



DECISION OF COMMISSION

In the Matter of:

Hattie M. Shifflett
████████████████████

Cooper Industries Inc.
Charlottesville, Virginia

Date of Appeal
to Commission: December 27, 1988

Date of Review: January 30, 1989

Place: RICHMOND, VIRGINIA

Decision No.: 31370-C

Date of Mailing: February 9, 1989

Final Date to File Appeal
with Circuit Court: March 1, 1989

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This matter comes before the Commission as the result of an appeal filed by the claimant from the Decision of Appeals Examiner (UI-8809729), mailed December 7, 1988.

ISSUE

Was the claimant able to work, available for work, and actively seeking and unable to find suitable work during the week or weeks for which benefits were claimed as provided in Section 60.2-612.7 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 declaring her to be ineligible for unemployment compensation for the one-week period between October 17 and October 22, 1988.

The claimant had filed for unemployment compensation effective October 16, 1988, because her regular employer, Cooper Industries, Incorporated of Charlottesville, Virginia, had decided to shut down its operations on Wednesday, Thursday, and Friday, October 19, 20, and 21 in order to conduct a thorough inventory. This information was known to all employees as early as September when sign-up sheets for those individuals wishing to work during the inventory period were posted with a deadline of September 27, 1988. Employees were also notified that if there were not enough volunteers to work during inventory, the lowest seniority employees in various departments would be called in to do so. The record does not establish whether the claimant may have volunteered to work during the three days of inventory; nevertheless, it is known that she was not required to do so.

The claimant's claim was taken on a partial basis and she was expected to work her regular shifts on Monday and Tuesday of that week. She did not work on Monday, October 17, 1988, because she had a doctor's appointment. She did work on Tuesday, October 18, and earned \$60.64. The weekly benefit amount established on her claim is \$162.00.

OPINION

Section 60.2-612.7 of the Code of Virginia provides that in order to be eligible for benefits for a particular week, a claimant must be able to work, available for work, and actively seeking and unable to find suitable work during that week.

Regulation VR 300-01-3.2.1F provides that, with respect to any week claimed, a partially unemployed claimant shall be deemed to be actively seeking work if he performs all suitable work offered to him by his regular employer.

Because partially unemployed individuals remain attached to their regular employers and continue to perform some services for them, it would actually work a disservice to those employers to require them to seek work elsewhere during the weeks they are partially unemployed. The foregoing regulation was intended to provide a means by which partially unemployed individuals may be found to be available for work without having to meet the same standards as totally unemployed individuals.

The possibility that the claimant may have failed to volunteer to work during the three days of the inventory shutdown makes no difference with respect to the week in question. This is because the evidence does not indicate that she was actually assigned to such work, but declined to perform it during those three days. In this respect, the situation is actually analogous to that in Gannaway v. Brown & Williamson Tobacco Corp., Commission Decision 22411-C, (November 16, 1983), in which the Commission found that claimants who volunteered to be laid off when the company was faced with a reduction in force had not voluntarily left work at all, since it was known that the layoff was coming and the employer had offered inducements for certain claimants to volunteer so as to accomplish the cutback as smoothly as possible. Just as the Commission found that volunteering in Gannaway did not amount to a voluntary leaving, the Commission also finds that the failure in this case of a claimant to volunteer to work during the inventory shutdown would not amount to a failure to seek suitable work since the employer at all times retained the right to assign the claimant to work if that is what was desired. (Underscoring supplied)

The evidence in this case is clear that the claimant was assigned to work sixteen hours during the week in question, but only worked eight because she took off one day for a doctor's appointment. It is equally apparent that the employer had notified employees well in advance of the week in question that the inventory shutdown was coming up. It actually does not matter whether the claimant's doctor's appointment was one which could have been shifted to another day or whether there was a medical emergency which required her to be there on Monday. The fact remains that the claimant missed half of the time she was scheduled to work during that week for her regular employer. Because of this, she was not meeting the eligibility requirements to establish that she was indeed actively seeking and unable to find suitable work during that week which were applicable to her as a claimant for partial unemployment compensation. (Underscoring supplied)

DECISION

The Decision of Appeals Examiner is hereby affirmed.

It is held that the claimant was not meeting the eligibility requirements of the Code between October 16, 1988 and October 22, 1988, the claim week before the Commission.


Charles A. Young, III
Special Examiner