

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

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Decision No. : 6163-C

Date: January 9, 1974

ABLE AND AVAILABLE: 235.4  
Health or physical condition  
Pregnancy.

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This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UI-73-1825) dated October 16, 1973.

ISSUE

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

FINDINGS OF FACT

United Air Lines, Washington, D. C., was the claimant's last employer for whom she worked as a stewardess from April 22, 1969, through June 14, 1973. The employer has furnished separation information which reads as follows:

This is to verify that Kathleen L. Smith, United Air Lines stewardess was placed on a maternity leave of absence effective June 14, 1973. This was done in accordance with the 1972-1974 agreement between United Air Lines, Inc. and the Airline Stewardesses and Flight Stewards in the service of United Air Lines, Inc., as represented by the Air Line Pilots Association, International: Section 12-B.

It is possible for an employee on a maternity leave of absence to secure other employment while on her maternity leave of absence. This is contingent upon her supervisor's knowledge and consent.

In a later affidavit the employer stated that it was company policy to attempt placement into a ground position if requested by a stewardess who has become pregnant. Placement into such positions is determined by the placement qualifications of the stewardess and available openings. Furthermore, the

company stated that stewardesses not requesting a maternity leave of absence on becoming pregnant were terminated from the company.

The claimant was separated from her employer on June 14, 1973 because of her pregnancy. She requested a maternity leave of absence. The claimant expects to return to her job in March of 1974, approximately 90 days after the birth of her child. The claimant has stated that she applied for ground positions with United Air Lines but no openings were available. According to the claim cards filed by the claimant, she made one contact per week with prospective employers for the weeks ending June 30, 1973, July 7 and 21, 1973, August 4, 11, and 18, 1973. During the week ending July 14, 1973, the claimant made four contacts with prospective employers. For the week ending July 28, 1973, the claimant made two contacts per week with prospective employers.

At the hearing before the Appeals Examiner the claimant presented evidence from her doctor stating that she was in excellent physical condition and that there was no reason that she could not engage in any kind of desk work until her due date.

### OPINION

Section 60.1-52 (g) of the Virginia Unemployment Compensation Act provides that a claimant must be able and available for work in order to be eligible for the receipt of unemployment compensation benefits.

The claimant in this case is on a maternity leave of absence. However, such maternity leave of absence per se will not render her ineligible for unemployment compensation; neither will her pregnancy.

It is obvious, by the terms of the Collective Bargaining Agreement, that upon knowledge of pregnancy a stewardess must discontinue flying. This does not mean that she discontinues flying at her own will, however. She may request a maternity leave of absence in order to retain and accrue seniority. The claimant did request a maternity leave of absence in order to protect such interests. A request for a maternity leave of absence under such circumstances does not absolutely infer that a claimant temporarily detaches herself from the labor market and thereby loses her eligibility for benefits. Rather, she is merely protecting her seniority during such time that she is forbidden to fly.

The claimant in this case became pregnant and could no longer fly. She attempted to obtain a ground position with the employer. The employer stated that it was company policy to attempt to place pregnant stewardesses in ground positions. Therefore, it is obvious that the claimant did wish to remain employed and in no way intended to detach herself from the labor market. Hence, her maternity leave of absence can in no way be interpreted as a voluntary withdrawal from the labor market.

Her pregnancy does not of itself preclude her from the receipt of benefits either. There is no disqualifying provision in the Virginia Unemployment Compensation Act because of pregnancy. A pregnant claimant may receive benefits if she suffers no basic disqualification and if she meets all of the eligibility criteria of the Act. (Underscoring supplied)

It is these prerequisites for eligibility which have been the main stumbling blocks for pregnant claimants who have been denied benefits. Often they have failed to meet the able and available for work requirement of the Act. A claimant who is pregnant will eventually reach a point of nonavailability as she approaches her expected date of delivery.

In the present case, the claimant suffers no disqualification. Since her expected date of confinement is more than four months away, the claimant's availability would not be unduly restricted because of her pregnancy. In addition, she has furnished information from her doctor which states she is able to work during the period in question. Therefore, our inquiry must be into whether she is available for work.

The general rule followed by the Commission is that to demonstrate availability the claimant must be conducting an earnest and active search for work during each week for which she claims benefits.

For the weeks ending June 30, 1973, July 7 and 21, 1973, and the period from July 29, 1973, through August 18, 1973, the claimant has contacted but one prospective employer each week. This is not an active search for work and, therefore, she has failed to meet the eligibility requirements of the Act for these weeks. The Commission is further of the opinion that for the weeks ending July 14 and 28, 1973, the claimant has made a sufficient number of contacts with prospective employers to demonstrate an active search for work. Accordingly, she is eligible for benefits for these weeks.

### DECISION

The decision of the Appeals Examiner is affirmed in part and reversed in part. It is held that the claimant has not met the eligibility requirements of the Act for the weeks ending June 30, 1973, July 7, and 21, 1973, August 4, 11 and 18, 1973. It is further held that the claimant has met the eligibility requirements of the Act for the weeks ending July 14, and July 28, 1973.