

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Charles H. Bower
[REDACTED]

Thomas D. Thompson
t/a McDonald's
Norton, VA 24273

Date of Appeal
to Commission: July 9, 1990
Date of Hearing: August 9, 1990
Place: RICHMOND, VIRGINIA
Decision No.: 34068-C
Date of Mailing: August 22, 1990
Final Date to File Appeal
with Circuit Court: September 11, 1990

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This case comes before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-9006966), mailed June 29, 1990.

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 9, 1990, the claimant filed a timely appeal from the decision of the Appeals Examiner which held that he was

Prior to filing his claim for benefits, the claimant was last employed by Pounding Mill Quarry Corporation of Bluefield, Virginia. The claimant worked as a Euclid driver and performed services for the company from January 6, 1977 through March 9, 1984. The last day that the claimant actually performed services for the company was February 23, 1984.

On Monday, February 27, 1984, the claimant called the employer and advised a company representative that he was unable to report for work that day because the clutch in his truck had malfunctioned. The claimant worked on his truck that week and later became sick with a sinus and inner ear infection. He did not report for work the rest of that week and he also failed to contact the employer during the rest of that week. On March 5, 1984, the claimant reported for work at approximately 7:15 a.m. He went to the office since he knew that he would be expected to complete an absentee report. At that time, he was advised by one of the people in the office that he was not to resume work until he spoke with the foreman. The claimant went and spoke with his foreman who advised him that the superintendent of the plant wished to meet with him prior to his resuming work. The claimant was told that the superintendent would be in at about 9:00 a.m. that morning and he was given the option of either waiting for him or returning at that time in order to attend the meeting. The claimant left the company premises and did not return at all that day. The company superintendent wanted to meet with the claimant to discuss the reason he had missed work the previous week and had not called in after February 27, 1984. Since he had been employed with the company, the claimant had missed a substantial amount of time from work but had invariably called the employer or had a family member contact the employer to advise that he would be unable to report for work and the reason. The employer was aware that the claimant's wife and children had experienced a number of health problems and the claimant had been given permission to contact the company by collect phone call if necessary.

When the claimant left the company premises on March 5, 1984, he went to a physician who examined him and diagnosed his problem as a sinus infection and inner ear infection. The claimant was advised that he shouldn't work or drive until this condition cleared up. The claimant returned to his home from the doctor's office and did not bother to call the employer either from the doctor's office or a pay phone to advise the company of what occurred.

The next time that the claimant went to the company premises was on March 9, 1984. At that time, the claimant went in at about 10:00 a.m. that morning and had his wife and children with him. His purpose in coming to the company was to pick up his paycheck. When he went to the company office, he was advised that he would

again need to speak with the foreman first. The claimant went and spoke with his foreman who told him that the company had assumed that he quit his job since he had been absent without letting anyone know of his intentions. When the claimant was told this by the foreman, he did not protest or do anything other than return to the office with the foreman and sign the separation form that was prepared by a company representative. When this form was being prepared, an employee inquired of the claimant how they should characterize his separation. The claimant stated that he wanted them to indicate that he voluntarily quit his job since that would look better when he attempted to find new work. After the form was prepared, the claimant signed it and was paid the wages that were due him. The claimant was also paid a bonus but this check was mailed to him at a later date. At the time the claimant discussed his job with the foreman on March 9, 1984, the company had not yet replaced the claimant. They had been assigning other employees to cover his job duties and responsibilities.

During the six or seven years the claimant worked for this company, he had never missed a full week of work for any reason other than when he was on an approved leave or vacation. When the claimant reported for work on March 5, 1984, he did not advise his foreman or any other company representative that he was feeling bad and intended to go see a doctor.

OPINION

Section 60.1-58 (a) of the Code of Virginia provides a disqualification if the Commission finds that a claimant left work voluntarily without good cause.

