

COURT OF APPEALS OF VIRGINIA

Present: Judges Barrow, Koontz and Bray

JENNIFER R. PRESLEY

v. Record No. 2518-93-3

MEMORANDUM OPINION\*  
PER CURIAM  
JUNE 28, 1994

VIRGINIA EMPLOYMENT COMMISSION  
AND  
SINGLE STOP FOOD SHOPS, INC.

FROM THE CIRCUIT COURT OF DICKENSON COUNTY  
Donald A. McGlothlin, Jr., Judge

(Hugh F. O'Donnell; Client Centered Legal Services of  
Southwest Virginia, Inc., on briefs), for appellant.

(James W. Osborne Assistant Attorney General, on  
brief), for appellee Virginia Employment Commission.

No brief for appellee Single Stop Food Shops, Inc.

UNPUBLISHED

Jennifer R. Presley appeals the decision of the circuit court affirming the determination of the Virginia Employment Commission (VEC) that Presley was not eligible for unemployment compensation. Upon reviewing the record and briefs of the parties, we conclude that this appeal is without merit. Accordingly, we affirm the decision of the trial court. Rule 5A:27.

Presley raises two issues on appeal: (1) whether the VEC properly applied the provisions of Code § 60.2-618(3); and (2) whether Presley had good cause to refuse the work offered by her employer.

Under Code § 60.2-625(A), "the findings of the [VEC] as to

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\*Pursuant to Code § 17-116.010 this opinion is not designated for publication.

the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law." "The VEC's findings may be rejected only if, in considering the record as a whole, a reasonable mind would necessarily come to a different conclusion." Craft v. Virginia Employment Comm'n, 8 Va. App. 607, 609, 383 S.E.2d 271, 273 (1989) (emphasis in original). "However, the issue of whether an employee has refused suitable work without good cause is a mixed question of law and fact reviewable by this court on appeal." Umbarger v. Virginia Employment Comm'n, 12 Va. App. 431, 432, 404 S.E.2d 380, 381 (1991).

I.

Under Code § 60.2-618(3)(a), an individual is disqualified from receiving unemployment benefits if he or she "failed, without good cause, . . . to accept suitable work when offered." In determining whether the refused work was suitable, the VEC is directed to consider

b. . . . the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience, his length of unemployment and the accessibility of the available work from his residence.

c. No work shall be deemed suitable . . .  
(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;  
. . . .

Code § 60.2-618(3). The "burden of proving a disqualification under Code § 60.2-618(3)(a) rests with the employer to show by a

preponderance of the evidence that the job was suitable."

Johnson v. Virginia Employment Comm'n, 8 Va. App. 441, 447, 382 S.E.2d 476, 478 (1989).

The VEC special examiner determined that the stocker position offered to Presley was suitable work, as defined in Code § 60.2-618(3). "[U]sually a reasonably comparable wage in a job which utilizes an employee's experience and skills will be the major factors to measure suitability of a job offer." Johnson, 8 Va. App. at 448, 382 S.E.2d at 479. The examiner found that the stocker job was located within a reasonable commuting distance from Presley's home, was offered at the prevailing wage rate for such work in the locality, and, because Presley had previously held the stocker position, was "in line with her previous training and experience."

The fact that the position was part-time did not preclude a finding that the offered work was suitable. While a stocker worked only 4.25 hours a day, the examiner found that the position was available seven days a week. Presley herself, on her VEC claim form, described the work as available seven days a week.

Moreover, Code § 60.2-618(3)(c)(2) requires comparability of the rate of pay between the offered work and other similar jobs in the locality. It does not require comparability between the total salary of the previous job and that of the offered position. As noted by the special examiner, Presley "had the alternative of filing a claim for partial unemployment

compensation if her hours were reduced and she earned less than her weekly benefit amount."

The special examiner made no specific determination concerning the scheduled hours in the offered position. However, the appeals examiner found that 4.25 hours per day was suitable with respect to the prevailing labor market area. Cf. In the matter of Blankenship, Decision No. UI-040851C (Dec. 1, 1993) (twelve hour shift was fifty percent longer than customary shift in prevailing labor market area).

Therefore, the VEC determination that the employer offered suitable work was supported by evidence and satisfied the statutory requirements. Accordingly, we affirm that determination.

## II.

"If the employer proves that the offered work is suitable, the claimant is disqualified unless he or she proves by a preponderance of the evidence that good cause existed to refuse the otherwise suitable work." Johnson, 8 Va. App. at 447, 382 S.E.2d at 478. "To support a finding of good cause to refuse suitable employment, the reasons advanced must be such that a reasonable person desirous of employment would have refused the offered work." Id. at 452, 382 S.E.2d at 481.

The special examiner determined that Presley did not establish good cause to refuse the stocker position. We cannot say the record as a whole would necessarily lead to a different

conclusion. The job as a stocker would have required Presley to work from 8:00 p.m. to shortly after midnight. The examiner noted that the position offered Presley "the reasonable alternative of accepting the job while seeking other full-time employment more to her liking."

Accordingly, we affirm the decision of the circuit court.

Affirmed.