

UNEMPLOYMENT COMPENSATION COMMISSION OF VIRGINIA

DECISION OF APPEALS EXAMINER

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Decision No. S-15-07
Date: April 16, 1952

ABLE AND AVAILABLE - 150.2
Distance to work -
Transportation and
travel

POINT AT ISSUE

Has the claimant been available for work during the week or weeks for which she claims benefits?

FINDINGS OF FACT

The claimant's last employer, Dan River Mills, Inc., Danville, Virginia, appealed from a determination of the Claims Deputy which declared the claimant eligible for unemployment compensation as of November 7, 1951, the date she filed her Initial Claim.

The Supervisor of the Hourly Rating Department, Dan River Mills, testified that the claimant was employed as a sheet folder on the First Shift. Dan River Mills operates on a fixed shift basis and workers are employed on the least desirable shift and are moved by seniority according to their classifications to the Second or the First Shift. When it is necessary to transfer employees, they are moved back in inverse order. Due to an equalization of production, the claimant, who was considered a junior employee, was transferred from the First Shift to the Second Shift in order to maintain production schedules. Work on the Second Shift was the same as to type of work and rate of pay. The claimant gave as her reason for not accepting the transfer the fact that she had no transportation to and from work on the Second Shift. Under "Memorandum of Contract Proposals" dated July 31, 1951, Section 13 - D. 4 provides that an employee shall be laid off if he is unable to accept transfer to another shift. The claimant was laid off because of her inability to accept work on the Second Shift.

Testimony of the claimant reflects that, while she worked on the First Shift, she rode to work with her husband who works in Danville approximately the same hours that she worked. She lives seventeen miles from Schoolfield and there is no public transportation available. Her husband uses the car and it would be impossible for her to have use of the car. When questioned as to whether or not she would accept Third Shift work, she indicated that she could not accept it because she did not wish to drive the distance on a country road by herself.

Other than asking her last employer for reemployment, the claimant has made no other efforts to find employment; however, she did indicate she had talked with one or two employees about the possibility of getting on where they were working.

OPINION

Section 60-46 (c) of the Virginia Unemployment Compensation Act provides in part that, in order to be eligible for benefits, a claimant

must be available for work. The term, "Available for work," is not defined by Law but is subject to interpretations and definitions in decisions that have been handed down by the Commissioner and also by the Supreme Court of Appeals for the State of Virginia. It has been consistently held that transportation is a personal problem and must be solved by the claimant. In this case the claimant, who was working on the First Shift and was transferred to the Second Shift, did not have means of transportation to work on the Second Shift. Although she contends that she is available for work on the First Shift, she has made little or no effort to find other employment on her own.

The Supreme Court of Appeals, in passing upon the meaning of the words, "Available for work," in the case of Unemployment Compensation Commission of Virginia vs Tomko, et als, 192 Virginia, page 463, decided by that Court on June 18, 1951, is quoted in part:

"As used in the statute, the words "available for work" imply that in order that an unemployed individual may be "eligible to receive benefits" he must be willing to accept any suitable work which may be offered to him, without attaching thereto restrictions or conditions not usual and customary in that occupation but which he may desire because of his particular needs or circumstances. Stated conversely, if he is unwilling to accept work in his usual occupation for the usual and customary number of days or hours, or under the usual and customary conditions at or under which the trade works, or if he restricts his offer or willingness to work to periods or conditions to fit his particular needs or circumstances, then he is not available for work within the meaning of the statute.

"The courts have universally held that a claimant who undertakes to limit or restrict his willingness to work to certain hours, types of work, or conditions, not usual and customary in the trade, is not "available for work"."

It is to be noted from the foregoing cited decision that, if an individual restricts her offer or willingness to work to periods or conditions to fit her particular circumstances, she is then not available for work within the meaning of the Statute. In this case the claimant is limiting her offer or willingness to work on the First Shift because of her own circumstances, in that she does not have transportation to and from work on the Second Shift. It is further noted, from the foregoing that a claimant, in order to be available for work, must be willing to accept employment for the usual and customary days or hours under which the trade works. Inasmuch as the type of work the claimant was doing was customarily performed on the Second Shift and the claimant was not available for work on the Second Shift, the Examiner cannot find that the claimant meets the requirement of being available for work and is, therefore, ineligible for benefits. (Underscoring supplied.)

DECISION

The determination of the Deputy is hereby reversed.

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Decision affirmed by Commissioner in Decision No. 703-C, dated
May 27, 1952.

Commissioner's Decision affirmed by the Corporation Court of the
City of Danville.