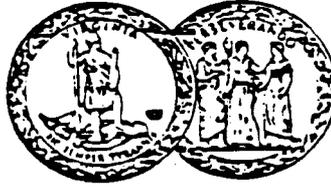


COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION



ABLE & AVAILABLE: 160.05  
Effort to Secure Employment or Willingness to Work  
(General)

DECISION OF COMMISSION

In the Matter of:

Eric M. Ortiz  
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Rite Aid of Virginia, Inc.  
Harrisburg, Pennsylvania

Date of Appeal

to Commission: May 26, 1993

Date of Hearing: July 28, 1993

Place: RICHMOND, VIRGINIA

Decision No.: 42517-C

Date of Mailing: August 6, 1993

Final Date to File Appeal  
with Circuit Court: August 26, 1993

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This case came before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-9307014), mailed May 6, 1993.

APPEARANCES

None

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 May 26, 1993, the claimant filed a timely appeal from the Appeals Examiner's decision which held that he was ineligible to receive benefits for the period of February 28, 1993 through March 13, 1993. The basis for that decision was the Appeals Examiner's conclusion that the claimant was restricting his availability for work by "making repeated visits to the same potential employers, rather than making visits to numerous new potential employers ...."

Prior to filing his claim for benefits, the claimant last worked as a cashier for Rite Aid of Virginia. He worked for this employer from November 13, 1990 until his dismissal on September 15, 1992. The claimant performed services for this employer at a location in Alexandria, Virginia. The claimant resides in Arlington, Virginia.

During the claim week ending March 6, 1993, the claimant made three job contacts in search of work. On March 2, 1993 and March 5, 1993, the claimant contacted the Arlington, Virginia office of Manpower Temporary Services in search of any type of general clerical work. On March 5, 1993, the claimant contacted the Falls Church, Virginia office of Manpower Temporary Services. On that occasion, he was seeking general clerical work.

During the claim week ending March 13, 1993, the claimant made three job contacts. On March 9, 1993, the claimant contacted the Falls Church office of Manpower Temporary Services in an effort to obtain general clerical work. On that same day, he contacted The Arlington Hospital in Arlington, Virginia for a position as a billing clerk in the business office. On March 10, 1993, the claimant contacted the Arlington office of Manpower Temporary Services in an attempt to obtain general clerical work.

Manpower Temporary Services maintains numerous offices throughout the Northern Virginia area. Each of those offices has a different client data base which is predicated upon the geographic area that office serves. An applicant who applies at one of the offices of Manpower Temporary Services is not automatically considered for placement at any job other than one available through that particular office. Manpower Temporary Services encourages applicants to apply for work through more than one of its offices since that will expand the applicant's exposure to potential employment opportunities. In addition, the job opportunities available at each Manpower office change on a daily basis as the employers report their needs.

The claimant had been regularly contacting both The Arlington Hospital and Alexandria Hospital on a regular basis and reporting those contacts to the Commission. Both of those hospitals post new job openings on a weekly basis, and the claimant regularly visited the hospitals, reviewed the job postings, and applied for those for which he was qualified.

On March 25, 1993, the claimant signed a Record of Facts Obtained by Deputy which states as follows:

In regards to my claim form for BWE 3/6/93 and 3/13/93 I was unaware of the VECs policy that I must have more than one company contacted for each week I wish to claim benefits. I was in on March 18th and this was explained to me at the time. This

claim form had already been sent and received by Richmond on March 17, 1993. Before I was given this information. I will also be having this problem with my contacts on my next claim form up to the date of March 18, 1993 for the same reason listed as above.

I understand that I must provide more than one contacted company for each week I wish to claim benefits for. Failure to do so may be considered placing a limitation on my availability for that week.

#### 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 claimant made three bona fide job contacts during each of the two claim weeks in question. Although the claimant made a number of contacts with Manpower Temporary Services, those contacts were with different offices which maintained different data bases. Furthermore, the jobs that are available through each of those offices changes on a daily basis as employers report their needs to the company.

A similar situation exists with respect to both of the hospitals that the claimant regularly contacted in search of work. Both of those hospitals posted new job openings on a weekly basis. The claimant checked those job openings regularly and applied for those for which he was qualified. Under these circumstances, the Commission is of the opinion that the claimant's job search efforts were sufficient to satisfy the requirements of the statute.

Both the Deputy and the Appeals Examiner appeared to reach a contrary conclusion based upon the notion that repeated contacts with the same employers violated some Commission "policy." The Commission must first observe that there is no statute or regulation that prohibits a claimant from making repeat job

contacts in order to satisfy the eligibility requirements of the law. The handbook that is provided to claimants when they file their initial claims for benefits does not contain any information on this subject. (emphasis added)

In determining whether a "repeat" contact can be validly considered for the purpose of satisfying the eligibility requirements of the law, the Commission should consider, among other things, whether the claimant has a reasonable expectation that work is available for which he or she would be qualified to perform. For example, if a claimant contacted the same employer in consecutive claim weeks after being told initially that no work was available and the company was not hiring, the contact made during the second week would be suspect. In contrast, if the claimant was told upon the initial contact that he or she should return the following week because something may be available then, returning to the same employer the following week would certainly be reasonable. (emphasis added)

The Commission is of the opinion that the claimant's repeat contacts with the various offices of Manpower Temporary Services falls within the second scenario described in the preceding paragraph. Since each of the Manpower offices services a different client base and has a pool of available assignments that changes on a daily basis, it would not be unreasonable for an unemployed individual to make repeat job contacts during consecutive claim weeks with that employer. The same analysis holds true with respect to the claimant's contacts with The Arlington Hospital and Alexandria Hospital.

For these reasons, the Commission does not agree with the reasoning advanced by the Deputy and the Appeals Examiner for holding the claimant ineligible for the weeks in question. Consequently, the Commission concludes that the claimant satisfied the eligibility requirements of the statute for the weeks in question.

#### DECISION

The Appeals Examiner's decision is hereby reversed. The claimant is eligible to receive benefits for the period of February 28, 1993, through March 13, 1993, the claim weeks before the Commission.

*M. Coleman Walsh, Jr.*  
M. Coleman Walsh, Jr.  
Special Examiner