



DECISION OF COMMISSION

In the Matter of:

James H. Taylor
[REDACTED]

The Kroger Company
Clifton Forge, Virginia

Date of Appeal

to Commission: February 27, 1987

Date of Review: April 10, 1987

Place: RICHMOND, VIRGINIA

Decision No.: 28336-C

Date of Mailing: April 30, 1987

Final Date to File Appeal

with Circuit Court: May 20, 1987

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This is a matter before the Commission on appeal by the claimant from the Decision of Appeals Examiner (UI-87-791), mailed February 19, 1987.

ISSUE

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

FINDINGS OF FACT

The claimant filed a timely appeal from the Decision of Appeals Examiner, which disqualified him effective January 4, 1987, for having left work voluntarily without good cause.

The Kroger Company was the claimant's last employer for whom he worked from May 20, 1974, through December 19, 1986. At the time of his separation, the claimant was employed as a lead stock clerk, working from 10:30 p.m. until 7:00 a.m., and being paid at the rate of \$9.71 per hour, plus \$20.00 per week additional by virtue of performing as a lead man.

In November, 1986, a new contract was signed between the company and the union representing the employees in which the hourly rate for employees was reduced by \$1.00 per hour. Prior to this, the claimant was being paid at the rate of \$10.06 per hour, plus the \$20.00 per week differential. In conjunction with the new contract, the employer, in an effort to reduce overhead, presented to its employees a buy out plan which provided a cash payment to employees who resigned a job. The amount of the cash payment was dependent upon the hourly rate of the employee. This plan was not instituted in order to reduce the work force but to reduce the overhead, and no employees were in danger of layoffs. The plan provided, however, that any employee who wished to take advantage of the payment must do so by December 27, 1986.

In the claimant's case, the amount of the buy out payable to him was \$10,000.00 if he resigned. The claimant felt that there would be other changes in the future and decided to accept the buy out and resigned his job effective December 20, 1986.

The claimant was working full-time and his job was filled by the employer after his leaving with a part-time employee. The part-time employee, however, because of the differential in the hourly rate, was to be paid \$7.10 per hour. The part-time employee also was replaced when the employer had to hire another part-time employee to fill that vacancy.

Each employee who took advantage of the buy out plan was replaced by another employee of the company and these employees were also replaced so that the number of employees at the employer's place of business remained constant.

OPINION

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

This Commission has consistently held that when an individual leaves work voluntarily, the burden of proof is upon him to come forward with evidence to show that there were circumstances which compelled him to leave his employment and that such circumstances amount to good cause as set out in the Unemployment Compensation Act. (See generally, Sid F. Kerns v. Atlantic American, Inc., Decision No. 5450-C, dated September 20, 1971)


In the case now before the Commission, while the employer's buy out plan and the amount of money to be received by individuals who resigned can certainly be viewed as tempting, there was nothing present which compelled the claimant to accept the offer. He was

under no threat of discharge or layoff by the employer and could have continued his employment until such time as other circumstances intervened.

In the absence of testimony or evidence that the claimant faced such compelling and necessitous circumstances, it is concluded that his leaving was voluntary and without good cause within the meaning of that term as is used in the Act. (Underscoring Supplied)

DECISION

The Decision of Appeals Examiner is hereby affirmed. It is held the claimant is disqualified effective January 4, 1987, for any week benefits are claimed until he has performed services for an employer during thirty days, whether or not such days are consecutive, and subsequently becomes totally or partially separated from such employment for having left work voluntarily without good cause.


Edwin R. Richards
Special Examiner