

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:
Boyd Coleman
[REDACTED]
Clinchfield Coal Company
Lebanon, Virginia

Date of Appeal
to Commission: August 15, 1990
Date of Hearing: November 1, 1990
Place: RICHMOND, VIRGINIA
Decision No.: 34296-C
Date of Mailing: February 6, 1991
Final Date to File Appeal
with Circuit Court: February 26, 1991

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This case came before the Commission on appeal by the employer from a Decision of Appeals Examiner (UI-9006089), mailed July 25, 1990.

APPEARANCES

None

ISSUE

Did the claimant fail, without good cause, either to apply for available, suitable work when so directed by the Commission or to accept suitable work when offered as provided in Section 60.2-618(3) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On August 15, 1990, the employer filed a timely appeal from the decision of the Appeals Examiner which held that the claimant was qualified to receive benefits, effective April 8, 1990. That decision

was based upon the Appeals Examiner's conclusion that the employer's offer of reemployment did not constitute suitable work because the jobsite was not reasonably accessible from the claimant's residence.

Prior to filing his claim for benefits, the claimant was employed by Clinchfield Coal Company. In February of 1990, he was laid off by that employer due to a lack of work.

On February 27, 1990, the claimant completed a standard Panel Form. The claimant listed on this form the jobs he had the ability to perform in the event of a recall. Additionally, he checked off a number of different mines in UMWA District 28 where he would be willing to work. One of these mines was the Triple C #1 Mine near Dante, Virginia.

By letter dated April 11, 1990, the employer offered the claimant reemployment as a repairman at the Triple C #1 Mine. This was the same position that the claimant held when he last worked for the company. The claimant would have been paid \$15.96 an hour plus overtime for any hours worked in excess of 40 each week. He would have worked from 4:00 p.m. until midnight, Monday through Saturday. The wages and hours of work are governed by the terms of the collective bargaining agreement negotiated by the employer and the UMWA.

On or about April 13, 1990, the claimant refused this offer of work. He did so for three reasons. First, he felt that too much time would be involved traveling to and from the jobsite. Second, the evening shift was not favorable to him as a minister. Third, he thought that the prospect of him being recalled to a job closer to his home was very favorable.

The Triple C #1 Mine is located 5.4 miles north of Dante, Virginia. Depending upon the route taken, the mine was between 36.3 and 42.5 miles from Rowe, Virginia, where the claimant lived. Another employee who also lived in Rowe, Virginia, had accepted a recall to the Triple C #1 Mine. Also, two other employees who lived in Pilgrim Knob, Virginia, had accepted recalls to this mine. Pilgrim Knob is located a greater distance from the Triple C #1 Mine than Rowe, Virginia.

It would have taken the claimant approximately 2 hours to drive from his home in Rowe, Virginia to the mine. This was due to the terrain, the narrow roads, and the number of trucks that used those roads. If the claimant had accepted this position, it would have been difficult for him to transfer to another mine that was closer to his home. The claimant offered no explanation why he believed that the prospect of being recalled to a mine closer to his home was more favorable.

The claimant filed claims for unemployment insurance benefits through the week ending July 7, 1990. On August 26, 1990, the claimant completed an Eligibility Review Form. On this form, he indicated that he was willing to travel up to 60 miles to get to work. Question 13 on this form asked, "Within what area will you look for and accept work?" The claimant indicated that he would look for work up to 60 miles from Rowe, Virginia, depending on the pay scale. He also indicated he would accept work in Buchanan, Russell or Tazewell County. The Triple C #1 Mine is located within this geographic area.

OPINION

Section 60.2-618(3) of the Code of Virginia provides a disqualification if a claimant fails, without good cause, to accept an offer of available, suitable work. In determining whether or not any work is suitable for an individual, the statute requires the Commission to consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience, his length of unemployment and the accessibility of the available work from his residence. Additionally, no work would be deemed suitable if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

In the case of Johnson v. Virginia Employment Commission, 8 Va. App. 441, 382 S.E.2d 476 (1989), the Virginia Court of Appeals provided the following analysis regarding suitability of an offer of work and good cause for refusing suitable work:

"Suitability" of employment and "good cause" for refusal involve separate determinations but they are not mutually exclusive. The same factors may, but will not necessarily, be considered in each determination. Generally "suitability" entails an evaluation limited to the nature and characteristics of the job in relation to the skills, training, and experience of the particular employee and the length of unemployment. The determination of "good cause" to refuse employment, however, will involve a much broader inquiry than merely considering whether the intrinsic aspects of the job are acceptable to the prospective employee. "Good cause" to refuse a job offer may arise from factors totally independent of those criteria used to determine whether a job is suitable to a particular employee; however, some or all of those factors intrinsic to the job may be considered in combination with extrinsic circumstances to

determine whether good cause exists for the employee to refuse the employment. . . .

