

DECISION OF COMMISSION

In the Matter of:

Patsy W. Whittaker
████████████████████

Commonwealth of Virginia
Radford, Virginia

Date of Appeal
to Commission: July 20, 1989

Date of Review: August 18, 1989

Place: RICHMOND, VIRGINIA

Decision No.: 32256-C

Date of Mailing: September 1, 1989

Final Date to File Appeal
with Circuit Court: September 21, 1989

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This matter comes before the Commission as the result of an appeal filed by the claimant from the Decision of Appeals Examiner (UI-8905693), mailed June 29, 1989.

ISSUE

Does the claimant's unemployment begin during the period between two successive academic years or during a similar period between two regular terms for which she has a contract or contracts or reasonable assurance to perform services other than in an instructional, research or principal administrative capacity for an educational institution as provided in Section 60.2-615B of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The claimant filed a timely appeal from the Appeals Examiner's decision which amended an earlier Deputy's determination and declared her to be ineligible for unemployment compensation between May 7, 1989 and June 17, 1989.

Prior to filing her claim for benefits, effective May 7, 1989, the claimant last worked for Radford University in Radford, Virginia

between September 1988 and May 6, 1989. Her position was that of a dishwasher. In her position, the claimant was classified as a Commonwealth of Virginia hourly wage employee.

The employer is an educational institution which operates on an academic schedule, running from the end of August until May of the following year. Despite this, certain activities are carried on during the summer, and in past years, wage employees of the Radford University Food Service Division have been allowed to transfer to the Housekeeping Division in order to continue working during the summer. This practice was discontinued in 1989 because the Commonwealth of Virginia recently established a policy that wage employees such as the claimant could work no more than 1500 hours in any year. Because of this, the claimant was laid off on Graduation Day, May 6, 1989, but given a guarantee that she would be able to return to work at the end of August when the next school term begins.

The claimant did have some wages in employment during her base period for employers other than educational institutions. Despite this, these wages alone were insufficient to meet the minimum qualifying requirements for monetary entitlement to unemployment compensation.

OPINION

Section 60.2-615B provides that benefits based on service in any capacity, other than in an instructional, research, or principal administrative capacity, for an educational institution shall not be paid any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms. Individuals who have been denied benefits solely under this subsection, and who are not offered a chance to perform services in the second of such academic years or terms shall be entitled to a retroactive payment of the unemployment compensation which they would otherwise have been eligible to receive if they did not have a reasonable assurance of returning.

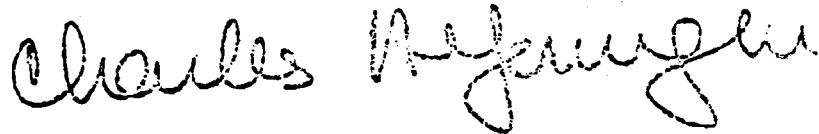
In the case at hand, it is apparent that the claimant did perform services other than in an instructional, research, or principal administrative capacity for an educational institution during the 1988-1989 school year. It is also apparent that she does have a reasonable assurance of returning to work in such a capacity for the same institution for the 1989-1990 school year. Because of this, any benefits based upon her services performed for educational institutions may not be paid during the period between May 6, 1989 and late August 1989. Inasmuch as the claimant has insufficient wages during her base period in employment other than that for educational institutions so as to monetarily qualify her for benefits, she is also ineligible for a reduced benefit entitlement based solely upon those wages.

While it is unfortunate that the claimant has been placed in a situation which she might not have otherwise been in due to the restrictions imposed upon the number of hours that wage employees of the Commonwealth of Virginia may now work in a year, this really has nothing to do with the legal issue at hand. If the claimant had used up all of the 1500 hours allowable to her in one year sometime during the school term, then she would not have been denied benefits under this section of the Code so long as the employer had no more work for her during the term. Nevertheless, when, as in this case, an educational institution does not permit employees to work during the period between terms, those individuals are not eligible to collect benefits based upon services performed for any educational institution during the period of time between terms so long as they have a reasonable assurance of returning to work in the upcoming school year. Of course, if the claimant's employer is unable to honor the commitment to rehire her at the end of August, then she would be retroactively entitled to the benefits she may have filed for during the period between terms. (Underscoring supplied)

DECISION

The decision of the Appeals Examiner is hereby affirmed.

It is held that the claimant was not meeting the eligibility requirements of Section 60.2-615B of the Code between May 7, 1989 and June 17, 1989, the claim weeks before the Commission.



Charles A. Young, III
Special Examiner