

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

BRENT BACCALA,

Plaintiff

v.

Case No. _____

THE VIRGINIA EMPLOYMENT COMMISSION,

and

THE COMMONWEALTH OF VIRGINIA,

Defendants.

CLASS ACTION COMPLAINT

Plaintiff Brent Baccala, on behalf of himself and all others similarly situated, respectfully represents to the Court and alleges as follows:

SUMMARY OF THE COMPLAINT

1. Defendant Virginia Employment Commission (“VEC”) has developed an illegal administrative procedure called “Vacate” and has attempted to use it to illegally deny unemployment benefits to Plaintiff Baccala.
2. The most blatant legal violation known to date is a facially illegal Commission Order (Exhibit 6) issued by the VEC on October 14, 2022.
3. The manner in which “Vacate” was used to deny Baccala’s unemployment benefits suggests that this procedure has been used to illegally deny benefits to other unemployment claimants.

4. This lawsuit is brought on a representative basis on behalf of all Virginia unemployment claimants whose claims have been illegally “vacated”.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over the cause of action alleged in this Complaint pursuant to VA. CODE ANN. §8.01-195.4, which assigns jurisdiction of tort claims against administrative agencies of the Commonwealth of Virginia in excess of \$50,000 to the circuit courts of the Commonwealth.
6. Venue is proper in this District pursuant to VA. CODE ANN. §8.01-261(18)(a) because Plaintiff Baccala resides in this District.

PARTIES

7. Defendant Virginia Employment Commission is an administrative agency of the Commonwealth of Virginia, and is sued for violations of the federal Social Security Act, 42 U.S.C. §503, and the Virginia Unemployment Compensation Act, VA. CODE ANN. § 60.2-100 *et seq.*
8. Defendant Commonwealth of Virginia has been made a proper party defendant to comply with the Virginia Tort Claims Act §8.01-195.4.
9. Plaintiff Brent Baccala is a resident of Burke, Virginia.

FACTS

10. The process of applying for unemployment benefits in Virginia and contesting adverse rulings involves several basic steps that are relevant here: (1) the claimant files an initial

application for benefits (“initial claim”), (2) the VEC issues a “monetary determination”, (3) the claimant may file an initial appeal of an adverse monetary determination, (4) the VEC conducts an Appeals Examiner’s hearing, (5) the VEC issues a Decision of Appeals Examiner, (6) the claimant can request a Commission Appeal of an adverse Decision of Appeals Examiner, (7) the claimant can petition the local circuit court for judicial review of an adverse Commission ruling.

11. Plaintiff Baccala is a claimant for unemployment compensation benefits, filed three initial claims for unemployment compensation benefits, received adverse monetary determinations on all three, and appealed two of them, VEC docket numbers UI-2120160 and UI-2131927.
12. VEC issued a prima facie illegal Decision of Appeals Examiner (Exhibit 2) on November 1, 2021, “vacating” Baccala’s unemployment claim, docket number UI-2131927, without conducting the hearing required by VA. CODE ANN. § 60.2-620 and 42 U.S.C. 503 (a)(3). The “Date of Hearing” on Exhibit 2 is blank; this is not a bookkeeping error. No hearing was conducted.
13. Baccala attempted to appeal the November 1, 2021 Decision of Appeals Examiner, UI-2131927, filing a timely VA. CODE ANN. §60.2-622 appeal on November 22, 2021.
14. After some telephone contact with the VEC, Baccala was informed by email (Exhibit 3) on January 31, 2022 that “[a]n Order does not have appeal rights and cannot be appealed to a higher level”, in contradiction of VA. CODE ANN. §60.2-622.
15. VEC issued an illegal Decision of Appeals Examiner (Exhibit 4) on April 1, 2022, “vacating” Baccala’s other unemployment claim, docket number UI-2120160, without conducting the hearing required by VA. CODE ANN. § 60.2-620 and 42 U.S.C. 503 (a)(3).

