



DECISION OF COMMISSION

In the Matter of

Brooks L. Tatum, Claimant
[REDACTED]

American Furniture Company
Martinsville, Virginia

Date of Appeal

To Commission: October 12, 1982

Date of Hearing: April 8, 1983

Decision No.: 19749-C

Date of Decision: June 8, 1983

Place: Richmond, Virginia

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This matter comes before the Commission on appeal by the employer from the decision of the Appeals Examiner (UI-82-6959), mailed October 4, 1983.

ISSUE

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

FINDINGS OF FACT

On October 12, 1982, the employer initiated a timely appeal from a decision of the Appeals Examiner which held that the claimant was not subject to a disqualification from receiving unemployment insurance benefits effective May 23, 1982.

Prior to filing his claim for benefits, the claimant's last thirty day employer was American Furniture Company of Martinsville, Virginia. The claimant worked for this company from August 15, 1977 through April 9, 1982. As of his last day of work, the claimant was performing services as a maintenance man in the finishing department and was paid \$5.15 an hour. The claimant

was a full-time employee with this company and had approximately twenty-three years of experience in the finishing room with this and other former employers.

In December of 1981, the claimant began experiencing some difficulty with his immediate supervisor. This supervisor was not satisfied with the way that the claimant was carrying out his job duties and spoke with him about this. On February 17, 1982, the claimant's supervisor gave him a formal warning for his being away from his work area for extended periods of time.

Despite these warnings, the employer was not satisfied with the claimant's progress and on March 30, 1982, the claimant was advised that he was being put back on the line as a spray operator and that his pay rate would be adjusted to \$4.15 per hour based upon his new job. The claimant, on April 5, 1982, spoke with the plant manager requesting a transfer to another department. However, at that time the claimant's request for a transfer was denied. On April 6, 1982, the claimant advised the assistant foreman that he was quitting his job effective Friday, April 9, 1982. The claimant's notice that he was resigning was accepted by the company. At the time the claimant submitted his notice, he had heard that a company located in Madison, North Carolina would probably be hiring people in May. However, after submitting his notice, he later discovered that this company would not be hiring at all. Consequently, the claimant, on April 7, 1982, sought to retract his resignation. However, he was advised that the company had accepted his resignation and that he would not be allowed to retract it. The claimant worked through Friday, April 9, 1982 after which his employment with American Furniture Company came to an end.

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 his work. However, for this disqualification to be imposed, it must first be established that the claimant was actually discharged by his employer. In the present case, the evidence in the record is clear that the claimant submitted his notice of resignation and by doing so, set in motion the chain of events which brought about his separation from work three days later. Therefore, it is the opinion of the Commission that the claimant left his job voluntarily and the issues arising from his claim for benefits and the employer's appeal should be resolved under the provisions of Section 60.1-58 (a) of the Code of Virginia.

Section 60.1-53 (a) of the Code of Virginia provides a disqualification if the Commission finds that a claimant left his job voluntarily without good cause.

In any case arising under this section of the Code of Virginia, it is necessary for the Commission to take two factors into account. First, the employer bears the burden of proving that a claimant's separation from work was actually voluntary. Once that has been established, then the burden of proof is upon the claimant to demonstrate that his voluntary separation from work was for reasons which constitute good cause.

In reviewing the evidence in the record, the Commission is convinced that the claimant was not involuntarily separated from his job, but rather, left his job voluntarily. The claimant submitted his notice of resignation on April 6, 1982 which was accepted by the company. The next day, the claimant attempted to retract that notice of resignation, however, the company declined to allow him to do so. Once the claimant submitted his notice of resignation, he was, in effect, terminating the employment contract as of the effective date of the resignation. Once the employer, as the other party to the employment contract, has accepted that notice, they are under no obligation legally to allow the claimant to retract his notice of resignation. Furthermore, the fact that the employer did not honor the claimant's request to allow him to retract the notice does not transform his otherwise voluntary leaving from work into an involuntary termination from employment.

