

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF APPEALS EXAMINER

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Decision No. S-19729-19398

VOLUNTARY LEAVING: 425.
Suitability of work

Date: September 11, 1967

POINTS AT ISSUE

Has the claimant been available for work during the week or weeks in which she claims benefits?

Did the claimant voluntarily leave her last employment without good cause?

FINDINGS OF FACT

The claimant appealed the determination of the Deputy which disqualified her for benefits effective July 13, 1967, for having left work voluntarily without good cause.

The claimant was last employed by The Dean Company, Dixie Veneer Division, Princeton, West Virginia, where she worked from September 8, 1937, through June 15, 1967. The employer filed separation information advising that the claimant left their employment to return to her home in Portsmouth, Virginia.

According to the claimant, she worked for over 29 years for the employer firm, who, prior to September, 1966, were located in Portsmouth, Virginia. The work she was performing for the employer was a highly specialized work, and they did not have anyone trained to perform her duties. As a result, she was asked by her supervisor to go with them to West Virginia, and to continue working at her job on a temporary basis until another employee could be trained to do the work. She agreed to go to West Virginia for at least six months because of loyalty to the employer.

The claimant further indicated that she is the major support of her family, as her husband has a nervous condition that has prevented him from working for more than 30 years. The claimant's mother-in-law, who is 79 years of age, lived with them in Portsmouth, and when she agreed to accompany the employer to West Virginia, this was a hardship on her and her family. The claimant's son, who is a medical doctor, indicated that he was treating his father as well as his grandmother, and shortly after his mother left for West Virginia, her departure had a noticeable affect upon his father's health. His grandmother's health was failing rapidly, and both she and his father needed medical attention several times each week. He remained in contact with his mother while she was in West Virginia, and it became necessary for him to start sending tranquilizers to his mother in order that she could carry on her work. The general health of his father and his grandmother had deteriorated to the point that he felt it was necessary for his mother to return to their home in Portsmouth to look after them.

The claimant last worked on June 15, 1967, and is presently drawing a pension from the employer in the amount of \$106.41 per month. She filed her claim for benefits on July 6, 1967, and during the first two weeks she claimed benefits, through July 19, 1967, she was applying to employers in the area seeking employment. Since July 20, 1967, the claimant has confined her efforts to making telephone calls to prospective employers.

OPINION

Section 60-46(c) of the Code of Virginia provides in part that, in order to be eligible for benefits, a claimant must be available for work.

The Virginia Supreme Court of Appeals has held that to be available for work, a claimant must be making an active and diligent search for work. These requirements are for the most part continuing requirements which must be met from week to week. In this instance, during the first two weeks the claimant was filing benefits, through July 19, 1967, she was doing those things expected of an unemployed person seeking employment, thereby meeting the availability requirements of the Act.

From July 20, 1967, through August 16, 1967, the claimant's efforts have been confined to making telephone calls to prospective employers. Her efforts can neither be described as active or diligent and therefore, she has failed to meet the availability requirements of the Act.

Section 60-47(a) of the Code of Virginia provides a disqualification if it is found that an individual leaves work voluntarily without good cause.

In this instance, the claimant worked for the employer from 1937 until September 1966 while their business was located in Portsmouth, Virginia, which was her home. When the employer decided to move the business to West Virginia, and the claimant agreed to accompany them on a temporary basis, she did so because of loyalty to the employer. When the employer moved the business from Portsmouth, Virginia to West Virginia, the claimant's work then became unsuitable, and she had good cause for leaving her employment since her home was located in Portsmouth, Virginia. Therefore, the leaving of her employment was with good cause.
(Underscoring Supplied.)

DECISION

That portion of the Deputy's determination disqualifying the claimant for having left work voluntarily without good cause is hereby reversed. It is also held that the claimant has met the eligibility requirements of the Act from July 6, 1967, through July 19, 1967.

It is also held that the claimant has not met the eligibility requirements of the Act from July 20, 1967, through August 16, 1967, the claim weeks before the Examiner.

The claimant's weekly benefit amount will be affected by the pension payment she is receiving from her last employer.

NOTE: Decision affirmed by Commission in Decision No. 4623-C, dated October 16, 1967.