

COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION

VOLUNTARY LEAVING: 235.  
Health or Physical  
Condition.



DECISION OF COMMISSION

In the Matter of

Frederick E. Terrell  
S. S. No. [REDACTED]

Mecklenburg Correctional Center  
Boydton, Virginia

INTERSTATE

Date of Appeal

To Commission: August 22, 1984

Date of Review: November 11, 1984

Place: RICHMOND, VIRGINIA

Decision No.: 24036-C

Date of Decision: November 21, 1984

Date of Mailing: November 21, 1984

Final Date to File Appeal  
with Circuit Court: December 11, 1984

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This is a matter before the Commission on appeal by the claimant from a decision of the Appeals Examiner (No. UI-84-5136) mailed August 10, 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

Commonwealth of Virginia was the claimant's last employer where he had worked as a correctional officer at the Mecklenburg Correctional Center from September 1, 1982 until February 15, 1984. At the time of his separation, the claimant was working the second shift, from 4:00 p.m. until midnight, and he was being paid an annual salary of \$12,100.

In December 1982, the claimant had been assaulted by three inmates in Building 5 where he was assigned at that time. He was reassigned to death row in Building 1 on the side where the Briley brothers were confined. These individuals were convicted murderers awaiting execution. The claimant was concerned that there were not enough guards nor was there enough protection for the guards at Mecklenburg. He testified that he tried to warn the administration regarding his fear of the lack

of security. He had applied for other jobs and had asked to work on a different shift which he felt would be less dangerous than the 4:00 p.m. to midnight shift when the inmates were out of their cells during a greater period of time.

The employer had refused his request to change shifts and he had been unable to find employment elsewhere.

The claimant had applied for work at the Lorton Federal Reformatory but he had not actually obtained the employment prior to resigning from his job due to his fear over the prison's lack of security.

Approximately three months after the claimant left, the Briley brothers led several other inmates in a successful escape from the Mecklenburg facility.

The claimant testified that he knew the work was dangerous when he was hired but he did not agree to work this dangerous when he was originally employed.

#### OPINION

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.

In 76 American Jurisprudence 2nd, Unemployment Compensation, Section 68, it is stated:

"While a claimant's honest fear of the work itself may constitute good cause for refusing proffered employment, neither a groundless, an unreasonable, a pathological, or a phantasmal fear, nor a fear due to hazards different or greater than those to which the employee was previously accustomed, even though he is oppressed by such fear or anxiety, answers the requirements of good cause." (Emphasis Added)

The question presented by this case is one of first impression in Virginia and is: Does the claimant have good cause to leave employment found by the Commission to be otherwise suitable on the sole ground that he honestly fears the hazards connected with that employment? For the reasons that follow, the Commission is of the opinion that he does not.

In Glen Alden Coal Company v. Unemployment Compensation Board of Review, 171 Pa. Super. 325, 90 A2d 331 (July 17, 1952), the claimant had refused an offer of work in the coal mine where he had previously worked as a loader and runner, loading coal cars outside the mine. His refusal was based on his perception that the work inside the mine was more dangerous than his work loading the coal cars. The Court pointed out, in ruling that he had not shown good

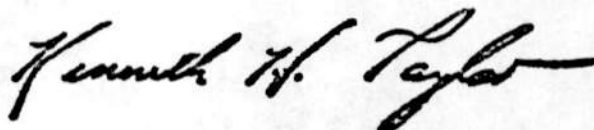
cause for the refusal of the work, that mere increase in the hazard in one's employment is not good cause for leaving work. The Court stated as follows:

"All occupations have their hazards, dangers and perils, differing in degree and kind. ... Life itself is a hazard. ... If fear is recognized as a good cause for refusal of employment, it will operate in respect to all occupations, since none is free from risk, and any perceptible increase of hazard may become the basis for a claim of fear. Drawing a fair and just line, with no arbitrary or artificial or unworkable ingredients, between differing degrees and kinds of hazards in variant fields of work would impose a staggering, if not an impossible task upon administrative and judicial authorities. ... Once fear, induced by an increased or a differing hazard is admitted, the Board, and this Court will be launched on an unknown sea without chart or compass." 90 A2d 334, 335. (Underscoring supplied)

The claimant in this case had accepted employment as a correctional officer at the Mecklenburg Correctional Center and he was aware of the hazards of that employment when he accepted it. While his fear of increased danger may have been well-founded in view of developments soon to follow after his leaving, it did not constitute good cause for leaving otherwise suitable employment. (Underscoring supplied)

#### DECISION

The decision of the Appeals Examiner, which disqualified the claimant for benefits for having left work voluntarily without good cause, is hereby affirmed.



Kenneth H. Taylor  
Special Examiner