16. On April 5, 2022, Baccala filed a Complaint with the Federal District Court in Richmond, alleging violations of his 14th Amendment right to Due Process.
17. Although Baccala's Federal Complaint was dismissed without prejudice on July 27, 2022, the VEC then accepted his appeal of UI-2131927 and mailed him a Notice of Appeal on July 29, 2022 (Exhibit 5).
18. VEC issued a facially illegal Commission Order (Exhibit 6) on October 14, 2022, claiming, in contradiction of VA. CODE ANN. §60.2-622(A)(ii), that "[t]he Appeals Examiner's order is not appealable".
19. Baccala petitioned for Judicial Review and the Fairfax County Circuit Court reversed the VEC's adverse monetary determination on August 24, 2023 (Exhibit 7) and remanded UI-2131927 to the VEC "for the purpose of determining the amount of unemployment benefits due to the Petitioner during the time period in question".
20. VEC requested additional documentation from Baccala, including a copy of his W-2 form from the time period in question, which he provided, and asked him to complete a fact finding form related to his Employment in Education, which he did on September 1, 2023.
21. VEC issued Baccala a Statement of Wages and Potential Benefit Entitlement (Exhibit 8) on September 1, 2023 indicating \$6,336 in estimated unemployment benefits and Federal Pandemic Unemployment Compensation ("FPUC").
22. Plaintiff Baccala timely filed a Virginia Tort Claims Act Notice of Claim with the Attorney General's Office on September 26, 2023 (Exhibit 9), based on the Commission Order of October 14, 2022 (Exhibit 6), and included a clause notifying the Attorney General's Office that he intended to proceed on a representative basis.

23. As of October 16, 2023, Baccala has received no benefits, no further fact finding requests, has been unable to speak to a live operator on the VEC's customer service telephone line, and the VEC's website indicates that "Employment in Education" is still an "Issue Delaying Payment" on his unemployment claim.

CLASS ACTION ALLEGATIONS

24. The VEC appears to have developed an illegal administrative procedure called "Vacate". Based on how UI-2120160 and UI-2131927 were processed, a "vacated" claim seems to be processed normally until it reaches the first level of appeal. First, the claimant is mailed a letter indicating that a hearing will be conducted at some time in the future (Exhibit 1). However, the hearing is never conducted. After a period of time has elapsed, typically months, VEC then issues an illegal Order of Appeals Examiner (Exhibits 2 and 4) informing the claimant that their claim has been "vacated", and which makes no further mention of hearings or appeal rights. If the claimant then attempts to appeal a "vacated" claim using the second level of appeal process, their attempted second level appeal will be ignored, or they will be informed by email that the Order of Appeals Examiner can not be appealed (Exhibit 3), or an illegal Commission Order (Exhibit 6) will be issued indicating that the order can not be appealed.
25. This case is brought as a representative action pursuant to the Virginia Supreme Court doctrine promulgated in *Bull v. Read*, 54 Va. 78 (Va. 1855) in which the Court held that "...it was allowable according to settled practice, for some to file a bill on behalf of themselves and the other inhabitants similarly situated seeking any relief to which they might all in common be justly entitled"

26. Plaintiff proposes to act on a representative basis for all Virginia unemployment claimants whose claims have been illegally “vacated”.
27. More specifically, Plaintiff proposes to act on a behalf of all Virginia unemployment claimants who received adverse monetary determinations, appealed those decisions, and have been denied the hearings required by VA. CODE ANN. § 60.2-620 and 42 U.S.C. 503 (a)(3), and also on behalf of those claimants who have been denied the appeal rights granted by VA. CODE ANN. §60.2-622.
28. *Bull* is not widely applied in Virginia courts, and therefore lacks a body of case law nearly as well developed as Fed. R. Civ. P. 23, the class action procedure used in federal courts and, in derivative form, in most state courts in the United States.
29. It seems reasonable to analyze the proposed class in light of Fed. R. Civ. P. 23 and its associated case law, since this is far better developed than *Bull*, while noting that *Bull* is not as strict as Fed. R. Civ. P. 23.
30. Fed. R. Civ. P. 23 requires class actions to satisfy conditions of numerosity, commonality, typicality, adequacy, and one of either predominance or superiority.
31. *Numerosity*. Numerosity has not yet been established, yet there is reason to believe that it may be. Plaintiff Baccala is in possession of three illegal VEC orders, along with the envelopes they were mailed in, and has no reason to believe that these orders are unique. Pre-certification discovery is needed to establish numerosity (see below).
32. *Commonality of Fact*. Common questions of fact affect all members of the class, including, but not limited to, the following:

