

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

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Decision No.: SUA-196

VOLUNTARY LEAVING - 365.05
Prospects of other work.

Date: May 27, 1977

This is a matter before the Commission on appeal by the claimant from the decision of the Appeals Examiner (No. SUA-77-158), dated March 21, 1977.

ISSUE

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

FINDINGS OF FACT AND OPINION

Tazewell County School Board was the claimant's last employer for which he had worked as a custodian and bus driver from 1972 through February 4, 1977. He was paid \$2.75 an hour by this employer at the time of his separation and frequently worked overtime and weekends.

On or about January 25, 1977, the claimant obtained an offer of employment from the Mountaineer Machinery Company of Bluefield, West Virginia, to begin working on February 7, 1977, as a machinist trainee. He was to be paid \$3.55 in the position and was assured of employment by the owner of the business. The claimant had submitted a letter at the hearing before the Appeals Examiner from the owner of that business which stated:

"Russell Taylor did apply for work with Mountaineer Machinery, and was assured of work on or about February 7. However, due to certain circumstances beyond our control, our work load dropped way below normal for this time of year. For this reason we could not hire Russell Taylor as a machinist trainee.

"When our work returns to normal in the near future, we will hire Russell and train him as a machinist."

The claimant notified his employer of his intentions to resign on January 25, 1977, such resignation to be effective Friday, February 4, 1977. When he reported to work at his new employment on February 7, 1977, he was informed that the work load had dropped due to unforeseen economic circumstances and he could not be employed at that time. The claimant also testified before the Appeals Examiner that he felt the new work to be in his own best interest as it did not involve much overtime nor did it involve working on the weekends. He also felt that since he had reached his fullest potential as a bus driver and custodian, that he could benefit from learning a skilled trade.

Section 60.1-58(a) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that an individual has left work voluntarily

without good cause. The Commission has held in limited circumstances that an individual may have good cause for leaving employment to accept new work which he reasonably believes to be in his own best interest. It has held that if the work to which the claimant transfers is of a non-temporary duration and he has actually obtained it, in contrast to mere anticipation of securing it, such leaving is with good cause.* It is the opinion of the Commission that the claimant reasonably believed that the new work as a machinist trainee was in his own best interest; it would have yielded an immediate increase in his wages, and would have given him the opportunity to learn a skilled trade, which would have improved his employability in the future.* By virtue of the letter from the claimant's prospective employer, it is clear that the claimant had actually obtained the new employment prior to relinquishing his job with the Tazewell County School Board.* Although he was unable to begin the new employment as he and the employer had anticipated, this was due to economic conditions beyond the claimant's control or ability to foresee at the time of his resignation. The Commission notes that the question of whether or not a claimant has actually obtained new employment must be viewed from the perspective of the claimant at the time of his separation;* since this claimant had obtained new employment which he reasonably believed to be in his own best interest at the time of his separation, his leaving to accept such employment was with good cause as that term is used in the Act.

DECISION

The decision of the Appeals Examiner is hereby reversed. The Deputy is instructed to determine the claimant's eligibility for benefits during the weeks claimed.

* Underscoring supplied.