

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF APPEALS EXAMINER

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Decision No.: UI-76-5014

VOLUNTARY LEAVING: 500.1
Wages -- Agreement
Concerning.

Date: August 19, 1976

ISSUES

Code of Virginia Section 60.1-58(a): Did the claimant voluntarily leave his last employment without good cause? Section 60.1-52(g): Was the claimant available for work during the weeks for which benefits were claimed?

FINDINGS OF FACT

The claimant appealed from a determination of the Deputy which disqualified him for unemployment compensation effective June 13, 1976, for having voluntarily left his last employment without good cause.

The claimant last worked for the Provident Mutual Life Insurance Company, Richmond, Virginia, from March 15, 1976 through June 15, 1976, as an insurance agent.

The claimant had no previous experience in sales and took this job upon referral by the local office of the Commission. He performed his job under a contract of employment which provided that he would receive \$700.00 per month for the first three months of work. After that time, his guaranteed salary would decrease while commission upon sales would increase. The claimant's contract provided that it would cease to be valid at the end of any month in which the claimant failed to make ninety percent of his sales quota unless the company specifically waived its right to terminate the contract. The claimant found it very difficult to sell insurance and, after ten weeks, was told that he would not be able to receive any more paychecks until he had brought his sales to within ninety percent of his objective quota. The claimant tried very hard to sell more policies during the remaining two weeks of his third month of employment but was unable to do so. Since he realized that he would have to sell more insurance during his fourth month than he had sold during all three of his first months in order to receive a paycheck at all, he decided to resign his position at the end of his third month of employment.

Although duly notified, the employer did not appear at the hearing or respond to the notice.

The claimant filed for unemployment compensation effective June 13, 1976, and continued to claim benefits through July 3, 1976. During these weeks he indicated that he had made four job contacts in an effort to find work, one of which consisted of answering an advertisement in the newspaper.

OPINION

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

The Commission has consistently held that all work is performed under a contract of employment whether verbal or written. Any change in the duties, terms, or conditions of the work not authorized by the existing employment contract is in effect a termination of the existing contract and the offer of a new one. If the new work offered is not suitable, an individual would have good cause in refusing to accept it.

In the present case, this claimant's written contract provided that it would be automatically terminated at the end of any month in which he had not made his quota. Since the employer informed the claimant that he would not be receiving any more paychecks in accordance with the contract until he had made his quota, it is apparent that the contract was being terminated and a new contract being offered. Since the claimant had never agreed to work for nothing, it is the opinion of the Appeals Examiner that he did have good cause in resigning his employment, rather than face the uncertainty of whether he would be paid for the work he did in the future. Therefore, he should not be subject to the disqualifying provisions of the aforementioned section of the Virginia Act.

Section 60.1-52(g) of the Act provides that in order to be eligible for benefits for a particular week, a claimant must show that he was available for work during that week.

The Commission has consistently held that the phrase "available for work" requires that a claimant make an active search for work by personally contacting various employers each and every week for which benefits are claimed.

It is the opinion of the Appeals Examiner that by personally contacting only four employers in three weeks, this claimant has not shown that he was actively seeking work so as to be considered available for work within the meaning of the aforementioned section of the Act during the weeks in question.