

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF APPEALS EXAMINER

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Decision No.; S-10272-10029

VOLUNTARY LEAVING: 515.05

Date: February 3, 1961

Working Conditions-  
General.

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POINTS AT ISSUE

- (1) Has the claimant been available for work during the week or weeks for which he claims benefits?
- (2) Did the claimant leave work voluntarily without good cause?

FINDINGS OF FACT

The claimant appealed from a decision of the Deputy which disqualified him from January 4, 1961, through February 21, 1961, and reduced his potential benefits by seven times the weekly benefit amount for having left work voluntarily without good cause.

The claimant was last employed by the White Park Coal Company, Richlands, Virginia, where he worked on two different occasions. He was employed from September, 1959, to August, 1960, and was laid off due to lack of work. He first filed a claim for benefits on August 31, 1960, but did not report back. He returned to work with his last employer in September, 1960, and worked until November 22, 1960. He was employed as a cutting-machine operator at a rate of \$18.00 per day, working eight hours per day, five days per week.

The employer submitted a Worker's Separation Report and also informed the Deputy in a telephone conversation that, the claimant would not follow orders, stating that he would not cut more than six places per day. He was asked to finish out a shift loading coal one day and refused, and quit. He further stated that he could not get along with the foreman and was always causing trouble. The employer was not represented at the hearing.

According to the claimant, he had not had any difficulty with either the foreman or the superintendent until the day prior to his separation. Following the completion of the day's work, he had gone to the superintendent's home to advise him that a part was needed for the cutting machine. In the course of the conversation, the superintendent asked him several times as to why he didn't quit his job. He returned to work the following morning at the customary time. At approximately 9:00 o'clock, the superintendent came into the mine where the claimant was working and began talking to him in an abusive way, using profanity. Finally, he made a remark which the claimant felt was entirely uncalled for, whereupon he walked out of the mine. This was at approximately 10:00 o'clock, A.M.

The claimant reopened his claim for benefits on December 28, 1960. On January 11, 1961, he reported back, at which time he was interviewed by the Deputy and returned a questionnaire form which he had prepared. He indicated

that his efforts to find work had been to apply to two prospective employers. On January 25, 1961, he again reported and stated that he recontacted one of those previously reported, and had been to two other places.

At the hearing before the Examiner, the claimant was unable to give the exact dates of any contacts, but seemed to feel that he had been to two additional employers since his last reporting. He expressed a willingness to take any kind of work he could get, in or around the mine, at a minimum rate of \$15.00 per day. He is willing to work any shift and has his own automobile which he can use in getting to and from work. He was unable to explain to the Examiner why he had not been to more places, except that the weather had been bad.

#### OPINION

Section 60-46 (c) of the Virginia Unemployment Compensation Act provides in part that, in order to be eligible for benefits, a claimant must be available for work. Generally, to be considered available for work, among other things, a claimant must show that he is actively and earnestly searching for available suitable work, and is ready and willing to accept employment without attaching any undue restrictions upon his employability.

The evidence in this case shows that, during the approximately five weeks in which this individual has claimed benefits, he had only applied to some five employers in an effort to find work. He readily admits that there is a large number of mines in the area, and gives as his only reason for not contacting more that he could not reach them because of the weather.

The claimant's actions in seeking employment during the period in which he has claimed benefits, are certainly not those which could reasonably be expected of an unemployed person who is earnestly and diligently seeking work. It is, therefore, held that he has not met the availability for work requirements of the Act.

Section 60-47 (a) of the Virginia Unemployment Compensation Act provides a disqualification of seven weeks and potential benefits reduced accordingly if it is found by the Commission that the claimant left work voluntarily without good cause.

There is no question in the instant case that the claimant voluntarily left his employment, therefore, the only issue to be determined is whether or not his leaving would be with good cause within the meaning of that term as used in the Act.

In every employer-employee relationship, each individual has the right to expect to be treated fairly, and to be spoken to in a normal and customary manner. When either party departs from this practice and uses either abusive, or profane language, he creates a condition which would cause continued association to become extremely unpleasant. From the testimony of the claimant, under oath, it appears that he voluntarily quit his job when he was talked to in an extremely abusive and profane manner by his employer. In view of these facts, it is the opinion of the Examiner that the claimant has demonstrated good cause for leaving his job, and he would not be subject to the disqualifying provisions of the Act. (Underscoring supplied.)

DECISION

The portion of the Deputy's decision holding the claimant eligible for benefits is hereby reversed. It is held that the claimant has not met the eligibility requirements of the Act from December 28, 1960, through January 31, 1961, the date of the hearing before the Examiner.

It is further held that no disqualification be imposed in connection with the claimant's separation from his last employment.

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NOTE: Decision affirmed by the Commission in Decision No. 3659-C, dated March 6, 1961.