

DECISION OF COMMISSION

In the Matter of

John D. Grantham
[REDACTED]

Mounds View ISD #621
St. Paul, Minnesota
(Last 30-Day Employing Unit)

Asphalt Driveway Company
St. Paul, Minnesota
(Subsequent Employing Unit)

INTERSTATE

Date of Appeal

To Commission: September 20, 1984

Date of Review:

October 29, 1984

Place: RICHMOND, VIRGINIA

Decision No.:

24159-C

Date of Decision:

October 29, 1984

Date of Mailing:

October 31, 1984

Final Date to File Appeal

with Circuit Court: November 20, 1984

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This is a matter before the Commission on appeal by the claimant from the decision of the Appeals Examiner (No. UI-84-6778), mailed September 14, 1984.

ISSUE

Did the claimant leave work voluntarily without good cause as provided in Section 60.1-58(a) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The claimant had filed an additional claim for unemployment compensation, effective June 24, 1984, giving Asphalt Driveway Company of St. Paul, Minnesota as his most recent employing unit. The claimant worked for Asphalt Driveway Company from May 30, 1984 through June 16, 1984, for a period of time less than thirty working days as a driveway estimator and salesman. He was being paid a \$200 per week salary during his three-week training program. The employer had advised the claimant that he would go on a straight commission basis sometime following his training period but that he would not be expected to continue drawing a training salary after his initial three-week period. The rate of the commission was not specified.

After the claimant had worked approximately 2½ weeks and had only made three sales, he determined that he would be unsuccessful in meeting his employer's expectations. The sales manager had told the salesmen repeatedly that they would be expected to make two sales a day after their training period was over. The claimant assumed that based on his performance in his training, he would be unable to meet the employer's expectations and would ultimately be terminated. He elected to resign rather than have a discharge on his record.

At the time of the claimant's leaving, the employer had not advised him that he was going to be terminated due to low sales performance.

OPINION

Section 60.1-58(a) of the Virginia Unemployment Compensation Act provides in pertinent part:

"An individual shall be disqualified for benefits upon separation from the last employing unit for whom he has worked thirty days or from any subsequent employing unit:
(a) For any week benefits are claimed until he has performed services for an employer during thirty days, whether or not such days are consecutive, and subsequently becomes totally or partially separated from such employment, if the Commission finds such individual is unemployed because he left work voluntarily without good cause."

In Commission Decision 3251-C (1958), the Commission held that when an individual leaves in anticipation of a discharge at a future date, his leaving is nonetheless voluntary. The Commission stated:

"Cases where an individual leaves his work in anticipation of being discharged at some future date are not new to this Commission. In such cases the holdings have established the principle that an anticipated discharge is not a discharge in fact, and if the claimant elects to leave before the discharge actually occurs he does so voluntarily. The threat of discharge is sometimes used to warn or exhort an employee, but the threat is not tantamount to actual discharge."

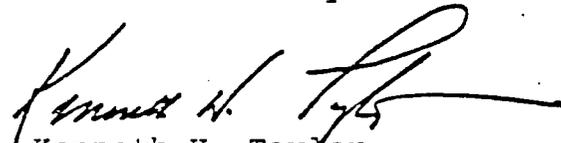
While the claimant may have been acting in anticipation of a termination, he had not been advised by his employer that he was being terminated, nor was he given any specific last day of work. According, it is the opinion of the Commission that the claimant left work voluntarily.

The final issue remains as to whether the claimant's leaving was with good cause. His primary objection to the work was that he was unable to do it; there was no evidence that the employer had reduced his \$200 per week salary at the time of his leaving. While

the claimant's anticipation of poor sales in the future is understandable, had he continued in this work and attempted to perform the sales after completing his training, he may have satisfied or even surpassed his employer's expectations. By relinquishing his employment at the end of his training period, the claimant foreclosed the possibility of success in this employment. Had he continued, albeit on a commission basis, and then been unsuccessful in his attempts to make sales, his leaving might have been under more compelling and necessitous circumstances. By resigning at the end of his training program, however, in anticipation of failure, the claimant left voluntarily but without good cause as that term is used in the Act. (Underscoring supplied)

DECISION

The decision of the Appeals Examiner is hereby affirmed.


Kenneth H. Taylor
Special Examiner