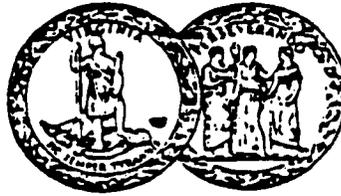


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Sylvia E. Wininsky
[REDACTED]

Fauquier County School Board
Warrenton, Virginia

Date of Appeal

to Commission: September 19, 1991

Date of Hearing: November 22, 1991

Place: RICHMOND, VIRGINIA

Decision No.: 36673-C

Date of Mailing: December 2, 1991

Final Date to File Appeal

with Circuit Court: December 22, 1991

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This case is before the Commission on appeal by the claimant from Appeals Examiner's decision UI-9112763, mailed September 19, 1991.

APPEARANCES

None

ISSUE

Did the claimant leave work voluntarily without good cause as provided in Section 60.2-618.1 of the Code of Virginia (1950), as amended?

Was the claimant discharged from employment due to misconduct connected with work as provided in Section 60.2-618.2 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The claimant filed a timely appeal from the Appeals Examiner's decision which affirmed an earlier Deputy's determination and disqualified her for unemployment compensation, effective July 21, 1991, for having left work voluntarily without good cause.

Prior to filing her claim, the claimant last worked for the Fauquier County School Board of Warrenton, Virginia, between August 27, 1990 and June 12, 1991. Her position was that of an elementary art teacher.

The claimant's duties were split between the Northwestern Elementary School in Marshall, Virginia, and the Pierce Elementary School in Remington, Virginia. The principal of the former institution was satisfied with the claimant's performance; however, the principal of the latter was not. She felt that the claimant was ineffective as a teacher because she had unsatisfactory classroom management skills. On March 18, 1991, the claimant was handed a letter from the school superintendent informing her of his intention not to recommend that her contract be renewed for the upcoming 1991-92 school year. Enclosed was a copy of Section 22.1-305 of the Code of Virginia which provides that any non-tenured teacher whose contract has been recommended for non-renewal has a limited time to demand specific documentation and have a conference with the division superintendent or his designee. Within ten days after the conference is held, the division superintendent must notify the teacher in writing as to whether the original recommendation will be renewed. If it is, the local school board must affirm it within 30 days.

The claimant discussed the possibility of requesting a conference with a number of individuals, including the Director of the Mountain View Uniserv, a division of the Virginia Education Association. This individual told the claimant that she did not feel it would do her any good to request a conference with the superintendent. The claimant then chose not to request the conference; rather, she submitted a letter of resignation instead, indicating that she would be moving out-of-state at the end of the school year. She did not have another job to go to at that time.

OPINION

Section 60.2-618.1 of the Code of Virginia provides a disqualification if it is found that a claimant left work voluntarily without good cause.

Section 60.2-618.2 of the Code of Virginia provides a disqualification if it is found that a claimant was discharged from employment due to misconduct in connection with work.

Although the claimant has strenuously argued that she resigned only to avoid having the stigma of a discharge on her record, the Commission must disagree based upon a prior holding in the case of Garner v. Accomac County School Board, Commission Decision 30974-C (December 2, 1988). There, the claimant was a non-tenured teacher who was notified by his principal that the recommendation

was being made that his contract not be renewed for the upcoming school year. Unlike the situation in this case, there is no evidence that the claimant in Garner was aware that he had any recourse except to go before the school board to protest the intended action. He submitted his resignation after his principal told him that the school board had never gone against any of his recommendations of non-renewal and that, if the claimant would resign, he would get a favorable letter of recommendation. The Commission held that this attempt on the part of the claimant's supervisor to influence his decision meant that his ultimate separation was not voluntary at all.

The situation in this case differs from that in Garner in that there is no evidence that the employer attempted to influence the claimant's decision to submit her resignation. Instead, she was specifically informed of her legal right to request a conference so that the recommendation could be reconsidered, and there is no evidence that the promise of a good recommendation in return for her resignation was being dangled before her. The fact that she was told that such conferences were not known to result in a reversal of the recommendation makes no difference, since the Uniserv director was not an employer representative in the chain of command above her. Because of this, the Commission agrees with the Appeals Examiner that the claimant's separation was a voluntary one so as to place the burden upon her to show good cause if she is to avoid a disqualification under this section of the Code.

In the case of Lee v. Virginia Employment Commission, 1 Va. App. 82, 335 S.E.2d 104 (1985), the Virginia Court of Appeals affirmed the following standard for establishing good cause for voluntarily leaving work:

The Commission has adopted and held firmly to the premise that an employee, who for some reason, becomes dissatisfied with his work, must first pursue every available avenue open to him whereby he might alleviate or correct the condition of which he complains before relinquishing his employment. . . . He must take those steps that could be reasonably expected of a person desirous of retaining his employment before hazarding the risks of unemployment.

The claimant in Lee was a government employee who had previously filed a grievance to protest his lack of advancement in his position. As a settlement, the employer set up an individual development plan for the claimant which provided him with both short and long-term career goals. Later on, due to budget constraints, the agency was unable to implement the agreement and

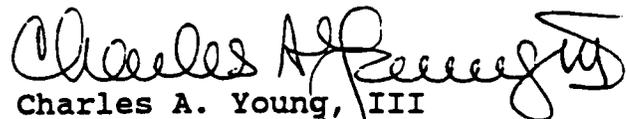
the claimant was transferred into a job from which there was no known promotion potential. Rather than file a second grievance to get the plan enforced, he chose to resign his job instead. The Virginia Court of Appeals found that this constituted a voluntary leaving of work without good cause.

This claimant was placed in an analogous situation. After being told that the superintendent would recommend that her contract not be renewed for the upcoming school year, she was specifically informed of a grievance procedure which was available to her, yet she freely chose not to utilize it and resigned instead. She would have lost nothing by pursuing a grievance because, under the law, the division superintendent would have to have given her a new recommendation. Even if it were the same one, she still had the time to resign before being terminated by the school board 30 days later. The Commission must conclude that this claimant did leave her work voluntarily without good cause; therefore, she should remain disqualified for benefits under this section of the Code.

DECISION

The Decision of Appeals Examiner is hereby affirmed.

The claimant is disqualified for unemployment compensation effective July 21, 1991, for any week or weeks benefits are claimed until she has performed services for an employer during thirty days, whether or not such days are consecutive, and she subsequently becomes totally or partially separated from such employment, because she left work voluntarily without good cause.


Charles A. Young, III
Special Examiner

NOTICE TO CLAIMANT

IF THE DECISION STATES THAT YOU ARE DISQUALIFIED, YOU WILL BE REQUIRED TO REPAY ALL BENEFITS YOU MAY HAVE RECEIVED AFTER THE EFFECTIVE DATE OF THE DISQUALIFICATION. IF THE DECISION STATES THAT YOU ARE INELIGIBLE FOR A CERTAIN PERIOD, YOU WILL BE REQUIRED TO REPAY THOSE BENEFITS YOU HAVE RECEIVED WHICH WERE PAID FOR THE WEEK OR WEEKS YOU HAVE BEEN HELD INELIGIBLE. IF YOU THINK THE DISQUALIFICATION OR PERIOD OF INELIGIBILITY IS CONTRARY TO LAW, YOU SHOULD APPEAL THIS DECISION TO THE CIRCUIT COURT. (SEE NOTICE ATTACHED)