

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

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Decision No: 3566-C

ABLE & AVAILABLE: 190.1

Evidence:

Date: September 13, 1960

Burden of proof and
presumption

This is a matter before the Commission on appeal by the employer from the decision of the Examiner (No. S-9374-9212) dated July 25, 1960.

ISSUE

Has the claimant been available for work during the week or weeks for which he is claiming benefits?

FINDINGS OF FACT

This is an appeal from the decision of the Appeals Examiner in which it was held that the claimant had met the eligibility requirements of the Unemployment Compensation Act from June 14, 1960, through July 14, 1960.

The claimant, who was last employed by Dan River Mills, Inc., retired on April 1, 1960, after having reached the age of 65 years. He has applied for and is receiving Social Security Benefits. On April 14, 1960, the claimant made an application for pension benefits from the Veterans Administration. In his application he stated that he was totally disabled, having become so on March 31, 1960.

In order to qualify for this type of pension, i.e., Non-Service Connected Pension, an applicant must meet the following three requirements: (1) He must be a veteran of one of the wars, with 90 days or more of service. (2) He must meet the minimum schedule requirements for a total disability rating based on the unemployability of the individual. (3) He must be unable to pursue a substantially gainful occupation. The crucial test is whether an applicant for a pension is able to follow gainful employment. If he is not able to do so he qualifies for a pension.

The claimant established to the Veterans Administration that he met all of the aforementioned eligibility requirements and he was so advised. Since filing his claim for benefits, the claimant has been making an active search for employment.

OPINION AND DECISION

The sole issue in this case relates to the claimant's ability to work. A strong presumption is raised against the claimant's ability to work by reason of his application for a pension, the eligibility for which is dependent upon the claimant's inability to follow a substantially gainful occupation. In order to overcome this presumption the claimant must establish to the satisfaction of the Commission that he is in fact able to work. The claimant has failed to present any evidence which is sufficient to overcome the presumption.
(Underscoring Supplied)

The Examiner in his decision seemed to conclude that the claimant had not made an application for a veteran's pension. Such is not the case. The evidence adduced at the Commission's hearing clearly establishes that the claimant not only applied for a veteran's pension, but was declared eligible. It is to be noted, however, that the sole act of making the application for a pension based upon inability to work is sufficient to raise a presumption against the claimant.

The decision of the Appeals Examiner is hereby reversed. The claimant has failed to meet the eligibility requirements of the Act from June 14, 1960, through July 14, 1960, the date of the hearing before the Examiner.