



DECISION OF COMMISSION

In the Matter of:

Sherry C. Broome
████████████████████

Select Temporary Service
Richmond, Virginia

Date of Appeal
to Commission: November 27, 1989
Date of Hearing: January 5, 1990
Place: RICHMOND, VIRGINIA
Decision No.: 32909-C
Date of Mailing: January 10, 1990
Final Date to File Appeal
with Circuit Court: January 30, 1990

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This matter comes before the Commission as the result of an appeal filed by the claimant from the Decision of Appeals Examiner (UI-8910261), mailed November 17, 1989.

APPEARANCES

None

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?

Did the claimant register for work and continue to report at an employment office in accordance with such regulations as the Commission may prescribe as provided in Section 60.2-612.5 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On November 27, 1989, the claimant filed a timely appeal from the decision of the Appeals Examiner which held that she was ineligible to receive benefits for the claim week ending July 29,

1989. The Appeals Examiner reached this conclusion based upon his finding that the claimant had failed to report to the Commission on or before October 3, 1989, as she had been directed.

The claimant filed an initial claim for benefits effective July 23, 1989. Thereafter, she submitted her continued claim form for the two-week claim period of July 23, 1989, through August 5, 1989. During the claim week ending July 29, 1989, the claimant made three separate job contacts in search of employment. She was physically able to work, imposed no unusual restrictions on her availability for work, and did not refuse any offers of work during this week.

The claimant's continued claim form for the week in question was received by the Commission on August 9, 1989. The payment of benefits for that week was authorized and a check was issued on August 11, 1989. After payment had been authorized, the local office Deputy issued a Notice of Predetermination Fact-Finding Interview on September 26, 1989. The claimant was instructed to report to the Commission's local office on or before 3:00 p.m., on Tuesday, October 3, 1989, because an issue regarding her job search for the week ending July 29, 1989, had arisen. The claimant did not report for that fact-finding interview, and the Deputy held that she was ineligible to receive benefits for the claim week ending July 29, 1989, because one of her job contacts could not be verified. The claimant did not claim benefits for the week of October 1, 1989, through October 7, 1989.

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 she 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).

In this case, the evidence in the record manifestly establishes that the claimant was able to work, that she was available for work, and that she was actively seeking and unable to obtain suitable work. Consequently, she has satisfied the eligibility requirements of this statute.

Section 60.2-612.5 of the Code of Virginia provides that an unemployed individual, to be eligible to receive benefits with respect to any week, must register for work and thereafter continue to report at an employment office in accordance with such regulations as the Commission may prescribe.

This particular statute is totally inapplicable to the case at bar. A claimant could be held ineligible for benefits under this statute under one of two scenarios. First, if a claimant has failed to register for work, he would be ineligible to receive benefits. Second, if a claimant claimed benefits during a particular claim week and, during that same claim week failed to report to the Commission as directed, then he would be ineligible to receive benefits for the claim week in which he failed to report.

In this case, the claimant did not report to the Commission on or before October 3, 1989, as directed. Nevertheless, the Commission's records reflect that she never claimed benefits for that week. She fully satisfied all of the eligibility requirements for the claim week ending July 29, 1989. The statute does not permit the Commission to hold a claimant ineligible to receive benefits during one week for a "failure to report" that occurred in another week. For these reasons, the Commission must reverse the decision of the Appeals Examiner and find that the claimant was eligible to receive benefits for the claim week in question.
(Underscoring supplied)

DECISION

The decision of the Appeals Examiner is hereby reversed.

It is held that the claimant is eligible to receive benefits for the claim week ending July 29, 1989, since she satisfied all of the eligibility criteria set out in Section 60.2-612 of the Code of Virginia.

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