- Were hearings conducted on appeals as required by VA. CODE ANN. § 60.2-620 and 42 U.S.C. 503 (a)(3)? If not, why not?
- Were commission appeals accepted as required by VA. CODE ANN. §60.2-622?
If not, why not?
- Has the “Vacate” procedure been formalized by the VEC? Is it documented?
If so, how? If not, why not?
- Do the VEC Appeal Examiners know that hearings are required on all appeals?
- Does Chief Administrative Law Judge [REDACTED] know that Decisions of Appeals Examiner are appealable?

33. *Commonality of Law*. Common questions of law affect all members of the class, including, but not limited to, the following:

- Does sovereign immunity protect state government administrative agencies from claims arising from an illegal administrative procedure?
- Is filing a Virginia Tort Claims Act Notice of Claim for a single illegal VEC Commission Order sufficient to establish standing to act on a representative basis for all claimants who received similar illegal Commission Orders? If so, is this standing sufficient to act on behalf of claimants who received different types of orders, including, but not limited to, Orders of Appeals Examiner, issued through the same illegal administrative process (“Vacate”)?
- Does the \$100,000 bar in the Virginia Tort Claims Act apply if a jury finds that either gross negligence or willful misconduct occurred? If not, what limit does apply?

- If any bar on damages does exist, in a representative action, does this bar apply to the entire representative action, or does it apply per claimant? Per violation?
34. *Typicality*. Plaintiff Baccala is believed to be a typical unemployment claimant who has applied for benefits which have then been unlawfully denied.
35. *Adequacy*. Plaintiff Baccala is committed to fairly and adequately representing the legal interests of his fellow class members.
36. *Superiority*. Most class members are likely unaware that the orders they have received from the VEC are illegal. While a public media campaign to inform them could be considered, the Plaintiff is *pro se* and has limited financial resources. The VEC, however, possesses the identities, last known addresses, and other contact information for the class members, and could either be compelled under discovery to provide this information to the Plaintiff, or could be compelled under court order to inform the class members directly of the illegality of the “Vacate” procedure. Thus, a representative action seems superior to other methods of litigating this case.
37. In particular, the Multiple Claimant Litigation Act, VA. CODE ANN. §8.01-267.1 *et seq* applies to *pending* litigation that has been “(i) filed in that court, regardless of whether the defendant has been served with process, or (ii) properly transferred to that court” §8.01-267.2. To the Plaintiff’s knowledge, there is no other pending litigation regarding the VEC’s “Vacate” procedure.

INJURY

38. Plaintiff Baccala, and other members of his presumed class, have a legitimate expectation of entitlement to, and, thus, a protected property interest in, having their unemployment

benefits paid by the VEC.

39. Although Baccala was ultimately able to prevail in a Judicial Review, and may yet obtain his unemployment benefits, the manner in which his claim was “vacated” suggests that many others similarly situated were not so fortunate, as they were likely unaware that the orders were illegal or that any appeals process existed at all.

CAUSE OF ACTION

40. Plaintiff incorporates by reference and alleges as if fully set forth herein paragraphs 1 to 39, above, with the same meaning, force and effect.

41. The employees of the VEC, including, but not limited to, Appeals Examiner [REDACTED], [REDACTED], Chief Administrative Law Judge [REDACTED], and Clerk of the Commission [REDACTED], owed a duty to Baccala and his other class members to process their unemployment claims in compliance with Virginia code and Federal statute.

42. These employees breached this duty and acted negligently or wrongfully in the performance of their duties in the following ways, but not limited thereto:

- Failing to conduct the hearings required by law;
- Failing to process the appeals required by law;
- Misrepresenting claimant’s legal rights in official communications with them;
- Issuing illegal orders;
- Failing to adequately supervise the operation of the VEC to ensure its legal operation;
- Any other or additional acts of negligence or intentional misconduct which the Plaintiff may identify during the course of discovery.

