

COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Mildred K. Bartley  
████████████████████

Atlantic Research Corporation  
Alexandria, Virginia

Date of Appeal  
to Commission: January 24, 1986  
Date of Review: February 24, 1986  
Place: RICHMOND, VIRGINIA  
Decision No.: 26561-C  
Date of Mailing: February 28, 1986  
Final Date to File Appeal  
with Circuit Court: March 20, 1986

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This is a matter before the Commission on appeal by the claimant from the Decision of Appeals Examiner (UI-85-9795), mailed January 7, 1986.

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 claimant filed a timely appeal from the Appeals Examiner's decision, which reversed an earlier Deputy's determination and disqualified her for benefits effective October 13, 1985, for having left work voluntarily without good cause.

The claimant was last employed as a computer programmer by the Atlantic Research Corporation of Alexandria, Virginia, from January 28, 1980, through July, 1985. As the summer of 1985 approached, the claimant decided that she no longer wished to

work as a programmer; rather, she wished to become a systems analyst. She also wanted to take the summer off to be with her children; and she therefore submitted a resignation to become effective June 7, 1985. The work she had been doing required a security clearance, which would have terminated at the time of her resignation. In the hopes that she would come back to work at a later date, the employer persuaded the claimant to "go casual," which meant that she would stay on the payroll to be called in as needed. This way, her security clearance would remain in effect in the event that she wished to come back on a full-time basis. She did come in to work her last three days for the company in July.

At some time in September, the claimant was asked if she wished to come back to work on a full-time basis and she responded in the affirmative. Later on, her former supervisor called her back to state that there was no work available which she would be interested in performing. The claimant then filed her claim for unemployment compensation, however, she remained on her employer's payroll as a casual employee through the beginning of December, when she submitted a resignation to take other work.

#### 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.

In the case of Sid F. Kerns v. Atlantic American, Inc., Decision No. 5450-C (September 20, 1971), the Commission held:

It is established that the burden is upon the employer to produce evidence which establishes a prima facie case that the claimant left his employment voluntarily. The employer assumes the risk of non-persuasion in showing a voluntary leaving. Once a voluntary leaving is shown, the burden of coming forward with evidence sufficient to show that there are circumstances which compel the claimant to leave his employment and that such circumstances amount to good cause as set out in the Unemployment Compensation Act, devolves upon the claimant."

In the present case, it appears that the claimant is arguing that her separation did not occur until October of 1985, when she was told by her former supervisor that there was no work

available, which she would be interested in doing. This is actually not the proximate cause for her separation from work at all.

In the case of Steven Molettiere v. W. G. Cosby Transfer & Storage, Decision No. UCFE-489 (September 17, 1979), the Commission held:

In determining the appropriate code section to apply to a claimant's separation, it is necessary to determine the proximate cause for the termination of employment. Although the immediate cause for this claimant's termination was the act of dismissal communicated to him by the employer, the Commission does not find this to be the proximate cause for the separation. Had the claimant not told his employer that he was quitting his job, the sequence of events which followed would not have occurred. It was this act, therefore, which was the proximate cause for this claimant's separation.

Here, the proximate cause for the claimant's separation was the resignation, which she communicated to her employer in June of 1985. By agreeing to "go casual", the claimant was voluntarily assuming the risk that the employer would not have work for her to perform since she was agreeing to come in only when needed. After working those three days, the claimant was unemployed and her separation had already occurred in actuality. The statement concerning coming back to work in October, as well as the resignation she submitted in December, had nothing to do with the reason she was no longer working for the Atlantic Research Corporation.

Inasmuch as it has been established that the claimant voluntarily left her job by virtue of the resignation she submitted in June, the burden then devolves upon her to establish good cause for that action under the Commission holding in the Kerns case previously cited. While it is understandable that she might wish to advance in her field by becoming a systems analyst, there has been no showing that continued work as a programmer represented such a change in the terms or conditions of her employment as to render it unsuitable for her. Furthermore, while it is certainly understandable that she might wish to take the summer off to be with her children, this was clearly a matter of mere personal preference and cannot rise to the level of good cause so as to relieve her of the disqualification under

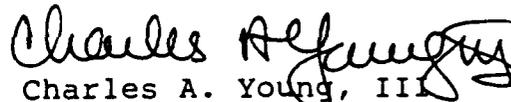
this section of the Act. After reviewing the evidence in this case, the Commission feels that the claimant was properly found to be disqualified by the Appeals Examiner.

DECISION

The Decision of Appeals Examiner is hereby affirmed.

It is held that the claimant is disqualified for unemployment compensation effective October 13, 1985, for any week or weeks benefits are claimed until she has performed services for an employer during thirty days, whether or not such days are consecutive, and she has subsequently become totally or partially separated from such employment because she left work voluntarily without good cause.

When this decision becomes final, the Deputy is instructed to calculate what benefits may have been paid to the claimant after October 13, 1985, so as to determine the extent of the overpayment she will be liable to refund to this Commission as a result of this decision.

  
Charles A. Young, III  
Special Examiner

NOTICE TO CLAIMANTS

IF THE DECISION STATES THAT YOU ARE DISQUALIFIED, YOU WILL BE REQUIRED TO REPAY ALL BENEFITS YOU MAY HAVE RECEIVED AFTER THAT DATE. 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 WISH TO DISPUTE YOUR OBLIGATION TO REPAY THESE BENEFITS TO THE COMMISSION, YOU MUST FILE A TIMELY APPEAL.