



DECISION OF COMMISSION

In the Matter of:

Euradina L. Coles
[REDACTED]

Migrant & Seasonal Farmworkers
Association, Inc.
South Hill, Virginia 23970

Date of Appeal
to Commission: April 3, 1985

Date of Hearing: June 14, 1985

Place: RICHMOND, VIRGINIA

Decision No.: 24988-C

Date of Mailing: June 17, 1985

Final Date to File Appeal
with Circuit Court: July 7, 1985

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This is a matter before the Commission on appeal by the employer from a Decision of Appeals Examiner (UI-85-1408), mailed March 14, 1985.

APPEARANCES

Employer Representative, Attorney for Claimant

ISSUES

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 connected with work, as provided in Section 60.1-58(b) of the Code of Virginia (1950), as amended?

Did the claimant fail, without good cause, either to apply for available, suitable work when so directed by the employment office or the Commission or to accept suitable work when offered, as provided in Section 60.1-58(c) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The first four paragraphs of the findings of fact of the Appeals Examiner are hereby adopted by the Commission.

The employer never extended to the claimant a definite, bona fide job offer as a field service representative. The employer, through two of its representatives, had merely encouraged the claimant to apply for this particular position. There was a procedure available whereby the employer could have transferred the claimant into that position. This procedure had been utilized on past occasions but was not exercised in this instance.

OPINION

Section 60.1-58(b) of the Code of Virginia provides a disqualification if the Commission finds that a claimant was discharged for misconduct connected with her work. The evidence is clear from both the claimant and the employer that the claimant's separation on January 21, 1985, occurred as a result of the employer's reorganization and reduction in force. There has been no allegation of misconduct and the employer has conceded that none existed. Accordingly, no disqualification may be imposed upon the claimant pursuant to the provisions of Section 60.1-58(b).

Section 60.1-58(c) of the Code of Virginia provides a disqualification if the Commission finds that a claimant has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the Commission or to accept suitable work when offered. This particular statute sets out two different basis upon which a disqualification could be imposed. A claimant could be disqualified if she failed to apply for work when directed by the employment office or the Commission. In the alternative, a claimant could likewise be disqualified if an offer of suitable work was refused for reasons which do not constitute good cause. After reviewing the evidence in the record, the Commission is convinced that no disqualification can be imposed under either of these two criteria.

For a claimant to be disqualified for refusing to apply for suitable employment, the referral must be made by the employment office or the Commission. Section 60.1-10 of the Code of Virginia defines the Commission to mean the Virginia Employment Commission. Section 60.1-15 of the Code of Virginia defines an "employment office" to mean:

. . . a free public employment office, or branch thereof, operated by this State or maintained as a part of a state-controlled system of public employment offices or by a federal agency charged with the administration of free public employment offices.

Although the claimant was referred to a job opportunity by the employer and encouraged to apply for it, that does not constitute a referral within the contemplation of Section 60.1-58(c) since the employer is neither an employment office nor the Commission. Also, a disqualification cannot be imposed on the claimant based upon any refusal of an offer of suitable work. In the present case, the most that the evidence would establish is that the employer referred the claimant to this job opportunity and encouraged her to apply for it. However, no actual, bona fide offer of work was made to the claimant. Such an offer envisions a definite assurance of employment at a given salary with a particular schedule of hours to work. While the employer believed the claimant to be a qualified candidate for this position, no bona fide offer was made to her as contemplated by Section 60.1-58(b) of the Code of Virginia. In the absence of such an offer, no disqualification may be imposed.

Section 60.1-58(a) of the Code of Virginia provides a disqualification if the Commission finds that a claimant left work voluntarily without good cause.

Within this context, the employer has argued that the claimant's failure to apply for the job opening as a field service representative rendered her otherwise involuntary separation a voluntary one. However, this argument is not persuasive to the Commission. As previously stated, the claimant had no definite assurance or offer of work following her layoff due to a reduction in force effective January 21, 1985. The claimant's decision not to apply for a job for which she felt unqualified does not change the character of her separation from an involuntary one to one which is voluntary. Accordingly, no disqualification may be imposed pursuant to the provision of Section 60.1-58(a) of the Code of Virginia.

In the letter of appeal filed with the Commission and at the hearing held for the purpose of affording the opportunity to orally argue the case, the employer contended that the claimant should be disqualified pursuant to the provisions of Section 60.1-58(d) of the Code of Virginia for making a false statement to the Commission in an attempt to obtain benefits or to obtain an increase in her benefits. The Appeals Examiner did not address this issue since it was not set out on the Notice of Hearing which was mailed to the parties. Likewise, that issue was not set out on the Notice of Hearing mailed by the Commission. Based upon the record that is in the evidence, it does not appear that the claimant knowingly made a false statement or representation in an attempt to obtain benefits or to obtain an increase in benefits. However, the record on that point has not been sufficiently developed since the parties were not put on notice of this issue. Accordingly, the case shall be remanded to the Deputy for further proceedings on that point.

DECISION

The decision of the Appeals Examiner is hereby affirmed. It is held that the claimant is qualified to receive unemployment insurance benefits, effective January 20, 1985, since she was discharged by the employer for reasons which do not constitute work-related misconduct.

It is also held that the claimant did not fail, without good cause, either to apply for available, suitable work when so directed by the employment office or Commission or to accept suitable work when offered and is not subject to the disqualification provided in Section 60.1-58(c) of the Code of Virginia.

It is further held that the claimant did not leave work voluntarily without good cause and no disqualification may be imposed pursuant to the provisions of Section 60.1-58(a) of the Code of Virginia.

The case is referred to the Deputy with instructions to investigate the claimant's claim for benefits and to determine whether or not she has complied with the eligibility requirements of the Act for each week benefits have been claimed. The Deputy is further instructed to carefully review the claimant's claim for benefits together with the transcript of testimony taken before the Appeals Examiner and to issue an appropriate determination concerning the issue raised by the employer under the provisions of Section 60.1-58(d) of the Code of Virginia. The Clerk of the Commission is instructed to transmit to the Deputy a copy of the transcript of the Appeals Examiner's hearing for the purpose of expediting a determination of this issue.


M. COLEMAN WALSH, JR.
SPECIAL EXAMINER