

LD6245805

HOUSE BILL NO. 1764

Offered January 18, 1995

A BILL to amend and reenact §§ 60.2-500, 60.2-528, and 60.2-536 of the Code of Virginia, relating to unemployment compensation; employer responsibility for benefit charges; administrative review.

Patrons—Nixon, Bloxom, Callahan, Cantor, Hargrove, Katzen, McClure, Nelms, Parrish and Tata

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That §§ 60.2-500, 60.2-528, and 60.2-536 of the Code of Virginia are amended and reenacted as follows:

§ 60.2-500. Determination with respect to whether employing unit is employer.

A. 1. The Commission may, upon its own motion or upon application of an employing unit, and after not less than ten days' notice in writing mailed to the last known address of such employing unit and an opportunity for hearing, make findings of fact, and on that basis, or affected claimant, determine (i) whether an employing unit constitutes an employer and (ii) whether services performed for or in connection with the business of an employing unit constitute employment for such employing unit. The employing unit and any affected claimant shall be given the opportunity to be heard prior to any decision being made. Written notice of such hearing shall be mailed to the last known addresses of all interested parties at least ten days before the hearing. Such cases shall be heard and adjudicated by an appeal tribunal appointed pursuant to § 60.2-621, in the same manner as prescribed for disputed benefit claims in §§ 60.2-620, 60.2-621, 60.2-623, 60.2-623.1, 60.2-624, and 60.2-626 through 60.2-630. The appeal tribunal, after affording all parties a reasonable opportunity for a fair hearing, shall enter an order or decision with respect to the case. All testimony at any hearing pursuant to this section shall be recorded but need not be transcribed unless a petition for judicial review from such determination is filed in the manner herein prescribed. At such hearing the interests of the Commonwealth shall be represented by the Office of the Attorney General. The Commissioner shall have the power to designate a special examiner to hold such hearings, and may authorize and empower such special examiner to decide any matter so heard, in which event the decision of such special examiner shall be the final decision of the Commission under this section, subject to judicial review under subsection B of this section an appeal is filed with the Commission in the manner prescribed in § 60.2-620.

2. Upon an appeal from the decision of an appeal tribunal made under subdivision A 1, the Office of the Attorney General shall represent the interests of the Commonwealth in any hearing before the Commission. The Commissioner may designate a special examiner to decide any matter so heard, in which event the decision of such special examiner shall be the final decision of the Commission under this section, subject to judicial review under subsection B. Proceedings before the Commission under this subsection shall conform to the provisions for disputed benefit claims in §§ 60.2-622 A, 60.2-623, 60.2-623.1, 60.2-624, and 60.2-626 through 60.2-630.

B. 1. Judicial review of any such determination made in subsection A of this section may be initiated within thirty days after mailing notice of such findings and determination to the employing unit all parties or, in the absence of mailing, within thirty days after delivering such notice and determination, in the Circuit Court of the City of Richmond. Such judicial review shall be commenced by the filing of a petition, which need not be verified but which shall state the grounds upon which a review is sought. Service of two copies of such petition upon the Commissioner shall be deemed completed service and such petition shall be filed with the clerk of the court within five days after service thereof. With its answer the Commission shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. In any judicial proceedings under this article, the Commission's findings of facts, if supported by the evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law. Such actions shall be given preference on the docket over all other cases except cases to which the Commonwealth is a party.

2. An appeal may be taken from the decision of such court to the Court of Appeals, in conformity with Part Five A of the Rules of Supreme Court and other applicable laws. In any such proceedings for judicial review, the Commission shall be represented by the Office of the Attorney General. A determination by the Commission from which no judicial review has been commenced shall be conclusive in any subsequent judicial proceeding involving liability for taxes against the employing unit or its successor under the provisions of subdivision 1 of subsection B of § 60.2-210 and of subsection B of § 60.2-523.

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§ 60.2-528. Individual benefit charges.

A. An individual's "benefit charges" shall be computed in the following manner:

1. For each week benefits are received, a claimant's "benefit charges" shall be equal to his benefits received for such week.

2. For each week extended benefits are received, pursuant to § 60.2-610 or § 60.2-611, a claimant's "benefit charges" shall be equal to one-half his benefits received for such week. However, a claimant's "benefit charges" for extended benefits attributable to service in the employ of a governmental entity referred to in subdivisions 1 through 3 of subsection A of § 60.2-213 shall be equal to the full amount of such extended benefit.

3. For each week partial benefits are received, the claimant's "benefit charges" shall be computed (i) in the case of regular benefits as in subdivision 1 of this subsection, or (ii) in the case of extended benefits as in subdivision 2 of this subsection.

B. 1. The employing unit from whom such individual was separated, resulting in the current period of unemployment, shall be the most recent employing unit for whom such individual has performed services for remuneration during thirty days, whether or not such days are consecutive. If such individual's unemployment is caused by separation from an employer, such individual's "benefit charges" for such period of unemployment shall be deemed the responsibility of the last thirty-day employer prior to such period of unemployment.

2. Any employer charged with benefits paid shall be notified of the charges quarterly by the Commission. The amount specified shall be conclusive on the employer unless, not later than thirty days after the notice of benefit charges was mailed to its last known address or otherwise delivered to it, the employer files an appeal with the Commission, setting forth the grounds for such an appeal. Proceedings on appeal to the Commission regarding the amount of benefit charges under this subsection or a redetermination of such amount shall be in accordance with the provisions of § 60.2-500. The decision of the Commission shall be subject to the provisions of § 60.2-500. Any appeal perfected pursuant to the provisions of this section shall not address any issue involving the merits or conditions of a claimant's separation from employment.

C. No "benefit charges" shall be deemed the responsibility of an employer of:

1. An individual whose separation from the work of such employer arose as a result of a violation of the law by such individual, which violation led to confinement in any jail or prison;

2. An individual who voluntarily left employment in order to accept other employment, genuinely believing such employment to be permanent;

3. An individual with respect to any weeks in which benefits are claimed and received after such date as that individual refused to accept an offer of rehire by the employer because such individual was in training with approval of the Commission pursuant to § 60.2-613;

4. An individual who voluntarily left employment to enter training approved under § 236 of the Trade Act of 1974 (19 U.S.C. § 2296 et seq.) or Title III of the Job Training Partnership Act approved pursuant to § 60.2-613;

5. An individual hired to replace a member of the Reserve of the United States Armed Forces or the National Guard called into active duty as a result of Operation Desert Shield or Operation Desert Storm and whose employment is terminated concurrent with and because of that member's return from active duty; or

6. An individual who left employment voluntarily with good cause due to a personal bona fide medical reason caused by a non-job-related injury or medical condition.

§ 60.2-536. Review of decision under § 60.2-535.

A. *Issues arising under § 60.2-635 shall be heard by an appeal tribunal in accordance with the provisions of § 60.2-500 A 1.* Any person aggrieved by a decision of the Commission under the provisions of § 60.2-535 shall have the right to review before the Commission. Such review before the Commission shall be instituted by a request filed by the aggrieved party with the Commission within ~~ten~~ *twenty-one* days from the date of ~~making~~ *the decision is mailed*.

B. Any party aggrieved by the Commission decision on review may secure judicial review of any decision pursuant to the provisions of § 60.2-500, such provisions applying mutatis mutandis.