

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

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Decision No.: 5785-C

Date: September 28, 1972

ABLE AND AVAILABLE: 235.25
Health or physical condition -
Illness or injury

This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UI-72-1707) dated August 22, 1972.

ISSUES

Was the claimant discharged for misconduct in connection with his work pursuant to § 60.1-58 (b), Code of Virginia (1950), as amended?

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

FINDINGS OF FACT

The claimant originally filed a claim for benefits effective April 9, 1972. On a physician's certificate of health dated April 17, 1972, the claimant's doctor had stated that the claimant was not physically able to work except to perform office work, an occupation in which he had no experience or training.

The claimant reopened his claim for benefits effective June 25, 1972; and he informed the Deputy on July 18, 1972, that although he had tried to secure information from his doctor showing that he was able to work, the doctor had refused to give him such a statement, since his status was still the same as it had been in April of 1972.

The claimant filed his claim for benefits effective June 25, 1972, and has filed continued claims through the week ending July 8, 1972.

In addition, the Commission finds that the claimant was informed by his doctor that as a result of a previous injury, he, in the future, would be only able to perform light work, such as keeping records, doing filing, typing, and operating office machines. The Appeals Examiner found that since the claimant could not work any more in the profession in which he had been trained and possessed skills and had no skills or training outside of this area, that the claimant was, therefore, not able to work. The claimant asserts that the Unemployment Compensation Act does not require that he be able to work solely in the area in which he currently possesses certain job skills.

OPINION

Section 60.1-58 (b) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that an individual is discharged for misconduct in connection with his work.

The claimant appealed only the issue concerning his ability and availability for work. The employer did not note an appeal of either issue decided by the Appeals Examiner. Therefore, the Appeals Examiner's decision regarding the claimant's separation from his last employment has become the "final decision of the Commission" pursuant to § 60.1-52 of the Code of Virginia (1950), as amended.

Section 60.1-52 (g) of the Virginia Unemployment Compensation Act provides that a claimant must be able to work and be available for work during the week or weeks for which he claims benefits.

The facts clearly show that the claimant is no longer able to perform those skills in his customary occupation of studio engineering due to an injury he sustained. His doctor does indicate that he is able to perform other work as long as it does not require excessive physical exertion.

In Decision No. 423-C, dated February 24, 1949, this Commission stated:

We have previously held to the view that one who is able to do light work only should not be denied benefits for that reason alone.

It is this Commission's interpretation of the law that the obligation upon a claimant is to be able to work in the general labor market and that he be capable of performing some service for a prospective employer. One may be unable to pursue his usual occupation because of some physical impairment and yet retain sufficient powers of labor to perform some gainful work in the labor market. Those with physical impairments have, as a general rule, a greater difficulty in securing suitable employment than those who are physically whole. This, however, does not mean that the physically handicapped are unable to work, or that they are unemployable. In the vast majority of cases, such individuals must simply direct their efforts toward securing a type of work which is comparable with their capabilities. (Underscoring Supplied)

From the evidence before this Commission, the Commission believes that the claimant is able to work within the meaning of the Act.

DECISION

The determination of the Appeals Examiner, concerning the claimant's ability to work, is hereby reversed. It is held that the claimant is able to work. The Deputy is directed to determine the claimant's availability for work effective June 25, 1972.