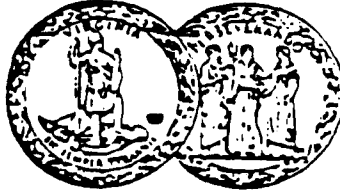


COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Renee L. Zumbaugh  
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GTE Government Systems, Inc.  
Chantilly, Virginia

Date of Appeal  
to Commission:

August 17, 1993

Date of Review:

October 1, 1993

Place: RICHMOND, VIRGINIA

Decision No.:

43248-C

Date of Mailing:

October 1, 1993

Final Date to File Appeal

with Circuit Court: October 21, 1993

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This case came before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-9311986), mailed July 30, 1993.

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 August 17, 1993, the claimant filed a timely appeal from the Appeals Examiner's decision which disqualified her from receiving benefits, effective February 28, 1993. The basis for that decision was the Appeals Examiner's conclusion that the claimant had left her job voluntarily under circumstances that would not constitute good cause.

Prior to filing her claim for benefits, the claimant last worked for GTE Government Systems, Inc. as a pricing analyst. She worked from June 1, 1992 through February 19, 1993. She was a full-time employee and was paid a salary of \$30,000 annually.

On December 3, 1992, the company announced to all of its employees that it would be necessary to reduce the size of the company's

workforce in light of significant reductions in the Department of Defense budget. In an attempt to accomplish this reduction and minimize any disruption, the employer offered to all eligible employees a Voluntary Separation Benefits Program. The program consisted of two options. The first option was a Voluntary Separation Incentive Program (VSIP), and the second option was an Enhanced Early Retirement Program (EERP).

Employees were advised that the official offering date of the program would be January 11, 1993. Employees were also informed that they would have until February 5, 1993, to accept or decline this offer. Employees were further advised that the company did not have any plans to offer any other voluntary separation programs in the future.

The claimant was not eligible for the EERP program; however, she was eligible to participate in the VSIP option. Under that option, an employee would receive a lump sum separation amount based on years of accredited service. The formula for computing the lump sum separation payment, as contained in the program brochure, was as follows:

3.7% for first 10 years of service, plus 4.7% for each year of service thereafter of an employee's highest consecutive 3-year average pay. Minimum payment 10%; maximum payment 120% of an employees's highest consecutive 3-year average pay.

In addition to the lump sum separation pay, eligible employees could also receive pension benefits. If the employee was vested under the pension plan, he or she would receive a reduced vested pension immediately, regardless of age.

The claimant decided to accept the VSIP option. She chose to do so for a number of reasons. First, the company declined to tell anyone what they would offer if someone did not accept one of the voluntary options and was subsequently laid off due to a reduction in force. Second, the claimant believed that she would be laid off if she did not accept the option. The claimant had previously worked for the employer and had gone through a reduction in force approximately one year earlier. She was the last person who had been hired in her group and there was not enough work in the group to keep all of the employees busy.

Third, the claimant and her co-workers had been told that there would be cuts in their group, although no individual employees had been designated for a layoff. Fourth, when the claimant had been laid off previously it only took her two months to find another job.

For these reasons, the claimant accepted the VSIP option. As a result, she received a lump sum separation payment of \$2,836.73 based

on the formula set out in the plan. She did not receive any other compensation or benefit. The claimant was only partially vested in a 401K plan, and those funds were not distributed.

Prior to accepting the VSIP option, the claimant had applied for a transfer within the company; however, it had not come through. The claimant had looked for another job outside the company, but had not been successful in finding one. The claimant worked through February 19, 1993, and voluntarily left her job at that time by virtue of her decision to accept the VSIP option.

#### 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 were 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. V.E.C., 1 Va. App. 82, 335 S.E.2d 104 (1985). In cases arising under this statute, the burden of proof is upon the claimant to establish good cause for leaving work. Kerns v. Atlantic American, Inc., Commission Decision 5450-C (September 20, 1971).

In the case of Lewis v. Lynchburg Foundry Company, Commission Decision 27864-C (January 13, 1987), the employer was compelled to close one of its operations because of adverse economic conditions. In order to lessen the impact of the closing, the employer offered a special arrangement to those salaried employees who were age 55 or older and who had at least 25 years of service with the company. Eligible employees who took advantage of the plan were given salary continuation for 24 months that was equal to one-half of their base salary. In addition, health, dental, and life insurance coverages were continued for the same 24 month period. At the end of the 24 month period, dental insurance coverage would cease but life and health insurance would continue.

Under these facts, the Commission held that the claimant had good cause for quitting work in order to accept the special arrangement offered by the company. In reaching that conclusion the Commission stated:

First, the claimant knew layoffs would occur and he may be affected. Second, the company would not provide the claimant with any information as to the likelihood he would be laid off. Third, the

company's special severance arrangement was a highly attractive offer, especially in light of the claimant's age and the benefits guaranteed for 24 months. By accepting the company's offer, the claimant could attempt to obtain other employment while being assured of the regular severance pay and other benefits guaranteed under the severance arrangement.

In the present case, it is clear that the claimant knew layoffs would occur and that she might be affected. Furthermore, the claimant was not provided any information by the employer regarding the likelihood that she would be laid off. Consequently, based upon the information that was available to the claimant, it was reasonable for her to believe that she was a likely candidate for a layoff if she did not accept the VSIP option. Thus, the claimant was, for all intents and purposes, in the same position as the claimant in the Lewis case with respect to these factors.

When the attractiveness of the VSIP option is compared to the special severance arrangement offered in the Lewis case, there are some stark differences. In the present case, the only benefit that the claimant received was a lump sum payment of \$2,836.73, which represented approximately 15% more than her gross salary for a single month. By contrast, the claimant in the Lewis case received 24 months of salary continuation plus continued life, health, and dental insurance coverages for the same period of time. Under these circumstances, the Commission must conclude that the VSIP option that the claimant accepted was not so financially attractive as would constitute a compelling and necessitous reason for voluntarily leaving gainful employment. Accordingly, the claimant's decision to accept the VSIP option would not constitute good cause and she must be disqualified from receiving benefits in accordance with the statute.

#### DECISION

The Appeals Examiner's decision is hereby affirmed. The claimant is disqualified from receiving benefits, effective February 28, 1993, because she left work voluntarily without good cause.

This disqualification shall remain in effect for any week benefits are claimed until the claimant performs services for an employer during 30 days, whether or not such days are consecutive, and she subsequently becomes totally or partially separated from such employment.

*M. Coleman Walsh, Jr.*  
M. Coleman Walsh, Jr.  
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)