly served with a Withholding of Earnings, the agency has no choice but to fully comply until such time as the Division of Child Support Enforcement modifies the amount to be withheld.

At the Appeals Examiner's hearing, the claimant presented some evidence to suggest that his child support obligation had been modified. The evidence he presented was in the form of a sketch decree which did not show on its face that the court had entered it. Even if the claimant had presented a certified copy of the court order at the appeals hearing, the Commission could not have unilaterally changed the amount that was being withheld from the claimant's unemployment compensation. Accordingly, if the claimant believes that the amount currently being withheld is incorrect, he should provide the Division of Child Support Enforcement with a certified copy of the court order in question and request the Division to modify the Withholding of Earnings in a manner consistent with the provisions of the court order.

Under the present circumstances, the Commission must conclude that \$135.00 per week must be withheld from the claimant's unemployment compensation and paid to the Division of Child Support Enforcement on account of his child support obligation.

DECISION

The Appeals Examiner's decision is affirmed. The claimant's weekly benefit amount must be reduced by \$135.00, which amount shall be paid to the Division of Child Support Enforcement on account of the claimant's child support obligations.

M. Coleman Walsh
M. Coleman Walsh, Jr.
Special Examiner