

UNEMPLOYMENT COMPENSATION COMMISSION OF VIRGINIA

DECISION OF APPEALS EXAMINER

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Decision No: IS-1232-1251  
Date: August 29, 1955

ABLE AND AVAILABLE - 90  
Conscientious objection

POINT AT ISSUE

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

FINDINGS OF FACT

The claimant appealed from a determination which declared him ineligible for unemployment compensation as of May 9, 1955. The Deputy held in his determination that the claimant did not meet the requirement of being available for work within the meaning of that term as used in Section 60-46 (c) of the Code of Virginia.

The claimant was last employed by Walter Truland Corporation, Arlington, Virginia, where he had worked from July 26, 1954, through April 10, 1955, and was separated from his employment due to lack of work. The following explanation was furnished by the employer: "One janitor terminated due to reduction in force."

The claimant is a porter, having performed this type of employment with his last employer. The claimant is a baptized member of the First Seventh-Day Adventist Church, Washington, D. C., and is a member in good standing. The tenets of the Church forbid labor on Saturday, the Sabbath, and if a person violated this rule he would lose his membership. The claimant is a devout, sincere member of the Church. Throughout the period that he has been claiming unemployment compensation, from May 9, 1955, through August 7, 1955, the claimant has sought employment with various employers in Washington. When he filed his Claim for week ending August 7, 1955, he stated that he had started to work on August 15, 1955.

The claimant has been applying to places where he might obtain work that would not require him to work on the Sabbath. A private employment agency where he was registered for work had sent him to a job; however, he was unable to take the job as the employer had no one to relieve him on the Sabbath. Another employer he applied to for work also told him that, if he could not work on Saturday because of it being the Sabbath Day, they would not accept him for employment. He has applied to other places for work and there was no indication that he might be offered employment.

OPINION

Section 60-46 (c) of the Code of Virginia provides in part that, in order to be eligible for benefits, a claimant must be available for work. Generally, to be considered available for work, among other things, a claimant must show that he is actively and earnestly searching for suitable work and is ready and willing to accept employment without attaching undue

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restrictions to his employability.

A careful review of the claimant's statements regarding his activity in looking for work during the period he has been claiming shows that he has been looking for employment. The primary issue before the Examiner is whether or not the claimant, a bona fide member of the Seventh-Day Adventist Church, who observes Saturday as the Sabbath, is available for work within the meaning of that term as used in the Virginia Unemployment Compensation Act. The Examiner is of the opinion that this issue is well-settled. This Examiner held in Decision No. D-1397; A. E.-609, dated November 24, 1945, that a bona fide member of a Seventh-Day Adventist Church did meet the requirement of being available for work, and this Decision is quoted in part:

"This claimant has expressed her willingness to work every day of the week except that portion of the week which she deems her Sabbath, and any work to which she might be referred that would require her to work on her Sabbath day would be unsuitable."

The claimant's refusal to work on Saturday is not a restriction in itself that would justify the denial of unemployment compensation on the grounds that the claimant is not available for work. The Appeals... Tribunals of a number of states have found Seventh-Day Adventist claimants available for work despite the restrictions the claimants have placed against Saturday work. The restriction imposed by the claimant in this case has not taken him out of the labor market inasmuch as the Examiner takes judicial knowledge that there are probably a large number of places in the District where the claimant could find work that would not interfere with his Sabbath Day. In view of the foregoing, it is the conclusion of the Examiner that this claimant has been meeting the eligibility requirements of Section 60-46 (c) of the Code of Virginia from May 9, 1955. (Underscoring supplied)

#### DECISION

The determination of the Deputy is hereby reversed. The claimant is eligible for benefits from May 9, 1955, through August 7, 1955, the period covered by his Claims.