

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



VOLUNTARY LEAVING: 440.
Termination of Employment.

DECISION OF COMMISSION

In the Matter of

Gary D. Compton, Claimant
[REDACTED]

Color Clean Corporation
Alexandria, Virginia

Date of Appeal

To Commission: May 22, 1982

Date of Hearing: July 9, 1982

Decision No.: 18749-C

Date of Decision: July 16, 1982

Place: Richmond, Virginia

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This matter comes before the Commission on appeal by the claimant from the decision of the Appeals Examiner (UI-82-4093), dated May 14, 1982.

ISSUE

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

Was the claimant discharged for misconduct in connection with his work as provided in Section 60.1-58 (b) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On May 22, 1982, the claimant initiated a timely appeal from a decision of the Appeals Examiner which disqualified him from receiving unemployment insurance benefits, effective February 7, 1982, based upon the circumstances surrounding his separation from work.

Prior to filing his claim for benefits, the claimant was last employed by Color Clean Corporation of Lorton, Virginia. The claimant performed services for this employer as its president and manager from August of 1981 until February of 1982. The

claimant was paid an annual salary of \$16,000.00 and the company was engaged in commercial, janitorial and carpet cleaning services.

The claimant, his wife, and a third party each owned one-third of the outstanding shares of stock in the corporation. The third individual had capitalized the corporation in the amount of \$9,000.00 and the claimant and his wife had each executed a promissory note made payable to this third party in the amount of \$3,000.00. Under the terms of their agreement with this third party, interest payments would be due on a quarterly basis and it was understood that the only source of income which the claimant and his wife had for making these interest payments would be the profits and dividends paid by the corporation.

In January of 1982, business began to fall off for the company and disagreements between the claimant and his wife and the third party arose concerning the operation of the business. Since the business was not making a profit, no dividends were being paid to the claimant and his wife. In turn, they were not making the interest payments on the notes held by the third party.

As a result of the differences between the stockholders, various alternatives were explored for the claimant and his wife buying out the other stockholder or this other stockholder selling her stock to another party. When no resolution could be reached, the third party called the notes and accelerated the payments due under the terms of the note. Since the claimant and his wife did not have the necessary financial resources to pay off the notes, an agreement was reached with the other stockholder whereby the claimant and his wife transferred to her all of the stock they owned in the corporation. In exchange for that consideration, the third stockholder cancelled the notes in question.

At the time of this transaction, the claimant ceased to be the president and manager of the corporation. The corporation did not make a bona fide offer of continuing work to the claimant as a technician.

OPINION

Section 60.1-58 (a) of the Code of Virginia provides a disqualification if the Commission finds that an individual left his job voluntarily without good cause.

In cases arising under this particular provision of the law, it is necessary for the Commission to review two fundamental considerations. First, it is necessary to establish that the claimant actually did leave his job voluntarily and the burden of proving this rests with the employer. However, once this is established, then the burden of proof lies with the claimant to establish that the circumstances surrounding his leaving work were such as would constitute good cause.

In the present case, the claimant's employment with the employer came to an end when he exchanged his stock in the corporation in consideration of the third stockholder cancelling a promissory note in the amount of \$3,000.00. In reviewing the evidence and testimony in the record, the Commission is of the opinion that the claimant did voluntarily leave work with this employer and was not terminated by them. Accordingly, it would be appropriate for the issues arising from the claimant's appeal to be resolved under this section of the Act and not under Section 60.1-58 (b) of the Code of Virginia.

In construing the meaning of the phrase "good cause", the Commission has consistently held that an individual leaves work voluntarily without good cause unless the reason for leaving is based upon some legal premise or is of such a compelling and necessitous nature as would leave him no other reasonable alternative other than quitting his job. As previously stated, the burden of proof is upon the claimant to establish facts and circumstances which would establish that he did have good cause for leaving his job.

In the present case, the claimant was faced with an untenable situation. The promissory note which he had executed in favor of the third stockholder of the corporation had been called since he did not have the necessary funds to make the interest payments. In addition, the corporation was facing difficult financial problems as the result of a slowing down of business. As a result, the claimant was not receiving any dividends or profits from the corporation as had originally been anticipated. Under these circumstances, the Commission is of the opinion that the claimant had little choice but to exchange his stock in the corporation for the consideration of the noteholder cancelling the note which he had executed. Had he failed to do so, he would have been subject to civil litigation and given the current circumstances of the business, there was no reasonable prospect that he would receive any profits, dividends or potentially even his salary. Furthermore, there was no reasonable opportunity to continue working for this employer after the exchange of stock had taken place. The employer admitted at the hearing before the Appeals Examiner that any discussion regarding the claimant working for her was said as a joke and was not intended as a bona fide offer of work. (Underscoring supplied).

Therefore, under these circumstances, the Commission is of the opinion that the claimant has established good cause for his decision to leave work and should not be disqualified from receiving unemployment benefits.

DECISION

The decision of the Appeals Examiner is hereby reversed. It is held that no disqualification may be imposed based upon the claimant's separation from work with his last thirty day employer.

The local office Deputy is instructed to carefully examine the claimant's claim for benefits and determine whether or not he has complied with the eligibility requirements of the Act for each week benefits have been claimed.

M. Coleman Walsh, Jr.
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Special Examiner