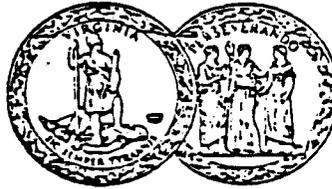


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

VOLUNTARY LEAVING: 155.2
Domestic Circumstances —
Home or Spouse in Another
Locality.



DECISION OF COMMISSION

In the Matter of:

Danny R. Hutchinson
[REDACTED]

Clyde Stacy & John Matney
Bristol, Virginia

Interstate

Date of Appeal
to Commission: February 24, 1987

Date of Review: March 30, 1987

Place: RICHMOND, VIRGINIA

Decision No.: 28322-C

Date of Mailing: March 31, 1987

Final Date to File Appeal
with Circuit Court: April 20, 1987

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This is a matter before the Commission as the result of an appeal filed by the claimant from the Decision of Appeals Examiner (UI-87-523), mailed February 5, 1987.

ISSUE

Did the claimant leave work voluntarily without good cause as provided in Section 60.1-58 (a) [recodified effective 1-1-87 as Section 60.2-618.1] of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The claimant filed a timely appeal from the Appeals Examiner's decision, which affirmed an earlier Deputy's determination disqualifying him for benefits effective December 7, 1986, for having left work voluntarily without good cause.

The claimant was last employed as an electrician by Clyde Stacy & John Matney, t/a The Black Diamond Company of Grundy, Virginia, between October 1, 1985, and November 16, 1986. He had previously worked at the same location for a predecessor company through 1984.

Upon being recalled to work in October of 1985, the claimant's pay and benefits were cut from the prior level he had enjoyed due to the depressed nature of the coal mining industry in which he worked.

All employees returning to work were faced with the same situation, and the claimant's pay and benefits remained the same until the time of his separation.

While he was laid off, the claimant's wife was attending college and she hoped to get a job after graduation. Sometime during 1986, she received the promise of a job in Tennessee beginning in January of 1987. The employer allowed the claimant time off from work so that he could seek work there, however, he did not have a definite offer of work at the time he resigned his job in November, 1986, in order to accompany his wife to Tennessee.

OPINION

Section 60.1-58 (a) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that a claimant left work voluntarily without good cause. Good cause shall not be found in cases where an individual has left work voluntarily to join or accompany a spouse to a new locality or where an individual has voluntarily left employment to become self-employed.

The two statutory exceptions to the term "good cause" are recent additions to the Act. In cases such as the one at hand where the claimant actually gives two reasons for voluntarily leaving, one of which involves accompanying his spouse to a new locality, it is necessary to determine the primary reason for the claimant's separation from work. If, in the present case, that reason was dissatisfaction with pay and working conditions, the Commission would not be statutorily precluded from finding good cause in his actions. If, however, the primary reason was to join or accompany his spouse to a new locality, the prohibition would apply and good cause could not be established for the leaving. (Underscoring supplied)

In the present case, if the primary reason for the claimant's separation was his dissatisfaction over the cut in pay and benefits he had to take when returning to his job under new management, the Commission is unable to conclude that he would have stayed on the job working under those conditions for over a year thereafter. It is apparent from the evidence that the reason he stayed on the job so long was to enable his wife to get through college and to secure other employment in Tennessee. Because of this, the primary reason for his voluntary separation was one under which the Commission has no jurisdiction to find good cause so as to relieve him of a disqualification under this section of the Act.

DECISION

The Decision of Appeals Examiner is hereby affirmed.

It is held that the claimant is disqualified for unemployment compensation effective December 7, 1986, for any week or weeks benefits are claimed until he has performed services for an employer during thirty days, whether or not such days are consecutive, and he subsequently becomes totally or partially separated from such employment because he left work voluntarily without good cause.


Charles A. Young, III
Special Examiner