

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

SUITABLE WORK: 500.7
Wages — Prevailing Rate.



DECISION OF COMMISSION

In the Matter of

Francis G. Angerman
[REDACTED]

BHW Carpentry
Annandale, Virginia

Date of Appeal
To Commission: November 17, 1982

Date of Review: January 14, 1983

Decision No.: 20456-C

Date of Decision: February 1, 1983

Place: Richmond, Virginia

This is a matter on appeal to the Commission by the claimant from a decision of the Appeals Examiner No. UI-82-11476, dated November 4, 1982.

ISSUES

Did the claimant file his appeal within the statutory time limit as provided in Section 60.1-61 of the Code of Virginia (1950), as amended or has good cause been shown to extend the appeal period?

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

FINDINGS OF FACT

The claimant filed a timely appeal from the Appeals Examiner's decision which held that the Deputy's determination disqualifying him for benefits effective June 27, 1982, for having failed without good cause to apply for available, suitable work has become final because the appeal therefrom was not timely filed and good cause has not been shown for extending the appeal period. The determination was mailed to the claimant on September 10, 1982, and carried a final appeal date of October 1, 1982. The claimant took no action to appeal the determination because he was working at the time and did not intend to claim any future benefits. He

did not understand that the determination could adversely affect benefits already received.

On September 30, 1982, the Deputy mailed a second determination entitled "Notice of Correction" to the original determination which reads:

"The following paragraph was inadvertently omitted from the determination:

'When this Determination becomes final, a Determination will be rendered with regard to any overpayment of benefits which may have been received subsequent to the effective date of the Determination.'

The Notice of Correction was delivered by the U. S. Postal Service to the claimant's home on October 1, 1982. He did not open his mail on that date, however, because he was working. When the claimant read the Notice of Correction on Saturday, October 2, 1982, he became concerned because he then understood the significance of the Deputy's determination. The claimant wrote a letter of appeal which was received by the Commission in an envelope postmarked October 6, 1982.

On June 30, 1982, an employment service interviewer had called the claimant to refer him to prospective employment with R. L. Jenkins whose address is in Sterling, Virginia. The job was for rough and finishing carpentry work and paid wages of \$8 per hour or higher depending upon experience. The claimant had understood the interviewer to state that the job was in Fairfax, Virginia which is approximately 45 miles from his residence, and that he must furnish his own transportation whereas his former employer had furnished transportation to the job site. In submitting his job order, Mr. Jenkins had stated that he wanted applicants to call him for an appointment.

Although the claimant indicated to the interviewer that he could not work for wages of \$8 per hour, he took the employer's name and telephone number and attempted to contact him. When he received no answer after several attempts to contact the employer, by calling the number given, he searched the telephone book but could find no R. L. Jenkins listed. He called several other individuals

named Jenkins that appeared to be residing in the area where the prospective employer lived but none of them knew a R. L. Jenkins. He then contacted the post office but after finding that they could not give him any assistance he discontinued his efforts to contact the employer.

The employment service representative who referred the claimant was a temporary employee and is no longer employed by the local office. An experienced interviewer testified at the Appeals Examiner's hearing that the prevailing wage in the area for carpenters with ten years or more experience is \$11 per hour and that he would not have referred the claimant to the prospective job.

OPINION

Section 60.1-61 of the Virginia Unemployment Compensation Act provides that a Deputy's determination becomes final if it is not appealed within twenty-one days from the mailing of the determination; provided, however, that for good cause shown the twenty-one-day period may be extended.

It has been repeatedly held in past decisions that in order to demonstrate good cause to extend the appeal period, the appellant must show some compelling and necessitous reason beyond his control which prevented the filing of an appeal within the statutory time limit.

The claimant in this case certainly could have filed his appeal from the original Deputy's determination within the appeal period but obviously did not do so because he did not understand its full significance. Because of similar misunderstandings by other claimants, some time ago the Commission instructed claims adjudicators to include the paragraph which the Deputy in this case added by way of the corrected determination mailed on September 30, 1982. The correction in this case, of course, did alert the claimant to the full effect of the determination. The corrected determination, however, would be of no benefit to the claimant unless he was given ample opportunity to appeal if he disagreed with it. Since the statute provides that an appellant has twenty-one days to appeal an adverse determination and the claimant did appeal within that period after the corrected determination was mailed, it is concluded that the appeal should be accepted by the Commission as having been timely filed.

Section 60.1-58(c) of the Unemployment Compensation

Act provides a disqualification if it is found that a claimant failed without good cause to apply for available, suitable work when so directed by the Employment Service Division of the Commission.

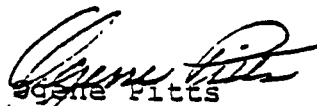
In determining whether any work is suitable, the Commission shall consider, among other things, as to whether or not the wages of the available work are substantially less favorable to the individual than those prevailing for similar work in the area. Based upon the testimony of the employment service representative at the Appeals Examiner's hearing, it is evident that the wages of the prospective employment were substantially less favorable to the individual than those prevailing for similar work in the locality, and the claimant, therefore, would have had good cause in failing to apply for it. (Underscoring supplied)

The claimant's actions in attempting to locate the prospective employer do not lead to the conclusion that he failed to apply for available work. Although the extent of these actions was not available to the Deputy when she issued her determination, his testimony at the Appeals Examiner's hearing shows that he did not summarily dismiss the referral. It is noted that he testified several times at the hearing that he would have accepted the job regardless of the lower wages if he had found the employer and the job was offered to him because of his great need for work at the time. Based upon the particular set of circumstances in this case, it is concluded that the claimant did not fail without good cause to apply for available, suitable work.

DECISION

It is held that the claimant's appeal from the Deputy's determination mailed on September 10, 1982, and corrected by a second determination mailed on September 30, 1982, was timely filed.

The determination of the Deputy disqualifying the claimant for benefits effective June 27, 1982, for having failed without good cause to apply for available, suitable work when so directed is hereby reversed.


Joanne Pitts
Special Examiner