

COURT OF APPEALS OF VIRGINIA

Present: Judges Benton, Keenan and Hodges
Argued at Norfolk, Virginia

PRISCILLA M. ROBINSON

V. RECORD NO. 1114-85

MEMORANDUM OPINION BY
JUDGE WILLIAM H. HODGES

VIRGINIA EMPLOYMENT COMMISSION, ET AL

September 3, 1986

FROM THE CIRCUIT COURT OF THE CITY OF RICHMOND
James B. Wilkinson, Judge

Anne Holton (Central Virginia Legal Aid
Society, Inc., on brief) for appellant.

J. Steven Sheppard, III, Assistant Attorney
General (Mary Sue Terry, Attorney General, on brief)
for appellee, Virginia Employment Commission.

Mark J. Welzenbach (Gregory B. Robertson;
Hunton & Williams, on brief)
for appellee, United Virginia Bank.

On September 28, 1984, appellant, Priscilla M. Robinson, filed a petition for judicial review requesting the Circuit Court of the City of Richmond to overturn a denial by the Virginia Employment Commission of her application for unemployment compensation. She now appeals the circuit court's ruling which upheld the determination that she voluntarily left her job without good cause and was thus barred from receiving compensation by Code § 60.1-58(a). We agree with the circuit court's decision and affirm.

We decline appellant's invitation to raise the burden of proof from that mandated by statute. Code § 60.1-67.1 says, in pertinent part, that: "[I]n any judicial proceedings under this chapter, the findings of the Commission as to the facts, if

supported by evidence and in the absence of fraud, shall be
conclusive, and the jurisdiction of such court shall be confined
to questions of law." Appellant argues that the evidence must be
"substantial" for the reviewing court to uphold the findings of
the Commission. The burden of proof applicable to this
proceeding, however, is clearly defined in Code § 60.1-67.1, and
does not require a finding that the evidence was substantial.
Therefore, we reject the appellant's suggestion that we raise the
burden of proof from that which is stated in the statute.

(Underscoring supplied)

Since no allegations of fraud have been made, the
dispositive question is whether there was evidence to support the
Commission's determination. Brady v. Human Resources Institute
of Norfolk, Inc., 231, Va. 28, 340 S.E.2d 797, 797-98 (1986).
Appellant argues that the Commission's finding that she
voluntarily left her job was directly contradicted by her
testimony that she never expressed any intention of leaving her
job, but merely requested a transfer from her department to
another department within the bank. She further alleges that,
since she followed the procedures for a transfer outlined by the
bank, her actions were taken with good cause.

The special examiner for the Commission found that Robinson
voluntarily left her position in the wire transfer department
even though she was advised that her position in that department
would be posted and filled as soon as possible due to the work
load of the department; and that if she pursued a transfer as
opposed to posting for a new position, she ran the risk of not
being able to find another position within the bank. Despite this

advice, Robinson asked for a transfer. The examiner decided that by doing so, Robinson assumed the risk that she might end up without a job. He found the situation analogous to a worker who leaves one job in mere anticipation of finding another.

The initial fact finding report by the deputy commissioner dated January 10, 1984, contains the claimant's statement which reads: "I voluntarily left work for personality differences with my immediate supervisor. I requested a transfer from Garland Hagan, (unreadable) and was initially denied. I again requested a transfer and was paid 11-1-83 through 11-30-83 to obtain more suitable work." The deputy commissioner held that Robinson voluntarily left her job due to a disagreement with her supervisor and was, therefore, ineligible for unemployment compensation. Robinson appealed this decision and the ruling was overturned by the appeals examiner.

The appeals examiner's decision was not based on the voluntary leaving portion of the disqualification section of Code §60.1-58(a) but was based on the misconduct portion of subsection (b). His conclusion was that the testimony and evidence did not show that the claimant was discharged for misconduct and he reversed the deputy commissioner's decision on that basis.

Linda Downey, personnel officer for the bank, testified that she had originally hired Robinson approximately four years earlier. She said that Robinson came to her in September of 1983 and said she wanted a transfer. She warned Robinson at that time that if she requested a transfer she would have to interview for another position and there was no guarantee that Robinson would

find another job within the bank. Downey informed Robinson that "this department will pay you for one month while you try and locate another job within U.V.B."

Barry Shenton, Vice President and Manager of the Treasury Department, testified that when Robinson came to him and requested a transfer in October of 1983, he explained to her what her options, rights and responsibilities were under bank policy. He followed up the conversation with a memo outlining the process that Robinson should follow to effect a transfer and she acknowledged receipt of this document. He informed Robinson that she was asking to be released from her current job to look for other jobs that might not be available and that there was no guarantee of another job within the bank. After he explained the various options to Robinson, she chose to proceed with the transfer procedure. In discussions with her, he pointed out that if the transfer process was not successful, the end result would be that she would leave the bank at some later date.

Robinson admitted that Barry Shenton had gone over the memo with her. She testified that at the time she first requested a transfer, her department had just changed to a new system and she was asked to remain in her position until everything calmed down. However, she felt that "things just still were not going right" and she again requested a transfer. She denied that anyone ever explained to her that she would be terminated if she did not find another job within the bank during the thirty day period the bank agreed to pay her while she looked for another job. She also denied that Linda Downey ever informed her of alternative ways of

finding another job within the bank without losing her present position. She acknowledged that she had been told that she would be paid for thirty days upon her return from sick leave and that this was to enable her to find another job within the bank. She testified that she was told by one supervisor that she could either go out for the operation on her feet and lose her position in the wire transfer department or not go out for the operation. The special examiner noted that this was new testimony that did not appear anywhere in the record, but Robinson insisted that she had testified about this ultimatum during the entire compensation hearing process.

An important part of the fact finder's responsibility is to weigh the testimony and make factual findings based upon all of the evidence. This requires weighing the credibility of the witnesses. The scope of jurisdiction, both at the circuit court level and at this level of appeal, is restricted to questions of law. The General Assembly has determined that so long as the factual findings of the Commission are supported by evidence, those findings are conclusive. While there was a wide variance between the bank's evidence concerning information and options which were explained to Robinson and her testimony that she received no information, the special examiner resolved the apparent conflicts in the bank's favor. We cannot say that the factual determination was without evidence to support it. While we agree that the purpose of the Virginia Unemployment Compensation Act is remedial in nature and must be liberally construed, Ford Motor Co. v. Unemployment Compensation

Commission, 191 Va. 812, 823-24, 63 S.E.2d 28, 33 (1951), we also note that "[t]he [Act] was intended to provide temporary financial assistance to workmen who become unemployed without fault on their part." Id., Id. at 469, 63 S.E.2d at 33-34. The special examiner found that Robinson had been told that she could keep her job if she pursued a new position through job posting and was warned of the possible pitfalls of demanding a transfer instead. Yet, she elected to pursue the transfer option and we believe these facts support a conclusion that she voluntarily left her job without good cause. Robinson "voluntarily" left her position in the wire transfer department in mere anticipation of securing another position within the bank. She interviewed for four positions but was not picked for any of these.

Therefore, we affirm the ruling of the circuit court that Robinson was not entitled to unemployment compensation.

AFFIRMED