

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Joseph K. Heldreth
[REDACTED]

Southwest Virginia Enterprise
Wytheville, Virginia

Date of Appeal
to Commission: October 28, 1985

Date of Review: July 3, 1986

Place: RICHMOND, VIRGINIA

Decision No.: 25950-C

Date of Mailing: July 11, 1986

Final Date to File Appeal
with Circuit Court: July 31, 1986

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This is a matter before the Commission as a result of an appeal filed by the claimant from the Decision of Appeals Examiner (UI-85-7375), mailed October 11, 1985.

ISSUE

Was the claimant unemployed during the week or weeks for which benefits were claimed as provided in Section 60.1-23 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The claimant filed a timely appeal from the Appeals Examiner's decision which reversed an earlier Deputy's determination and declared the claimant ineligible for unemployment compensation between February 24, 1985, and September 28, 1985.

The claimant was last employed as an editor by the Southwest Virginia Enterprise of Wytheville, Virginia, between January 1, 1954, and November 1, 1984. The employer is a newspaper distributed in the Wythe County, Virginia, area and the claimant was separated from this employment under non-disqualifying reasons.

On or about February 25, 1985, the claimant and his brother began publication of the Wythe County Weekly Mailer. This is a publication with some news, but primarily advertising, which is distributed free to all households in Wythe County. This venture was started with the idea that although it might not make money in the beginning it could turn into a profitable enterprise some time in the future. In fact, the claimant had received no money from the venture as of August 20, 1985, when the Deputy's determination was issued. At the hearing before the Appeals Examiner held on October 1, 1985, he admitted: "I've taken a couple of checks since then."

The claimant and his brother did rent an office and bought office equipment for it. They spend whatever time is necessary to publish the Weekly Mailer. The total amount of time spent in this venture, according to the claimant, is approximately twenty hours per week. During the rest of the week in his spare time, the claimant has had the opportunity to seek other employment with various employers. The claimant and his brother do possess a business license from the Town of Wytheville.

At the hearing, the claimant admitted that part of the reason he and his brother started publication of the Weekly Mailer was to create a job for himself. In his own words: "We tried to establish something that's going . . . We think it's going." In response to the assertions of his former employer who appealed the Deputy's determination and felt that he should not have to subsidize someone in competition with him, the claimant stated: "I'm in competition with him . . . It's a battle right now. . . ."

OPINION

Section 60.1-23 of the Virginia Unemployment Compensation Act provides that an individual shall be deemed to be unemployed in any week in which he has no earnings and with respect to which no wages are payable or in any week of less than full-time work if the wages payable with respect to such week are less than his weekly benefit amount.

In the case of Frederick J. Pickard v. Hayes C. Seay, Mattern & Mattern, Commission Decision No. 12665-C (October 4, 1979), it was held that an individual who sold real estate for twenty hours per week but who received no remuneration for such work was not considered to be "unemployed" since, under the regulations applicable to the real estate profession, twenty hours per week was considered to be full-time work.

In the case of Robert Rideout v. Franklin Concrete Products Corporation, Commission Decision No. 12597-C (November 1, 1979), affirmed by the Circuit Court for Isle of Wight County (October 6, 1980), the claimant operated as a field representative for a life insurance company under a contract which provided in part:

"Nothing contained herein shall be construed to create a relationship of employer and employee between the Society and the Field Representative or between the State Manager or other official representative of the Society and the Field Representative. Within the territory above described the Field Representative shall be free to exercise his own judgement as to the persons from whom he shall solicit applications for benefit certificates, the time and place of solicitation, the number of hours he shall devote thereto, the time he shall commence work, and whether or not he shall devote his entire time or only a portion thereof to such work."

The claimant's contract was stamped "PART TIME" on its face.

The Commission found that the normal and customary period of work per week to be performed by insurance sales persons pursuant to this agreement was self determinable. Because of this, the claimant was found not to be "unemployed" under the meaning of Section 60.1-23 of the Code of Virginia with respect to any weeks in which any such services were performed.

In the case at hand, the claimant's position can obviously rise no higher than that supported by his own evidence. From his own testimony it is apparent that he is engaged in a business venture competing with his former employer to which he devotes a self-determined amount of time necessary for publication of the Weekly Mailer. Thus, even though he may not have received wages during the weeks in question in an amount equal to his weekly benefit amount for unemployment compensation, it cannot be said that he was employed less than his normal and customary full-time hours during that week. This is not a situation in which an individual who has a full-time job and also has a business on the side loses the full-time job but continues to devote the same amount of time to his business. The business venture in the present case was not begun until after the claimant became unemployed, and based upon his own testimony, the purpose of entering into this venture was to create a job for himself. It is thus

concluded that this became his full-time work so that, during the weeks in question, he cannot meet the definition of being "unemployed" so as to be eligible to receive benefits.

DECISION

The Decision of Appeals Examiner is hereby affirmed. It is held that the claimant was not meeting the eligibility requirements of the Act between February 24, 1985, and September 28, 1985, the claim weeks before the Commission.


Charles A. Young, III
Special Examiner

NOTICE TO CLAIMANTS

IF THE DECISION STATES THAT YOU ARE DISQUALIFIED, YOU WILL BE REQUIRED TO REPAY ALL BENEFITS YOU MAY HAVE RECEIVED AFTER THE EFFECTIVE DATE OF THE DISQUALIFICATION. IF THE DECISION STATES THAT YOU ARE INELIGIBLE FOR A CERTAIN PERIOD, YOU WILL BE REQUIRED TO REPAY THOSE BENEFITS YOU HAVE RECEIVED WHICH WERE PAID FOR THE WEEK OR WEEKS YOU HAVE BEEN HELD INELIGIBLE. IF YOU WISH TO DISPUTE YOUR OBLIGATION TO REPAY THESE BENEFITS TO THE COMMISSION, YOU MUST FILE A TIMELY APPEAL.