

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

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Decision No.: 5631-C

SUITABLE WORK: 330.1
Genuineness

Date: May 22, 1972

This is a matter before the Commission on appeal by the employer from the decision of the Examiner (No. UI-72-261) dated March 7, 1972.

ISSUE

Did the claimant fail without good cause to apply for available, suitable work when so directed?

FINDINGS OF FACT

The employer appealed from that portion of the decision of the Appeals Examiner which held that the claimant was not disqualified for having failed, without good cause, to apply for suitable work.

Celanese Fibers Company, Narrows, Virginia, was the claimant's last employer where she worked from April 30, 1967, through January 12, 1972. She was employed as a beamer in the beaming department at a base rate of \$2.00 per hour, working production, and which were rotating or swing shifts. The claimant in this employment was represented by the Textile Workers Union of America, AFL-CIO-CLC, which had a contract with the employer. Under this contract seniority is developed on a departmental basis for the purpose of determining who might be furloughed from their job or the order in which they would be recalled to work. For other purposes seniority is on a plant wide basis. The contract further provides that an employee may be transferred from one department to another by the employer, and under such circumstances they maintain and accumulate additional seniority in the department from which they were transferred. On the other hand, if the transfer is at the request of the employee, the seniority in the department from which they transfer remains the same, but there is no further accumulation. They, then, accumulate the seniority in the new department.

On November 5, 1971, the claimant was transferred from the beaming department to the twisting department at the request of the employer. In this employment, she was paid the same rate of pay and worked the same hours. On January 13, 1972, the claimant was furloughed from her

position in the beaming department. The employer then posted a list of job openings in the twisting department and the claimant, according to the contract between her union and the company, had the right to bid on a job in the twisting department. She elected not to do so, however, but instead accepted the furlough. The claimant gave as her reason that it was well known in the plant that the twisting department was to be phased out of existence no later than December 1972. Had she bid on the job in the twisting department and been accepted, she would have accumulated no additional seniority in the beaming department. Being a new employee in the twisting department, without seniority, she would have been one of the first to be laid off when the actual phasing out of the operation occurred. Since she would accumulate no seniority in the beaming department, others on furlough from this department would pass her in seniority. Therefore, in order to maintain her job security she accepted the furlough from the beaming department.

OPINION

Section 60.1-58 (c) of the Code of Virginia, as amended, provides that an individual shall be disqualified for benefits if it is determined by the Commission that such individual has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the Commission or to accept suitable work when offered him.

In this case, the claimant was not directed by the employment office or the Commission to the job in twisting; therefore, there is no basis for disqualification under that portion of the statute. The real question before the Commission is, did the claimant refuse to accept suitable work when offered her. The Commission must, therefore, determine if the job in twisting was offered the claimant within the meaning of the Act.

The employer was required by the contract to post notices of vacancies to be filled, so that interested employees could bid on them. There is no evidence before the Commission to show that the claimant would have been given a position in the twisting department, or where she stood on the seniority list in that department. Therefore, it cannot be said that a bona fide offer of employment in the twisting department was made to the claimant. The Commission, therefore, is of the opinion that the claimant did not fail to accept suitable work when so offered. (Under-scoring supplied.)

DECISION

The decision of the Appeals Examiner is affirmed.