

DECISION OF COMMISSION

In the Matter of:

Michael E. Hendrickson
[REDACTED]

Commonwealth of Virginia
Richmond, Virginia 23229

Date of Appeal
to Commission:

March 13, 1989

Date of Review:

May 1, 1989

Place: RICHMOND, VIRGINIA

Decision No.:

31692-C

Date of Mailing:

May 26, 1989

Final Date to File Appeal

with Circuit Court: June 15, 1989

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This matter comes before the Commission as a result of an appeal filed by the claimant from the Decision of Appeals Examiner (UI-8901854), mailed March 1, 1989.

APPEARANCES

Employer Representative

ISSUE

Did the claimant leave work voluntarily without good cause as provided in Section 60.2-618.1 Code of Virginia (1950), as amended?

FINDINGS OF FACT

The claimant filed a timely appeal from the Appeals Examiner's decision which affirmed an earlier Deputy's determination and disqualified him for benefits, effective January 1, 1989, for having left work voluntarily without good cause.

Prior to filing his claim, the claimant last worked for the Commonwealth of Virginia, Department of Social Services between August 8, 1977 and December 30, 1988. His last position was that

of State Welfare Supervisor B in the employer's Culpeper, Virginia office.

When the claimant first applied for a state job, he indicated that he was willing to accept employment in the Northern Virginia area. His position prior to September 1, 1988 was that of Support Enforcement District Manager at the employer's office in Fairfax, Virginia. This was classified as a grade 12 position, and the claimant received two extra steps as a supplement for living and working in Northern Virginia, making his annual salary at that time \$33,833. Effective September 1, 1988, the claimant was involuntarily demoted and transferred to the Culpeper, Virginia office in lieu of termination based upon the accusation that he had committed a Group III offense under the applicable state employee standards of conduct. Almost immediately, he filed a grievance to protest this action, as well as a second grievance to protest a merit evaluation which had been given to him almost simultaneously. Both of these grievances were still pending at the time of the hearing held before the Appeals Examiner. After his demotion and transfer, the claimant was making \$28,310 per year since he had dropped one step to a grade 11 and lost the two-step Northern Virginia pay differential. Despite this, he decided that he would try it out and, therefore, began to commute from his home in Arlington to Culpeper on a daily basis. He soon found that instead of taking only 25 minutes to get to work, it was taking him between 1 1/2 hours to 2 hours each way and costing him between \$8 and \$9 per day for gas. He estimated the distance at between 75 and 80 miles one way.

The claimant also began to experience physical problems with recurrent cold and flu symptoms which caused him to use quite a bit of sick leave. He began to feel so physically and mentally exhausted at making the long commute to Culpeper that he decided in early December 1988 to resign his position. He submitted a letter of resignation with an effective date of December 31, 1988, noting that he wished to continue pursuing his grievances after his separation.

OPINION

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

In the case of Lee v. Virginia Employment Commission, et al, 1 Va. App. 82, 335 S.E.2d 104 (1985), the Virginia Court of Appeals affirmed the following standard for establishing good cause for voluntarily leaving work:

The Commission has adopted and held firmly to the premise that an employee, who for some reason, becomes dissatisfied with his work, must first pursue every available avenue open to him whereby he might alleviate or correct the condition of which he complains before relinquishing his employment. . . . He must take those steps that could be reasonably expected of a person desirous of retaining his employment before hazarding the risks of unemployment.

The facts of the Lee case are also applicable to the case at hand. There, the claimant was a government employee who had filed a grievance against his employer and had won a settlement which included the employer providing him with an individual development plan with both short and long-term career goals. Thereafter, primarily due to budget considerations, the employer could not live up to that agreement and transferred the claimant to a position which he believed had no promotion potential. Shortly thereafter, the claimant resigned his job, and it was held that this was done without good cause, primarily because he did not file another grievance to attempt to enforce the original agreement.

Here, the claimant did file two grievances against the agency which employed him which he made sure would remain active even after his resignation. Because of this, there can be no finding that the claimant voluntarily accepted the changed terms and conditions of employment which were unilaterally imposed upon him by his employer.

In the case of Lloyd Young v. Mick or Mack, Commission Decision 24302-C (December 11, 1984), the claimant quit his job after being informed that he was being demoted from assistant store manager to being a stock clerk with a reduction in pay of approximately one-third. The Commission held that the claimant did have good cause to refuse to continue to work under the new conditions and also stated:

At present, there is no case law which suggests that it is necessary to consider the motivation for an offer of new work. The analysis should be the same regardless of whether the change in the terms or conditions results from a reduction in force or for disciplinary reasons. In determining whether any work is suitable for an individual, the Commission considers such factors as his experience and prior training, his physical ability to perform the work, the degree of

risk to his health, safety and morals, the accessibility of the work from his residence, and his length of unemployment.

In this case, the demotion and transfer offered to the claimant resulted in a pay reduction of over 16 percent and required him to be on the road more than two hours a day beyond the time he had spent commuting previously. Not only did this obviously require him to expend additional funds to make the commute, but his testimony to the effect that he became both physically and mentally exhausted is not inherently unbelievable. It must be noted that the Commission has never required that an individual accept work beyond a reasonable commuting distance of his home unless the employer could prove the existence of a prior agreement between the parties that this could occur. This claimant applied for a job in the Northern Virginia area, and he was involuntarily transferred to one which was outside of that area. Based upon all the factors enumerated in the Young case, supra, the Commission concludes that the job in Culpeper was not suitable for the claimant so that he would have good cause to refuse it.

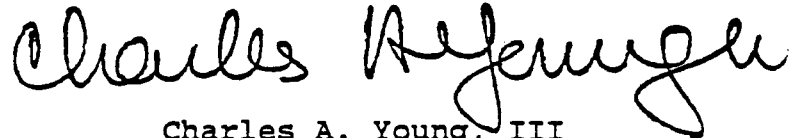
The question remains as to whether the claimant by accepting the job and working at it for three months, is thereby estopped from using the pay and commuting distance in an attempt to establish good cause for subsequently quitting it. After full consideration, the Commission must respond in the negative.

It would simply be inequitable to penalize the claimant for making a good faith effort to remain employed even though his employer was drastically changing the terms and conditions of his job. There is no evidence to indicate that the claimant ever truly accepted the demotion and transfer inasmuch as he continued to pursue his grievances against his employer for taking that action against him even after his resignation. From this, the Commission concludes that the claimant is not estopped from asserting the unsuitability of the work in terms of its pay and commuting distance, and he has established good cause for voluntarily leaving the employer's services so as to be relieved of a disqualification under this section of the Code. (Underscoring supplied)

DECISION

The Decision of Appeals Examiner is hereby reversed. It is held that the claimant is qualified for unemployment compensation, effective January 1, 1989, with respect to his separation from the services of the Commonwealth of Virginia, Department of Social Services.

The Deputy is instructed to carefully determine the claimant's eligibility for benefits during any weeks for which they may have been claimed.



Charles A. Young, III
Special Examiner