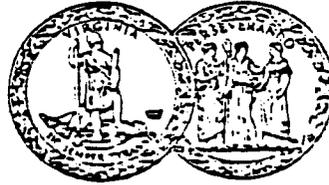


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



VOLUNTARY LEAVING: 135.2
Discharge or Leaving —
Interpretation of Remark or
Action of Employer or
Employee.

DECISION OF COMMISSION

In the Matter of

Lindsey H. Schwab, Claimant
[REDACTED]

Greencroft Club
Ivy, Virginia

Date of Appeal

To Commission: June 18, 1984

Date of Hearing: August 28, 1984

Place: RICHMOND, VIRGINIA

Decision No.: 23653-C

Date of Decision: August 31, 1984

Date of Mailing: August 31, 1984

Final Date to File Appeal

with Circuit Court: September 20, 1984

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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-84-4144), mailed May 30, 1984.

APPEARANCES

Claimant, Employer Representative

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?

FINDINGS OF FACT

Greencroft Club of Ivy, Virginia, was the claimant's last employer where she had served as the club manager from August, 1981, through March 28, 1984. At the time of her separation, the claimant was being paid an annual salary of \$26,000.

On March 1, 1984, the Board of Directors of the club met and determined that there were several deficiencies in the manner that the claimant was managing the club. The Board gave the claimant a list of thirteen items which they felt she should correct, and at the top of that list was the attitude of management to realize that management existed for service to the members and not the other way around. The claimant felt that the Board was being intrusive into her management functions, and she responded to the Board's list of deficiencies in a rebuttal tone rather than stating that she would attempt to correct these deficiencies. It was her feeling that some of the items were untrue allegations and others could not be accomplished by the club manager. She felt that she was being "set up" to fail in some of these and would be terminated from her job when she did so.

On March 12, 1984, the claimant wrote a letter to the Board members in which she stated her feelings that the club manager must have the responsibility and authority to run the club without interference from the Board. She closed her letter by giving the following ultimatum:

"Also, I will not take responsibility for the results of decisions not made by me. From the list of thirteen items presented to me on March 6, it is clear that the Board has a serious lack of trust and confidence in the present management of Greencroft. In my mind, a lack of trust makes a working relationship impossible. If I cannot have the trust of the Board and in turn be granted the authority to run the club I feel that this letter must be considered my sixty day notice of resignation as agreed to in my contract. I would appreciate a written response to the letter as soon as possible."

The Executive Committee advised the claimant that they considered that letter to be a resignation, and it was acceptable to them. When the Board met on March 27, they learned that the claimant had purchased a computer system for \$15,000 which they had been led to believe was going to cost \$5,000 or \$6,000. When they learned of that purchase, plus the ultimatum given to them by the claimant on March 12, 1984, they decided that she should turn in her keys and cease work effective March 28, 1984. The president of the club communicated this to the claimant by telephone on March 27, 1984, and told her that they had agreed to give her a month's pay through the end of April, 1984. The claimant accepted this, and she was paid through April, 1984.

The claimant argues that she did not intend her letter of March 12, 1984, to be taken as a resignation, but merely as a tool to show management that she was serious. She stated at the Appeals Examiner's hearing:

"I needed to let them know that I was serious about the way things had been run and the way that they were going to continue to run." (Transcript, p. 22)

The claimant also argued that she was required to give a ninety-day notice of resignation, and it was her understanding that the employer had to give her a ninety-day notice of termination of her contract. The employer had submitted a letter dated January 28, 1982, which advised the claimant that her contract was being renewed for one year, effective February 1, 1982, and that the contract would automatically be renewed for a period of one year unless either party gave the other a written notice ninety days prior to February 1, 1983. There was no written contract executed by the claimant and the employer setting forth the duties of the claimant.

OPINION

Section 60.1-58 (a) of the Code of Virginia provides a disqualification if it is found that an individual has left work voluntarily without good cause.

The first issue to be resolved is whether the claimant's separation was voluntary or as the result of a termination by the Board. Of particular import is the fact that no one had mentioned a termination of the claimant's employment until she did in her letter of March 12, 1984. While the claimant may not have intended the result of the letter to be her separation from work, she set into motion the chain of events which ultimately led to her becoming unemployed. The Appeals Examiner correctly stated that the claimant intended the letter to be an ultimatum, and she candidly stated at the hearing that she used the threat of resignation to show the Board that she was serious. (Underscoring supplied)

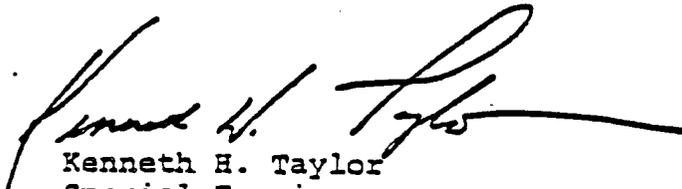
When an employee tenders a resignation in that manner, it is certainly capable of being accepted by the employer. While the claimant alludes to a contract requiring a ninety-day notice, it is apparent that the letter of January 28, 1982, did not speak to the issue of what notice was required to resign during the term of the contract. That letter merely provided for an automatic renewal of the claimant's contract for a period of one year beginning February 1, 1983, unless either side gave written notice ninety days prior to that date. Clearly, the claimant had entered a contract period beginning February 1, 1983, at the time her resignation was tendered. That ninety-day notice requirement would have no application to a resignation tendered during the term of the claimant's contract. It is also the opinion of the Commission that the employer allowed the claimant to work through March 28, 1984, and paid her through the end of April, 1984, which was certainly a reasonable opportunity for her to seek other employment. For this reason, the Commission finds that the claimant's unemployment, as of March 28, 1984, was because she voluntarily resigned, rather than being terminated by the employer. (Underscoring supplied)

With regard to the claimant's argument that she was being set up by the "list of thirteen" so that she could be later terminated, the Commission has held in numerous decisions that leaving work in anticipation of being discharged at some future date is not a discharge, in fact, and when an employee does so, her leaving is no less voluntarily. (See James Hutchinson v. Hill Refrigeration Corp., Decision No. 3251-C, dated July 10, 1958) The claimant in this case was under no threat of discharge and had she continued in her work in an effort to comply with the Board's requests, which appear to be reasonable, and then been terminated a different question would be presented. These are not the facts in this case, however.

In view of the foregoing, it is the opinion of the Commission that the claimant did leave work voluntarily. The reasons alleged by the claimant's decision do not rise to the level of good cause for leaving as they do not show a compelling or necessitous reason which would leave a person desirous of retaining her employment no alternative than to leave. Clearly, the conditions imposed by the Board did not change the duties or conditions of her work so as to render it unsuitable. She certainly could have remained in it and attempted to correct the conditions which the Board complained of rather than tendering her letter of resignation.

DECISION

The decision of the Appeals Examiner which held that the claimant left work voluntarily without good cause is hereby affirmed and remains in effect for any week benefits are claimed until she has performed services for an employer during thirty days, whether or not such days are consecutive.



Kenneth H. Taylor
Special Examiner