

UNEMPLOYMENT COMPENSATION COMMISSION OF VIRGINIA

DECISION OF COMMISSIONER

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Decision No: 880-C
Date: Nov. 16, 1953

SUITABLE WORK - 5
General

This is a matter before the Commission on appeal by the claimants and employer from the decision of the Examiner (S-1287, etc.-1307) dated September 10, 1953.

ISSUE

Did the claimants fail without good cause to accept an offer of suitable work?

OPINION AND DECISION

This case having come before the Commission for a review of the transcript of evidence taken before the Examiner, and the Commissioner, after reviewing the entire record, decision of the Examiner and the additional evidence presented to the Commission, being of the opinion that the decision should be affirmed, hereby sustains and affirms the same.

The two questions ultimately presented in this case are (1) whether the work offered the claimants in the Beaming Department was suitable work and (2) did the claimants have good cause to refuse the offered work?

Section 60-47 (c) of the Code of Virginia, the pertinent portions of which are quoted in the Examiner's decision, prescribes the only factors to be considered by the Commission in determining whether work is suitable. These factors are (1) the degree of risk involved to the claimants' health, (2) safety, (3) morals, (4) physical fitness and prior training, (5) experience, (6) length of unemployment, and (7) accessibility of the offered work from the claimants' residence.

Under the evidence presented there seems to be no reason to hold that the work offered is unsuitable as a result of factors (1), (2), (3) and (7), since there is essentially nothing to indicate that the work was unsafe or in any way detrimental to the health and morals of the claimants. The offered work was located in the same establishment where the claimants had been working, thus raising no question as to the accessibility from the residence of the claimants. Physical fitness, included in item 4, is so interwoven with item 1 as to be determined largely by the same considerations. In this connection it is noted that none of the claimants except one presented any evidence that would tend to substantiate a finding that they were not physically able to perform the new work. Decisions of this Commission cannot be predicated on conjecture.

As to the length of unemployment, it is noted that the claimants had been unemployed for several months before the offer of work in question was made to them. As a matter of fact, they were still unemployed as of the date of the hearing before the Commission, approximately seven months following their separation from work. The net result is that the only factors in favor of a holding of unsuitable work are the prior training and experience

of the claimants (items 4 and 5). While it is true that the claimants have never performed the particular work in question and that they have been employed by their present employer for many years, nevertheless, the offered work is in a sense of the same nature as the work they have been performing. They are certainly more qualified to do the work than some outsider totally unfamiliar and inexperienced with such operations. The indisputable fact is that though the work was new to the claimants their past training and experience qualified them for it.

It is all but conceded that the only real reason the claimants refused the offer of work in question was because it would lessen their seniority rights. They quite frankly admit that if the work had been offered on a temporary basis with the understanding later agreed upon by the union and company, they would have accepted it. Does this constitute good cause within the meaning of that term as used in section 60-47 (c)? We think not. In the first place, seniority is not even a factor in the determination of the suitability of work. The closest factor to seniority is "experience", and the two are by no means synonymous. Secondly, the claimants had been unemployed for several months before the offer of work was made. How long should they be permitted to remain unemployed at the expense of industry and under the justification of protecting their seniority rights? If the offer of work had been made immediately after their separation we might feel differently disposed. A claimant of many years' experience in one job is justified in refusing work offered immediately after separation from his last job when the work offered is of a different type and training than he possesses, providing less remuneration and destructive of his seniority rights. Such justification for refusal, however, diminishes as the period of unemployment lengthens. Unemployment laws were not passed as an invitation to idleness. The law does not presume that a person should be required to accept work at less than his usual skill, remuneration or hours, provided such work is either available or that prospects are good for obtaining such work within a reasonable time. In the absence of such available work or prospects for obtaining the same within a reasonable time if the claimant desires to be eligible for unemployment benefits he must stand ready to accept other work for which he might qualify. The cushion of security between jobs provided by the Act was not designed to finance an indefinite quest for the claimant's old or regular job, or even a job paying equal wages. (Underscoring supplied)

The contract between the company and union contains the controversial provision reducing seniority upon transfer from one department to another. The various provisions in the contract are bargained and negotiated for so that the contract might just as well have provided that no seniority rights would be lost by interdepartmental transfers. The point is that the claimants accept their work subject to the terms and conditions of the agreement between the company and union. If they are unable to bargain successfully for the retention of seniority rights in the case of a transfer, should the disbursement of unemployment benefits be governed thereby? The question seems to answer itself.

We fear that the claimants have a wrong conception of the purposes of the Unemployment Compensation Act and the reason for payment of benefits under it. Their understanding appears to be that during a lay-off because their employer has paid certain sums into the unemployment compensation fund they are entitled to a rest from work while drawing unemployment benefits. Such, however, is not the purpose or intent of the law. The law is designed to protect a worker in the event he becomes unemployed and is unable, there-

after, to obtain suitable employment. If, on the other hand, following his lay-off he is able to obtain other suitable work it is his duty to accept such work and if he refuses he is subject to the penalty imposed under the Act. (Underscoring supplied)

The Act provides a disqualification ranging from a minimum of six weeks to a maximum of nine weeks, with a corresponding reduction in the total amount of potential benefits. After careful review of the evidence, the Commission is of the opinion that the Examiner was correct in recognizing the mitigating circumstances involved and, therefore, imposing only the minimum disqualification of six weeks.

In the Examiner's findings of fact the following corrections should be made: "Article VI A" instead of "Article VI B" on page 3, and "Reeling Department" instead of "Coning Department" on page 3. The general reference made by the Examiner on page 1 to the claimants' years of service should also be modified to show that all of the claimants, with the exception of a few, have had as many as twenty years service with the employer.

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Decision affirmed by the Hustings Court, City of Roanoke, Virginia,
December 23, 1955.