

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

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Decision No. : 5858-C

Date: January 23, 1973

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

This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UI-72-2484) dated December 8, 1972.

ISSUE

Did the claimant leave work voluntarily without good cause within the meaning of Section 60.1-58(a) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The claimant appealed from the decision of the Appeals Examiner which disqualified her for benefits effective October 22, 1972, for having left work voluntarily without good cause.

Bethel Manor Dairy Queen, Hampton, Virginia, was the claimant's last employer for whom she worked as a counter girl from May, 1971, through October, 1972.

According to the employer, the claimant's work had become unsatisfactory due to her moodiness which caused her to slow down to the point where she did not get her work done. The employer testified that she had counseled the claimant about her actions on several occasions. When the condition did not improve, the employer changed the claimant's hours from 10:30 a. m. to 5:00 p. m., five days a week, to 11:00 a. m. to 3:00 p. m., five days a week. This was done so that the claimant could be working while the employer was there to give her closer supervision and further counseling. These hours were to continue until the claimant had shown an improvement in her work.

The claimant and two other co-workers testified that the claimant's work was satisfactory. The claimant also testified that she desired increased working hours. After discussing the situation with her family, the claimant told the employer that because of her reduced working hours, she was looking for another job. The claimant also indicated that she would not leave the employer without giving proper notice. The employer responded that she could make this her last day.

OPINION

Section 60.1-58(a) of the Virginia Unemployment Compensation Act provided a disqualification if it is found that the claimant has left work voluntarily without good cause.

The Commission in Thomas L. Cotter v. Stageway Restaurant, Inc., Decision Number 5837-C, dated January 2, 1973, held that where the claimant had advised his employer that he was looking elsewhere for another job but would not leave without giving proper notice, and the employer responded by releasing the claimant, there was no voluntary leaving.

In this situation, essentially the same facts are involved. The claimant merely told her employer that she was looking elsewhere for another job. The claimant had not yet found a job and had no intention of leaving her employment until she did so. It can not be said that the claimant's remark of looking elsewhere for another job was tantamount to a constructive voluntary leaving. It was the employer who terminated the employment.
(Underscoring supplied)

Accordingly, no penalty should be imposed under Section 60.1-58(a).

DECISION

The decision of the Appeals Examiner disqualifying the claimant effective October 22, 1972, for having left work voluntarily without good cause is hereby reversed. The deputy is instructed to determine the claimant's eligibility for benefits.

NOTE: Affirmed by Circuit Court of York County.