

PROCEDURE: 30.1  
Requests that Commission Take  
Additional Evidence and  
Testimony -- Legal Standard  
for Taking Additional Evidence.



DECISION OF COMMISSION

In the Matter of

David G. Sacco  
[REDACTED]

Georgetown Holiday Inn  
Washington, D.C.

INTERSTATE

Date of Appeal  
To Commission: March 15, 1985  
Date of Review: April 11, 1985  
Place: RICHMOND, VIRGINIA  
Decision No.: 24943-C  
Date of Decision: April 12, 1985  
Date of Mailing: April 12, 1985  
Final Date to File Appeal  
with Circuit Court: May 2, 1985

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This is a matter before the Commission on appeal by the employer from the Decision of Appeals Examiner (No. UI-85-1423) mailed March 12, 1985.

ISSUE

Did the claimant leave work voluntarily without good cause as provided in Section 60.1-58(a) of the Code of Virginia (1950) as amended?

Was the claimant discharged for misconduct in connection with work as provided in Section 60.1-58(b) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT & OPINION

The Findings of Fact and the Opinion of the Appeals Examiner are adopted by the Commission. These findings are as follows:

"The claimant filed a timely appeal from a determination of the Deputy which disqualified him for benefits effective January 6, 1985.

The Georgetown Holiday Inn, Washington, D. C., was the claimant's last employer for whom he worked from August 6, 1984, until December 27, 1984. The claimant was last employed as the assistant food and beverage director, earning an annual salary of \$24,000, at the time of separation. The claimant had been working with the Holiday Inn for the last six years.

The food and beverage director was transferred in the beginning of December of 1984. On or about December 11, 1984, the general manager of the hotel informed the claimant that the duties of the food and beverage director and assistant were to be assumed by the general manager himself, and the claimant's position to be eliminated effective December 27, 1984. The claimant was then asked to submit a notice of resignation, which he did, on or about December 17, 1984. That was at the direction of his general manager and for the stated purpose of protecting the claimant's future employment record.

The employer was duly notified of the scheduled hearing, but failed to appear or respond to the notice."

The employer, in its letter of appeal, states that the personnel coordinator did not respond to the telephone notice of hearing due to illness and has requested a review of the Appeals Examiner's decision based on information in the aforementioned letter and documents attached thereto.

Section 60.1-64 of the Virginia Unemployment Compensation Act provides that:

"The Commission may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or shall permit any of the parties to such decision to initiate further appeals before it. . . ." (Underscoring provided)

Regulation XI.B. of the Rules and Regulations Affecting Unemployment Compensation reads in pertinent part as follows:

"Commission Review. Except as otherwise provided by this rule, all appeals to the Commission shall be decided on the basis of a review of the evidence in the record. The Commission may, in its discretion, direct the taking of additional evidence after giving written notice of such hearing to the parties in accordance with this rule." (Underscoring provided)

The discretion provided the Commission as cited above must be exercised uniformly and consistently in order to maintain the integrity of the fair hearing process. The Commission follows the guidelines listed below when determining whether to direct the taking of additional evidence:

1. It is affirmatively shown that the additional evidence (A) is material and not merely cumulative, corroborative or collateral and (B) could not have been presented at the prior hearing through the exercise of due diligence and (C) the evidence is likely to produce a different result at a new hearing; or
2. The record of proceedings before the appeals tribunal is insufficient to enable the Commission to make proper, accurate or complete findings of fact and conclusions of law.

Although the evidence the employer has proffered by letter is material and could produce a different result, it obviously could have been presented at the evidentiary hearing through the exercise of due diligence. The employer had the option of representation by the individual(s) who had first-hand knowledge of the circumstances and events surrounding the claimant's separation, or a request for a postponement or continuance could have been made in a timely fashion. In view of the above, the employer's request to have this matter reopened and additional evidence entered into the record must be denied.

#### DECISION

After having reviewed the entire record and the decision of the Appeals Examiner, the Commission is of the opinion that the decision should be affirmed, and hereby sustains and affirms the same.



Joseph L. Hayes  
Special Assistant  
Commission Appeals