



DECISION OF COMMISSION

In the Matter of

Glenn Lester, Jr., Claimant
[REDACTED]

White Front Automotive Parts
Company
Richlands, Virginia

Date of Appeal

To Commission: March 5, 1985

Date of Review: April 12, 1985

Place: RICHMOND, VIRGINIA

Decision No.: 24865-C

Date of Decision: April 12, 1985

Date of Mailing: April 19, 1985

Final Date to File Appeal

with Circuit Court: May 9, 1985

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This is a matter before the Commission on appeal by the claimant from the Decision of Appeals Examiner (No. UI-85-335), mailed February 14, 1985.

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 appealed from an Appeals Examiner's decision which disqualified him for benefits effective November 18, 1984 for having left work voluntarily without good cause.

White Front Automotive Parts Company was the claimant's last employer where he had worked as a counter salesman from September 10, 1979 through November 2, 1984.

In early 1983, the claimant was laid off due to lack of work. He was recalled in June, 1983. At that time, he was assigned to work

from 8:00 a.m. through 5:00 p.m. during one week and 9:00 a.m. through 6:00 p.m. the next week and to work from 8:00 a.m. through 1:00 p.m. every Saturday.

In May, 1984, the claimant joined the Seventh-day Adventist Church, which observes the period from sundown on Friday through sundown on Saturday as its Sabbath. Church doctrine forbids working during these hours. The claimant advised his employer that he no longer would be able to work Saturdays and that he must leave work at sundown on Friday. He was told that efforts would be made to accommodate this requirement. At that time, there was no problem with the claimant working through 6:00 p.m. on Fridays because daylight-saving time was in effect. The employer excused him from Saturday duty which required some adjustment in the schedules of work for his co-workers. The claimant believed this caused some tension between him and those affected. On one occasion, the manager asked the claimant if he would work in his place on two Saturdays so that the manager could take his vacation. When he explained that he could not do so because of his religious convictions, the manager appeared to be upset and told the claimant that he was, in effect, preventing the manager from taking his vacation. The manager did take his vacation, however, after assigning the work to another employee.

In September, 1984, the manager scheduled employees, including the claimant, to conduct an inventory on one weekend. The claimant contacted the regional manager about the situation and was told that he could be absent during the hours that he could not work. The claimant left at the usual time on Friday evening of the inventory weekend. When he returned to work on Saturday evening, he was told that the inventory was nearing completion and he was not needed. The claimant noted that some of the other employees were still working on Sunday.

In October, 1984, the claimant realized that daylight-saving time would end on Tuesday, October 30, 1984, which meant that sundown would occur prior to the end of his 6:00 p.m. shift on Friday, November 2, 1984. On October 19, 1984, the claimant entered the store manager's office and handed him a letter of resignation which reads as follows:

"This is to inform you of my resignation effective November 2, 1984. Due to my religious convictions, I will no longer be able to work after 5:00 p.m. on Friday evenings. I feel this is going to cause further conflict - as I am unable to work Saturday shifts already. Rather than cause inconvenience to the other employees, I feel it would be easier if you could replace me.

I would like you to check on the one weeks' vacation pay that is rightfully mine. I will need this money to help until I can find another position.

Thank you for your kind attention to this matter."

After the manager had read the letter, the claimant indicated to him that he would like to stay if the matter could be resolved in some way. The manager stated:, "I hate to see you go." The claimant continued working until November 2, 1984 and then left his employment.

OPINION

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

The Commission has consistently held that where work is not suited to a particular worker, he would have good cause in leaving it. In determining whether any work is suitable for an individual, the statute directs the Commission to consider, among other things, the degree of risk to his morals. While the test of an individual's morals is, at best, subjective, these morals clearly are dependent upon one's conscientious beliefs. The precepts of a religion in which one believes are an integral and essential part of one's morals. The first moral obligation of a person is to remain true to his religious conviction and to conform to what he believes to be his sense of duty. Where one has been schooled to believe in and practice attendance of a faith which compel him to refrain from working during certain hours, it would offend his moral conscience to require him to do so.

If the employer in this case had compelled the claimant to work during hours which conflicted with his religious belief, he would have had good cause in leaving. But, that is not what happened in this case. The claimant argued at the Appeals Examiner's hearing that he had good cause to resign because he would have been dismissed by the employer if he had continued working but left at 5:00 p.m. on Fridays due to his religious convictions. This argument is not consistent with his past experience wherein the employer had always acquiesced to his requirement not to work between the hours of sundown on Friday and sundown on Saturday. Although the claimant may have had reason to believe that the employer would be reluctant to permit his leaving of work at 5:00 p.m. on Fridays, this did not compel his resignation without first alerting the employer to the impending problem and giving him the opportunity to make the decision. (Underscoring supplied)

In his letter of appeal, the claimant argues that:

"The issue at hand is whether I was faced with the insoluble problem of working or observing my religious convictions, not whether it was my duty to inform my employer of the impending time change."

It is difficult to see why the claimant believed the problem could not be solved because, as stated above, the employer had always acquiesced to his requirement in the past.

The claimant also stated in his appeal letter that he never would have left his job if he thought a schedule could have been worked out so that he could continue working. In this regard, it would seem that the claimant should have presented the problem to the employer for resolution rather than act on what he thought could or could not be done.

While the claimant did, after submitting his resignation, indicate to the employer that he would like to stay if the upcoming problem of his working hours could be resolved, he should not have been suprised when his resignation was accepted. As indicated by the Appeals Examiner in his decision, the resignation permitted the employer to avoid the necessity for further schedule changes.

The Commission has repeatedly held that an individual who becomes dissatisfied with his work should take those steps which a reasonable person, desirous of retaining his employment, would take in order to resolve any differences, dissatisfactions or disagreements with the employer prior to leaving. (Ellen Cobbs v. Luv-N Oven, Commission Decision No. 12784-C, dated December 7, 1979). This claimant's resignation without first giving the employer the opportunity to resolve the upcoming problem with regard to his hours of work shows that he left work voluntarily and without good cause. (Underscoring supplied)

DECISION

The Decision of Appeals Examiner disqualifying the claimant for benefits effective November 18, 1984 for having left work voluntarily without good cause is hereby affirmed and remains in effect for any week benefits are claimed until he has performed services for an employer during thirty days, whether or not such days are consecutive.


Gene Pitts
Special Examiner