

UNEMPLOYMENT COMPENSATION COMMISSION OF VIRGINIA

DECISION OF APPEALS EXAMINER

---oOo---

Decision No: S-5040-4957
Date: March 20, 1957

VOLUNTARY LEAVING - 90
Conscientious objection

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 voluntarily quit his last employment without good cause within the meaning of the Virginia Act?

FINDINGS OF FACT

The claimant appealed from a decision of the Deputy which declared him ineligible for benefits effective February 1, 1957.

The claimant was last employed by the Wilson Nehi Bottling Company, Danville, Virginia, where he worked from January 1, 1952, to September 28, 1956. He was employed as a bottle inspector and was paid at the rate of \$1.00 per hour. His hours of work varied, reporting to work at 7:30 A. M. each morning, Monday through Saturday, and working until the day's job was completed. Normally, this work would be fairly light in wintertime and heavy in the summertime. For all hours over 40 per week, he was paid at the rate of time and a half. Shortly prior to his separation, the claimant became a member of the Seventh Day Adventist Church which observes the Sabbath from sundown on Friday until sundown on Saturday. The members of this denomination, therefore, do not work on the Sabbath. The claimant and his pastor went to the employer to ascertain if arrangements could be made for the claimant to continue his employment and without working on Saturday. When he was told that this could not be done, the claimant quit his job.

He originally filed a claim for benefits on November 1, 1956, at which time he was declared ineligible for benefits; however, he did not appeal from this decision. He reopened his claim on February 1, 1957, and when he was interviewed by the Deputy on February 15, 1957, gave the names of some eight different employers he had contacted in an effort to find work. Subsequent to the interview with the Deputy, he has continued his search for work and he has indicated that he will take any kind of work that he can get at the prevailing rate of pay and does not place any restrictions upon the hours of his employment except that he cannot work between sundown Friday and sundown Saturday. Some of the employers that he had contacted would normally require Saturday work and others do not.

OPINION

Section 60-46 (c) of the Virginia Unemployment Compensation Act provides in part that, 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 suitable work and is ready and willing to accept employment without attaching undue restrictions to his employability.

In previous decisions on similar cases it has been held that the refusal to work on Saturday is not a restriction itself that would justify the denial of unemployment compensation on the ground that the claimant is not available for work. The restriction imposed by the claimant in this case does not take him out of the labor market inasmuch as the Examiner takes judicial knowledge that there are probably a large number of places in the Danville area where the claimant could find work that would not interfere with his Sabbath Day. Since he has been making an active and diligent search for work without placing undue restrictions upon his employability, it is the conclusion of the Examiner that this claimant has been meeting the eligibility requirements of Section 60-46 (c) of the Act.

Section 60-47 (a) of the Virginia Unemployment Compensation Act provides a disqualification of seven weeks and the total amount of potential benefits reduced by seven times the weekly benefit amount, if it is found that an individual voluntarily left his last employment without good cause.

In deciding the issues in this case it must be determined whether or not the claimant's leaving his employment was voluntary and whether or not such leaving constituted good cause. There is no question from the evidence that the claimant voluntarily gave up his employment because of his religious beliefs and arrangements could not be made with the employer for him to continue his work without working on Saturday; therefore, the only issue is whether or not such leaving would be for good cause. The Commissioner for the Unemployment Compensation Commission of Virginia in Decision No. 1067-C, dated March 24, 1955, in discussing the phrase, "good cause," held as follows:

"No more than a casual reading of the Act is required to find that the legislature was cognizant of the fact that certain types of work are suitable for some individuals. With this in mind, a list of factors was prescribed to assist in determining whether a particular job is suitable. These factors include such things as risk to the claimant's health, safety and morals, prior training, etc. Certainly it seems reasonable that those things which would make a job unsuitable under this test would likewise constitute good cause for leaving work. This Commission has, therefore, consistently considered those factors which affect the suitability of a job in its determination relating to good cause for voluntarily leaving."

It would certainly appear to the Examiner that, if the situation in the instant case was reversed and the claimant had been offered employment which required Saturday work and which he refused to accept because his religious beliefs prohibited him from working on Saturday, he would refuse such employment for good cause. This being true, it is also the opinion of the Examiner that the claimant's reasons for giving up his employment would also constitute good cause. It would certainly seem unreasonable to expect any work to be suitable which would conflict with an individual's religious beliefs where such conflict would not greatly interfere with his either accepting or holding the majority of jobs which might be available. (Underscoring supplied)

DECISION

The decision of the Deputy is hereby reversed. It is held that the claimant has met the eligibility requirements of the Act from February 1, 1957, through March 14, 1957, the date of the hearing before the Examiner.

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