

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of

Robert C. Moore, Claimant
[REDACTED]

Klate Holt Company
Langley AFB, Virginia

Date of Appeal

To Commission: August 22, 1983

Date of Hearing: January 24, 1984

Place: RICHMOND, VIRGINIA

Decision No.: 22777-C

Date of Decision: January 24, 1984

Date of Mailing: January 31, 1984

Final Date to File Appeal

with Circuit Court: February 20, 1984

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This matter comes before the Commission on appeal by the employer from the decision of the Appeals Examiner (UI-83-7598), mailed August 18, 1984.

APPEARANCES

Two Employer Representatives

ISSUES

Did the claimant register for work and continue to report at an employment office in accordance with such regulations as the Commission may prescribe as provided in Section 60.1-52 (e) of the Code of Virginia (1950), as amended?

Was the claimant a partially unemployed individual as provided in Regulation IX A 1 of the Rules and Regulations Affecting Unemployment Compensation?

Did the claimant follow the registration and filing requirements of the regulations for a partial claimant as provided in Regulation IX D of the Rules and Regulations Affecting Unemployment Compensation?

FINDINGS OF FACT

The claimant was hired by Klate Holt Company on June 25, 1979 in the employer's "relief category". The employer hires ten to fifteen of these part-time individuals to take the place of regular employees on vacation, sick leave, or absences due to other reasons. The claimant performed work as a driver, as a mail carrier and as a service station attendant for the employer which is a contractor with NASA at the Langley Air Force Base. When the claimant was hired, he, as the other relief workers, was told verbally that the employer could guarantee no regular days nor could the employer guarantee any minimum number of hours per week. The employer explained that the work is almost of a seasonal nature, with much more work being available in the summer months due to vacations. After the claimant was hired in 1979, the project manager wrote him a letter to confirm the employment relationship and the letter states:

"First, the circumstances of your employment should be explained. You have been hired as a Relief employee. As Relief, you will be trained primarily to fill vacancies caused by regular employees being sick, absent or on vacation. Although we try to use Relief employees as much as possible, there can be no assurance as to the number of hours you will work. You will accrue vacation and sick leave at the rate specified in the current Company Policy."

The claimant is one of the senior relief workers for the company and as such he has worked three or four days a week for the last year or so. He is paid \$6.23 per hour plus fringe benefits including pension, life insurance, health insurance, vacation pay, sick pay and disability insurance. These coverages do not lapse for the brief periods that the claimant has not had work to perform for this company.

The employer had no work for the claimant to perform during the claim week May 22 through May 28, 1983. On Friday of that week, the claimant reported to the local office of the Employment Commission in Newport News and advised that he was unemployed and wished to file a claim for benefits. The Claims Section had the claimant file a claim for partial benefits and furnished him a form VEC B-31, Statement of Partial Unemployment. He was told to have his employer fill it out and return it to the local office. The claimant took the form to a clerk at the Klate Holt Company who advised him that she would mail the form directly to the V.E.C. The company completed the form and mailed it to the V.E.C. on June 7, 1983. It indicated that for the claim week ending May 28, 1983, the claimant earned no wages. It also indicated that during the claim week ending June 4,

1983 the claimant earned no wages and performed no work. On the bottom of the Statement of Partial Unemployment, the employer wrote: "Employee not hired on a full-time basis".

The claim was not processed and when the claimant did not hear from the Commission, he reported to the local office on June 30, 1983 and was denied benefits by the Deputy and the Appeals Examiner on the grounds that he had not filed his claim in accordance with Commission regulations. The Deputy and the Appeals Examiner ruled that the claimant did not make a timely claim for benefits.

The employer appealed the favorable decision by the Appeals Examiner in order to clarify its position that, in their opinion, the claimant was not a full-time employee, so he could not ever be considered unemployed or partially unemployed because he could never perform less than full-time work. They maintained that since no guarantee was made as to the number of hours per week, the claimant cannot be considered unemployed or partially unemployed so as to be eligible for benefits.

OPINION

Section 60.1-52 (e) of the Code of Virginia provides that in order to be eligible for benefits, an individual must file a claim in accordance with Commission regulations. At the outset, it should be noted that during the claim week ending May 28, 1983, the claimant performed no work and no wages were payable to him. Under these circumstances, the claimant was not a partially unemployed but a totally unemployed individual. Therefore, the local office should have taken a total separation claim rather than a partial claim. Notwithstanding this error, the Commission notes that the claimant did provide the Statement of Partial Unemployment to the employer, who did not return it to the claimant as required by law but mailed it directly to the Employment Commission. This oversight should not result in prejudice to the claimant's claim for benefits. It is apparent that the claimant had done all he could do and relied upon his employer's representation that the Statement of Partial Unemployment would be furnished to the Commission.

Perhaps of greater significance is the employer's argument that a part-time individual such as the claimant can never be considered unemployed or partially unemployed since he was not guaranteed a minimum number of hours of work. The logic of this position was expressed in a case styled Washington Gas Light Company, Commission Decision 5672-C (June 2, 1972). In that case, the claimant was hired as a part-time employee of the Washington Gas Light Company on an as needed basis to work indefinite days and hours. The claimant was fully aware of this at the time of hire and she was guaranteed no specific minimum number of hours. Generally, the

claimant worked twenty to twenty-five hours and she filed a claim for unemployment compensation when her hours had been cut back drastically. The employer had made the argument that since the claimant never performed full-time work, she could never perform less than full-time work so as to be considered partially unemployed. The Commission adopted this argument and ruled that the claimant never worked "full-time hours" but only more part-time hours than she is presently working. The Commission went on to state that this situation did not constitute partial unemployment. The claimant was then denied benefits on the basis that she was not unemployed.

Subsequent to that decision, the Washington Gas Light case has been specifically overruled by the Commission and removed from the Precedent Decision Manual. This is borne out by the definition of a partially unemployed individual which appears in Regulation IX A 1:

"A partially unemployed individual is one who, during a particular week (1) had earnings, but less than his weekly benefit amount (2) was employed by a regular employer and (3) worked less than his normal customary full-time hours for such regular employer because of lack of full-time work."

The above definition by regulation expanded the definition of full-time work contained in Section 60.1-23 of the Code to include the normal customary full-time hours for that particular claimant. The rationale for this definition is that it may be possible by course of dealings over a period of time for the employer and the employee to establish full-time hours for that individual. In the case at hand, the employer readily concedes that the claimant had worked three or four days a week for at least a year prior to his unemployment and his filing of a claim for benefits. Accordingly, either three days a week or four days a week would be this claimant's normal customary full-time hours. Certainly, for the claimant to work less than three days a week would render him a partially unemployed individual. It is concluded, therefore, that the claimant was unemployed during the weeks claimed. It is also apparent that he was totally unemployed during those weeks as he performed no services and with respect to which weeks no wages wer payable.

Since the claim was processed as a partial claim, it is to be remanded to the Claims Deputy to be processed as a total unemployment claim and the Deputy is to investigate the reasons for separation preceeding the unemployment effective May 22, 1983 and render an appropriate determination. It is also the opinion of the Commission that the Deputy may not rule that the claimant was not unemployed during the two week period May 22 through June 4, 1983 as this issue has been specifically addressed in this opinion.

DECISION

The decision of the Appeals Examiner is hereby reversed.

The matter is remanded to the Claims Deputy to be processed as a claim resulting from the total unemployment of the claimant effective May 22, 1983. The Deputy is to render an appropriate determination with respect to the claimant's separation from his employment effective May 22, 1983 and for any week benefits were claimed subsequent to that day.



Kenneth H. Taylor
Special Examiner