

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Charlene D. Barrington

Virginia Power
Hampton, Virginia

Date of Appeal

to Commission: November 11, 1994

Date of Review: January 13, 1995

Place: RICHMOND, VIRGINIA

Decision No.: 46964-C

Date of Mailing: January 17, 1995

Final Date to File Appeal
with Circuit Court: February 6, 1995

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This case came before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-9415067), mailed November 1, 1994.

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 November 4, 1994, the claimant filed a timely appeal from the Appeals Examiner's decision which disqualified her for benefits, effective August 28, 1994. That disqualification was based upon the Appeals Examiner's conclusion that the claimant voluntarily left her job under circumstances that did not constitute good cause.

The findings of fact of the Appeals Examiner are supported by the evidence in the record. Accordingly, they are adopted by the Commission with the following additions.

The claimant was 34 years of age at the time she submitted her resignation. The claimant would not have been laid off if she elected not to accept the voluntary separation package offered by the company.

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).

When determining whether good cause existed for a claimant to voluntarily leave employment, the Commission and the reviewing courts must first apply an objective standard to the reasonableness of the employment dispute and then to the reasonableness of the employee's efforts to resolve that dispute before leaving the employment. In making this two-part analysis, the claim must be viewed from the standpoint of a reasonable employee. Umbarger v. V.E.C., 12 Va. App. 431, 404 S.E.2d 380 (1991).

In this case, the claimant's decision to quit her job was primarily motivated by the difficulties she was experiencing with her supervisor. She did not believe that he was treating her fairly. She also believed that the supervisor intended to discharge her at some point in the future.

The claimant was aware of the company's grievance policy since she had successfully utilized it in the past. Nevertheless, on this occasion, she did not pursue any grievance within the policy established by the company. Instead, she chose to quit her job and take advantage of the voluntary separation package that was being offered at the time.

The Appeals Examiner correctly concluded that the claimant had not established good cause for quitting her job due to the problems she experienced with her supervisor. In both the Lee and Umbarger cases, the Virginia Court of Appeals observed that a claimant must attempt to solve the problems that are of concern by exploring the reasonable alternatives that are available within the company. The claimant had successfully utilized the grievance procedure on one prior occasion, but chose not to explore that alternative in this instance. Therefore, her failure to do so precludes the finding of good cause.

Although accepting the voluntary separation package was not the primary reason for her decision to quit work, the Commission cannot completely ignore that factor. There have been some cases where the Commission has found good cause for employees who quit work in order to accept a voluntary separation package. The leading case in this regard is Lewis v. Lynchburg Foundry Company, Commission Decision 27864-C (January 13, 1987). In that case, the claimant was one of eleven employees who were offered an extremely attractive voluntary special severance arrangement. The offer was made only to those employees who were 55 years of age or older, and who had at least 25 years of service with the company. Those employees were offered salary and a benefit continuation for 24 months. Further, all of them knew that the company was restructuring its operations and was contemplating layoffs; however, the company refused to divulge any information regarding the likelihood of layoffs for the individuals who were eligible for the special severance arrangement.

In the Lewis case, the Commission found that the claimant voluntarily left his job in anticipation of a possible layoff at a future date. The Commission also concluded that the claimant had good cause for doing so for the following reasons:

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.

When viewed objectively, the special severance arrangement in the Lewis case was a much more attractive offer than the voluntary separation package that the claimant accepted. Furthermore, the claimant knew that she would not be subject to a layoff solely because she did not accept the voluntary separation package. In addition, the age of the claimant in the Lewis case was a significant factor in the Commission's consideration because of the difficulty he was likely to encounter finding comparable work if he had been laid off. That is not as significant a factor here. Therefore, even if the Commission analyzed this case exclusively on the basis of the claimant's decision to accept the voluntary separation package, good cause would not have been shown.

DECISION

The Appeals Examiner's decision is affirmed. The claimant is disqualified from receiving benefits, effective August 28, 1994, 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 he 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)