COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

VOLUNTARY LEAVING: 155.2
Home or Spouse in Another Locality.

DECISION OF COMMISSION

In the Matter of

Faye M. Brock
S. S. No. [redacted]
v.
USAFACEUR

&

Jayne B. Gibson
S. S. No. [redacted]
v.
United States Army

Date of Appeal To Commission: November 2, 1984

Date of Hearing: February 1, 1985

Place: RICHMOND, VIRGINIA

Decision No.: UCFE-998 & UCFE-1013

Date of Decision: February 21, 1985

Date of Mailing: February 22, 1985

Final Date to File Appeal with Circuit Court: March 14, 1985

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This is a matter before the Commission on appeal by the claimants from the Decisions of Appeals Examiner (No. UCFE-84-347 and No. UCFE-84-427), mailed October 17, 1984 and October 30, 1984, respectively.

APPEARANCES

Attorney for Claimants

ISSUE

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

FINDINGS OF FACT

These cases were consolidated by the Commission on its own motion with the concurrence of counsel. Faye M. Brock was last employed by the United States Military Community Activity Food Service Section in Germany from March 1983 through July 26, 1984. She worked as a kitchen helper earning $6.52 per hour. The claimant's husband is in the United States Army and was transferred to Germany in September 1981. The claimant followed him to Germany in October 1981 and worked first as a

sales clerk for the Army and Air Force Exchange. In June 1984, the claimant's husband received orders transferring him to Fort Hamilton, New York. He extended his tour of duty for thirty days and the claimant left with him on August 4, 1984. She was told by her employer that she had to leave after the thirty-day extension, and she could only work on the job if she was a member of a military family and her husband was still in the country.

Jayne B. Gibson worked at the dining facility on a United States Army military base in Germany from June 21, 1982 through August 3, 1984. She was employed as a food service worker earning $6.62 per hour. Gibson's husband, who is also in the United States Army, received orders to report to Fort Campbell, Kentucky. He attempted to extend his tour in Germany for one year, but was only successful in extending it for thirty days. She worked during this thirty-day period of extension. When Gibson's military husband, who served as her sponsor was transferred, she could no longer work on the military base pursuant to the dependent sponsor program.

Both of these claimants (Brock and Gibson) were hired pursuant to the Department of Defense's Dependent Hire Program.

OPINION

Section 60.1-58(a) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that an individual has left work voluntarily without good cause. Effective July 1, 1979, this section of the statute was amended to provide:

> "As used in this chapter, the term 'good cause' shall not include . . . . (ii) the voluntary leaving of work with an employer to accompany or to join his or her spouse in a new locality."

These cases afford the Commission an opportunity to re-examine and elaborate on the rule of law established in the matter of Martha F. Nash v. Department of Defense, Commission Decision No. UCFE-527, (January 30, 1980). Nash could not retain her employment unless she had Department of Defense sponsorship. She did not have such sponsorship and as a result left her employment to accompany her husband back to the United States. The underlying rationale in Nash was that the fundamental or primary reason for Nash's leaving was to accompany her spouse. Thus, the Commission held that:

> "When continuing employment is contingent upon the location of the spouses' (sic) residence, and his or her residence changes resulting in the claimant's unemployment, such a separation shall be deemed a voluntary leaving."

Implicit in the Nash rule is the presumption that a claimant has the option to retain his residence and his employment but chooses not to exercise it. This presumption is apparent because the Commission had long ago ceased to apply the constructive quit theory. In the case of Frank D. Clauden v. Daystrom Furniture, Inc., Commission Decision No. 6658-C, (March 27, 1975), the Commission stated the following:

> "It might be argued that there would be a legal fiction of constructive voluntary leaving brought into play as a result of the claimant's voluntary commission of a crime. While this view has generally been acceptable in the past, it does not seem like a plausible interpretation of the legislative intent as reflected in the Virginia Unemployment Compensation Act."

In the case of William Henry Branch, Sr. v. Brown & Williamson Tobacco Corporation, Commission Decision No. 6971-C, (July 29, 1975), the Commission had this to say:

> "Only through the legal fiction of constructive voluntary leaving can it be said that the claimant in the present case left his work voluntarily. That fiction states that where one commits an act voluntarily which ultimately leads to incarceration, then it is tantamount to voluntarily leaving his employment. In the opinion of the Commission that legal fiction is not a plausible interpretation of the legislative intent in enacting Section 60.1-58(a) of the Virginia Unemployment Compensation Act."

The Commission has continued to renounce the constructive quit theory and examine the actual or proximate cause for a claimant's separation. Under certain conditions, claimants may exercise an option to volunteer to accept a layoff and not be deemed to have voluntarily quit but laid off due to lack of work. See Vernel Gannaway, Jr. v. Brown & Williamson Tobacco Corp., Commission Decision No. 22411-C, (November 16, 1983). In the matter of Joel D. Goodwin v. Department of the Navy, Commission Decision No. UCFE-776, (February 10, 1983), the Commission again rejected the constructive quit theory when a claimant was required to leave his job because his father, who was his sponsor, left the country and the son's employment was thereby terminated. It is, therefore, abundantly clear that the constructive quit theory has been put to rest by this Commission.

