



DECISION OF COMMISSION

In the Matter of:

Lisa Y. Trotter  
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Peoples Drug Stores  
Columbus, Ohio

Date of Appeal  
to Commission: October 3, 1989  
Date of Hearing: November 3, 1989  
Place: RICHMOND, VIRGINIA  
Decision No.: 32646-C  
Date of Mailing: November 16, 1989  
Final Date to File Appeal  
with Circuit Court: December 6, 1989

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This case came before the Commission on appeal by the employer from a Decision of Appeals Examiner (UI-8908183), mailed September 25, 1989.

APPEARANCES

None

ISSUES

Should the employer be permitted to withdraw its appeal as provided in Regulation VR 300-01-4.3C and Regulation VR 300-01-4.2E of the Rules and Regulations Affecting Unemployment Compensation?

Does the employer have good cause to reopen the Appeals Examiner's hearing as provided in Regulation VR 300-01-4.2I of the Rules and Regulations Affecting Unemployment Compensation?

Did the claimant leave work voluntarily without good cause as provided in Section 60.2-618.1 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On October 3, 1989, the employer filed a timely appeal from the Decision of Appeals Examiner which held that the claimant was qualified to receive benefits, effective July 9, 1989. The basis for that decision was the Appeals Examiner's finding that the claimant had left her job voluntarily for reasons that would constitute good cause. In addition to filing an appeal, the employer requested that the Appeals Examiner's hearing be reopened.

The Appeals Examiner's hearing was conducted on September 23, 1989. Written notice of the date, time, and place of that hearing was mailed on August 31, 1989, to the correct, last-known addresses of both the claimant and the employer. In addition, a copy of the notice was forwarded to the employer's representative. There were no appearances at that hearing. On September 22, 1989, the employer requested a postponement of the case because its witness would be attending a seminar. The employer's letter of appeal asserted that the witness had to attend a mandatory meeting on September 24 and September 25, 1989, and that a request for her testimony to be taken telephonically was denied.

A hearing was scheduled before the Commission concerning the employer's appeal on November 11, 1989. Written notice of the hearing was mailed to the claimant, the employer and the employer's representative on October 20, 1989. The hearing was scheduled for the dual purposes of permitting the parties to argue the case and to allow the employer to present evidence concerning its request that the Appeals Examiner's hearing be reopened. In lieu of personally appearing at the hearing, the employer submitted a written request asking that its appeal be withdrawn. The basis for that request was the employer's understanding that, given the circumstances surrounding the reason for the claimant's separation from work, the company's account would not be charged for any benefits paid.

Prior to filing her claim for benefits, the claimant last worked for as many as thirty days for Peoples Drug Stores. She was employed as a part-time cashier from January 15, 1989 through May 17, 1989. She was paid \$3.35 an hour and normally worked between twenty-five and thirty hours each week.

The claimant voluntarily resigned from this job on May 17, 1989. She did so in order to accept a position with the Aquarius Hotel. The claimant had received an offer to work from that employer prior to quitting her job with Peoples Drug Store. The record does not reveal what job the claimant was offered. The job paid \$4.00 an hour and involved working forty hours weekly. There is no evidence in the record concerning whether this job was permanent. The claimant worked for the Aquarius Hotel for ten days before her job came to an end.

OPINION

Regulation VR 300-01-4.3C of the Rules and Regulations Affecting Unemployment Compensation provides that withdrawals of appeals before the Commission shall be handled in the same manner as withdrawals of appeals pending before the Appeals Examiners except that requests shall be made through the Office of Commission Appeals or through the Special Examiner assigned to the hear the case. Regulation VR 300-01-4.2E of the Rules and Regulations Affecting Unemployment Compensation provides as follows:

If the appellant wishes to withdraw his appeal, a request together with the reasons therefor must be made in writing and sent to the Clerk of the Commission-Lower Authority at the Commission's administrative office in Richmond. The request will be granted only if the appeals examiner assigned to hear the case is satisfied that:

1. The appellant understands the effect that withdrawal will have upon benefits entitlement, potential benefit charges, or potential overpayment;
2. The request is not the result of any coercion, collusion, or illegal waiver of benefits pursuant to Section 60.2-107 of the Code of Virginia; and
3. The appealed determination is not clearly erroneous based upon the existing record.

