

VIRGINIA EMPLOYMENT COMMISSION

VOLUNTARY LEAVING: 515.65
Working Conditions —
Safety.



DECISION OF COMMISSION

In the Matter of

Robert Caldwell, Claimant
[REDACTED]

Fountain Bay Mining Company
Coeburn, Virginia

Date of Appeal

To Commission: November 14, 1983

Date of Hearing: March 2, 1984

Place: RICHMOND, VIRGINIA

Decision No.: 22419-C

Date of Decision: March 2, 1984

Date of Mailing: March 2, 1984

Final Date to File Appeal

with Circuit Court: March 22, 1984

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This matter comes before the Commission on appeal by the claimant from the decision of the Appeals Examiner (UI-83-10015), mailed November 4, 1983.

APPEARANCES

Attorney for Claimant

ISSUE

Did the claimant leave work voluntarily without good cause as provided in Section 60.1-53 (a) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On November 14, 1983, the claimant initiated a timely appeal from a decision of the Appeals Examiner which disqualified him from receiving unemployment insurance benefits based upon the circumstances surrounding his separation from work.

Under such circumstances, the Commission is of the opinion that the claimant was confronted with a serious, potentially life-threatening situation which rendered his job unsuitable. When an employee is confronted with such a situation, has advised proper supervisory personnel of the condition and no meaningful action is taken to remedy the problem, the employee would have good cause for leaving his job, within the meaning of the Virginia Unemployment Compensation Act. Accordingly, based upon the evidence and testimony in the record, the Commission is of the opinion that the claimant, in this case, did leave work voluntarily for reasons which constitute good cause and no disqualification should be imposed under the provisions of Section 60.1-58 (a) of the Code of Virginia. (Underscoring supplied)

DECISION

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

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

M. Coleman Walsh, Jr.

M. Coleman Walsh, Jr.
Special Examiner

Prior to filing his claim for benefits, the claimant was last employed by Fountain Bay Mining Company of Coeburn, Virginia. He worked for this company from April 4, 1983 through September 13, 1983. Initially, he performed services as a section foreman, but later, at his own request, was transferred to a position as a miner's helper.

The claimant had requested this particular job transfer due to his concern for employee safety on the job. The claimant's first day working as a miner's helper was on September 12, 1983. On the previous evening, the employer had moved a power source into the main return. In the mining industry, a power source provides the necessary electricity to operate mining equipment within the mine. The main return is the opening in the mine through which noxious and sometimes highly combustible gases are vented out of the mine. The location of the power source in the main return constituted a serious safety hazard.

The claimant noticed the power source in that location on the morning of September 13, 1983. The claimant discussed the situation with several employees and after entering the mine to begin work, the claimant and one other employee returned from the mine. The claimant approached the job superintendent and advised them that they could not work under those conditions created by having an operational power source in the main return. The superintendent went to a telephone to call into the mine and determine the situation. The problem was not resolved and as a result of a complaint filed by the claimant with the Mine Safety and Health Administration together with a contemporaneous investigation, the mine was cited by federal inspectors for a safety violation for this specific situation. As a result of this particular situation, the claimant left his job voluntarily.

The placing of a power source in the main return creates an extremely dangerous situation due to the nature of the gases being vented from the mine. Sparks generated by the power source could conceivably ignite the gases and cause an explosion in the mine with potentially fatal consequences.

OPINION

Section 60.1-58 (a) of the Code of Virginia provides a disqualification if the Commission finds that a claimant left work voluntarily without good cause.

Over the years, the Commission has been confronted with numerous cases involving a claimant's decision to leave work voluntarily for health related reasons. The principles that

the Commission follows in reviewing such cases were first articulated in the case of Fannie M. Weaver v. Ideal Laundry and Dry Cleaners, Decision No. 3153-C, October 16, 1957. In that case, the Commission held:

"In construing the meaning of 'good cause', this Commission has repeatedly held that clear evidence that a particular type of work is detrimental to a claimant's health manifestly renders such work unsuitable for the claimant and, hence, is good cause for leaving such work. This Commission has also been consistent, however, in requiring that a claimant make every effort which a reasonable person desirous of retaining his employment would pursue before electing to leave."

These principles reaffirmed by the Commission in the case of Ralph Hollingsworth, Jr. v. N. J. Sullivan, Decision No. 14200-C January 21, 1981. In that case, the claimant performed work in an area where welding was done by other co-workers. The smoke created by the welding irritated the claimant's lungs and he was subsequently advised by his physician to quit his job for health reasons. However, the claimant did not advise the employer that he was leaving for health reasons and never complained to them about his work environment causing any health problems. After citing the Weaver case, the Commission further held that:

" . . . however, the claimant, by not discussing the matter clearly with his employer, did not allow the employer an opportunity to correct the atmosphere. A reasonable person, desirous of retaining their job, would have discussed the matter with the employer before resigning, giving him an opportunity to either transfer him to another location where the fumes would not aggravate his condition or to make arrangements to put in an exhaust fan for some other device to remove the fumes from the claimant's work area."

In the present case, the evidence in the record is clear that the claimant observed and was confronted by a potentially serious safety hazard as a result of the power source being located in the main return. The claimant advised the superintendent of this fact who did nothing more than make a phone call to other personnel in the mine. The lack of any meaningful effort on the employer's part to correct the situation is clearly shown by the fact that a contemporaneous investigation conducted on the next day, September 14, 1983, resulted in the employer being cited for a safety violation as a result of this specific situation.