UNEMPLOYMENT COMPENSATION COMMISSION OF VIRGINIA

DECISION OF COMMISSIONER

---oOo---

Decision No:	UCFE-11	ABLE AND AVAILABLE - 235.05 Health or physical condition:
Date:	December 10, 1957	General

This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UCFE-121-119) dated November 15, 1957.

ISSUE

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

OPINION AND DECISION

The claimant has made efforts to locate employment which he feels that he is capable of performing and this Commission is convinced of his willingness to accept suitable employment if he is able to find work within his limited physical capabilities.

The claimant, however, was involuntarily retired from his last employment at the Naval Mine Depot where his duties were primarily supervisory on account of total disability. At his hearing before the Commission the claimant produced two letters from the Veteran's Administration indicating that he had been determined totally and permanently disabled for insurance purposes. Although this is not conclusive evidence that the claimant is not capable of rendering some substantial salable service so as to be "able to work" within the meaning of section 60-46(c), it raises a strong presumption against his physical ability. Throughout his testimony the claimant repeatedly refers to the fact that he feels that he must limit himself to work where he could exercise strict control over his physical exertion.(Underscoring supplied)

The claimant was employed by U. S. Naval Mine Depot, Yorktown, Virginia, from 1949 to November, 1956, and again from February 27, 1957, through August 9, 1957, at which time he was retired due to disability. The claimant is a man of 50 years and had been employed at the Naval Mine Depot as a Heating-Plant Supervisor. He is drawing a Disability Pension of $119.00 per month from Civil Service and also had been in the Navy for twenty-one years and is receiving a Navy Retirement Pension of $159.00 per month.

In view of the nature of the work from which this claimant was retired on disability, and in view of the evidence of his total permanent disability status with the Veterans Administration, the presumption against his ability to work must prevail until such time as he can demonstrate that he is physically capable of performing services on the general labor market.(Underscoring supplied)

For the above reasons the decision of the Examiner is modified. The claimant is held ineligible for benefits under Section 60-46(c) from September 27, 1957, through December 5, 1957, by reason of his being unable to work.