

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Helen M. Lilliam
████████████████████

Commonwealth Health Care
Newport News, Virginia

Date of Appeal
to Commission: February 21, 1995
Date of Review: April 1, 1995
Place: RICHMOND, VIRGINIA
Decision No.: 47764-C
Date of Mailing: April 4, 1995
Final Date to File Appeal
with Circuit Court: April 24, 1995

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This case came before the Commission on appeal by the employer from a Decision of Appeals Examiner (UI-9501888), mailed February 17, 1995.

ISSUE

Was the claimant able to work, available for work, and actively seeking and unable to obtain suitable work as provided in Section 60.2-612(7) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On February 21, 1995, the employer filed a timely appeal from the Appeals Examiner's decision which held that the claimant was eligible to receive benefits for the period of December 18, 1994 through December 31, 1994. The Appeals Examiner, in reversing the Deputy's determination, concluded that the claimant had satisfied the eligibility requirements contained in Section 60.2-612(7)(a) of the Code of Virginia.

On December 5, 1994, the claimant filed an additional claim for benefits, listing Commonwealth Health Care as her most recent 30-day employer. Upon filing her claim, the claimant advised the Commission that she had worked for the employer from August 15, 1992 until November 25, 1994, as a private duty aide, and that she had become unemployed because of a lack of work.

On April 1, 1994, the claimant signed a statement which informed her of certain duties and responsibilities that she owed the employer. That statement provided as follows:

Please be reminded that you must call in to the office prior to 9:00 a.m. daily if you wish to work and are not assigned a case already. If you do not call, we must assume that you are unavailable for work that day.

If you have not contacted our office for a period of two consecutive weeks, we reserve the right to remove you from our employee list. You will be asked to reapply for work in order to be considered for any future employment.

The claimant does not have a telephone. She did not contact the employer from November 23, 1994 through December 4, 1994. On December 5, 1994, the claimant contacted the employer and was assigned a patient. She was scheduled to work December 6, 1994. That job did not work out for the claimant. Accordingly, she was removed from the assignment by the employer. She was not terminated by the employer. Her name remained on the list of those employees who were eligible to receive assignments if they notified the company of their availability.

The claimant submitted a continued claim form for the period of December 8, 1994 through December 31, 1994. On that form she certified that she was ready, willing and able to work each day during those two weeks. She also listed a total of four job contacts, two during each week. Two of the job contacts were in the City of Chesapeake and the other two were in the City of Portsmouth. The claimant is a resident of the City of Suffolk. During these two weeks, the claimant did not contact the employer in an attempt to obtain work. Had she done so, the employer had work assignments that would have been given to her.

OPINION

Section 60.2-612(7) of the Code of Virginia provides, in part, that an unemployed individual shall be eligible to receive benefits with respect to any week only if he is able to work, available for work, and actively seeking and unable to obtain suitable work.

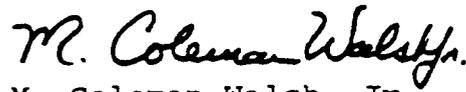
In order to satisfy the eligibility requirements of this statute, a claimant must be able to perform some substantial saleable service, be willing to accept any suitable work which may be offered without attaching thereto restrictions or conditions not usual and customary in that occupation, and be actively and unrestrictively seeking employment in the labor market where he resides. U.C.C. v. Dan River Mills, Inc., 197 Va. 816, 91 S.E.2d 642 (1956); U.C.C. v. Tomko, 192 Va. 463, 65 S.E.2d 524 (1951); Dan River Mills, Inc. v. U.C.C., 195 Va. 997, 81 S.E.2d 620 (1954).

In this case, the Commission is of the opinion that the claimant did not meet the eligibility requirements of the statute for the two weeks in question. The claimant knew or should have known that she had not been terminated by the employer. Consequently, she would have received job assignments from the employer had she contacted the company during the two weeks in question. The claimant did not contact the employer during these two weeks, yet she travelled to Chesapeake and Portsmouth to make job contacts that she reported on her continued claim form.

It is clear from these facts that the claimant was not seeking work with the one employer, Commonwealth Health Care, who was ready, willing and able to provide it to her. Under different circumstances, two job contacts in a week may well constitute an active search for work within the contemplation of the statute. Under the facts of this case, however, the claimant's failure to contact Commonwealth Health Care during these weeks precludes the Commission from finding that she was "actively seeking and unable to obtain suitable work."

DECISION

The Appeals Examiner's decision is reversed. The claimant is ineligible for benefits from December 18, 1994 through December 31, 1994, the claim weeks before the Commission, because she was not actively seeking and unable to obtain suitable work.


M. Coleman Walsh, Jr.
Special Examiner

NOTICE TO CLAIMANT

IF THE DECISION STATES THAT YOU ARE DISQUALIFIED, YOU WILL BE REQUIRED TO REPAY ALL BENEFITS YOU MAY HAVE RECEIVED AFTER THE EFFECTIVE DATE OF THE DISQUALIFICATION. IF THE DECISION STATES THAT YOU ARE INELIGIBLE FOR A CERTAIN PERIOD, YOU WILL BE REQUIRED TO REPAY THOSE BENEFITS YOU HAVE RECEIVED WHICH WERE PAID FOR THE WEEK OR WEEKS YOU HAVE BEEN HELD INELIGIBLE. IF YOU THINK THE DISQUALIFICATION OR PERIOD OF INELIGIBILITY IS CONTRARY TO LAW, YOU SHOULD APPEAL THIS DECISION TO THE CIRCUIT COURT. (SEE NOTICE ATTACHED)