

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

TOTAL & PARTIAL - 415.3
Unemployment -
Self-employment or other
work



DECISION OF COMMISSION

In the Matter of

Robert Rideout
[REDACTED]

Franklin Concrete Products Corporation
Franklin, VA 23851

Employer

Date of Appeal

To Commission: July 26, 1979

Date of Review: October 26, 1979

Decision No.: 12597-C

Date of Decision: November 1, 1979

Place: Richmond, Virginia

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This is a matter before the Commission on appeal by the claimant from the Decision of Appeals Examiner (No. UI-79-3528), dated July 19, 1979.

ISSUE

Was the claimant unemployed during the weeks for which he has claimed benefits as provided in Section 60.1-23 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT AND OPINION

On September 25, 1978, the claimant executed a contractual agreement effective September 1, 1978, with Woodmen of the World Life Insurance Society which placed him in the position of a field representative. The field representative contract reads in pertinent part:

". . . 6. Nothing contained herein shall be construed to create a relationship of employer and employee between the Society and the Field Representative or between the State Manager or other official representative of the Society and the Field Representative. Within the territory above described the Field Representative shall be free to exercise his own judgment as to the persons from whom he shall solicit applications for benefit certificates, the time and place of solicitations, the number of hours he shall devote thereto, the time he shall commence work, and whether or not he shall

devote his entire time or only a portion thereof to such work. The Field Representative shall not hold a contract with any other insuring organization. The Society may from time to time prescribe rules and regulations respecting the conduct of the business covered hereby, not interfering with such freedom of action of the Field Representative, which rules and regulations shall be observed and conformed to by the Field Representative. . ."

The claimant has continued in this position through the date of the hearing, June 14, 1979. The sole issue before the Commission to be decided in this case is whether or not the claimant can be deemed an unemployed individual while in the status of a field representative pursuant to his contractual agreement.

Section 60.1-23 of the Virginia Unemployment Compensation Act provides in pertinent part that:

"An individual shall be deemed 'unemployed' in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to such week are less than his weekly benefit amount. . ."

Although the employer's disclaimer of an employer/employee relationship may be material in other litigation, it is clear for the purposes of unemployment compensation that this claimant is performing services as an employee for this employing unit. Although these services may be exempt employment for the purposes of taxation under the Unemployment Compensation Act, that is immaterial to the resolution of the issue before the Commission.

This case would, therefore, turn on the meaning of the term "full-time" as applied to life insurance sales persons.

In a similar case, the Commission stated that:

"The plain meaning, as applied to the term 'full time' is the amount of time considered to be normal or standard amount for working during a given period. (See Webster's New Collegiate Dictionary (1977) G & C Merriam Company) Thus full time work may be considered to consist of the normal or customary period of work per week performed in the industry by workers performing work of the same or similar occupational classification." (See Frederick J. Picard v. Hayes, Seay, Mattern & Mattern, Commission Decision No. 12665-C, dated October 4, 1979)

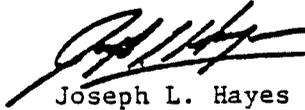
The claimant's position on this point can obviously rise no higher than that supported by his own evidence and testimony. The best evidence in the record is the document of the contract itself. This document, although it has the stamp "PART TIME" upon it, has no further definition of this term therein. It must, therefore, be concluded that the normal customary period of work per week performed by insurance sales persons pursuant to this contractual agreement are self determinable.

In order to remain consistent with the primary purpose and intent of the Unemployment Compensation Act, that is, to pay benefits to those who are unemployed due to no fault of their own, the Commission must conclude that insurance sales persons who are employed under terms of self determination as to time and place of solicitation, the number of hours he shall devote thereto, the time he shall commence work and whether or not he shall devote his entire time or only a portion thereof to such work shall be deemed to be employed full time and, therefore, not "unemployed" within the meaning of that term as used in the Virginia Unemployment Compensation Act.

Accordingly, the Commission must conclude that this claimant was not unemployed during the weeks at issue.

DECISION

The Decision of the Appeals Examiner is hereby affirmed.


Joseph L. Hayes
Special Examiner

AFFIRMED OCTOBER 6, 1980, CIRCUIT COURT FOR ISLE OF WIGHT COUNTY