



DECISION OF COMMISSION

In the Matter of

Linda Bannister
[REDACTED]

Quality Inn
Petersburg, VA 23803
Employer

Date of Appeal
To Commission: December 18, 1984
Date of Review: January 24, 1985
Place: RICHMOND, VIRGINIA
Decision No.: 24531-C
Date of Decision: January 24, 1985
Date of Mailing: January 31, 1985
Final Date to File Appeal
with Circuit Court: February 20, 1985

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This is a matter before the Commission on appeal by the claimant from the Decision of the Appeals Examiner (No. UI-84-8831), mailed December 14, 1984.

ISSUE

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

FINDINGS OF FACT

The claimant appealed from a Decision of the Appeals Examiner which held her ineligible for benefits from September 30, 1984, through October 27, 1984.

Quality Inn is the claimant's employer where she has worked since February 22, 1981.

The claimant had been employed as a night service maid working from 1:00 p.m. until 10:00 p.m.. She did not work under the direct supervision of the housekeeper but rather worked on her own under the general supervision of the desk clerk. On repeated occasions, the claimant could not be located during her scheduled hours of work and the employer had reason to believe she had either left the job site for a time or had gone home before the end of her work shift. For this reason, the claimant was transferred on September 25, 1984, from her position as night service maid to the position of regular maid on the day shift. In this position, she worked under the direct supervision of the housekeeper and her hours of work were from 7:45 a.m. until the work was completed. Because of the amount of work available, the claimant's hours were less than those she had been working.

The claimant filed a partial claim for benefits effective September 30, 1984. During the period September 30, 1984, through October 27, 1984, her earnings were less than her weekly benefit amount of unemployment compensation.

OPINION

Section 60.1-23 of the Virginia Unemployment Compensation Act provides that an individual shall be deemed unemployed in any week during which she performed no services or with respect to which no wages are payable to her or in any week of less than full time work if the wages payable to her with respect to such week are less than her weekly benefit amount.

Both the Deputy and the Appeals Examiner had held that the claimant was not considered "unemployed" during the period in question because the reduction in her hours was deemed to be a disciplinary measure by the employer because of the claimant's actions prior to the transfer. This is a misapplication of the law.

Section 60.1-23 of the Code is not punitive but rather defines the circumstances under which an individual shall be deemed to be "unemployed."

Regulation IX of the Rules and Regulations Affecting Unemployment Compensation also provides that:

"A 'partially unemployed individual' is one who, during any particular week (1) had earnings, but less than his weekly benefit amount, (2) was employed by a regular employer and (3) worked less than his normal customary full-time hours for such regular employer because of lack of full-time work." (Underscoring supplied)

If the employer had discharged the claimant for actions against the employer's interests which could be shown to have been willfully perpetrated it may have been appropriate to disqualify her for benefits under another section of the Act, but that is not the