In the present case, there is substantial controversy between the parties as to whether or not the claimant quit his job or was discharged. It is apparent from reviewing the record that the employer never advised the claimant specifically that he was being discharged for his attendance record or any other reason. Likewise, the claimant never told the employer he was quitting his job. Accordingly, in order to determine the character of the claimant's separation, the Commission must carefully evaluate all of the circumstances surrounding the claimant's separation and from those facts infer whether or not the claimant quit his job or if he was discharged. (See, Joyce H. Smith v. Meloy Laboratories, Inc., Decision No. 5512-C, November 22, 1971). In this case, the claimant had an extended history of absenteeism due to his own and family related illnesses. Also, the claimant had an established pattern of regularly notifying the employer on those occasions when he was unable to report for work. Further, the claimant had never missed an entire week of work for any reason other than approved leave or vacation. The failure to call the company represented a deviation

from the claimant's normal conduct and was the cause of some concern by the employer. Accordingly, an attempt was made to meet with the claimant on March 5, 1984 when he did return to work. However, although advised that he must speak with the superintendent prior to resuming his duties, the claimant left the employer's place of business and did not contact the company or return until 10:00 a.m. on March 9, 1984 when he came to pick up his paycheck. These combined circumstances gave rise to a reasonable belief by the employer that the claimant had abandoned his job. This belief was further reinforced when the claimant's foreman articulated that belief to him on March 9, 1984 and the claimant did not protest or seek to clarify the situation in any way at all. Once he became aware of the employer's belief that he had abandoned his job, the claimant had an affirmative duty to inform the employer of the mistaken belief and of his desire to maintain his employment. By failing to act to inform the employer of these facts, the claimant was responsible, in effect, for abandoning his employment. (See, Harold E. Lightfoot v. County of Henrico, Commission Decision No. 8327-C, August 24, 1976). Therefore, the Commission concludes that the claimant did leave work voluntarily. (Underscoring supplied)

Having determined that the claimant left work voluntarily, the Commission must now address the question of whether he did so with "good cause". In interpreting the meaning of this phrase within the context of the statute, the Commission has consistently held that an individual leaves work voluntarily without good cause unless the reason for leaving is based upon some legal premise or is of such a compelling and necessitous nature as would leave him no other reasonable alternative other than quitting his job. The burden of proving good cause is upon the claimant in these cases.

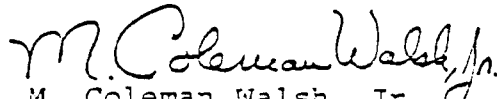
In the present case, the Commission is unable to conclude that the claimant did have good cause for abandoning his job. The claimant made little or no effort to contact the employer after February 27, 1984 and as previously stated, this gave rise to the employer's reasonable belief that he had abandoned his job. Furthermore, when confronted with the employer's belief that he had abandoned his job, the claimant did nothing whatsoever to dispell that belief. In this regard, the claimant did not conduct himself in the way a reasonable person, desirous of maintaining employment would have done. Therefore, the Commission concludes that the claimant left his job voluntarily for reasons which do not constitute good cause and the disqualification provided in Section 60.1-53 (a) of the Code of Virginia should be imposed.

At the hearing before the Commission, the claimant's attorney argued that the Appeals Examiner's decision, which held that the claimant was discharged for misconduct connected with his work was erroneous since the record only established that the claimant was

fired for excessive absenteeism and nothing more. However, the Commission is not persuaded that the claimant was discharged in this case. The greater weight of the evidence supports the facts found by the Commission and do not support the conclusion that the claimant was discharged. While the Commission recognizes that there is evidence in the record which could be construed to support such a conclusion (e.g. the employer's initial separation report which stated "voluntary quit due to excessive absenteeism"), the preponderance of the evidence before the Commission establishes that the claimant abandoned his job and the employer's belief that he had done so, under the totality of the circumstances, was a reasonable one. For these reasons, it would be inappropriate for the Commission to resolve the issues arising from the claimant's claim for benefits and his appeal under the provisions of Section 60.1-58 (b) of the Code of Virginia.

DECISION

The Decision of Appeals Examiner is hereby amended. It is held that the claimant is disqualified from receiving unemployment insurance benefits effective March 25, 1984, for any week benefits are claimed until he has performed services for an employer during thirty days, whether or not such days are consecutive, for having left work voluntarily without good cause.


M. Coleman Walsh, Jr.
Special Examiner