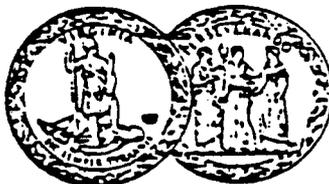


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

In the Matter of:

Thomas E. Caudron
████████████████████Thalhimer Brothers, Inc.
Virginia Beach, VirginiaDate of Appeal
to Commission:

July 6, 1992

Date of Review:

August 6, 1992

Place: RICHMOND, VIRGINIA

Decision No.:

39301-C

Date of Mailing: August 13, 1992

Final Date to File Appeal

with Circuit Court: September 2, 1992

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This case came before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-9208659), mailed June 19, 1992.

ISSUES

Was the claimant able to work, available for work, and actively seeking and unable to obtain suitable work as provided in Section 60.2-612(7) of the Code of Virginia (1950), as amended?

Was the claimant regularly attending training approved by the Commission as provided in Regulation VR 300-01-3.5(2)(B) of the Regulations and General Rules Affecting Unemployment Compensation?

FINDINGS OF FACT

On July 6, 1992, the claimant filed a timely appeal from the Appeals Examiner's decision which held that he was ineligible to receive benefits for the claim week ending April 18, 1992. That decision was based upon the Appeals Examiner's finding that the claimant was not regularly attending training as required by Commission regulations.

The claimant was enrolled in training approved by the Commission pursuant to the provisions of the Job Training and Partnership Act.

The claimant was attending computer technology courses at ECPI every Monday through Friday. This training began on March 9, 1992, and was scheduled to end on December 1, 1992.

On April 27, 1992, the claimant submitted his continued claim for benefits with respect to the claim week ending April 18, 1992. He also submitted his training certification form. The claimant disclosed to the Commission that he had been sick with bronchitis on Friday, April 17, 1992 and did not attend class. On that day, he went to a physician and sought medical treatment for his illness.

OPINION

Section 60.2-612(7) of the Code of Virginia provides, in part, that an unemployed individual shall be eligible to receive benefits with respect to any week only if he is able to work, available for work, and actively seeking and unable to obtain suitable work.

In order to satisfy the eligibility requirements of this statute, a claimant must be able to perform some substantial saleable service, be willing to accept any suitable work which may be offered without attaching thereto restrictions or conditions not usual and customary in that occupation, and be actively and unrestrictively seeking employment in the labor market where he resides. U.C.C. v. Dan River Mills, Inc., 197 Va. 816, 91 S.E.2d 642 (1956); U.C.C. v. Tomko, 192 Va. 463, 65 S.E.2d 524 (1951); Dan River Mills, Inc. v. U.C.C., 195 Va. 997, 81 S.E.2d 620 (1954).

Regulation VR 300-01-3.5(2)(B) of the Regulations and General Rules Affecting Unemployment Compensation provides as follows:

Benefits may be paid to an otherwise eligible claimant while he is attending training only if the Commission finds with respect to each week that the claimant is enrolled in and regularly attending the course of instruction approved for him by the Commission.

In this case, both the Deputy and the Appeals Examiner concluded that the claimant was not "regularly attending" his training class by virtue of a single absence due to illness. That is an erroneous interpretation of the applicable regulation. A single absence from approved training as a result of a bona fide illness does not contravene the regulation. The interpretation imposed by the Deputy and the Appeals Examiner would require a claimant to have perfect attendance during every week of approved training. If that was the intention of the regulation, it would have been drafted to say so. Instead, the regulation provides only that the claimant must regularly attend the course of training that has been approved by the Commission. With respect to the claim week ending April 18, 1992, the claimant has satisfied that requirement.

An analogy could be drawn to a claimant who was not in approved training but claiming regular UI benefits. If such a claimant was sick and unable to work on a single day during a claim week, the Commission would not find that he was ineligible for benefits because of that single day of illness. The same logic could be applicable to those claimants who are enrolled in approved training.

For these reasons, the Commission must conclude that the claimant was satisfying the requirement of the regulation that he regularly attend the course of training approved for him by the Commission. Therefore, he is eligible to receive benefits with respect to the claim week ending April 18, 1992. The Commission recognizes that the claimant requested a reopening of the Appeals Examiner's hearing. That issue is moot in light of the Commission's conclusion that the available evidence establishes his eligibility for benefits. Consequently, it is unnecessary for the Commission to address that issue.

DECISION

The Appeals Examiner's decision is hereby reversed. It is held that the claimant is eligible to receive benefits for the claimed week ending April 18, 1992, since the claimant was regularly attending the course of training approved for him by the Commission.

M. Coleman Walsh, Jr.
M. Coleman Walsh, Jr.
Special Examiner