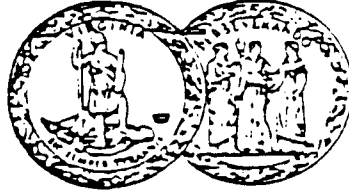


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:
Patricia I. Ibacache
████████████████████
MRJ, Inc.
Oakton, Virginia

Date of Appeal to Commission: October 20, 1992
Date of Review: December 14, 1992
Place: RICHMOND, VIRGINIA
Decision No.: 40398-C
Date of Mailing: December 30, 1992
Final Date to File Appeal
with Circuit Court: January 19, 1993

---oOo---

This case is before the Commission on appeal by the claimant from Appeals Examiner's Decision (UI-9213932), mailed September 29, 1992.

ISSUE

Did the claimant fail without good cause to accept suitable work when offered as provided in Section 60.20-618(3) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The claimant filed a timely appeal from the Appeals Examiner's decision which affirmed an earlier Deputy's determination and disqualified her for unemployment compensation effective June 21, 1992, for having failed without good cause to accept an offer of suitable work extended to her in the ensuing week.

The findings of fact made by the Appeals Examiner have been reviewed and are hereby adopted by the Commission with the exception of the final paragraph which is neither based upon information in the record nor any properly taken official notice made at the hearing by the Appeals Examiner. Additional findings will be made in the following paragraph.

The claimant had no other work experience inasmuch as she had been hired by MRJ, Inc., immediately after completing her college education. Although the employer had reported to the Deputy that the claimant could have started work as of June 22, had she accepted the offer made to her, this is in error. June 22 was the date of her second interview for a position, and the offer was not extended to her until the executive vice-president wrote her a letter on June 25, 1992. That letter gave her until July 3, 1992, to decide whether to accept the offer. The claimant waited until that deadline before turning it down.

OPINION

Section 60.2-618(3) of the Code of Virginia provides for a disqualification effective with the first day of any week in which an individual fails without good cause to accept an offer of suitable work.

In determining whether any offer is suitable for an individual, such factors to be considered shall include the degree of risk involved to health, safety, or morals; the physical fitness of the individual; the prior training; prior work experience; the length of unemployment; and the accessibility of the available work from the individual's residence. No work shall be deemed suitable if the wages, hours, or other conditions offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

The Commission must reject the claimant's contention that she was misled by statements contained in the October, 1991, edition of the "Unemployment Insurance Handbook for Claimants" which she had received. In that particular edition, the distinction between a disqualification which extends until an individual returns to work for at least 30 days for a single employer and eligibility which may change on a week-to-week basis is not explicitly made clear. Nevertheless, on page 9 appears the statement, "In addition, you must accept all offers of suitable work..." and on page 10, the factors cited previously are mentioned along with the requirement that all job offers and the claimant's response to them must be reported to the Commission. While it is unfortunate that the claimant may not have been adequately told what the penalties were for failing to accept an offer of suitable work, it is clear that she was made aware that she was expected to accept any offer of suitable work. If she was not sure of what might happen if she turned down a job offer, it was her responsibility to contact her local office for an explanation. Since she did not do so, it is apparent that she chose to turn down the offer in question at her own risk, and the fact that she did not know that she would be facing an indefinite disqualification is of no consequence.

Based upon all of the factors previously cited, the Commission must conclude that the offer which was extended to the claimant did represent suitable work for her, particularly considering the length of her unemployment, the fact that the job was directly related to her previous one, and the fact that it would have actually given her a raise in pay from that she had previously received.

The focus now must be on whether the claimant has established good cause to refuse the work and this involves a much broader inquiry than just looking at the intrinsic aspects of the job. A prospective employee is entitled to suitable work but cannot, without forfeiting unemployment benefits, choose to remain unemployed because the prospective employer does not offer the highest available job for which the individual may be qualified. Johnson v. V.E.C., 8 Va. App. 441, 382 S.E.2d 476 (1989).

This claimant's failure to accept the offer in question was predicated upon her feeling that it represented a "dead end" position rather than one at the "cutting edge" of computer programming. She had not heard from another position for which she had interviewed and which she thought would be more in line with her career goals. Nevertheless, she was not forced to make up her mind on the spot and there has been no showing that, by accepting the position, the claimant would have been precluded from still seeking other employment more to her liking. The Commission must agree with the Appeals Examiner that the claimant has not established good cause for failing to accept the job offer.


The Commission must note that this section of the Code, which is commonly referred to as the "job refusal" section, actually does not contain the word "refusal" in it. Instead, it speaks only to a "failure to accept" suitable work. It is clear to the Commission that had this claimant stated on June 25, 1992, the date she received the written job offer, that she would not accept it, then the disqualification would properly be made effective June 21, 1992, the first day of the week in which that occurred. Although it is also clear that the claimant did not state that she would accept the job in that week, the Commission does not consider this to be a "failure to accept" employment since, by the language of the written offer itself, she had until July 3, 1992, to make up her mind. Because the claimant chose to take until that deadline to inform the employer that she would not be accepting the offer, the Commission concludes that the effective date of the disqualification should be moved up until June 28, 1991, the first day of the week in which the failure to accept actually occurred.

DECISION

The Decision of the Appeals Examiner is hereby amended.

The claimant is disqualified for unemployment compensation effective June 28, 1992, for any week or weeks benefits 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 failed without good cause to accept an offer of suitable work extended to her in the ensuing week.

The Deputy is instructed to carefully determine the claimant's eligibility for benefits for the week ending June 27, 1992.


Charles A. Young, III
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)