43. The Virginia Tort Claims Act (“VTCA”), VA. CODE ANN §8.01-195.1 *et seq* allows tort claims to proceed, under limited circumstances, against the Commonwealth of Virginia and its administrative agencies, including the VEC.
44. Pursuant to VA. CODE ANN §8.01-195.3, the Commonwealth is liable for the negligence or wrongful acts or omissions of its employees while acting within the scope of their employment.
45. In *Cromartie v. Billings*, 837 S.E.2d 247 (Va. 2020), the Virginia Supreme Court held that “Virginia’s sovereign immunity doctrine protects officers only for simple negligence... Billings is not protected by sovereign immunity, however, because his actions exceeded simple negligence. First, because ‘settled, indisputable law’ forbade Billings’ actions, he is not protected by the scope of sovereign immunity.”
46. VEC’s “Vacate” procedure violates “settled, indisputable law” because VA. CODE ANN. § 60.2-620 and 42 U.S.C. 503 (a)(3) require hearings to be conducted, and VA. CODE ANN. §60.2-622 grants appeal rights to Appeals Examiner’s orders. Therefore, the VEC is not protected by sovereign immunity in this case.
47. None of the exclusions enumerated in VA. CODE ANN. § 8.01-195.3 apply in this case. Specifically, *Cromartie v. Billings* implies that the exclusion for “any claim arising out of the institution or prosecution of any judicial or administrative proceeding” can only be read to apply to *legal* administrative proceedings. In this case, the VEC’s “Vacate” procedure is *illegal* and therefore is not excluded.

PRE-CERTIFICATION DISCOVERY

48. To determine the number of unemployment claimants that may have legal claims against the VEC and to establish the numerosity of the proposed class, Plaintiff proposes that a subpoena similar to the following be issued by the Court:

TO: Clerk of the Virginia Employment Commission

YOU ARE COMMANDED to produce the following information on standard electronic media, such as USB flash drive or CD-ROM:

A spreadsheet, in a standard format such as XLS, listing all Orders or Decisions of Appeals Examiner with no Date of Hearing, providing for each:

- i. the docket number,
- ii. the date of the deputy's determination,
- iii. the date referred or appealed, and
- iv. the date the decision was mailed.

DAMAGES

49. *Compensatory Damages.* Baccala may ultimately receive his unemployment benefits, but has invested weeks of effort over the course of three years in pursuing *pro se* legal action against the VEC. Furthermore, Baccala still hopes to retain the services of professional legal counsel in this case, with the associated additional costs.
50. Other class members could obtain injunctive relief requiring the VEC to legally process their "vacated" claims. However, due to the period of time that has elapsed, some of the class members may not have retained adequate documentation to substantiate otherwise

valid claims. If illegally “vacated” claims are assumed to be valid, and Baccala’s claim is accepted as typical, then compensatory damages could range from \$5,000 to \$10,000 for each “vacated” claim.

51. *Punitive Damages*. If punitive damages can not be assessed, we are left with a situation where a governmental agency can develop an administrative procedure in clear violation of codified law and face no penalties.
52. While VA. CODE ANN. § 8.01-195.3 limits damages to \$100,000, this limitation is based on the doctrine of sovereign immunity that does not apply here, as noted above.
53. Punitive damages are limited to \$350,000 by VA. CODE ANN. §8.01-38.1.
54. Plaintiff contends that if a \$100,000 bar exists on VTCA tort claims of simple negligence, then the \$350,000 bar on punitive damages in VA. CODE ANN. §8.01-38.1 should apply to claims of gross negligence or intentional torts, with no bar on compensatory damages.
55. In a representative action, any limit on damages should apply separately to each violation, as otherwise damages would be significantly less in a representative action than if multiple independent actions were brought, violating the principle in *Bull* that representative class members may “[seek] any relief to which they might all in common be justly entitled”.
56. Determining an exact figure for the desired damages is not possible at this time, as the size of the class is as yet unknown.
57. It is not infeasible that a hundred unemployment claims have been illegally “vacated”.
58. As a rough estimate of the possible damages, if a jury finds gross negligence and awards \$10,000 in compensatory damages and \$350,000 in punitive damages for each of a hundred

violations, the total award would be for \$36,000,000. Adding another \$100,000 in legal fees for a discovery process bordering on a criminal investigation would not be unrealistic.

