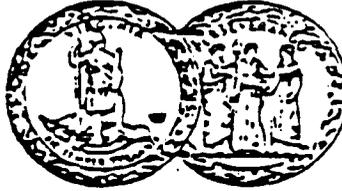


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Ola M. Fields
████████████████████

Bristol Home Health Services
Bristol, Virginia

Date of Appeal
to Commission: January 5, 1993

Date of Hearing: April 7, 1993

Place: RICHMOND, VIRGINIA

Decision No.: 40968-C

Date of Mailing: May 12, 1993

Final Date to File Appeal
with Circuit Court: June 1, 1993

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This case came before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-9218297), mailed December 30, 1992.

APPEARANCES

Attorney for Claimant

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?

FINDINGS OF FACT

On January 5, 1993, the claimant filed a timely appeal from the Appeals Examiner's decision which disqualified her from receiving benefits, effective September 20, 1992. The basis for that disqualification was the Appeals Examiner's conclusion that the claimant had left her job voluntarily for reasons that would not constitute good cause.

Prior to filing her claim for benefits, the claimant last worked as many of 30 days for Bristol Home Health Services. She worked for this employer as a home health aide. She was employed from October 17, 1991 until September 13, 1992. Her rate of pay was \$5.50 an hour.

During the summer of 1992, the employer discovered that one of its partners had embezzled a substantial amount of money. As a result, the company was left in a very precarious financial situation. The administrator met with all of the company employees on July 30, 1992, and explained the situation to them. At that point, the employer did not have sufficient funds to meet payroll on July 31, 1992. The employees orally agreed to accept late payment of their payroll checks that were due on July 31, 1992.

On August 7, 1992, the employer issued payroll checks which covered the period of July 6 through July 19, 1992. The claimant was one of the individuals who received a check on that occasion. The claimant was not paid again until August 14, 1992. On that occasion, the claimant met with the administrator and requested payment. As a result, she received a check that paid her through August 2, 1992.

On August 28, 1992, the claimant again met with the administrator concerning the paycheck that was due on that day. After inquiring whether she would be paid, the administrator responded, "What's the problem, you got paid on 24th and I haven't received a check since the week before we went to Hawaii." The claimant did not receive a paycheck on this day.

On September 11, 1992, the claimant contacted the company office and spoke with an LPN who was assisting the administrator. The claimant asked whether she was going to be paid. The claimant was told by the LPN that she didn't think they would get paid because insurance on company vehicles and the rent was due. At that time, the claimant told the LPN, who also assisted in scheduling, that she needed to have a few days off. The claimant specifically asked to have the following Monday and Tuesday off; however, she was told that she could only have Monday, Thursday, Saturday and Sunday of the next week as days off.

The claimant requested this time off from work so that she could get in her tobacco crop. The claimant had to do it herself since she did not have any funds to pay someone to do it for her.

On Tuesday morning, September 15, 1992, the claimant called the employer's office to find out when she would be paid. She again spoke with the LPN who told her that, as of the previous day, they would not be receiving paychecks. At that time, the claimant told the LPN that she was quitting because she could no longer continue to work without being paid.

By September 24, 1992, the claimant was eventually paid all of the outstanding wages due her. The claimant did not understand that the employer expected her to request a paycheck if she needed to be paid. The employer conceded that if the claimant had told her that she needed to be paid, she would have written her a check because the money was available. (See Tr. 17-18)

OPINION

Section 60.2-618(1) of the Code of Virginia provides a disqualification if the Commission finds that a claimant left work voluntarily without good cause.

In construing the meaning of the phrase "good cause," the Commission has consistently limited it to those factors or circumstances which are so substantial, compelling, and necessitous as would leave a claimant no reasonable alternative other than quitting work. Accord, Phillips v. Dan River Mills, Inc., Commission Decision 2002-C (June 15, 1955); Lee v. Virginia Employment Commission, 1 Va. App. 82, 335 S.E.2d 104 (1985). In any case arising under this statute, the claimant bears the burden of proving good cause for leaving work. Kerns v. Atlantic American, Inc., Commission Decision 5450-C (September 20, 1971).

Section 40.1-29(A)(1) of the Code of Virginia requires that all employers shall pay salaried employees at least once each month and employees paid on an hourly rate at least once every two weeks or twice in each month. A knowing violation of this statute could subject the offending employer to a maximum civil penalty of \$1,000 for each violation. In addition, Section 40.1-29(C) of the Code of Virginia provides, in part, that:

No employer shall withhold any part of the wages or salaries of any employee except for payroll, wage or withholding taxes or in accordance with law, without the written and signed authorization of the employee.

Notwithstanding the difficult financial circumstances that confronted the employer, the practice that the company followed from late July through September in paying the claimant did not conform with applicable state law. The employer's practice clearly contravened the provisions of Section 40.1-29(A)(1) of the Code of Virginia. Arguably, it was also in violation of Section 40.1-29(C) of the Code since there is no evidence that the claimant ever agreed in writing to having her pay indefinitely withheld until such time as she made a demand for payment.

Furthermore, the record reveals that the claimant made at least three separate inquiries about her pay or requests for payment that were not honored. If, as the employer asserted, the funds

were available to pay the claimant, then the company had a legal obligation to pay the wages that were due without any formal demand begin made.

Under the circumstances of this case, the employer's failure to pay the claimant her wages when they were due gave the claimant good cause for leaving her job. The claimant never agreed to work for free, and to her credit, she attempted to work with the employer over a period of approximately six weeks. The inquires and requests for payment that she made were reasonable efforts on her part to try and resolve the situation. Umbarger v. V.E.C., 12 Va. App. 431, 404 S.E.2d 380 (1991). Accordingly, since the claimant had good cause for quitting her job, no disqualification may be imposed upon her receiving unemployment insurance benefits.

DECISION

The Appeals Examiner's decision is hereby reversed. The claimant is qualified to receive benefits, effective September 20, 1992, based upon her separation from Bristol Home Health Services, Inc.

M. Coleman Walsh, Jr.
M. Coleman Walsh, Jr.
Special Examiner