

COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Karen Fedeles  
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Bell Atlantic Virginia, Inc.  
Richmond, Virginia

Date of Appeal  
to Commission: December 26, 1995

Date of Review: March 8, 1996

Place: RICHMOND, VIRGINIA

Decision No.: 50372-C

Date of Mailing: March 9, 1996

Final Date to File Appeal  
with Circuit Court: March 29, 1996

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This case is before the Commission on appeal by the employer from Appeals Examiner's decision UI-9515637, mailed December 15, 1995.

ISSUES

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 due to misconduct in connection with work as provided in Section 60.2-618(2) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The employer filed a timely appeal from the Appeals Examiner's decision, which although stating that it was affirming, actually amended a Deputy's determination so as to qualify the claimant for benefits, effective October 15, 1995. The Deputy found that the claimant had been laid off due to lack of work, while the Appeals Examiner found that she had left work voluntarily with good cause.

Prior to filing her claim, the claimant last worked for Bell Atlantic Virginia, Incorporated of Richmond, Virginia between September 5, 1978, and October 14, 1995. Her last position was that of special clerk at an office located in Falls Church, Virginia.

As early as 1993, the employer began to announce that downsizing the workforce would be coming in the future. The claimant was actually transferred into her position as a special clerk as a result of such activity. Her husband, who had worked for the employer for 24 years, apparently in a management position, was laid off at some point about this time. Even though the claimant was a member of the bargaining union covered by a union contract so as to be protected by seniority, she began to be fearful for her own position.

In August, 1995, the claimant's work unit was offered the opportunity to participate in the employer's Income Security Plan (ISP). The announcement informed her that her work group was subject to a force adjustment and that the election to participate in the ISP plan would be granted only to the extent necessary to relieve a surplus of employees in the order of seniority among those employees eligible who applied. Under this plan, employees would be paid \$1,000 per year of completed service up to a maximum of 30 years and would also be eligible to receive an expense allowance reimbursement of up to \$3,750 for education expenses necessary to make a transition to a different field.

Eligible employees were invited to put in for an estimate of the benefits they would receive and they were also informed that if they formally applied for the program, they would have up to 30 days to change their minds.

Employees at certain locations such as a particular office in Hagerstown, Maryland were informed that the company planned to close the office and were encouraged to accept the program if they did not wish to transfer elsewhere. Employees at the location where the claimant worked were not in any immediate danger of being laid off; therefore, unlike the situation of the Fredericksburg employees who the employer considers to have been furloughed, once the claimant applied for the program and did not withdraw her application after it was determined that her seniority entitled her to acceptance, she was considered to have voluntarily left her job.

Nowhere in any of the literature distributed regarding the ISP program, was any mention made of potential entitlement to unemployment compensation. The payments were also not designated in the literature as severance pay, although they were so designated on the employer's separation report to the Commission, and they were allocated to the last day of work. The claimant received half of her \$17,000 payment immediately upon her separation and is to receive the other half over the ensuing 48 months.

According to the claimant's initial claim form, she was due to receive \$472 in vacation pay for four days. This would have made her salary from the employer approximately \$600 per week, or in the neighborhood of \$32,000 a year.

#### 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 due to misconduct in connection with work.

In the case of Kerns v. Atlantic American, Incorporated, Commission Decision 5450-C (September 20, 1971), the Commission held:

It is established that the burden is upon the employer to produce evidence which establishes a prima facie case that the claimant left his employment voluntarily. The employer assumes the risk of non-persuasion in showing a voluntary leaving. Once a voluntary leaving is shown, the burden of coming forward with evidence sufficient to show that there are circumstances which compel the claimant to leave his employment and that such circumstances amount to good cause as set out in the Unemployment Compensation Act, devolves upon the claimant.