DESIRED RELIEF

59. WHEREFORE, the Plaintiff, on behalf of himself and the class he represents, demands judgment on behalf of himself and his class for injunctive relief, compensatory and punitive damages, a prohibition against further violations of law, and for other or further relief as the Court may determine just and proper.
60. The Plaintiff is currently proposing, on behalf of his class, a maximum jury award of THIRTY SIX MILLION ONE HUNDRED THOUSAND DOLLARS (\$36,100,000.00).
61. The Plaintiff reserves the right to amend the amount of the desired reward.

JURY TRIAL DEMAND

The Plaintiff demands a trial by jury.

Respectfully submitted,

Brent Baccala

5555 Hollins Ln
Burke, Virginia 22015

cosine@freesoft.org

APPEAL FILED:

ON: 2/06/21

LO: UNKNOWN

BY MAIL

POSTMARK: 2/06/21

VIRGINIA EMPLOYMENT COMMISSION

FIRST LEVEL APPEALS

POST OFFICE BOX 26441

RICHMOND, VIRGINIA 23261-6441

NOTICE OF APPEAL

SSN: ***-**-**** LTR. NO. 01
DOCKET NO: UI-2131927

CLAIMANT:
BRENT BACCALA
5555 HOLLINS LN
BURKE VA 22015

BRENT BACCALA
5555 HOLLINS LN
BURKE VA 22015

An Appeal has been filed from a determination of the Claims Deputy concerning the claimant's claim for unemployment benefits. The appeal is dated February 6, 2021 and was filed by the claimant. You will be provided a copy of the appeal.

In the near future you will receive a Notice of Hearing Before An Appeals Examiner which will advise you of the date, time and location of the hearing. Please refer to the above Social Security Number with any future contacts with this office.

The hearing will be conducted by an Appeals Examiner who is an impartial hearing officer and trier of fact. The purpose of the hearing is to receive evidence from the parties to make a decision with respect to the issues involved in the appeal. Each party will have the right to testify, offer the testimony of witnesses, examine any witnesses who testify and offer exhibits. The Appeals Examiner will administer oaths, control the order of proof, and officially receive exhibits into the record. The law requires that the hearing be recorded and all oral testimony shall be under oath or affirmation.

THE CLAIMANT SHOULD NOTE that eligibility to receive benefits is established on a week-to-week basis. It is important that you file your claims as directed while this appeal is pending to protect your continuing right to benefits. Failure to file your claims promptly may result in the denial of benefits. If you fail to receive your claim forms, IMMEDIATELY CONTACT YOUR LOCAL OFFICE OR THE INTERSTATE CLAIMS UNIT AND REQUEST DUPLICATE FORMS.

7/14/21

DATE

Clerk of the Commission
Telephone (804) 786-3020
FAX (804) 786-8492

READ IMPORTANT INSTRUCTIONS ON REVERSE SIDE

The Virginia Employment Commission is an equal opportunity employer/program.
Auxiliary aids and services are available upon request to individuals with disabilities.

9

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

Exhibit 2

DECISION OF APPEALS EXAMINER



Local Office : CENTRAL OFFI

Claimant's SSN : ***-**-

Date of Hearing:

Decision No. : UI-2131927

Decision Mailed: 11/01/2021

CLAIMANT:
BRENT BACCALA
5555 HOLLINS LN
BURKE VA 22015

0000072
20213240700029
Date Referred
or Appealed : 02/06/21
Date Deputy's
Determination: 07/13/21

BRENT BACCALA
5555 HOLLINS LN
BURKE VA 22015

IN THE MATTER OF: BRENT BACCALA

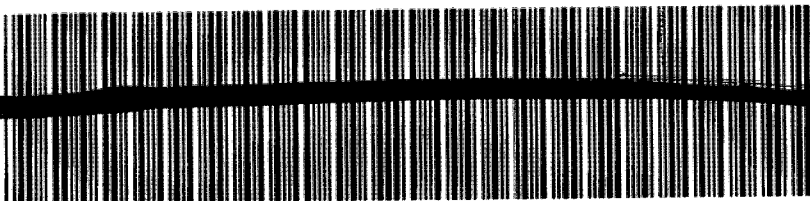
ORDER

The claimant filed an appeal from a Monetary Determination, issued on January 13, 2021. The Monetary Determination indicated that the claimant did not have earnings in covered employment during the base period established when the claim was filed effective January 10, 2021.