The employer's withdrawal request meets the first two requirements of the regulation; however, for reasons that will be discussed later, the Commission must conclude that the decision appealed from was clearly erroneous based upon the existing record. Thus, since all three of the requirements have not been met, the employer's request that its appeal be withdrawn must be denied.

Regulation VR 300-01-4.2I of the Rules and Regulations Affecting Unemployment Compensation provides that any party who is unable to appear at a scheduled hearing before an Appeals Examiner, or who appeared but wishes to present additional evidence, may request that the hearing be reopened. When such a request is received after the Appeals Examiner's decision has been rendered, it shall be referred to the Commission for a determination. If the determination is to reopen the hearing, then the matter shall be remanded for that purpose. If the Commission decides not to reopen the hearing, the letter requesting the reopening shall be treated

as an appeal to the Commission based upon the record as previously established.

In the case of Engh v. United States Instrument Rentals, et al., Commission Decision 25239-C (July 12, 1985), the Commission held:

In order to show good cause to reopen a hearing, the party making such a request must show that he was prevented or prohibited from participating in the hearing by some cause which was beyond his control and that, in the face of such a problem, he acted in a reasonably prudent manner to preserve his right to participate in future proceedings.

The reasons given by the employer for its reopening request, if proven, would probably have constituted good cause to reopen the Appeals Examiner's hearing. Unfortunately, the employer did not attend the Commission hearing to offer any evidence on that issue since it elected to request a withdrawal of its appeal. In the absence of sworn testimony concerning the circumstances surrounding the employer's request for a postponement of the Appeals Examiner's hearing, the record is insufficient to establish good cause for reopening the hearing. Therefore, the employer's request in that respect must be denied.

Section 60.2-618.1 of the Code of Virginia provides a disqualification if the Commission finds that a claimant left work voluntarily without good cause.

Over the years the Commission has been faced with a vast number of cases involving an employee who decided to leave his job to accept work elsewhere. In ruling on these cases, the Commission has sought to determine whether or not a reasonable person under the same or similar circumstances would also have left work to accept the new job.

The Commission's analysis of these cases was refined in the case of Harbert v. United Distribution Systems, Commission Decision 5996-C, (June 13, 1973). In that case, the Commission held:

The phrase "good cause" has been consistently construed to embrace a claimant's decision to change from one job to another where he has a reasonable expectation of improving himself or where he deems such a transfer to be for his own best interest. If the job to which he transfers is permanent or he has a reasonable basis for believing it to be, and he has actually obtained a job in contrast to a mere

anticipation of receiving it, his leaving must be deemed to be with good cause.

In this case, neither the claimant nor the employer appeared at the Appeals Examiner's hearing. The evidentiary record before the Commission consists of eight documents that the Appeals Examiner introduced as exhibits. None of these exhibits reflects where the claimant was told that the job was permanent. Additionally, there is nothing in the evidentiary record to establish that the claimant had a reasonable basis for believing the job would be permanent. The burden of proving good cause for leaving work is upon the claimant. It is incumbent upon her to provide by a preponderance of the evidence that her decision to leave work with Peoples Drug Store fell within the good cause proviso of the statute. See Kerns v. Atlantic American, Inc., Commission Decision 5450-C, (September 20, 1971). Since there is no evidence at all with respect to whether the new job was permanent, the Commission has no alternative but to conclude that the claimant has failed to carry her burden of proving good cause for leaving work with Peoples Drug Store. Consequently, the disqualification provided by the statute must be imposed.

#### DECISION

The employer's request that its appeal be withdrawn, and its request that the Appeals Examiner's hearing be reopened, are hereby denied.

The Decision of Appeals Examiner is hereby reversed. The claimant is disqualified from receiving benefits, effective July 9, 1989, because she left work voluntarily without good cause. This disqualification shall remain in effect for any week benefits are claimed until she performs services for an employer during thirty days, whether or not such days are consecutive, and she subsequently becomes totally or partially separated from such employment.

The case is remanded to the Deputy with instructions to investigate the claimant's claim for benefits and to determine if she has received any sum as benefits to which she was not entitled and is liable to repay the Commission as a result of the disqualification herein imposed.



M. Coleman Walsh, Jr.  
Special Examiner