



DECISION OF COMMISSION

In the Matter of:

Donald L. Marchinke
[REDACTED]

Richard R. Neff
Winchester, Virginia

Date of Appeal
to Commission: March 28, 1988

Date of Hearing: April 27, 1988

Place: RICHMOND, VIRGINIA

Decision No.: 30027-C

Date of Mailing: May 12, 1988

Final Date to File Appeal
with Circuit Court: June 1, 1988

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This is a matter before the Commission on appeal by the claimant from the Decision of Appeals Examiner (UI-8802572), mailed March 15, 1988

APPEARANCES

Two Employer Representatives

ISSUE

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?

FINDINGS OF FACT

The claimant filed a timely appeal from the decision of the Appeals Examiner which disqualified him for benefits, effective January 3, 1988.

Richard R. Neff trading as Shawnee Paving Company was the claimant's last employer for whom he worked from April 13, 1987 through November 25, 1987. The claimant was employed as a paver being paid at the rate of \$7.00 per hour.

While employed with this employer, the claimant who resided approximately 100 miles from Winchester, Virginia was commuting to and from work daily with his two brothers using one of his brother's vehicles for transportation during part of this time. The claimant did not have his own personal transportation but had driven his wife's automobile on occasion. However, when it began to deteriorate, his wife declined to allow him to use it for such a long trip. After this, the claimant continued to commute to and from work using his brother's vehicle.

The claimant and his brothers had requested and had been given permission to be absent from work during the week following Thanksgiving in order to go hunting. They were scheduled to return to work on or about December 7, 1987. At the time, the claimant was scheduled to return to work, his brother's automobile had broken down and he was unable to secure transportation from Frostburg, Maryland which is near Cumberland, Maryland to Winchester, Virginia. There was no public transportation available between the two points. At approximately 2:00 p.m. on December 7, the claimant's brother notified the employer of the problem and the fact the none of the brothers would be returning to work due to the transportation problem. The employer was advised that when the automobile was repaired and became operable, the claimant and his brothers could return to work. The claimant made attempts to borrow money from the bank and from his employer in order to purchase an automobile or have his wife's automobile put in good running condition. The claimant also attempted to buy a used automobile, but he was declined credit as he was with the loan request.

When the claimant did not return to work in a reasonable time, the employer hired a replacement. The employer had work available through January 15, 1988 had the claimant returned. The claimant at the time of the hearing on March 11, 1988 before the Appeals Examiner had not secured transportation to the jobsite nor had his automobile repaired. He was unable to return to work.

OPINION

Section 60.2-618.1 of the Code of Virginia provides a disqualification if it is found a claimant left work voluntarily without good cause.

In Campbell v. Shenandoah Sand and Gravel, Inc., Commission Decision 13080-C, (April 8, 1980), the Commission stated:

The Commission has previously held that when work becomes unsuitable to an individual he would have good cause for voluntarily leaving it. While the general rule is that

transportation to and from work is a personal problem to be resolved by the individual, where changed circumstances make the work inaccessible from the individual's residence the work would be unsuitable and an individual would not be disqualified for leaving it.

In Campbell, supra, the claimant accepted work which was approximately 60 miles from his residence knowing that he did not have personal transportation to and from the job. However, transportation was available by riding to and from work with his supervisor. When the supervisor left the job, the carpool that was providing the claimant transportation was disbanded and the claimant was left with no transportation. There was no public transportation available to him and the Commission held that the claimant had good cause for leaving.

In the case now before the Commission, the circumstances are almost identical. The claimant had transportation available for the 100 mile trip to work daily; however, due to the fact that the vehicle being used became inoperable, the claimant was unable to get to work. There was no public transportation available and the claimant could neither borrow money to repair his wife's automobile to the point it would make the trip or buy another vehicle. At that point, the work was no longer accessible from the claimant's residence; hence, it became unsuitable work. It is therefore concluded that the claimant left work voluntarily with good cause within the meaning of that term as used in the Code. (Underscoring supplied)

The fact that an individual leaves work voluntarily with good cause does not automatically render the claimant entitled to benefits. In this particular case, the question of transportation to and from work in the labor market raises an issue of his availability for work which must be resolved. Inasmuch as there is no evidence in the record before the Commission, this matter will be left up to the Deputy to investigate and make a proper determination.

DECISION

The decision of the Appeals Examiner is hereby reversed.

It is held that the claimant is qualified for benefits, effective January 3, 1988, as a result of his separation from employment with Richard R. Neff trading as Shawnee Paving.

In view of the claimant's transportation difficulty, the Deputy is directed to carefully investigate the claimant's continued claim for benefits and determine whether or not he has

met the eligibility requirements of the Code during each week for which benefits are claimed.


Edwin R. Richards
Special Examiner

Note: Affirmed in the Circuit Court of Fredrick County, Case No. L-88-64 (June 27, 1989).