An examination of the claimant's wage records reveals that the claimant has wages in the base period in Washington, D.C. The claimant does not have any wages in Virginia and must file a claim against that state.

Since the claimant has wages in another state, this appeal is moot. Therefore, the claimant's appeal, the Notice of Hearing and Docket Number UI-2131927 are hereby VACATED from the docket of First Level Appeals.

Appeals Examiner



An Appeal Received January 31, 2022

CommissionAppeals, rr <commissionappeals@vec.virginia.gov>
To: cosine@freesoft.org

Mon, Jan 31, 2022 at 2:02 PM

To Mr. Brent Baccala ([REDACTED]):

The office of Commission Appeals received an appeal from you, January 31, 2022, by Priority Mail. When reviewing the information to attach it to an Appeals Examiner's decision, there were no recent Appeals Examiner's decisions issued by First Level Appeals. You have an active appeal at First Level Appeals, Docket No. UI-2120160, which has not been adjudicated. An Order was mailed from First Level Appeals on November 1, 2021, Docket No. UI-2131927. An Order does not have appeal rights and cannot be appealed to a higher level. The documents you mailed and received by Commission Appeals have been given to First Level Appeals to put with the active appeal you have in that department. I also printed out a screenshot of the appeal information as a coversheet.

[REDACTED]
Commission Appeals



COMMONWEALTH of VIRGINIA
Virginia Employment Commission

First Level Appeals, P.O. Box 26441, Richmond, Virginia 23261-6441
804-786-3020 · 800-552-4500 · FAX 804-786-8492

Exhibit 4

00041699036006043798



A-FLA-014

BRENT BACCALA
5555 HOLLINS LN
BURKE, VA 22015-0000

Order of Appeals Examiner

Order Number: UI-2120160

SSN: xxx-xx-[REDACTED]

Order Mailed: April 1, 2022

IN THE MATTER OF:

CLAIMANT
BRENT BACCALA

[The text of the Order continues on the reverse.]

This Order of Appeals Examiner was mailed this 1st day of April, 2022, to the following:
CLAIMANT: BRENT BACCALA, 5555 HOLLINS LN, BURKE, VA 22015-0000



000000006043798

ORDER

The claimant filed an appeal from a Monetary Determination, issued on October 8, 2020. The Monetary Determination indicated that the claimant did not have earnings in covered employment during the base period established when the claim was filed effective October 4, 2020. In the Regular Base Period July 1, 2019 through June 30, 2020 and the Alternate Base Period, October 1, 2019 through September 30, 2020 there are insufficient earnings in covered employment to qualify the claimant for benefits. Commission records currently show no employer has reported qualifying wages to Virginia.

An examination of the claimant's wage records reveals that the claimant has wages in the base period in Washington, D.C. The claimant does not have any wages in Virginia and must file a claim against Washington D.C.

Since the claimant has wages in another state, this appeal is moot. Therefore, the claimant's appeal, the Notice of Appeal, and Docket Number 2120160 are hereby VACATED from the docket of First Level Appeals.

██████████

Appeals Examiner



COMMONWEALTH of VIRGINIA
Virginia Employment Commission

Commission Appeals, P.O. Box 26441, Richmond, Virginia 23261-6441
804-786-4140 · FAX 804-786-9034

Exhibit 5

Notice of Appeal

00041699036007773876

A-CLA-010



BRENT BACCALA
5555 HOLLINS LN
BURKE, VA 22015-0000

SSN: xxx-xx-
Docket: UI-133451-C
CLAIMANT
BRENT BACCALA

An appeal has been filed from a Decision of Appeals Examiner mailed November 1, 2021, concerning the claimant's claim for unemployment benefits. The appeal is dated November 22, 2021, and filed by the claimant.

