

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of

Peggy Johnson, Claimant
[REDACTED]

Hall & Taylor Body Shop
Charlottesville, VA 22901

Date of Appeal

To Commission: September 2, 1981

Date of Review: October 31, 1981

Decision No.: 16998-C

Date of Decision: November 6, 1981

Place: Richmond, Virginia

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This matter comes before the Commission on appeal by the claimant from the decision of the Appeals Examiner (UI-81-7549), dated August 18, 1981.

ISSUE

Did the claimant leave work voluntarily without good cause as provided in Section 60.1-58 (a) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The Findings of Fact of the Appeals Examiner are hereby adopted by the Commission. The Commission also finds that by written agreement, dated October 8, 1980, Douglas M. Taylor and Larry B. Hall entered into a Buy-Sell agreement with respect to that partnership known as Hall & Taylor Body Shop. This agreement provided, in part, as follows:

"2. Purchase Price Considerations. The lump-sum purchase price established under paragraph 1 above shall account for the following agreements which apply to any buy-sell hereunder:

- (a) All of the Partnership's assets as a going concern including bank accounts and cash on hand, receivables, inventory,

and all assignable rights to licenses, insurance policies, unemployment ratings, and similar intangibles, will be included in the sale hereunder."

Although the partners intended to dissolve the partnership on October 31, 1980, the Cancellation of Certificate of Partnership was not executed until November 14, 1980 and the actual closing whereby the consideration for the business changed hands did not occur until December 2, 1980.

OPINION

Section 60.1-58 (a) of the Code of Virginia provides a disqualification if the Commission finds that an individual left her job voluntarily without good cause.

In construing the meaning of the phrase "good cause", the Commission has consistently held that an individual leaves her job voluntarily without good cause unless the reasons for leaving was based upon some legal premise or is of such a compelling and necessitous reason as would leave her no other reasonable alternative other than quitting her job. In such cases, the burden of proof is upon the claimant to demonstrate by clear and convincing evidence that she did have good cause for leaving her job.

In the present case, the claimant left her job on October 31, 1980 due to the fact that the partnership arrangement under which the business had been operated was soon to be dissolved and she did not desire to continue working for the partner who would be taking over the business on the basis of a sole proprietorship. As the Appeals Examiner pointed out in his decision, the claimant had the opportunity to continue working until the partnership was dissolved and the succeeding owner had offered the claimant continued employment. Under these circumstances, the Commission is in complete agreement with the analysis of the Appeals Examiner that the claimant's decision to leave her job was for reasons which do not constitute good cause and the disqualification provided in Section 60.1-58 (a) should be imposed.

In the letter of appeal filed by the claimant's attorney, it was argued that the Appeals Examiner's decision should be reversed inasmuch as the claimant's last thirty day employer, a partnership, was dissolved and had ceased to exist. It was also contended that the claimant had been authorized to leave employment upon dissolution of the partnership, that prejudicial error occurred when the former partner, Douglas M. Taylor, was excluded from the hearing on behalf of the partnership and that the claimant's decision to discontinue her employment would not disqualify her from receiving unemployment insurance benefits since the offer of employment by

the successor to the partnership did not constitute an offer of suitable work within the meaning of Section 60.1-58 (c) of the Code of Virginia. It is the opinion of the Commission that these arguments are without merit.

Despite the fact that the partnership for whom the claimant last worked has been dissolved, that does not effect the claimant's eligibility or qualification to receive unemployment insurance benefits in any way, since the claimant was not laid off for lack of work, but voluntarily left her job. In addition, since the claimant left her job prior to the dissolution of the partnership, the allegation that she was authorized to leave employment upon dissolution is neither relevant nor material.

With respect to the claimant's objection with respect to the failure of the Appeals Examiner to allow Mr. Taylor to participate in the hearing as a general partner on behalf of the employer, two factors must be noted. First, no objection whatsoever was noted by the claimant's attorney at the hearing before the Appeals Examiner with respect to this issue. However, even if the objection had been raised in a timely manner, it is the opinion of the Commission that the claimant is without standing to make the objection. Inasmuch as the unemployment insurance tax rating for that partnership inured to the benefit or the detriment of that partnership's successor in interest, the only aggrieved party who could properly make such an objection would be the partnership's successor in interest. Finally, the claimant's attorney based their appeal, in part, on the allegations that the offer of work by the successor in interest to the partnership did not constitute an offer of suitable work within the meaning of Section 60.1-58 (c) of the Code of Virginia. Further, there is no issue which has arisen under this Section of the Act since the claimant's separation from work occurred prior to the employer's dissolution as a partnership. Accordingly, the Appeals Examiner acted properly in ruling under the provisions of Section 60.1-58 (a) instead of Section 60.1-58 (c), which deals with the refusal to accept offers of suitable work.

Therefore, after reviewing all of the evidence and testimony in the record and considering the grounds for appeal submitted by the claimant's attorney, it is the decision of the Commission that the claimant left her job voluntarily for reasons which do not constitute good cause and should be disqualified from receiving unemployment insurance benefits.

DECISION

The decision of the Appeals Examiner which disqualified the claimant from receiving unemployment insurance benefits is hereby affirmed.

M. Coleman Walsh, Jr.

M. Coleman Walsh, Jr.
Special Examiner