In the case of Gannaway v. Brown and Williamson Tobacco Corporation, Commission Decision 22411-C (November 7, 1983), the claimant was working for an employer which had decided to restructure its operations and close its Petersburg facility. This required laying off company employees, many of whom had extensive service with the company. Accordingly, a plan was proposed by which employees who would accept a special settlement option would receive a minimum of 26 weeks of pay plus additional weeks if they had more than six years of completed service in either a lump sum or over a period of 20 months after they were accepted for participation in the program. They would also continue to receive life and medical insurance coverage for up to six months. Employees volunteering to leave under these conditions would receive the benefits only if and when the employer chose to accept them. Under those circumstances, the Commission held that the claimant's choice to accept the benefits under the program did not amount to a voluntary leaving of work on his part; rather, it was in effect a layoff because the employer retained the right to determine when the separation would occur.

In the case of Lewis v. Lynchburg Foundry Company, Commission Decision 27864-C (January 13, 1987), the employer saw the need to close a portion of its operation due to economic conditions. It worked out a special severance arrangement which was offered only to employees who had reached the age of 55 and had at least 25 years of service with the company. Eligible employees would be paid half their regular salary for the next 24 months after their separation and would continue to receive health, dental and life insurance coverage during the same period of time. The claimant accepted the offer and left on the date which had been preselected. All other employees who accepted the offer left at the same time and none of the other eligible employees who did not accept the offer were laid off. In deciding the case, the Commission stated:

While the present case is very similar to the situation in Gannaway, there is a significant distinction. Unlike the employees in Gannaway, there was no certainty in this case that the claimant would be laid off. ... Whether the claimant would have been laid off was a matter of speculation. Under these circumstances, it appears that the claimant accepted the employer's severance arrangement in anticipation that he might be laid off. ... Therefore, the Commission is of the opinion that the claimant's decision to take advantage of the special severance arrangement constituted a voluntary leaving of work and was not a layoff by the employer.

The Commission went on to state that the claimant had established good cause for accepting the offer so as to avoid a disqualification. This was because the claimant knew that layoffs were coming and that he might be affected, the company would not provide him with the specific information as to the likelihood that he would be laid off, and the offer was considered extremely attractive in light of the claimant's age and the benefits which were guaranteed to him for 24 months.

Had this claimant been working the Hagerstown, Maryland office which was scheduled to be closed, then her separation under the ISP plan would have represented a layoff under the Gannaway analysis. Nevertheless, the department where she was working was not slated to close and, the claimant knew or should have known that her 17 years of seniority in a position covered by the bargaining agreement would substantially protect her even if some layoffs were coming. Finally, it is apparent that the employer was not simply waiting to see how many people signed up for the offer before deciding when to let them go and whether they would be let go. Instead, they were informed up front that if they accepted the offer they would be allowed to leave at a specified date, assuming their seniority was high enough. The

Commission finds this case to be governed by the Lewis holding so as to establish the claimant's separation as a voluntary leaving.

The question now turns as to whether the claimant has established good cause for taking that action. When analyzed against those factors considered in Lewis, the Commission must answer this question in the negative.

In Lewis, it is apparent that the employer was going to have to close part of its operations so as to create a reasonable concern in the claimant's mind that he might be laid off. The employer refused to give him any assurances that this would not occur. In the case at hand, the claimant knew that her department was not going to be closed and also knew that she had 17 years of seniority to protect her. Although there may indeed have been rumors about possible layoffs, she has not shown that any attempts on her part to seek clarification from official sources were rebuffed.

Finally, it must be noted that the claimant in Lewis essentially received a full year of pay over a two year period plus a continuation of all company benefits for the same period of time. This claimant received approximately one quarter of a year's pay immediately with the other quarter to be paid over a two year period, with there being no indication that she was entitled to any paid company benefits. Under these circumstances, the Commission does not find that it was the attractiveness of the employer's offer which led the claimant to accept it, so much as it was her desire to no longer work for the company. It is concluded that she has not established good cause for voluntarily the employer's services, and she should be disqualified under this section of the Code.

#### DECISION

The decision of the Appeals Examiner is hereby reversed.

The claimant is disqualified for unemployment compensation, effective October 15, 1995, for any week or weeks are claimed until she has performed services for an employer during 30 days, whether or not such days are consecutive and she has subsequently become totally or partially separated from such employment, because she left work voluntarily without good cause.

The Deputy is instructed to calculate what benefits may have been paid to the claimant after the effective date of the disqualification which she will be liable to repay the Commission as a result of this decision.



Charles A. Young, III  
Special Examiner