

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Joseph R. Parnell
[REDACTED]

Date of Appeal
to Commission: March 4, 1996
Date of Hearing: April 8, 1996
Place: RICHMOND, VIRGINIA
Decision No.: 50908-C
Date of Mailing: April 17, 1996
Final Date to File Appeal
with Circuit Court: May 7, 1996

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This case came before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UCX-9602323), mailed February 22, 1996.

APPEARANCES

None

ISSUES

Does the claimant have good cause to reopen the Appeals Examiner's hearing as provided in Regulation VR 300-01-8.2I of the Regulations and General Rules Affecting Unemployment Compensation?

Does the claimant have sufficient earnings during his base period to be monetarily eligible for unemployment insurance benefits for exservicemen under the provisions of Section 60.2-612(1) of the Code of Virginia and 5 U.S.C.A. Section 8521?

FINDINGS OF FACT

On March 4, 1996, the claimant filed a timely appeal from the Appeals Examiner's decision which held that he was not monetarily eligible to receive unemployment compensation benefits for

exservicemen. That decision was reached because the claimant had not shown that he met the definition of "federal service" set out in 5 U.S.C.A. 8521.

When he filed the present appeal, the claimant stated, "I moved and was not notified of this hearing." That was treated by the Commission as a request to reopen the Appeals Examiner's hearing. A hearing was scheduled for 2:30 p.m. on April 8, 1996, to receive evidence from the claimant regarding the reopening issue and the issue concerning his monetary eligibility. Written notice of that hearing was mailed to the claimant at the new address he provided when he filed his appeal. That notice was mailed on March 26, 1996. The claimant did not appear for the hearing or submit an affidavit for the agency's consideration.

The Appeals Examiner's hearing was scheduled for 11:00 a.m. on February 21, 1996. Written notice of that hearing was mailed to the claimant on February 7, 1996. That hearing notice was mailed to him at 4048 Laurel Green Circle, Virginia Beach, Virginia 23456. That was the claimant's last-known address on file with the Commission until he filed the present appeal and provided a different address.

The findings of fact of the Appeals Examiner are supported by the evidence in the record. Accordingly, they are adopted by the Commission with the following additions.

The claimant's DD-214 reflected "secretarial authority" as the narrative reason for separation. This is not one of the acceptable narrative reasons for separation meeting the requirements of federal law (see, Commission Exhibit D). In a letter that he filed simultaneously with his appeal to the Commission, the claimant indicated that a Form DD-215 had been requested to amend the information in blocks 23 and 26 of his DD-214, which are headed "Type of Separation" and "Separation Code," respectively.

OPINION

Regulation VR 300-01-8.2I of the Regulations and General Rules Affecting Unemployment Compensation provides, in pertinent part, that an Appeals Examiner's hearing may be reopened upon a showing of good cause. In the case of Engh v. United States Instrument Rentals, Commission Decision 25239-C (July 12, 1985), the Commission held:

In order to show good cause to reopen a hearing, the party making such a request must show that he was prevented or prohibited from participating in the hearing by some cause which was beyond his control and that, in the face of such a problem, he acted in a reasonably prudent manner to preserve his right to participate in future proceedings.

Here, the claimant has made the unsworn assertion that he did not receive notice of the Appeals Examiner's hearing because he moved. If that was the case, the claimant does not have good cause for reopening the Appeals Examiner's hearing. The Commission mailed the hearing notice to the claimant's last-known address that he had provided the agency. If he moved, it was the claimant's responsibility to inform the Commission of his new address. Since the claimant failed to appear before the Commission, it is not known when he moved and what efforts, if any, he made to inform the Commission of his address change prior to filing his appeal on March 4, 1996.

Therefore, the Commission must conclude that the claimant has not proven good cause to reopen the Appeals Examiner's hearing. Consequently, his eligibility for benefits must be reviewed based upon the evidence compiled by the Appeals Examiner.

The Appeals Examiner's opinion represents a correct application of the law to the facts established by the record. Accordingly, that opinion is adopted by the Commission with the following additions.

The payment of unemployment compensation benefits to exservice members is controlled by both federal and state law. An exservice member must meet the definition of "federal service" found in 5 U.S.C.A. 8521 (a)(1) to be monetarily eligible for benefits. The Department of Labor has promulgated regulations to carry out the purposes of the UCX program, which are found in 20 C.F.R. 614.1 et seq. Pursuant to these regulations, the findings of the military agency, "shall be final and conclusive for all purposes of the UCX Program." 20 C.F.R. 614.23. The findings of the military agency include, "the narrative reason or other reason for separation from active service." 20 C.F.R. 614.21(a)(5). There is a federal procedure available to exservice members to obtain a correction on a military document. However, under no circumstances may the state agency question the information in the military document because it is exclusively a federal matter. Missouri Division of Employment Security v. Galpine, 712 S.W.2d 67, 68 (Mo. Ct. App. 1986); accord, Evans v. V.E.C., Record No. 2182-93-1 (Va. Court of Appeals, March 14, 1995) (per curiam, unpublished).

To assist state agencies in implementing the UCX program, the military agency provides through the Department of Labor a list of reasons for separation which may appear on the DD-214 and which meet the criteria found in 5 U.S.C.A. 8521(a)(1)(B)(ii). "Secretarial authority" is not one of the acceptable reasons on this list.

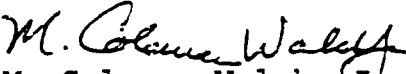
Under these circumstances, the Commission has no alternative but to conclude that the claimant did not meet the definition of "federal service" to be monetarily eligible for unemployment compensation for exservice members. There is no evidence before the Commission that the claimant had other wages in covered

employment during his base period that could have been used to establish monetary eligibility under Section 60.2-612(1) of the Code of Virginia. Accordingly, the Commission finds that the claimant was not monetarily eligible for benefits as found by the Appeals Examiner.

DECISION

The claimant's request to reopen the Appeals Examiner's hearing is denied.

The Appeals Examiner's decision is affirmed. The claimant is not monetarily eligible to receive benefits based upon his claim filed effective January 7, 1996.


M. Coleman Walsh, Jr.
Special Examiner