

UNEMPLOYMENT COMPENSATION COMMISSION OF VIRGINIA

DECISION OF COMMISSIONER

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Decision No.: 3259-C

ABLE AND AVAILABLE - 295
Length of unemployment

Date: July 28, 1958

This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. S-6746-6701) dated June 28, 1958.

ISSUE

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

FINDINGS OF FACT

This case came on appeal from a decision of the Appeals Examiner holding the claimant ineligible from May 7, 1958, through June 27, 1958.

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Between May 7, 1958, and May 26, 1958, the claimant sought employment with three employers. She applied to Sweet-Orr Company on May 20, 1958, to Jefferson Mills the same day and to Dublin Garment Company on May 22, 1958. Between May 21, and June 27, 1958 the claimant applied to two other employers. She contacted General Electric June 24, 1958, and Burlington Mills on June 26, 1958.

From June 7, 1958, through June 22, 1958, the claimant was, according to her testimony, "in the country . . . on vacation". She admittedly was making no efforts during this period (June 7, 1958, - June 22, 1958) to find employment.

Claimant is willing to work any shift and places no unreasonable restrictions on her wages. She has made no effort to locate sales work. She did state that she would be willing to try sales work if she thought she could do it.

OPINION AND DECISION

The sole issue raised in this case questions the claimant's availability for work as required by Section 60-46(c). Though not defined by statute the phrase "available for work", since it is an integral part of every claim, has had a long administrative history. It has been a requirement of eligibility since the enactment of the unemployment insurance program and is a universal provision in all jurisdictions administering such laws. Laxness in the enforcement of the availability requirement would quickly destroy the fundamental aims of unemployment insurance and bring its beneficent ideals into disrepute. Those who lack either the desire or the initiative to seek suitable employment but rather prefer to obtain benefits while waiting for a job to seek them out are not available for work. Only those who are eager applicants for work and who are unequivocally attached to the labor market can carry the burden of proving their availability for work. An active and unrestrictive search for suitable work has consistently been held by this Commission to be the badge of availability. The Supreme Court of Appeals has concurred with this concept. In Dan River Mills, Inc., v. Unemployment Compensation Commission of Virginia and Carolyn P. Jones, 195-Va. 997 at page 1002 the Court said:

"The administrative practice of the Virginia Commission has consistently applied the principle that to be 'available for work' a claimant must be actively and unrestrictively seeking suitable employment in the market where he resides. Despite frequent amendments to section 60-46 and 60-47 in other particulars, the General Assembly has not seen fit to change such administrative interpretation of these statutes."

The claimant seeks benefits in this appeal for a period of slightly over six weeks in addition to a waiting period week. During those seven weeks the claimant contacted five different employers. During the first week of her claim (May 7-13, 1958) the claimant made no search for work. In the next two weeks (May 14-27, 1958) she personally contacted three employers. In the next four weeks (May 28-June 24, 1958) the claimant contacted only one other employer and by her own admission was on vacation in the country during three of these compensable weeks. The day prior to her hearing before the Appeals Examiner she contacted her fifth employer. This contact was made at the beginning of her eighth week.

Fully conscious of the adverse economic conditions prevailing in the labor market where the claimant resides, this Commission is inclined to construe the evidence in the light most favorable to the claimant. Certainly the law does not contemplate that a door to door canvas must be made each week in order to prove an "active search" is in progress. The quality of the search is oftentimes more important than the quantity. On the other hand, an initial search which proves unsuccessful will not excuse abandonment of individual efforts. The applicant who is eager to find work will not accept initial rebuffs with passive resignation. During the two weeks, May 14-27, 1958, the record shows the claimant made her initial efforts to find work. Although the number of contacts were few they were directed to manufacturing establishments where the claimant felt her best hope of employment lay. For the next four compensable weeks the evidence will not support a finding of an active search. Indeed much of this time was consumed in vacationing. As her eighth week began it appears that she once again resumed her efforts to find work.

A word should be said about restrictions. The Examiner felt that the claimant had restricted her availability to factory work. In reply to a question of whether she was interested in sales work the claimant replied, "Well, I couldn't sell never." When asked if she would be willing to try sales work she answered that she would - if she thought she could do it.

The desire to find employment in keeping with one's prior employment experience and utilizing the best of his talents or skills, is both reasonable and desirable. There is a limit, however, beyond which selectivity becomes a restriction. As the length of one's unemployment grows longer and longer he is expected to expand his search and his willingness to include jobs which are entirely new so far as his past experience is concerned. This does not mean, of course, that the individual is to be expected to extend his availability to include employment beyond his physical or mental capabilities. It does mean that the individual must be ready and willing to attempt new work that is within his capacity and must extend his search to include such work. (Underscoring supplied)

During the first seven weeks of her claim the claimant in this case directed her inquiries to industrial work which was understandable in view of her previous experience. Her selectivity has not been too restrictive as yet. If she remains unsuccessful in her efforts to locate this type work and continues her claim she must extend her willingness and her search to encompass new types of work which she may have some opportunity of obtaining. The record is

insufficient to resolve whether or not sales work is suitable for this claimant, but the issue here does not require determination of that fact at this time.

For the reasons stated the decision of the Appeals Examiner is hereby modified.

The claimant is held unavailable for work from May 7, 1958, through May 13, 1958, and from May 28, 1958, through June 24, 1958; she is held available for work from May 14, 1958, through May 27, 1958. Three days of the eighth week were before the Commission and the evidence indicates that the claimant had again resumed her search for suitable work and was available from June 25, 1958, through the date of her hearing before the Examiner; but this period being less than a week must be, and hereby is, remanded to the deputy for further evidence and decision on the remainder of said week if the claim continued beyond the period covered by this appeal.