

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF APPEALS EXAMINER

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Decision No.: UI-69-24

ABLE AND AVAILABLE: 475.05

Date: March 17, 1969

Union Relations:  
General.

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ISSUE

Has the claimant been available for work during the week or weeks for which he claims benefits?

FINDINGS OF FACT

The claimant appealed from a determination of the Deputy which declared him ineligible for benefits from December 16, 1968, through December 29, 1968.

Bradley Brothers Construction Company, Kingsport, Tennessee, was the claimant's last employer where he worked from September 10, 1968, through December 12, 1968. He was separated from this employment due to lack of work.

The claimant is classified occupationally as a structural-steel worker which is also known as an ironworker. For a number of years he has been a member of Local 384 International Association of Bridge, Structural & Ornamental Ironworkers.

The claimant filed for benefits on December 16, 1968. On December 30, 1968, he returned a claim supplement form which he had prepared, and in response to the question as to what was the lowest wage he would accept, he had entered \$4.67½ per hour. When the claimant was interviewed on the same date by a representative of the Commission, he stated that he could not accept less than \$4.67½ per hour as an ironworker; however, he would take any other job provided it would pay not less than \$3.00 an hour.

In filing his appeal on January 8, 1969, the claimant gave as his basis for his appeal that when he joined the union he had taken an oath that he would not work for less than the union scale. If he took a job at less than the scale, he would not be able to get another job as an ironworker. In any other type of work he expressed a willingness to take the prevailing rate of pay.

At the hearing on the claimant's appeal it was established that the wage scale for an ironworker or a structural-steel worker on jobs which were not

covered by union contract would be less than that as established by Local 384. The claimant again stated that he would not accept employment in his line of work which paid less than the union scale. He reiterated that he would accept employment in some other line of work and would accept the prevailing rate of pay for such work.

He has continued his claim series through the week ending January 19, 1969, and during each of these weeks has applied to employers in an effort to find work.

#### OPINION

Section 60.1-52 (g) 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 looking for work, is ready and willing to accept all offers of suitable work, and does not place undue restrictions upon his employability.

The issue involved in this appeal is not new to the Commission. In fact, the Commission in Decision No. 545-C, in a similar case, has stated as follows:

"In order to qualify under the eligibility provisions of the Act, a claimant must unreservedly be attached to the labor market, especially must he be willing to accept employment in his usual trade or occupation and at his normal and accustomed wage scale.

"This Commission has consistently taken the position that one who joins a union containing restrictions regarding the employment he will accept does so voluntarily. If such a claimant, as a result of such restrictions, refuses to accept a job or refuses to apply for a suitable job, he thereupon becomes voluntarily unemployed. The Unemployment Compensation Act is not designed to pay benefits to those who are voluntarily unemployed."

This claimant is a member of a union which has established a minimum wage scale which their members are allowed to accept in the performance of his usual and customary work. This wage scale as established by the union is acknowledged to be higher than the wages paid for similar work by employers who are not covered by union contracts. Thus, the claimant, by restricting his availability to the wage scale established by his union, has removed himself from possible employment with those employers who pay a lesser rate. By so doing, the claimant is necessarily restricting his employability to only those employers who meet the union requirements as to wages. It is, therefore, the opinion of the Examiner, since this claimant is not unrestrictively in the labor market, that he has failed to meet the availability for work requirements of the Act.

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DECISION

The determination of the Deputy is hereby affirmed and amended. It is held that the claimant has not met the eligibility requirements of the Act from December 16, 1968, through January 19, 1969, the claim weeks before the Examiner.

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NOTE: Decision affirmed by the Commission in Decision No. 4884-C, dated March 17, 1969.