COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

MISCELLANEOUS: 60.05
Benefit Computation
Factors: General.

DECISION OF COMMISSION

In the Matter of:
Bonnie W. Patterson
[redacted]

Staunton City School Board
Staunton, Virginia

Date of Appeal to Commission: August 28, 1990

Date of Review: September 18, 1990

Place: RICHMOND, VIRGINIA

Decision No.: 34342-C

Date of Mailing: October 11, 1990

Final Date to File Appeal with Circuit Court: October 31, 1990

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This case is before the Commission on appeal by the claimant from Appeals Examiner's decision UI-9008486, mailed August 10, 1990.

ISSUE

Should the claimant be ineligible for unemployment insurance claim during a period between two successive academic years or terms in which she had a contract or a reasonable assurance to perform services for an educational institution as provided in Section 60.2-615 of the Code of Virginia?

FINDINGS OF FACT

The claimant filed a timely appeal from the Appeals Examiner's decision which affirmed an earlier Deputy's determination declaring her to be ineligible for unemployment compensation between June 10, 1990 and July 7, 1990, under the provisions of Section 60.2-615 of the Code of Virginia.

The claimant had worked as a teacher for the Staunton City School Board in Staunton, Virginia, between October, 1988 and June 5, 1989, at which time her contract came to an end. It was not renewed for the succeeding school year; however, she worked as a substitute teacher in the schools of the City of Staunton and the County of Augusta between

September, 1989 and June 6, 1990. She did not sign up with either school system for substitute positions for the 1990-91 school year because she accepted a contract to be an instructional aide in the Staunton City Schools for that academic year. Even though this position pays only a little above $8,000, the claimant accepted it because it would provide her with fringe benefits. In that position, she will assist teachers, both inside and outside of the classroom.

The claimant had filed her claim for unemployment compensation effective February 11, 1990. All of the wages earned during her base period came from either the Staunton City School Board or the Augusta County School Board. The weeks in question are those which the claimant claimed between the 1989-90 and the 1990-91 academic years.

OPINION

Section 60.2-615 provides in pertinent part:

> A. 1. Benefits based on service in an instructional, research, or principal administrative capacity for an educational institution shall not be paid to an individual for any week of unemployment commencing during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms.
>
> 2. The provisions of this subsection relating to the denial of benefits shall apply to an individual who performs such services on a part-time or substitute basis.
>
> B. 1. Benefits based on service in any capacity, other than an instructional, research, or principal administrative capacity, for an educational institution shall not be paid to 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.

> 2. The provisions of this subsection relating to the denial of benefits shall apply to an individual who performs such services on a part-time or substitute basis.

From the quoted language above, it is apparent that employees of educational institutions are considered to be divided into two separate classes. The first is what is generally considered the professional class, consisting of teachers, researchers, and administrators while the second group consists of non-professional employees such as janitors, cafeteria workers, crossing guards, and bus drivers. Also includable in the non-professional class are teacher's aides who, while they may perform some instructional functions, do so only under the direct supervision and responsibility of a professional teacher.

As early as 1977, a question arose concerning the situation involving employees who might "cross over" from the professional to the non-professional categories, either within or between academic years. Supplement 3, 1976 Draft Legislation, (May 6, 1977), page 7 provides:

> A distinction between the between-terms provisions . . . and the within-terms provision . . . is that the between-terms provisions do not apply to crossovers between professional and non-professional capacities, --e.g., when an individual is employed in a non-professional capacity in one year and in a professional capacity in the succeeding year, the between-terms denial would not apply during the summer.

Unemployment Insurance Program Letter No. 30-85, issued by the U. S. Department of Labor, July 12, 1985, goes on to state:

> The crossover situation . . . arises when an educational employee working in one capacity receives assurance of continued employment in the second of two academic periods in the other capacity encompassed by Section 3304 (a) (6) (A) of the Federal Unemployment Tax Act (FUTA). For example, if a teacher (a person serving in a "professional" capacity) receives assurances that at the end of the Christmas holidays recess his/her employment will be continued in January, but as a teacher's aide (i.e., in a "non-professional" capacity) rather than as a teacher, a crossover will occur if the teacher goes on to the new job. ... (Underscoring supplied)
>
> Clause (iii) of Section 3304 (a) (6) (A), FUTA, continues to be interpreted as requiring denial of benefits during within term periods in crossover

situations, although denial in crossover situations arising between terms is still precluded in accordance with the established interpretation of Clauses (i) and (ii).

In the case at hand, the claimant began her employment with the employer as a professional teacher. After she lost her full-time position, she continued as a substitute teacher; nevertheless, she remained in that professional category. When her services were no longer needed due to the ending of the 1989-90 school year, she had already signed a contract to be employed in a non-professional category for the 1990-91 school year. This clearly places her in the category of a "crossover" so as to avoid the imposition of the between-term denials applicable to each category separately. (Underscoring supplied)

DECISION

The Decision of Appeals Examiner is hereby reversed.

It is held that the claimant is not ineligible for benefits by virtue of the provisions of Section 60.2-615 of the Code of Virginia with respect to the weeks claimed between June 10, 1990 and July 7, 1990, because her contract of employment for the second of the two consecutive academic years or terms was in a different category than her employment in the first.

The Deputy is instructed to carefully determine the claimant's eligibility for benefits claimed during the summer recess in accordance with any other applicable provisions of the Code.

Charles A. Young III
Special Examiner