



DECISION OF COMMISSION

In the Matter of

Aubrey L. Mitten, Claimant  
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Newport News Shipbuilding &  
Dry Dock Co.  
Newport News, Virginia

Employer

Date of Appeal

To Commission: October 25, 1973

Date of Hearing: November 14, 1973

Decision No.: 6129-C

Date of Decision: November 20, 1973

Place: Richmond, Virginia

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This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UI-73-1943) dated October 19, 1973.

ISSUES

Should the claimant's request for the Commission's approval of training be approved within the meaning of § 60.1-52.1 of the Code of Virginia (1950), as amended?

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

FINDINGS OF FACT

The claimant, a metallurgical engineer, with a college degree, was separated from his last employer due to a reduction in force. He has been unemployed and has claimed benefits since April 29, 1973. After searching throughout the summer for employment with negative results, he decided to enroll for classes at Virginia Commonwealth University. He began attending classes at VCU at his own expense on September 4, 1973 on a daily basis. These courses, totalling nineteen semester hours or seventeen classroom hours per week, include fundamentals of drawing, basic design, art history, interim design, and theater design, are scheduled to end in December.

The claimant by letter dated September 17, 1973 stated as follows:

"I have recently enrolled in classes at Virginia Commonwealth University to broaden my employment capabilities. For the past several months (three plus) I have sought work commensurate with my education (Metallurgical Engineering) and previous industrial experience. The lack of success in finding employment thus far has prompted my decision to seek additional education which would enhance the spectrum of employment opportunities to which I might avail.

While enrolled in school, I will continue my search for employment with the same sincere effort previously exerted. Should any conflict arise between job searching and classes, the former shall naturally take precedent. When an appropriate employment opportunity is presented, the educational program would become non-essential and thereby terminated."

#### OPINION

Section 60.1-52.1 of the Virginia Unemployment Compensation Act states:

"Notwithstanding any other provisions in this chapter, no otherwise eligible individual shall be denied benefits for any week because he is in training with the approval of the Commission, nor shall such individual be denied benefits with respect to any week in which he is in training with the approval of the Commission by reason of the application of the provisions in § 60.1-52 (g) relating to availability for work, or the provisions of § 60.1-58 (c) relating to failure to apply for, or a refusal to accept, suitable work."

Regulation XIII, B, of the Commission's Rules and Regulations Affecting Unemployment Compensation provides that training shall be approved only if the Commission finds that:

- a. Prospects for continuing employment for which the claimant is fitted by training and experience are minimal and are not likely to improve in the foreseeable future in the locality in which he resides or is claiming benefits;
- b. The proposed training course of instruction is likely to prepare the claimant in a relatively short time for an occupation for which there are, or are expected to be in the immediate future, recurring full-time

employment opportunities in the locality in which the claimant resides or is claiming benefits, or in other areas if the claimant has indicated willingness to seek work in such areas;

- c. The proposed training course has been approved by an appropriate accrediting agency or, if none exists in the State, the training complies with quality and supervision standards established by the Commission, and
- d. The claimant has the required qualifications and aptitude to complete the course successfully.

After examining the record and the evidence presented by the claimant, the Commission concludes that the courses of instruction being pursued by the claimant do not meet the criteria established by Regulation XIII, supra.

However, the Commission also notes that when applying for approval of courses which he is currently taking, the claimant stated that he would continue his search for work, that his search for work would take precedence over class attendance and he would terminate the classes to accept appropriate employment. Thus, this claimant did not seek to be removed from the provision of the Act relating to availability for work or failure to apply for, or a refusal to accept, suitable work and may have been misinformed concerning whether to seek approval by the Commission of the courses he is taking.

Since the Commission has not approved the course of instruction being pursued by the claimant, his entitlement to benefits must rest upon meeting all other provisions of the Act.

In Decision No. 6068-C, dated August 17, 1973, concerning the eligibility of student claimants for benefits, the Commission adopted four guidelines and concluded that "when the primary goal of a claimant is to obtain employment and not an education and the claimant meets the other availability requirements . . . , then the claimant should be held eligible for benefits.

The facts in the present case indicate that the claimant's primary goal is to obtain employment. Although the claimant is taking a full class load, as noted above, he has stated that he will continue his search for employment, that his search for work will take precedence over class attendance and that he will accept suitable employment.

In the absence of proof that the claimant has refused suitable employment or is not continuing an active search for work, he should not be denied benefits.

The Commission again emphasizes, as was aptly stated in Stephen Patronas v. Unemployment Compensation Board, Commonwealth Court of Pennsylvania, 5-17-72 (reported in CCH Unemployment Insurance Reports at page 41, 656,

the following distinction:

"It should not be assumed that this decision will set a precedent for large numbers of college students to finance their college education by way of unemployment compensation benefits. The factual situations in this case . . . are clear, and they permit the courts to draw a line between claimants who are basically students and claimants who are basically committed to the work-force but in addition are attempting to better themselves by continuing their education. "

In summary, it is the opinion of the Commission that this claimant, under the circumstances of this case, is not rendered ineligible for benefits by attendance of the college courses.

DECISION

The decision of the Appeals Examiner is affirmed. Since there is only incomplete evidence concerning the claimant's efforts to find employment during the claim weeks subsequent to September 2, 1973, the Deputy is directed to carefully determine the claimant's availability for work.



B. Redwood Councill  
Assistant Commissioner