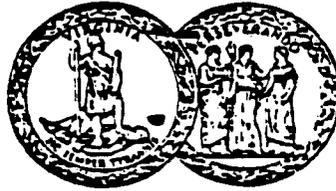


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

VOLUNTARY LEAVING: 235.4
Health or Physical
Condition -- Pregnancy.



DECISION OF COMMISSION

In the Matter of:

Bonnie G. Dudding
[REDACTED]

Mountain National Bank
Clifton Forge, Virginia

Date of Appeal
to Commission: October 22, 1971
Date of Hearing: November 12, 1971
Place: RICHMOND, VIRGINIA
Decision No.: 5510-C
Date of Mailing: November 18, 1971

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This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UI-71-2241) dated October 14, 1971.

ISSUES

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

Has the claimant been available for work during the week or weeks for which she claims benefits within the meaning of Section 60.1-52(g) of the 1950 Code of Virginia (as amended)?

FINDINGS OF FACT

The claimant last worked for Mountain National Bank, Clifton Forge, Virginia. At the time of separation from her last employment on May 28, 1971, the claimant was classified as a note teller. The claimant informed her employer during the end of January, 1971, that she was pregnant and that her doctor had

advised her to stop work at the end of her seventh month of pregnancy, which would be at the end of May, 1971.

The claimant stated that she did not inquire from her employer if she could be placed upon a leave of absence during the period she would be away from work, explaining her reason for doing so by saying that it was company policy that no leave of absence be granted by the bank for pregnancy reasons. The claimant's understanding of the company policy was correct and fully substantiated by letter dated October 12, 1971, signed by the vice president and cashier of the employer bank. The vice president clearly stated "when an employee leaves her employer for medical, pregnancy, or other reasons, the bank's employment policies do not include the granting of a leave of absence."

The claimant's expected date of delivery was August 1, 1971. The claimant's doctor stated that she would not be able to return to work until September 1, 1971. The claimant in a letter to the Commission postmarked October 22, 1971, indicated that her intentions regarding the time that she would seek work were altered when she lost her baby in June. From September 7 through October 4 the claimant applied to prospective employers for work. The claimant has also stated that she would accept any kind of work: work "any hours" and accept "about what (pay) I could get." The claimant also indicated that she could arrange transportation to and from any prospective employment, and that although daylight hours were desired, evening hours "could be worked."

OPINION

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

The Commission has consistently held that the claimant has left work without good cause unless the reasons for leaving are sufficiently necessitous and compelling as would prompt a person reasonably desirous of maintaining her employment to quit. One of the objects of the Unemployment Compensation Act is to withhold payment of benefits from persons who are at fault for their unemployment. The claimant left her work on May 28 on the advise of her doctor. Clearly, there is good cause for leaving work if evidence shows a necessity to do so for reasons of health. There can be no question but that pregnancy is a necessitous and compelling reason for leaving one's employment. While the Commission has held in conformity with the spirit of the Unemployment Compensation Act that every employed person must take every reasonable precaution to protect her employment rights, the Commission has never required an employee to perform an act which, if performed, would in no way alter a given situation. The claimant testified before the Appeals Examiner unequivocally that

"a leave of absence is not granted at the bank." Her understanding of bank policy, that leaves of absences were not granted by the bank to an employee for any reason, was fully substantiated and verified by letter dated October 12, 1971, submitted at the Appeals Examiner's hearing and signed by the vice president of the bank. To require the claimant to make a verbal request for a leave of absence when she was clearly aware that such leaves were not granted would be asking the claimant to perform a useless task which would not alter the fact that the bank did not grant leaves of absences. Therefore, the claimant cannot be deemed to have not taken every precaution to protect her employment rights, and her quitting as aforesaid was clearly for good cause.

Section 60.1-52(g) of the Virginia Unemployment Compensation Act provides in part that in order to be eligible for benefits, a claimant must be "able to work" and "available for work."

Medical evidence submitted by the claimant showed that the claimant became able to work on September 1, 1971. The Commission is of the opinion, therefore, that the claimant became able to work on that date. The Commission is also of the opinion that the claimant was available for work from September 7, 1971, through October 4, 1971.

DECISION

The decision of the Appeals Examiner, with respect to the disqualification is hereby reversed. It is held that no disqualification should be imposed upon the claimant for having left work voluntarily without good cause. It is further held that the claimant was meeting the eligibility requirements of the Act from September 7, 1971, through October 4, 1971.



B. Redwood Councill
Assistant Commissioner