Thus, the determination of "suitability" entails both a subjective and objective examination whether an employee with certain qualifications would reasonably be expected to accept an offer of employment considering, among other factors, the wage, the benefits, the duties, and the conditions intrinsic to a particular job in light of the length of unemployment and reasons therefor--usually a reasonably comparable wage in a job which utilizes an employee's experience and skills will be the major factors to measure suitability of a job offer; 8 Va. App. at 447, 448, 382 S.E.2d at ____.

The Commission agrees with the Appeals Examiner's assessment that the wages, hours, and other conditions of the work offered were not substantially less favorable to the claimant than those prevailing for similar work in the locality. These terms and conditions of employment are subject to the collective bargaining agreement negotiated by the employer and the union representing the employees. If the claimant had been offered employment at a non-union mine, the terms and conditions of that employment would, at best, only match those that exist at a union mine. Therefore, the job offered to the claimant was suitable when compared with similar work in the locality.

The Commission is also of the opinion that the work offered the claimant was suitable when analyzed in light of the other statutory criteria. The evidence does not reveal that the claimant would have been subjected to any undue degree of risk to his health, safety or morals. The claimant raised no objection to the work based upon his physical fitness, and the job was consistent with his experience and prior training. The claimant had been unemployed for approximately two months when the position was offered.

Furthermore, the Commission is satisfied that this job was accessible to the claimant from his residence. The mine was located within the geographic area that the claimant certified that he was willing to accept work. Other company employees traveled an equal or greater distance under the same conditions as the claimant would have encountered had he accepted the job. Although the claimant would have spent more time traveling than he wished, that fact does not make the job inaccessible from his residence in light of all the other circumstances. Accordingly, the Commission finds that the job offered to the claimant was suitable work within the contemplation of Section 60.2-618(3) of the Code of Virginia.

Since the Commission has concluded that the job offered to the claimant was suitable, the burden rest upon him to establish good cause for his refusal. In addressing the question of "good cause," the Johnson court stated:

The claimant has the burden to show that good cause exists for her refusal to accept suitable employment, and she must put forward real and substantial reasons for her refusal. To support a finding of good cause to refuse suitable employment, the reasons advanced must be such that a reasonable person desirous of employment would have refused the offered work. 8 Va. App. at 452, 382 S.E.2d at ___ [citations omitted].

In applying these principles to the present case, the claimant's reasons for his refusal must be viewed in light of the totality of the circumstances. After nearly two months of being unemployed, the claimant was offered reemployment in the same job classification that he last worked. He would have been scheduled to work 48 hours each week which, based upon his hourly rate and 8 hours of overtime, would have resulted in wages equal to \$829.92 per week. Furthermore, the job offered was at a mine that he told the company he would accept employment, and was within the geographical area that he told the Commission he would look for and accept work. It is against this backdrop that the claimant's reasons for refusing the job must be analyzed.

The primary reason that the claimant advanced for his refusal was the amount of time that would be taken in commuting to and from work. Based upon his testimony, it would take approximately two hours to travel from his home to the mine. Is this a substantial reason for refusing full-time work in an industry where job security is admittedly uncertain? Would a reasonable person, under the same circumstances, also have refused this job? The Commission believes that both of these questions must be answered in the negative. The evidence in the record establishes that other employees at this mine travel an equal or greater distance to get to work than the claimant would have. Similarly, the time they would have spent traveling would have been equal or greater to that spent by the claimant. Furthermore, the claimant told the company he was willing to accept work at that specific mine. In light of that and his certification to the Commission on the Eligibility Review Form, his complaint about the time spent commuting to and from work is neither substantial nor compelling.

The claimant also advanced two secondary reasons for his decision to refuse the job. He claimed that he had a good prospect of obtaining work at another mine that was located closer to his home; however, he offered no proof or explanation of that "good prospect."

This assertion is belied by the fact that he continued to claim unemployment insurance benefits through July 7, 1990. The claimant also maintained that working on the second shift was not favorable to him as a minister. The claimant did not offer any evidence to show that any difficulties or inconvenience could not be overcome through the exercise of ordinary care and diligence. Therefore, this would not constitute a substantial or compelling reason that would have prompted a reasonable person to have also refused the offer of work.

In conclusion, the Commission must find that the job offered to the claimant was suitable work within the meaning of Section 60.2-618(3) of the Code of Virginia. Furthermore, the claimant has not established good cause for refusing that offer of work. Accordingly, the disqualification provided in the statute must be imposed.

DECISION

The decision of the Appeals Examiner is hereby reversed. The claimant is disqualified from receiving benefits, effective April 8, 1990, because he refused, without good cause, an offer of available, suitable work.

The case is referred to the Deputy with instructions to investigate the claimant's claim for benefits and to determine if he has been overpaid any sum of benefits to which he was not entitled and which he must repay the Commission as a result of the disqualification imposed by this decision.


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)