

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

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Decision No.: 5450-C

VOLUNTARY LEAVING: 190.1

Date: September 20, 1971

Evidence:

Burden of proof and presumptions.

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This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UI-71-1655) dated July 23, 1971.

ISSUE

Did the claimant voluntarily leave his last employment without good cause pursuant to Section 60.1-58 (a) of the 1950 Code of Virginia (as amended)?

FINDINGS OF FACT

The evidence discloses that the claimant was employed by Atlantic American, Inc., Norfolk, Virginia, from October 5, 1970, to June 4, 1971. The employer's representative indicated at the Commissioner's hearing that the claimant had performed his functions as Service Manager satisfactorily up until approximately three months before his separation on June 4, 1971. However, approximately three months before June 4, 1971, he received three calls in one day from customers who had lodged complaints regarding their inability to resolve their complaints with the claimant concerning various repair work they had performed upon their automobiles. From this point on, various incidents arose whereby the claimant had heated controversies with the employer regarding decisions he made in his capacity as Service Manager. These differences of opinion tended to reflect themselves in the claimant's attitude toward the customers of the company. The claimant indicated he regretted that many of his decisions regarding his department were overridden by his employer. In the days immediately preceding June 4, 1971, the claimant stated at the Commission hearing that he was informed by various employees that he was to be discharged. On June 4 the employer called the claimant into his office. The claimant predicted it was to receive his formal discharge. According to the employer his mind was "75% made up" at that time that he would be forced to terminate the claimant. However, as the discussion developed between the employer and the claimant, both the claimant and the employer admitted that possibly the claimant could be given another opportunity to correct his attitude and continue in his employment. The claimant conditioned his continued employment in his capacity as Service Manager in that he insisted the employer discharge the Assistant Manager, whom the claimant felt was one of the causes of his attitude toward his work. He requested that the employer allow him to discharge the Assistant Manager. The employer could not consent to this, to which the claimant responded that he then would have to quit.

OPINION

Section 60.1-58 (a) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that an individual leaves work voluntarily without good cause.

It is established that the burden is upon the employer to produce evidence which establishes a prima facie case that the claimant left his employment voluntarily. The employer assumes the risk of non-persuasion in showing a voluntary leaving. Once a voluntary leaving is shown, the burden of coming forward with evidence sufficient to show that there are circumstances which compell the claimant to leave his employment and that such circumstances amount to good cause as set out in the Unemployment Compensation Act, devolves upon the claimant.

The Commission finds, after an exhaustive and careful review of the evidence that the employer has shown that a voluntary leaving took place, and that the claimant has shown the circumstances which prompted this leaving. However, the Commission find that these circumstances were not such as to amount to good cause.

The facts show that the claimant's attitude was such that it interfered with the proper performance of his duties in his capacity as Service Manager, and that as a result of the same, conflicts arose between his immediate superior and himself, which culminated in his superior discussing his entire performance at the company with the claimant on June 4, 1971. At that time, a sincere effort was extended by the employer to allow the claimant to remain on the job in that the employer indicated to the claimant that, if he would cease questioning his authority and respond favorably to customers who levied complaints, he would be inclined to retain the claimant in his employ. To this gesture the claimant demanded that if he stayed he be given the authority to discharge another employee. The Commission is of the opinion that this request was a wholly unreasonable ultimatum to attach to his remaining with the company, and that the employer was well within his rights in rejecting the claimant's demand. The claimant's statement that unless he be vested with this authority that he would have to quit is a clear indication to this Commission that the claimant acted of his own volition. Regardless of his motive, the act of quitting under the aforementioned circumstances was without good cause.

DECISION

The decision of the Appeals Examiner is hereby affirmed. It is held that the claimant is disqualified effective June 22, 1971, for any weeks benefits are claimed until he has performed services for an employing unit for 30 days, whether or not such days are consecutive, for having left work voluntarily without good cause.