This identical issue was addressed by the California Court of Appeal in the case of Genaro Rabago v. Unemployment Insurance Appeals Board and Eltra Corporation, 84 Cal. App. 3d 200, 148 Cal. Rptr. 499 (1978). In that case, the employee attempted to withdraw his notice to quit five days after it had been given, which was prompted by the unavailability of future employment that he had previously thought available. The employee argued that the employer's refusal to accept his withdrawal of his notice to quit made the employer the moving party and rendered the termination involuntary. The Court adopted the proposition articulated by previous decisions of the Unemployment Insurance Appeals Board which stand for the proposition that a resignation severs the employment relationship on the date set by the resignation and that an attempt to withdraw it prior to that date is a request for reemployment which the employer may refuse. The Court further held that:

"We therefore conclude that the appellant was the moving party when he initiated the action by giving the notice to quit and that his status was not changed by the employer's subsequent refusal to permit withdrawal of the notice. Such a request is properly classified as a request for reemployment."

In light of the foregoing, the Commission is of the opinion that the claimant did leave his job voluntarily and that the decision of the employer to disallow the claimant from withdrawing his resignation did not change the character of his separation from work to an involuntary separation.

In construing the meaning of the phrase "good cause", the Commission has consistently held that an individual leaves work voluntarily without good cause unless the reason for leaving was based upon some legal premise or is of such a compelling and necessitous nature as would leave the claimant no other reasonable alternative other than quitting his job. In analyzing a particular case that arises under this section of the Code of Virginia, the Commission seeks to determine whether or not a reasonably prudent person desirous of maintaining employment would also have quit his job when faced with the same or similar circumstances as in the present case.

In his decision, the Appeals Examiner held that the claimant had good cause to leave his job because of the substantial reduction in pay that resulted from his job being changed. However, the claimant did not offer this as his reason for submitting his resignation. The claimant, in the statement he gave to the local office Deputy on June 9, 1982, stated that he quit because "They were working me too hard and switching me to too many different jobs." In that same statement, the claimant advised the Deputy that a supervisor with a company in Madison, North Carolina told him they would probably be hiring in May and he turned in his notice as a result. He later found out that they would not be hiring and he asked his former employer to allow him to retract his notice of resignation. In light of these circumstances, and particularly the claimant's willingness to return to American Furniture Company and continue working in his new job at the lesser rate of pay, the Commission is of the opinion that the reduction in pay did not provide the claimant, either objectively or subjectively, with good cause for leaving his job.

In reviewing the record, it appears that the employer was dissatisfied with the claimant's job performance and that the claimant was dissatisfied with the way he was being treated by his immediate supervisor. The claimant did undertake certain steps to try and resolve this situation. He did speak with his supervisor and he had also requested from the plant manager that he be allowed to transfer to another department. However, at the time he submitted his notice of resignation, the claimant anticipated that he would be hired by another company. The claimant did not fully investigate the situation and had no definite offer of employment at the time he submitted his resignation. Therefore, the Commission is of the opinion that the claimant did not take all of those steps which a reasonably prudent person under the same or similar circumstances would also have taken in order to preserve a continuous period of employment, whether with his last employer or a different employer. Therefore, since the claimant did not fully

explore all reasonable options that were available to him, the Commission is of the opinion that good cause has not been established for his decision to leave work voluntarily.

DECISION

The decision of the Appeals Examiner is hereby reversed. It is held that the claimant is disqualified from receiving unemployment insurance benefits effective May 23, 1982 for any week benefits have been claimed until he has performed services for an employer during thirty days, whether or not such days are consecutive, for having left his job voluntarily without good cause.

The case is referred to the Deputy with instructions to examine the claimant's claim for benefits and determine whether or not he has been paid any sum as benefits to which he was not entitled and is liable to repay the Commission as a result of this decision.

M. Coleman Walsh, Jr.

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Special Examiner