COMMISSION APPEALS
(Appeals from a Decision of the Appeals Examiner)

All appeals to the Commission shall be decided on the basis of a review of the evidence in the record developed by the Appeals Examiner. The Commission will not automatically schedule a hearing in this case. If either party wishes a hearing to present additional testimony, evidence or oral argument, a written request setting forth the grounds must be submitted to the Clerk of the Commission within fourteen (14) days from the mailing of this notice. Generally, all Commission hearings are held in person in Richmond, Virginia. However, the Commission may permit oral argument hearings to be conducted by conference call if all parties consent.

The Commission's Special Examiners shall follow the guidelines listed below when determining whether to direct the taking of additional evidence by the Commission. The Commission may, on its own motion or upon petition by either party, direct the taking of additional evidence only if:

1. It is affirmatively shown that the additional evidence (A) is material and not merely cumulative, corroborative or collateral and (B) could not have been presented at the prior hearing through the exercise of due diligence and (C) is likely to produce a different result at a new hearing; or
2. The record of proceedings before the Appeals Examiner is insufficient to enable the Commission to make proper, accurate or complete findings of fact and conclusions of law.

This Notice of Appeal mailed on the 29th day of July, 2022.


Clerk of the Commission

READ AND FOLLOW THE IMPORTANT INSTRUCTIONS ON REVERSE SIDE

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



ORDER OF COMMISSION

In the Matter of:

Brent Baccala

S. S. No. xxx-xx- [REDACTED]

Date of Appeal

to Commission: November 22, 2021

Date of Review: October 14, 2022

Order No.: UI-133451-C

Place: RICHMOND, VIRGINIA

Date of Mailing: October 14, 2022

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The Commission set up this case as an appeal by the appellant from an Appeals Examiner's order UI-2131927 dated November 1, 2021, that vacated the claimant's appeal to the monetary determination. The Appeals Examiner found that the claimant had wages in Washington, D.C., and he should file his claim in that jurisdiction.

The Appeals Examiner's order is not appealable, and, therefore, the appeal set up to this order was in error. The appeal set up under Docket Number UI-133451-C is, therefore, vacated, and this matter is stricken from the Commission's docket.

[REDACTED]
Chief Administrative Law Judge

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Brent Bacala

Plaintiff(s),

v.

Virginia Employment Commission
Defendant(s).

No. CL-2022-0015396

This cause came on to be heard on the 24th day of August, 2023 on
the Plaintiff's/Defendant's motion for Petition for Judicial Review

Upon the matters presented to the Court at the hearing, it is

ADJUDGED, ORDERED, and DECREED as follows:

The Order of the Commission is REVERSED.

The Court finds that the Petitioner had wages
in Virginia during the base period established when
the claim was filed. The Court remands the
matter back to the Commission for the purpose

Entered this _____ day of _____, 20____.

→

JUDGE

SEEN:

Counsel for Plaintiff(s)

Counsel for Defendant(s)

8/25/23 em: TT + D Atty

of determining the amount of unemp
benefits due to the Petitioner during
the time period in question.

ENTERED, this 24th day of August, 2023.

SEEN:

BAK, Bala

Counsel for the Plaintiff(s)

Brent W Baccala
pro se

MA [Signature]
JUDGE

Seen and Objected to:

Elizabeth B. Peay
Counsel for the Defendant(s)

Elizabeth B. Peay, ^{VA} State Bar # 6798-
Senior Assistant Attorney General
202 N. Ninth St
Richmond VA 23219



COMMONWEALTH of VIRGINIA

Virginia Employment Commission

Exhibit 8

00041699036010784520

B-MON-001



BRENT BACCALA
5555 HOLLINS LN
BURKE, VA 22015-0000

Claimant Information

Mail Date: 09/01/2023
Redetermination Date: 08/31/2023

ID: 52747993
First Name: BRENT
Last Name: BACCALA
Payment Method: Direct Deposit

Benefit Effective Date: 01/10/2021
Weekly Benefit Amount: 278.00
Number of Weeks: 12
Maximum Benefit Amount: 3,336.00
Benefit Year Ending Date: 01/08/2022

Did you know... you can retrieve this and other documents by going online at <https://uidirect.vec.virginia.gov/CSS> and logging into your account? Creating an online account is simple, secure, and easy.

