



VIRGINIA EMPLOYMENT COMMISSION

DECISION OF APPEALS EXAMINER

NOTICE: This decision becomes final unless appealed in writing by any party named setting forth the grounds upon which the appeal is sought either at the office where the claim was filed or by mail to the Appeals Section, Virginia Employment Commission, P. O. Box 1358 Richmond, Virginia 23211, not later than midnight of

November 30, 1982

In the matter of:

Claimant

Ralph D. Bush
Route 3, Box 239
Jonesville, VA 24263

Employer

Moses Coal Co.
Pennington Gap, VA 24277

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|------------------------------|-----------------------------------|--|
| Appellant: | <input type="checkbox"/> Employer | <input checked="" type="checkbox"/> Claimant |
| Claimant's S.S. No.: | [REDACTED] | |
| Decision No.: | UI-82-11512 | |
| Date Deputy's Determination: | September 29, 1982 | |
| Date Referred or Appealed: | October 4, 1982 | |
| Date of Hearing: | November 4, 1982 | |
| Place of Hearing: | Norton, Va. | |
| Date of Decision: | November 4, 1982 | |
| Date of Mailing: | November 9, 1982 | |

APPEARANCES: Claimant; Employer Representative

STATUTORY PROVISION(S) & POINT(S) AT ISSUE: Code of Virginia, Section 60.1-58 (a) Did the claimant leave work voluntarily without good cause?

FINDINGS OF FACT: The claimant appealed a Deputy's determination which disqualified him for unemployment benefits effective September 12, 1982, for having left work voluntarily without good cause.

The claimant was employed with Moses Coal Company of Pennington Gap, Virginia, from March, 1981, through September 13, 1982. The claimant performed duties as a truck driver and laborer at the strip mine site operated by Moses Coal Company. The claimant normally worked 7 a.m. through 5 p.m., Monday through Friday at a pay rate of \$6.50 per hour.

On September 13, 1982, the claimant was informed that it would be necessary for him to operate a different type of truck from which he had been operating. This change was necessitated by the fact that financial difficulties made it necessary for Moses Coal Company to return the truck the claimant had been driving. The claimant refused to accept the truck offered explaining that this particular type of truck was unstable and inherently dangerous.

The employer representative agrees that the vehicle refused by the claimant was less stable than the vehicle he had previously driven;

however, this vehicle is routinely used on strip mine sites and is reasonably safe if the proper care is taken when loading and operating the vehicle.

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.

This Commission has consistently held that voluntarily leaving employment with its certain wage rewards and entering the field of the unemployed must be justified by a cause that is compelling and necessitous. If no such cause exists, then it is necessary for an employee to secure another job prior to leaving.

In the instant case, after carefully considering the evidence and testimony presented, it is the Examiner's opinion that the dangers existing in the proposed change of equipment were inherent to the nature of the work and would be logically expected by a person engaged in this type work. While any employee has an inalienable right to take counsel of his fears and leave a job, when he does, he is out of work through his own choosing. Thereby, the receipt of unemployment compensation would be dependent upon him 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 claimant has not shown a greater degree of risk than would logically be expected and, therefore, has not shown reasons of a compelling and necessitous nature which would lead him to quit his job. The Deputy's determination stands affirmed.
(Underscoring supplied)

DECISION: The Deputy's determination which disqualified the claimant for unemployment benefits effective September 12, 1982, for having left work voluntarily without good cause is hereby affirmed and remains in effect for any week or weeks benefits are claimed until he has performed services for an employer for thirty days, whether or not such days are consecutive.

Walter J. Darnell Jr.
Walter J. Darnell, Jr. 
Appeals Examiner

NOTE: Affirmed by Commission Decision No. 20209-C, dated 1/28/83.
Affirmed by the Circuit Court of Lee County, #83-13, dated August 30, 1984.