

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

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Decision No.: 8327-C

VOLUNTARY LEAVING: 135.1

Date: August 24, 1976

Discharge or Leaving -  
Absence from work

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This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UI-75-9571), dated March 18, 1976.

ISSUE

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

FINDINGS OF FACT AND OPINION

The claimant appealed from a determination of the Deputy which disqualified him for unemployment compensation effective November 9, 1975, for having voluntarily left his last employment without good cause.

The claimant last worked for the County of Henrico as a truck driver and substitute trash collector from April 5, 1975, through October 2, 1975.

On October 3, 1975, the claimant was sick and his wife called in to report this fact and to inquire about picking up his check. The claimant continued to be sick and sought a doctor's care for two months. He had no telephone, but he knew that it was necessary to notify his employer of his progress in order to keep his job. He therefore had asked a friend of the family to call for him, which she said she did. He also asked a co-worker with whom he had ridden to work previously to report his absence, which he said he did. The claimant did not take the step of writing a letter to personally inform his supervisor that he was absent for reasons of illness nor did he request a leave of absence, although such leaves were granted by the County.

The claimant's supervisor did not receive the notification that the claimant was out sick and the County assumed that the claimant had abandoned his employment and sent him a notice by mail on October 24, 1975, in which they stated their assumption that he had quit. The claimant assumed that he was going to get his job back upon returning however, he did not protest his termination or make any other efforts to communicate with his employer, but filed a claim for unemployment compensation effective November 9, 1975.

Since the County had not received notification that the claimant was out sick, nor otherwise received any communication from the claimant, the County reasonably assumed that the claimant had abandoned his employment. According to the County policy, the County then sent a form letter to the claimant which explained the manner in which he could withdraw earnings from the retirement system, convert his group life insurance policy to an individual policy, and continue his hospitalization benefits. The first paragraph of that letter stated, "Since we did not get to talk to you prior to your leaving, I would like to explain the termination of your County benefits."

Neither the claimant nor his attorney appeared at the Commission hearing. The day following the hearing before the Commission counsel for the claimant had a letter hand-delivered to the Commission. This letter sets forth the claimant's argument which in effect was that it was his opinion that the legal issue was not whether the claimant left work voluntarily, but whether or not he was discharged due to misconduct in connection with his work.

§60.1-58 (a) provides a disqualification if it is found that an individual left work voluntarily without good cause. The Commission has consistently held that where one leaves work without exhausting all reasonable alternatives, prior to abandoning his employment, that he leaves work voluntarily without good cause.

In the present case the claimant is not without culpability as he would have us believe. Although the claimant allegedly requested other persons to notify his employer of his absence, the employer's testimony is consistent that it received no such notice. It is also readily apparent that the claimant took no steps to personally notify the employer of his absence.

Having gone some period of time without notification from the claimant as to the causes of his absence, the employer reasonably assumed that the claimant had abandoned his job. Accordingly, the employer followed normal procedure and mailed a letter to the claimant which advised the claimant of his right to withdraw earnings from the retirement system, his ability to convert the group life insurance policy to an individual policy and the method by which he may continue his hospitalization plan. The wording of the first paragraph of that letter clearly shows that it was the assumption of the County that the claimant had left his employment.

The claimant took no action whatsoever upon receipt of this letter to inform the County that it was wrong in its assumption that he had left his employment. The claimant's failure to take any action to correct the County's assumption that he had left his employment, in effect, condoned that assumption and affirmed such assumption as being correct. By failing to inform the County that he had no intention whatsoever of leaving his employment, the claimant was

neglecting a reasonable step which a prudent person reasonably desirous of maintaining his employment would have taken. Such failure to act on the part of the claimant clearly is tantamount to abandoning his employment.

In the opinion of the Commission, the claimant by his failure to properly notify his employer of his absences, in effect, created the belief in the mind of the employer that he had abandoned his job. Upon being made aware of the employer's belief that he had abandoned his job, by letter dated October 24, 1975, the claimant had a positive duty to inform his employer of the mistaken belief that he had abandoned his employment. By failing to act to inform his employer of his desire to maintain the employment relationship, when he had a positive duty to do so, the claimant was, in effect, responsible for abandoning his employment, and as such, should be disqualified from receipt of unemployment insurance benefits.

DECISION

The decision of the Appeals Examiner is hereby affirmed.