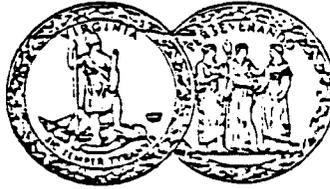


COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION

VOLUNTARY LEAVING: 135.25  
Discharge or Leaving --  
Leaving Prior to Effective  
Date of Discharge.



DECISION OF COMMISSION

In the Matter of:

Jerry T. Wilson  
[REDACTED]

Bartlett Tree Expert  
Company, Inc.  
Columbus, Ohio

Date of Appeal

to Commission: July 15, 1987

Date of Hearing: September 17, 1987

Place: RICHMOND, VIRGINIA

Decision No.: 28940-C

Date of Mailing: September 28, 1987

Final Date to File Appeal

with Circuit Court: October 18, 1987

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This is a matter before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-87-3299), mailed July 9, 1987.

APPEARANCES

Attorney for Claimant

ISSUES

Did the claimant leave work voluntarily without good cause as provided in Section 60.2-618.1 of the Code of Virginia (1950), as amended?

Was the claimant discharged for misconduct connected with his work as provided in Section 60.2-618.2 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On July 15, 1987, the claimant filed a timely appeal from the Decision of Appeals Examiner. That decision held that the

claimant was disqualified from receiving benefits, effective March 15, 1987. The basis for the disqualification was the Appeals Examiner's finding that the claimant left his job voluntarily without good cause.

Prior to filing his claim for benefits, the claimant last worked for Bartlett Tree Expert Company, Inc., of Roanoke, Virginia. He worked for this company from August 1, 1985, through March 16, 1987. At the time of his separation from work, the claimant performed the duties of a ground man.

On Monday, March 16, 1987, the claimant was informed that he was being discharged because of his low production and unsatisfactory job performance. The claimant was told that the discharge would be effective at the end of the day on Thursday, March 19, 1987. The claimant was told he could work through that day. The claimant continued to work until his lunch break on March 16, 1987. He then left the job voluntarily and did not return to work. The primary reason the claimant left his job at that time was because he had been fired effective the end of the work week. A secondary reason for his leaving then was some confusion over insurance coverage. The claimant thought that if he were injured on the job between March 16, 1987, and March 19, 1987, it would not be covered by any of the company insurance. The claimant was specifically told by his supervisor that he would be covered for any injury on the job as long as he was working for the company. The claimant misunderstood this, and that misunderstanding contributed to his decision to leave work when he did.

#### OPINION

Section 60.2-618.1 of the Code of Virginia provides a disqualification if the Commission finds that a claimant left work voluntarily without good cause.

In this case, the first issue that must be addressed is whether the claimant left his job voluntarily or whether he was discharged by the employer. In resolving this issue, the Commission must determine what impact, if any, the claimant's decision to leave work on March 16, 1987, had on the employer's decision to dismiss him effective March 19, 1987.

When the claimant chose to leave on March 16, 1987, he left work voluntarily prior to the effective date of his discharge. While this case bears some resemblance to the "leaving in anticipation of discharge" cases articulated by the Commission in Hutchinson v. Hill Refrigeration Corporation, Commission Decision No. 3251-C

(July 10, 1958), they are factually distinguishable. In a true "leaving in anticipation of discharge" case, there has been no definite act by the employer to discharge the employee. The employee's decision to leave is prompted by the anticipation that a discharge might occur at some future, unspecified date. Further, the absence of any direct action by the employer is an essential element. (For a further discussion, see Gannaway v. Brown & Williamson, Commission Decision No. 22411-C, at pg. 6). Accordingly, the Commission is of the opinion that the principles enunciated in the Hutchinson case and its progeny are not applicable to the case at bar.

After careful consideration, the Commission must reject counsel's argument that the claimant's separation was a discharge because the employer initiated the chain of events which led to the separation. It is undisputed that the employer did advise the claimant that he would be dismissed on Thursday, March 19, 1987, which was the end of the work week. It is also undisputed that the claimant left work on March 16, 1987, and did not return thereafter. This constitutes an intervening cause of separation. The claimant could have worked an additional three days for the employer, but became unemployed prior to that time as a result of his own voluntary decision not to return to work. Accordingly, when he filed his claim for benefits, he had become unemployed as a result of his decision to leave work. (Underscoring supplied)

This result finds support in an analogous line of cases illustrated in the matter of Boyd v. Mouldings, Inc., Commission Decision No. 23871-C (September 13, 1984). In that case, the claimant submitted her resignation on May 21, 1984, to be effective June 1, 1984. The following day, the claimant was informed that her notice of resignation was being accepted immediately. She was paid her salary only up until the last day she worked and was not paid for the notice period itself. In that case, the Commission stated:

In the case at hand, the employer made no effort to pay the claimant for her notice period or bargain with her to impose a lesser notice period which might have been acceptable to her. Therefore, the employer's intervening action in terminating her services prior to the notice period did amount to an involuntary separation on her part, which must be considered under the provisions of Section 60.1-58 (b) [now Section 60.2-618.2] of the Virginia Unemployment Compensation Act.

In reviewing the facts of the present case in light of the analysis in Boyd, the conclusion is inescapable that the claimant's

decision to leave work three days prior to the effective date of his termination was an intervening cause just like the employer's action in immediately accepting a resignation prior to the effective date without paying the claimant through that date. Accordingly, although the chain of events which led to the claimant's separation was initially begun by the employer, the claimant's decision to leave work when he did was an intervening cause of his unemployment and changed the character of his separation to a voluntary leaving of work. (Underscoring Supplied)

Since the Commission has determined that the claimant left his job voluntarily, the question of whether he did so with good cause must now be addressed. 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 of such a compelling and necessitous nature as would leave him no other reasonable alternative other than quitting his job.

Here, the claimant has advanced two reasons for his decision to leave work when he did. First, he left when he did because he had been told of his impending discharge. A secondary reason for his leaving when he did was some confusion over insurance coverage. However, neither of these reasons satisfies the "compelling and necessitous" criteria. Even though the claimant had been informed of his impending discharge, that does not remove the fact that he could have worked through March 19, 1987, and there is no compelling reason in the record for his failure to do so. Further, the confusion over the insurance could easily have been clarified had the claimant pursued the matter further. The employer is required by law to maintain worker's compensation coverage for its employees to afford them protection from any job related injury or occupational disease.

Therefore, for these reasons, the Commission is of the opinion that the claimant left his job voluntarily without good cause. Accordingly, the disqualification provided in Section 60.2-618.1 of the Code of Virginia should be imposed.

#### DECISION

The Decision of Appeals Examiner is hereby affirmed. It is held that the claimant is disqualified from receiving benefits, effective March 15, 1987, for having left work voluntarily without good cause. The disqualification shall remain in effect for any week benefits are claimed until he has performed services for an

Jerry T. Wilson

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employer during thirty days, whether or not such days are consecutive.

*M. Coleman Walsh, Jr.*  
M. Coleman Walsh, Jr.  
Special Examiner