

COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION

PROCEDURE: 60.15  
Conduct of Hearing --  
Scheduling of Hearing--Location.



DECISION OF COMMISSION

In the Matter of:

Garnethia Dunn  
[REDACTED]

General Masonry, Inc.  
Springfield, VA

Date of Appeal  
to Commission: November 28, 1987  
Date of Hearing: December 21, 1987  
Place: RICHMOND, VIRGINIA  
Decision No.: 29456-C  
Date of Mailing: December 30, 1987  
Final Date to File Appeal  
with Circuit Court: January 19, 1988

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This is a matter before the Commission as the result of an appeal filed by the employer from the Decision of Appeals Examiner (UI-8710436), mailed November 25, 1987.

APPEARANCES

None

ISSUES

Does the employer have good cause to reopen the hearing before the Appeals Examiner as provided in Regulation VR 300-01-4.21 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

The claimant had filed a claim for unemployment compensation effective October 4, 1987, and was disqualified by the Deputy effective that date for having left work voluntarily without good cause. He filed a timely appeal from that determination and

a hearing was scheduled before an Appeals Examiner in the Portsmouth office of the Commission for November 17, 1987. At that hearing, only the claimant appeared and, at his request, the testimony of his probation and parole officer was taken by telephone. There was no response to the notice of hearing by the employer and the Appeals Examiner's Decision which was mailed November 25, 1987, reversed the Deputy's determination and declared him qualified for unemployment compensation effective October 4, 1987.

By letter dated November 28, and received December 4, 1987, the employer noted an appeal and a request to participate telephonically in another hearing.

The Findings of Fact made by the Appeals Examiner have been reviewed and are hereby adopted by the Commission with certain additions to be discussed in the next paragraph. Those findings of Fact are as follows:

The claimant filed a timely appeal from a Deputy's determination which held him disqualified from receiving unemployment compensation benefits effective October 4, 1987, because he left work voluntarily without good cause.

The claimant was last employed by General Masonry, Incorporated of Springfield, Virginia as a full-time brick mason helper. The claimant worked for the employer from March 30, 1987, through August 11, 1987, while he was incarcerated in a State Penitentiary in Fairfax, Virginia.

The claimant was released from incarceration on August 13, 1987. The State Department of Correction's (sic) records show the claimant's home to be in Portsmouth, Virginia. The claimant was given 72 hours after his release from the penitentiary in Fairfax to return to his mother's home in Portsmouth. Failure to return to his mother's home within the 72 hour period would have resulted in a parole violation.

The claimant could not have remained in Fairfax or Springfield, Virginia without specific permission from the Department of Corrections. In order to have received that permission, he would have had to establish that he had a place to live which met all the criteria set forth by the Department of Corrections.

He also would have established that he had a job and transportation to and from work. The claimant did not have any transportation to and from work and he did not have a place to live in Fairfax or Springfield, Virginia. Because he had to return to Portsmouth, Virginia, the claimant tendered his resignation to the employer.

Although duly notified of the hearing scheduled on this appeal, the employer did not appear or respond to the Notice of Hearing.

While working for the employer under the work-release program, the claimant's transportation to and from work was provided by the Department of Corrections. Once a parole plan has been approved, it takes from six weeks to two months to change it even if all of the criteria for approval can be met. It is customary for prisoners on work release to leave their jobs as they are paroled to distant locations.

#### OPINION

Regulation VR 300-01-4.2I of the Rules and Regulations Affecting Unemployment Compensation provide that any party who is unable to appear at a scheduled appeals hearing 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 decision. If the decision is to reopen, the matter shall be remanded for that purpose. If the decision is not to reopen, the request to do so shall be treated as an appeal to the Commission and a decision shall be rendered based upon the record established at the Appeals Examiner's hearing.

In the case of Engh v. United States Instrument Rentals, et al, Commission Decision No. 25239-C, (July 12, 1985), it was 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."

Here, both the claimant and the employer were located within Virginia which means that the appeals hearing was properly scheduled to be conducted in person at the local office where the claimant filed his claim for benefits. Telephonic hearings are only scheduled automatically in cases where the claimant lives and files a claim out of state. Telephonic hearings may be scheduled otherwise in special circumstances upon request only. In the case at hand, the evidence indicates that the employer was notified that the hearing was to be conducted in person in the Portsmouth office of the Commission and there has been no indication that a request was ever made to allow the employer to participate by telephone. Therefore, the employer's failure to appear at the scheduled hearing was not due to circumstances beyond its control and the Commission is unable to conclude that the employer acted in a reasonably prompt manner to preserve its right to participate in future proceedings. Therefore, the case will not be reopened and a decision will be rendered based upon the existing record. (Underscoring supplied)

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

In the case of Phillips v. Dan River Mills, Inc., Commission Decision No. 2002-C (June 15, 1955), it was held:

"Therefore, where the pressure of real, not imaginary, substantial, not trifling, reasonable, not whimsical, circumstances compel the decision to leave employment, the worker leaves voluntarily but with good cause. The pressures of necessity, of legal duty, or family obligations or other compelling circumstances, and the worker's capitulation to them, will not penalize his right to benefits if he once again re-enters the labor market."

Here, the claimant was confronted with a situation in which he could keep his job only if he chose to forego his release from incarceration while attempting to change his parole plan which had already been worked out. Inasmuch as he had family willing to provide him a home in the Portsmouth area, this represented the plan which was most likely to get him the earliest release date. The Commission is of the opinion that a person in the claimant's situation would feel the compulsion to choose freedom over his job and, once released, would then be legally obligated to follow the terms of the parole plan even if it included relocation which would result in the loss of employment. (Underscoring supplied)

After reviewing the evidence in this case, the Commission concludes that the claimant did leave work voluntarily but with good cause. Therefore, he was properly found to be qualified for benefits with respect to his separation from the employer's services

DECISION

The employer's request to reopen the hearing before the Appeals Examiner is hereby denied.

The Decision of Appeals Examiner is hereby affirmed.

It is held that the claimant is qualified for unemployment compensation effective October 4, 1987, with respect to his separation from the services of General Masonry, Incorporated.



Charles A. Young, III  
Special Examiner