The cases before the Commission, however, have raised the issue of the possible application of the constructive quit theory in the rule of law established in Nash. The principles stated in the Nash rule were intended to apply only to cases where the claimant has willingly quit when a job which is contingent upon the location

of a spouse's residence ends because the claimant did not exercise the option of obtaining Department of Defense sponsorship and continuing in the available employment. Since the language "shall be deemed a voluntary leaving," as used in Nash, could be construed to be an application of the constructive quit theory and since this theory has been rejected by the Commission in a long line of cases, the Commission hereby expressly overrules the rule of law established in the matter of Martha F. Nash v. Department of Defense, Commission Decision No. UCFE-527, (January 30, 1980). Future cases should be decided in accordance with the opinion, infra.

In any case arising under the provisions of Section 60.1-58(a) of the Code, the Commission must first determine whether or not the claimant actually left work voluntarily. If the Commission concludes that the claimant's separation from work was voluntary, then the Commission must scrutinize the circumstances surrounding the claimant's leaving of work to determine whether or not it would constitute "good cause" within the meaning of the statute. (See Gannaway, supra.)

It is clear, when reviewing the language of Section 60.1-58(a) of the Code, that the Virginia General Assembly intended the disqualification to apply not solely for leaving work but for voluntarily leaving work. Leaving work, as used in this section, is characterized in each instance by the modifier, voluntarily. While this Commission has never intended to broaden the language of the statute beyond that expressly mandated by the Virginia General Assembly, it is clear that the legislature intended the disqualification to apply only to those individuals who voluntarily leave their work. Although the Virginia General Assembly has limited the definition of "good cause" as shown above, it has not seen fit to enact legislation defining the term "voluntarily." Guidance in defining this term can be found at 81 C.J.S. 445 where the following is stated:

> "The meaning of the word 'voluntarily' and other words of similar import as used in a provision prohibiting the payment of unemployment benefits to one who has left his employment voluntarily is to be determined in the light of the purpose and intent of the statute considered as a whole and with special reference to declarations of public policy and to sections describing the qualifications required to secure compensation and enumerating the causes which make an employee ineligible for compensation. Where the term 'leaving work voluntarily' is not defined in the statute, and in the absence of some imperative reasons for enlarging its meaning, the term should be construed as having its ordinary and commonly accepted meaning."
> (Underscoring Supplied)

The term "voluntarily" is defined as:

> "Done by design or intention, intentional, proposed, intended, or not accidental. Intentionally and without coercion." See BLACK'S LAW DICTIONARY, 1414 (5th ed. 1979).

When discussing the purpose of the Virginia Unemployment Compensation Act, the Virginia Supreme Court has stated that:

> "The primary purpose of the Act is to provide temporary financial assistance to workmen who become unemployed through no fault of their own." See Ford Motor Company v. Unemployment Compensation Commission, 191 Va. 812 (1951); Unemployment Compensation Commission v. Tomko, 192 Va. 463 (1951).

In view of the above, the Commission concludes that those individuals who do not intentionally relinquish their jobs and who become unemployed through no fault of their own cannot be said to have voluntarily left work within the meaning of that term as used in the Virginia Act. We will now examine these cases within the framework of the principles set forth above.

All work is performed pursuant to a contract of work, either written or oral, which includes, among other things, an understanding between the employer and the employee as to the terms and conditions each is expected to satisfy. When a claimant is unemployed as a result of a departure from the terms of the contract, the Commission examines the cause of the change, the nature of it, and the context in which it occurred to determine whether he is qualified for benefits. However, when a contract of employment expires and no new contract is offered, a claimant is unemployed because of a lack of work and is, therefore, not subject to disqualification on that basis. See Edward T. Bowles v. Cities Service Oil Company, Commission Decision No. 3764-C, (August 17, 1961).

The claimants, Brock and Gibson, moved to Europe with their spouses and accepted employment made available to them by virtue of their military dependency status. They were employed pursuant to the Dependent Hire Program of the Department of Defense (Family-Member Employment Policy). This status had, thus, become a term and condition of their employment. The United States government transferred their spouses, thereby, terminating their dependency status. The option to remain employed by operation of the military dependency program was thus removed. To conclude that these claimants knew at the time they accepted this employment that their dependency status would end upon the transfer of their spouses and result in the loss of their jobs and that such a separation was tantamount to a voluntary quit would be an application of the constructive quit theory that the Commission has

expressly rejected. Since the actions of the United States government in transferring the claimants' spouses cannot be imputed to the claimants and since there is no evidence of any willful act committed by these claimants which caused their separation, the only conclusion that can be reached is that their employment ended by operation of the contract of hire which is equivalent to lack of work. Accordingly, the Commission concludes that these claimants did not voluntarily leave their last employment, but were unemployed due to lack of work. (Underscoring supplied)

DECISION

The decisions of the Appeals Examiners are hereby reversed. It is held that, subject to compliance with the other eligibility provisions of the Code of Virginia, the claimants are qualified to receive benefits. The effective date of Brock's qualification is August 12, 1984. The effective date of Gibson's qualification is September 2, 1984.

Joseph L. Hayes
Special Assistant
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