

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

VOLUNTARY LEAVING - 515.4
Working Conditions
Fellow Employee



DECISION OF COMMISSION

In the Matter of:

Amos A. Allen
[REDACTED]

Diversified Mailing
Fredericksburg, VA

INTERSTATE

Date of Appeal to Commission: January 28, 1986
Date of Review: February 25, 1986
Place: RICHMOND, VIRGINIA
Decision No.: 26610-C
Date of Mailing: February 27, 1986
Final Date to File Appeal with Circuit Court: March 19, 1986

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This is a matter before the Commission as the result of an appeal filed by the claimant from the Decision of Appeals Examiner (UI-86-71), mailed January 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 reversed an earlier Deputy's determination and disqualified him for benefits effective November 24, 1985, for having left work voluntarily without good cause.

At the time he filed his claim, effective November 24, 1985, the claimant's last 30-day employer was the Diversified Mailing Company of Fredericksburg, Virginia, where he had worked as a maintenance mechanic between May 28, 1985, and October 9, 1985.

Beginning in September, 1985, a co-worker with whom the claimant had been friends, began spreading rumors about him behind his back, and he was quite upset about this and did make mention of it on one occasion to his supervisor. In response to the problem, the employer transferred the claimant from the night shift to the day shift and even allowed him to keep the \$1.00 night shift differential after making this move. Nevertheless, he was still upset about the rumors which were being spread and he announced in early October that he was quitting his job to move to West Virginia. Although he also indicated that he had found other employment in that state, there was no specific job offer pending at the time of his separation. Sometime after quitting his job and moving, the claimant did obtain other employment but had not worked as many as thirty days at the time he filed his claim.

Although the claimant gave a week's notice, he left nearly two days before it was up. One of the reasons he told the employer for leaving was the fact that he could not afford living expenses in the Fredericksburg area.

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.

Here, one of the claimant's arguments in his appeal to the Commission is that he has since worked for as many as thirty days for his new employer in West Virginia and this should somehow negate the prior decision. There may be a misconception on his part inasmuch as the disqualification was imposed until such time as he has performed services during thirty days, whether or not such days are consecutive and subsequently becomes totally or partially separated from that employment. If indeed the claimant has worked for an employer in West Virginia for as many as thirty days, and has been totally or partially laid off from that employment since the effective date of the disqualification, then it is incumbent upon him to report to his local office to file an additional claim. The case at hand is confined to the issues concerning his separation from work with his former employer in Fredericksburg, Virginia.

Although there have been cases in which individuals subjected to ridicule at work have been able to establish good cause for voluntarily leaving that employment, it is necessary in such cases that an individual show that the terms or conditions of his work have become so oppressive as to render continued employment unsuitable. (See Wayne A. Otey v. Camac Corporation, Decision 24598-C February 14, 1985 (Underscoring supplied))

In the Otey case, the ridicule directed against the claimant was from numerous co-workers and even included the wife of the plant superintendent. In that case, the claimant had complained concerning the ridicule and he was able to show that the employer had played an active role in the problem since certain confidential medical records on file with the employer were apparently released without his permission.

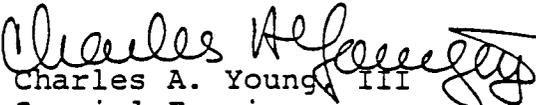
In the case at hand, the claimant can show no such involvement by his employer with the spreading of rumors against him. Indeed, the employer attempted to accommodate his situation and get him away from the offending co-worker by moving him to the day shift and even allowing him to keep the night shift pay differential. A closer examination of the facts in the case indicates that there were other reasons for the claimant's separation including his feeling that the living costs in Fredericksburg were too high and his desire to move back to West Virginia. It is therefore concluded that the claimant has failed to show circumstances of such a necessitous or compelling nature as would have offered him no alternative but to leave his job at the time he did and he should remain disqualified for benefits under this Section of the Act. (Underscoring supplied)

DECISION

The decision of the Appeals Examiner is hereby affirmed.

It is held that the claimant is disqualified for unemployment compensation effective November 24, 1985, for any week or weeks benefits are claimed until he has performed services for an employer during thirty days, whether or not such days are consecutive, and he has subsequently become totally or partially separated from such employment because he left work voluntarily without good cause.

When this decision becomes final, the Deputy is instructed to calculate what benefits may have been paid to the claimant after this date, so as to determine the extent of the overpayment he will be liable to refund to this Commission as the result of this decision.


Charles A. Young III
Special Examiner