

UNEMPLOYMENT COMPENSATION COMMISSION OF VIRGINIA

DECISION OF APPEALS EXAMINER

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Decision No: S-5013-4929
Date: March 12, 1957

VOLUNTARY LEAVING - 345
Pension

POINTS AT ISSUE

- (1) Has the claimant been available for work during the week or weeks for which he claims benefits?
- (2) Did the claimant voluntarily quit his last employment without good cause within the meaning of the Virginia Act?

FINDINGS OF FACT

The claimant appealed from a decision of the Deputy which declared him ineligible for benefits effective as of January 11, 1957.

The claimant was last employed by the George R. Robson & Company, Culpeper, Virginia, where he has worked off and on for a period of some 20 years. His most recent period of employment was from sometime in February, 1956, until about October 25, 1956, at which time he quit his job but subsequently returned and worked on November 30, 1956, and December 3, 1956, and again quit because his earnings were approaching the \$1200 and he did not wish to interfere with the receipt of his Social Security Benefits.

A separation report received from the employer indicated that at the time the claimant had left there was plenty of work available for him and he could have continued working; however, at the time that he filed his claim no work was available and would not be until the weather opens up in the spring. The claimant was employed as a construction laborer and was being paid at the rate of \$.90 per hour.

The claimant will be 70 years of age in April, 1957, and has been drawing Social Security Benefits for a period of approximately 3 years. His wife also recently became eligible for benefits, and she and the claimant together are receiving \$99.20 per month.

At the hearing on his appeal, the claimant acknowledged that he had quit his employment because his earnings were approaching the maximum allowed under the Social Security Act to continue to be eligible for such benefits. Since filing his claim for benefits on January 11, 1957, he has applied to 3 construction companies in Culpeper and 2 others whose names he did not remember. All of these contacts were made in the two weeks preceding the hearing.

OPINION

Section 60-46(c) of the Virginia Unemployment Compensation Act provides in part that to be eligible for benefits, a claimant must be available for work. Generally, to be considered available for work, among other things, a claimant must show that he is actively and earnestly searching for suitable work and is ready and willing to accept employment without attaching undue restrictions to his employability.

The evidence in the instant case clearly indicates that the claimant was making no effort to find employment during the initial stages of his claim. Although he had contacted five prospective employers in the two weeks preceding the hearing on his appeal, all of these concerns were construction contractors, which normally would not have work available at this time of the year.

While the Examiner realizes that the opportunities of employment for a person of the claimant's age and work experience are necessarily limited in the Culpeper area, he, nevertheless, does not feel that five contacts in a period of six weeks are those which could reasonably be expected of an unemployed person who is earnestly and diligently seeking work. It is, therefore, the opinion of the Examiner that the claimant has failed to demonstrate that he was meeting the availability for work requirements of the Act.

Section 60-47(a) of the Virginia Unemployment Compensation Act provides a disqualification of seven weeks and the total amount of potential benefits reduced by seven times the weekly benefit amount, if it is found that an individual voluntarily left his employment without good cause.

This claimant left employment because his earnings for the year 1956 were approaching \$1200 and he did not wish to continue working which would result in his being ineligible for further Social Security Benefits. Since work was available and the claimant could have continued on with his employment, the Examiner is of the opinion that the claimant's leaving was voluntary and without good cause within the meaning of that term as used in the Virginia Unemployment Compensation Act. He is, therefore, subject to the disqualification provisions of the Act. (Underscoring supplied)

DECISION

The decision of the Deputy is hereby affirmed. It is held that the claimant has not met the eligibility requirements of the Act from January 11, 1957, through February 20, 1957, the date of the hearing before the Examiner.

It is also held that, in the event the claimant should ever meet the eligibility requirements and there has been no intervening employment within the meaning of that term as used in the Act, he shall be disqualified for seven weeks and his potential benefits reduced by seven times the weekly benefit amount, for having left work voluntarily without good cause.

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* Decision affirmed by the Commissioner for the Unemployment Compensation Commission of Virginia in Decision No. 3084-C, dated April 2, 1957.