

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

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Decision No.: 6640-C

Date: March 24, 1975

VOLUNTARY LEAVING: 135.4  
Discharge or leaving -  
Resignation intended.

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This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UI-75-107), dated February 2, 1975.

ISSUE

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

FINDINGS OF FACT AND OPINION

The findings of fact of the Appeals Examiner are adopted by the Commission. Additionally, the claimant has testified that the employer had a discussion with her at the time that she submitted her letter of resignation. The employer advised her that she would welcome the claimant to stay if she wanted to, but that if she didn't she was to leave that day.

Section 60.1-58 (a) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that a claimant leaves work voluntarily without good cause.

In Theresa Jean Sager v. Bethel Manor Dairy Queen, Commission Decision No. 5858-C (January 23, 1973), aff'd sub nom, Bethel Manor Dairy Queen v. Virginia Employment Commission, et al, Circuit Court of York County (October 9, 1973), it was held that where a claimant told her employer that she was looking elsewhere for a job and the employer terminated her employment that day that there was no voluntary leaving in view of the fact that the employer terminated the employment.

In the present case, the claimant did tender a letter of resignation, such resignation to be effective over thirty days later. Although no letter of resignation was given in Bethel Manor, supra, the facts are somewhat similar. The employer then told the claimant that she could continue to work and she would ignore the resignation or she would have to leave that day. Therefore, it is apparent that the employer terminated the employment relationship.

Although a letter of resignation was submitted by the claimant, it had an effective date of September 30, 1974. This notice of resignation was courtesy to the employer which would give the employer ample opportunity to look around for a replacement for the claimant. By the same token, it would allow the claimant to search for other work prior to the actual termination of her employment. Had her employment continued until September 30, 1974, and then terminated without the claimant having obtained other employment, then the issue of voluntary quit would have arisen. However, the employer terminated the claimant August 26, 1974, and therefore, at most there was only speculation as to the issue of voluntary quit.

Since it was the employer rather than the claimant who terminated the claimant's employment the Commission must conclude that the leaving was not voluntary. Accordingly, no disqualification can be imposed under Section 60.1-58 (a).

### DECISION

The decision of the Appeals Examiner is reversed. The deputy is directed to examine the claimant's eligibility for the weeks benefits are claimed.