



DECISION OF COMMISSION

In the Matter of

Walter I. Hylton, Claimant  
[REDACTED]

Frith Construction Company  
Martinsville, VA 24112

Date of Appeal

To Commission: September 21, 1979

Date of Review: January 25, 1980

Decision No.: 12846-C

Date of Decision: January 28, 1980

Place: Richmond, Virginia

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This matter comes before the Commission on appeal by the employer from the decision of the Appeals Examiner (UI-79-6550), dated September 11, 1979.

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 AND OPINION

Frith Constuction Company of Martinsville, Virginia was the claimant's last employer where he had worked from January 28, 1977 through December 29, 1978 as a laborer. At the time of his separation, the claimant was working approximately forty-five hours per week.

The claimant lives in Meadows of Dan, Virginia, a distance of approximately fifty miles from the job site in Martinsville. During the winter of 1978 the claimant requested a leave of absence without pay because of the difficulty driving to and from work due to the adverse weather conditions and because of the reduced hours of work because of the winter weather. The claimant testified that up until the last two weeks of his employment in 1978 he was working forty-five hours per week and that work was available at the time he left. He testified that on some weeks he only worked two or three days because of

adverse weather conditions. He asked permission for a leave of absence during the winter of 1979 with the understanding that he would return to work during the spring after the weather improved. The employer kept the claimant's insurance policy in effect and expected the claimant to return in April of 1979. The claimant did not return to work in April of 1979 but obtained a job closer to his home in June of 1979. That job lasted less than thirty days and he reopened his claim on August 13, 1979. The claimant testified at the hearing before the Appeals Examiner that he did not look for work subsequent to being laid off in July of 1979 because he was too far removed from any available work.

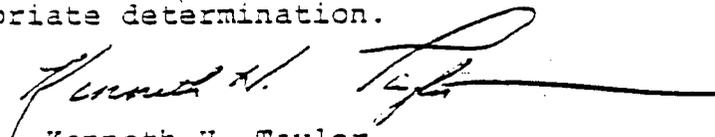
Section 60.1-58 (a) of the Code of Virginia provides a disqualification if it is found that an individual has left work voluntarily without good cause. Although the claimant's hours of work may have been reduced somewhat due to adverse weather conditions in December of 1978 it is clear that he was not laid off by the employer but that he voluntarily left available, suitable work. In determining suitability of work the Act makes no distinction between part-time and full-time work, the only requirement of the law being that the work offered be suitable. This work was suitable as it was the same work the claimant had been performing since January of 1977 and involving the same rate of pay. While it is unfortunate that the commuting distance to the job was an obstacle for the claimant to overcome during the winter months, he agreed to the distance to work as a condition of the employment by continuing in it for so long a period of time. It is also apparent that the claimant has, effectively, removed himself from the labor market area where he could reasonably expect to locate suitable employment. He also testified that he was not seeking employment when he reopened his claim in August of 1979 because no work was available in the vicinity of his residence. (Underscoring supplied)

In view of the foregoing it is the opinion of the Commission that the claimant voluntarily left available, suitable work without good cause as that term is used in the Act.

DECISION

The decision of the Appeals Examiner is hereby reversed. It is held that the claimant is disqualified for benefits effective January 7, 1979 for any week benefits are claimed until he has performed services for an employer during thirty days whether or not such days are consecutive because he left work voluntarily without good cause.

The local office Deputy is directed to investigate the claim and determine the amount of benefits overpaid as a result of this decision and render an appropriate determination.

  
 Kenneth H. Taylor  
 Special Examiner