Statement of Wages and Potential Benefit Entitlement Unemployment Insurance

The Virginia Employment Commission (VEC) has calculated the weekly benefit amount (WBA) and maximum benefit amount (MBA) of the claim for unemployment benefits that you filed based on the base period wages and employer(s) in our records. The amounts listed below are the base period wages on file with the VEC that were used in calculation of your potential benefit:

REGULAR BASE PERIOD WAGES						
Employer Name	Employer Account	October 1, 2019 - December 31, 2019	January 1, 2020 - March 31, 2020	April 1, 2020 - June 30, 2020	July 1, 2020 - September 30, 2020	Totals for Base Period October 1, 2019 - September 30, 2020
DISTRICT OF COLOMBIA GOVT	12757586	\$0.00	\$0.00	\$11,130.67	\$2,792.80	\$13,923.47
Total Wages		\$0.00	\$0.00	\$11,130.67	\$2,792.80	\$13,923.47

Decision by Deputy: VEC673

Beginning with the benefit week ending 01/02/2021 through 09/04/2021 you will receive an extra \$300 of Federal Pandemic Unemployment Compensation per week paid.

Call the VEC at 1-866-832-2363 to request a redetermination if this is your first mailing of this decision AND the below criteria applies.

- If there are employers listed above for whom you did not work or for whom the wages are misreported. Failure to report an error in this information may result in an overpayment that you will be required to repay.
- If there are employers not listed above for whom you did work during the base period or if wages are missing for an employer listed above. Be prepared to submit proof of the wages that are missing from this statement such as pay stubs or a W-2 tax form so that the VEC can re-evaluate your potential benefit entitlement. NOTE: Some earnings, by law, are not reportable to the VEC and cannot be used in the calculation of your potential benefit entitlement.
- The request for redetermination must be made within one year of the mail date above.

APPEAL RIGHTS

The following appeal rights apply only to challenge the effective date or if this is your redetermination of an earlier decision.

This decision becomes final unless a notice of appeal is filed by **10/01/2023**. The appeal must be in writing and should set forth the grounds upon which the appeal is sought. If an appeal is filed, you should continue to file your weekly claim each week.

Appeals should be filed through one of the following methods:

Internet	Fax	Mail	In-Person
www.vec.virginia.gov	(804) 786-8492	Virginia Employment Commission Attention: First Level Appeals P.O. Box 26441 Richmond, VA 23261-6441	At Any VEC Service Location

Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219

September 22, 2023

NOTICE OF CLAIM

1. This is a Notice of Claim issued pursuant to the Virginia Tort Claims Act, VA. CODE ANN. §8.01-195.6.
2. The Virginia Employment Commission (“VEC”) has developed an illegal administrative procedure called “Vacate” and has attempted to use it to illegally deny unemployment benefits to Brent Baccala, a resident of Burke, Virginia.
3. VEC issued an illegal Commission Order on October 14, 2022 (attached) claiming, in contradiction of VA. CODE ANN. §60.2-622, that “[t]he Appeals Examiner’s order is not appealable”, and mailed it to Baccala.
4. The Commission Order of October 14, 2022 was presumably drafted at, signed in, and mailed from the VEC Central Office at 6606 West Broad Street, Richmond, Virginia 23230.
5. Baccala received the Commission Order of October 14, 2022 by United States first class mail service at his home address of 5555 Hollins Ln, Burke, Virginia 22015.
6. The manner in which this procedure was used to deny Baccala’s unemployment benefits suggests that this procedure has been used to illegally terminate appeals and deny benefits to a presently unknown number of unemployment insurance claimants.
7. **This claim is brought on a representative basis on behalf of all Virginia unemployment insurance claimants whose claims have been illegally “vacated”.**

Brent Baccala

5555 Hollins Ln
Burke, Virginia 22015

cosine@freesoft.org