

UNEMPLOYMENT COMPENSATION COMMISSION OF VIRGINIA

DECISION OF COMMISSIONER

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Decision No: 3028-C  
Date: Sept. 6, 1956

ABLE AND AVAILABLE: 450.152  
Time — Hours: Irregular.

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This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. S-4488-4419) dated July 19, 1956.

ISSUES

- (1) Has the claimant been available for work during the week or weeks for which she claims benefits?
- (2) Did the claimant voluntarily quit her employment without good cause?

OPINION AND DECISION

The record before the Commission in this case clearly establishes the uncontroverted fact that the claimant is not available for the split-shift hours which she had formerly worked and which are the hours customary in the occupation she had pursued from September 17, 1951, through December 1, 1955. The reason for her restriction against these hours is her inability to get someone to care for her children.

On two occasions this precise question has been decided by a lower court of this state and appeal in each instance denied by the Supreme Court of Appeals of Virginia. See, Louise Jones v. U. C. C. of Virginia and Dan River Mills, and Margaret S. Holley v. U. C. C. of Virginia and Dan River Mills, decided December 1952 by the Corporation Court of the City of Danville, petition for appeal denied by the Supreme Court of Appeals, June 1953. In each of these cases appellants could not work on a particular shift because of the lack of someone to care for their children, and in each instance they were held unavailable for work.

The problem is discussed in the case, U. C. C. of Virginia v. Steve Tomko et als, 192 Va. 463, 65 S. E. (2d) 524, cited by the Examiner.

In this state the matter seems well-settled that the claimant cannot restrict his hours of work to suit the convenience of his particular personal domestic circumstances and still remain available for work within the meaning of Section 60-46 (c). (Underscoring supplied)

This alone would suffice to sustain the Examiner's decision; but it appears further that the claimant was likewise restricting her search for employment by excluding from her contacts certain retail establishments where, in her opinion, the wages would not justify her working. This Commission has never required a claimant to seek or accept work where the wages, hours, or other conditions of work are substantially less favorable to the individual than those prevailing for similar work in the locality. But this in no way infers that the claimant can exclude from consideration work for which he is qualified simply because the prevailing wage is not sufficient for him to meet his personal domestic expenses and still clear an amount he deems suitable. If a claimant is to receive the benefits of the Unemployment Compensation Act, he must make himself available for any suitable employment and he must actively

and unrestrictively search for such employment. (Underscoring supplied)

For the reasons stated the decision of the Examiner was proper and the same is hereby affirmed.