

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

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Decision No.: 6725-C

Date: April 18, 1975

ABLE & AVAILABLE: 160.15
Efforts to secure employment
and willingness to work-
Attitude and behavior.

This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UI-75-678), dated February 19, 1975.

ISSUE

Has the claimant been available for work during the weeks for which he claims benefits within the meaning of Section 60.1-52 (g) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT AND OPINION

The findings of fact of the Appeals Examiner are adopted by the Commission. Additionally, it is found that the claimant signed a statement dated October 27, 1974, in which he stated that he limited himself to work only during certain hours, and that these hours were day shift hours. The claimant also stated in the Appeals Examiner's hearing when asked if he would work at nights or on Saturdays, that he didn't want to work these hours because he wanted to stay at home at night and that he was getting ready to hunt on Saturdays. The claimant further stated that he gave these answers to the questions on October 27, and 28, 1974, because he felt that he was going to be offered a job during those hours.

Section 60.1-52 (g) 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 Virginia Supreme Court in Unemployment Compensation v. Tomko, 192 Va. 463, has stated that the burden is on the claimant to show that he has met the benefit eligibility conditions; one of which is unrestricted availability for work. In Dan River Mills, Inc. v. Unemployment Compensation Commission of Virginia and Carolyn P. Jones, 195 Va. 997 (1954), the Supreme Court at page 1002 stated:

The administrative practice of the Virginia Commission has consistently applied the principle that to be 'available for work' the claimant must be actively and unrestrictedly seeking suitable work in the market where he resides.

Since claims are paid on a week-to-week basis, it is necessary that all of the eligibility requirements be met during each week. The record reveals that it is customary in the claimant's last employment that work is often performed at night and on Saturdays. It is also apparent that night and Saturday work is required for many of the jobs for which he had applied. Therefore, it is apparent that the claimant did put a restriction on his availability for work. Although the claimant contends that he did not state that he would not work at night or on Saturdays, it is clear that his reply that he did not want to work at these times is not one which would demonstrate an unrestrictive search for work. Additionally, although the claimant states that his statement on December 12, 1974, was not a change in position, the evidence is to the contrary. The record reflects that the claimant signed statements on both October 27, and 28, 1974, which stated that he would limit his work to day shift hours, and that he could not work on nights or Saturdays.

The claimant further stated that he answered the questions on October 27, and 28, 1974, in the manner in which he did because he felt that he was going to be offered a job which would include work during these times. The claimant offers this statement as an explanation of his answers and in support of his position that he never intended to limit his availability. In the opinion of the Commission, however, this explanation is an even stronger indication that the claimant was restricting the hours in which he would work. If he felt that he was about to be offered work during nights or on Saturdays, his answer would be totally inconsistent with his allegation that he was not restricting his availability. If, in fact, he was not restricting his availability, it is apparent that the claimant would not have answered in the manner in which he did, but rather, would have attempted to inquire about the job referral which he felt he was going to receive.

Finally, the argument has been advanced that the claimant answered in the manner in which he did because he was not fully aware of the import of the questions asked him on October 27, and 28, 1974. It was contended that if the claimant knew that his statements would be disqualifying there would be no misunderstanding and the claimant would have answered that he did not limit himself for work. In the opinion of the Commission, this argument is without merit; not being aware of the import of the question would seemingly indicate less bias in the answer of the claimant. The claimant's answer would have then been reflective of his actual intentions rather than what he thought the Commission would have wanted to hear.

The claimant on October 27, 1974, answered in the affirmative that he would limit himself to work only certain hours. As a result of his affirmative answer he was called into the local office the next day to give a statement to the claims taker concerning his availability. Obviously, the claimant should have been aware of the import of his answer by virtue of the fact that he was called in to further explain it. If the claimant was unsure of the question or its importance, he had ample opportunity to ask for clarification but he failed to do so.

Whether or not the claimant has shown an active and unrestricted search for work is a question of fact to be determined by the Commission. See Virginia Employment Commission v. William H. Coleman, 204 Va. 18 (1963). After reviewing the evidence in the record, the Commission finds that the claimant did make the statements on October 27, and 28, 1974, which limited the hours which he was willing to work and because of such restrictions, the claimant has failed to meet the availability requirements of the Act.

The Commission is also of the opinion that for the period from December 15, 1974, through February 15, 1974, the claimant has met without restriction the availability for work requirements of the Act.

DECISION

The decision of the Appeals Examiner is hereby affirmed by the Commission.