



DECISION OF COMMISSION

In the Matter of:

Ricky L. McConnell
████████████████████

Wisco Foods, Inc.
Wise, Virginia

Date of Appeal
to Commission: November 6, 1986

Date of Review: December 3, 1986

Place: RICHMOND, VIRGINIA

Decision No.: 27869-C

Date of Mailing: December 20, 1986

Final Date to File Appeal -
with Circuit Court: January 9, 1987

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This is a matter before the Commission on appeal by the claimant from the Decision of Appeals Examiner (UI-86-7930), mailed October 17, 1986.

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?

FINDINGS OF FACT

The claimant filed a timely appeal from the Appeals Examiner's decision which affirmed an earlier Deputy's determination disqualifying him for benefits effective August 17, 1986, for having left work voluntarily without good cause.

The claimant was last employed by Wisco Foods, Inc., of Wise, Virginia, between May 21, 1981, and March 15, 1986, as a truck driver.

The claimant's job consisted of the wholesale delivery of food products to grocery stores located in Southwest Virginia and Eastern Kentucky. Each day he worked, the claimant would be assigned a route to run; however, he received a salary of \$300 per week no matter how many hours he actually spent on the job.

During the course of his employment, a number of things came up which caused the claimant concern. Gradually, new customers were added to his routes, and this meant that he would have to spend more and more time on the road without receiving an increase in pay. Toward the end of his employment, he was actually working between fifty and sixty hours per week on a regular basis.

With the addition of additional customers, the employer would simply load more products on the truck rather than divide the routes up. This meant that the truck would be regularly loaded beyond its legal capacity which made it very difficult to control at the beginning of the route. Although the claimant did complain about this on numerous occasions, nothing was ever done to correct the problem of overloading the vehicle.

The truck which the claimant drove was not maintained to his satisfaction. On a number of occasions, he received warning tickets for having improper equipment, and on one occasion he almost had an accident when the brakes in his truck would not hold. Although he brought this to the attention of the employer on numerous occasions, nothing was done until finally the front end assembly of the truck became so loose as to make it almost uncontrollable. On the last day that the claimant worked, the truck was not even fully loaded, yet he was stopped by police at a portable weighing station. After he was given a ticket for being almost three tons overweight, he made the decision to quit his job.

The claimant had also made arrangements to go into business for himself hauling produce from South Carolina into Virginia. After he quit his job, he did do this for a while until the venture turned unprofitable. He then ceased this operation and filed his claim for unemployment compensation.

Although duly notified, the employer did not appear at the hearing before the Appeals Examiner to offer any testimony or evidence in the matter.

OPINION

Section 60.1-58 (a) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that a claimant left work voluntarily without good cause.

Good cause shall not be found in cases where an individual has left work voluntarily to join or accompany a spouse to any locality or in situations where an individual has left work voluntarily to become self-employed. (Underscoring supplied)

The two statutory exceptions to the term "good cause" are recent additions to the Act. Of the two, situations have arisen more frequently involving spousal relocation. In such cases, problems have arisen when a claimant has give more than one reason for voluntarily leaving work, one of which was to join or accompany a spouse to a new locality. In such a situation, the Commission must determine the primary reason for the separation. If the primary reason was to join or accompany a spouse to a new locality, then the statutory exception would apply and good cause could not be found. If, however, the primary reason for leaving was not to accompany or join the spouse in a new locality, then the Commission would determine if good cause could be established for the leaving.

The case at hand involves an analogous situation. Part of the claimant's reason for leaving was to go into business for himself, and part of his reason was due to his dissatisfaction with his working conditions. If the primary reason was self-employment, then good cause could not be found for the leaving. If the primary reason was due to working conditions, then the Commission would not be precluded from finding good cause in his actions. (Underscoring supplied)

From the evidence presented, it is apparent that the dissatisfaction with working conditions occurred before the claimant ever decided to initiate a self-employment venture. Furthermore, the fact that the claimant waited until the very day that he was given a ticket for being overweight before quitting is an indication that the immediate cause of his separation involved the working conditions rather than his plans to become self-employed. For these reasons, the Commission finds that the primary reason that the claimant quit his job with Wisco Foods, Inc., was due to his dissatisfaction with the working conditions, and therefore, it

may be considered whether he has established good cause for taking that action so as to determine if a disqualification under this section of the Act should lie.

In the case cited by the Appeals Examiner, Ralph D. Bush v. Moses Coal Company, Decision No. UI-82-11512 (November 4, 1982); affirmed by Commission Decision No. 20209-C (January 28, 1983); affirmed by the Circuit Court of Lee County (August 30, 1984), the claimant was a truck driver who quit his job after the employer wanted him to drive a vehicle with a shorter wheel base which was known to be more prone to "rear up" in the event that it was improperly loaded or the driver attempted to go up a steep grade. Nevertheless, that type of vehicle was commonly used in strip mining operations of the type where the claimant was employed. In finding no good cause for voluntarily leaving work, it was held:

"While an employee has an inalienable right to take counsel of his fears and leave his job, when he does so, he is out of work through his own choosing. Thereby, the receipt of unemployment compensation would be dependent upon his producing evidence to the effect that the dangers involved were greater than would be expected by a person involved in that line of work."

In the present case, the employer did not choose to present any evidence, and that presented by the claimant is not inherently unbelievable. The Commission is unprepared to state that individuals involved in the wholesale distribution of foodstuffs must customarily be expected to drive overloaded, unsafe vehicles and have their complaints about such conditions be ignored by their employers. The uncontroverted evidence here indicates that this is exactly what the claimant was expected to do, and his efforts to adjust with his employer the situations of which he complained got him nowhere. When he finally got a ticket for being nearly three tons overweight in a vehicle which was not even as fully loaded as it had been on many previous occasions, the Commission concludes that he has met the burden of showing that he was being exposed to greater dangers than those which could be reasonably expected by an individual in his line of work. Therefore, he has established good cause for voluntarily leaving the employer's services, and he should not be disqualified for benefits under this section of the Act.

DECISION

The Decision of Appeals Examiner is hereby reversed. It is held that the claimant is qualified for unemployment compensation effective August 17, 1986, with respect to his separation from Wisco Foods, Inc.

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