

**Virginia Employment Commission  
Interoffice Communication**

To: UI Adjudication Staff

From: William Walton, UI Director

Re: Clarification on Employers filing Partial Claims

Date: May 20, 2011

On January 19, 2011 I sent an e-mail to all VEC benefits staff regarding the issue of employers who file partial claims. A number of non-monetary determinations and appeals have ensued since then. As a result, I believe some further clarification is in order.

When an employer/business owner files a partial claim the first issue that must be addressed, as with every claim, is whether the claimant is actually unemployed. Based upon long-standing Commission precedent a business owner who files a partial claim during a business slowdown or temporary cessation of operations would not be considered “unemployed”. This interpretation was illustrated in a decision issued today by Commission Appeals in the case of *Merrill v. M. R. Merrill Construction*, Commission Decision 98337-C. The Commission relied on several previous decisions, notably *Rideout v. Franklin Concrete Product Corporation*, Commission Decision 12597-C (November 1, 1979), *aff’d*, Circuit Court of Isle of Wight County (October 6, 1980), and *Heldreth v. Southwest Virginia Enterprise*, Commission Decision 25950-C (July 11, 1986), *aff’d*, Circuit Court of Wythe County (March 4, 1991). A copy of the *Merrill* decision is attached as guidance for future cases that are factually similar.

If an employer files a claim for benefits after closing or selling his/her interest in the business then that situation should be viewed as a potential voluntary quit, an issue code 20 keyed on VABS, and the case set for a pre-determination interview on the Deputy scheduler. There are three cases in the Precedent Decision Manual that address situations of business owners who file claims after closing or selling their businesses. Those cases are *Hull v. Merrimack Marine*, Decision UI-73-1930 (October 26, 1973), *aff’d*, Commission Decision No. 6140-C (November 29, 1973); *Compton v. Color Clean Corporation*, Commission Decision No. 18749-C (July 16, 1982); and *Groves v. Groves Plumbing & Heating*, Commission Decision No. 32327-C (September 6, 1989).

It has also become apparent as some recent cases worked their way through the appeals process that a number of employers previously filed partial claims and were paid on those claims due to an apparent misunderstanding of the Commission’s governing precedents by agency staff. Testimony offered by some employer/owners and their bookkeepers or accountants reflect that in at least some instances agency staff may have encouraged employers to file partial claims based on the erroneous belief that they would be entitled to benefits. As a result of my January 19, 2011 e-mail a number of deputies have gone back as much as two years and held the claimant/owners ineligible for benefits. This has created an inequitable result in those cases where the individuals were relying on misinformation provided by agency staff.

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Therefore, the guidance previously provided, as further clarified in this IOC, should only be applied prospectively beginning with initial claims (including reopened and additional claims) or weeks claimed effective January 16, 2011. The Administrative Law Division will vacate any Deputy's determination or Appeals Examiner's decision that ruled on any weeks prior to January 16, 2011. If a determination or decision ruled on weeks that fell both before and after January 16, 2011 the ruling with respect to the pre-January 16<sup>th</sup> weeks will be set aside.

Please let me know if you have any questions.

c: Salvatore Lupica, Chief Operating Officer  
Shelby Robinson, Assistant Commissioner for Field Operations  
M. Coleman Walsh, Jr., Chief Administrative Law Judge  
Heidi E. Young, Chief Appeals Examiner