

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

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Decision No.: 6121-C

VOLUNTARY LEAVING: 135.05

Date: November 7, 1973

Discharge or leaving -
General

This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UI-73-1633) dated September 27, 1973.

ISSUES

Did the claimant voluntarily leave his last employment without good cause pursuant to § 60.1-58 (a) of the Code of Virginia (1950), as amended?

Was the claimant able and available for work within the meaning of § 60.1-52 (g) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

Kelly-Crawford Transfer Company, Richlands, Virginia, was the claimant's last employer for whom he worked as a truck driver on a commission basis from September 15, 1972, to on or about March 13, 1973.

The employer was engaged in a hauling contract for a brickyard. According to the employer, the claimant some two weeks prior to his termination had gone to the brickyard to have his truck loaded for delivery. Shortly thereafter, another truck came to the yard and was loaded at a different point prior to loading the claimant's truck. After the claimant's truck had been loaded and readied for work the next day, the claimant removed his personal belongings and informed the employer that he was quitting.

The employer then called another individual who had applied to him for work, in order to replace the claimant. This individual told the employer that he would have to give two weeks' notice on his current job before he could report to the employer. Later that day the claimant called the employer to inform him that he would be back to work the next morning, and the employer allowed him to do so since the other individual could not report until two weeks later. At the end of the two-week period, when the other individual reported to the job, the employer released the claimant.

According to the claimant, he had resented the loading of the other truck prior to loading his and for that reason he had notified the employer that he was quitting. He did this because he previously felt that he had been mistreated in not being given the better trucks and better runs since he was paid on a commission basis. However, upon reflection, the claimant felt that he was obligated to the employer and called him telling him that he would come back to work. The employer allowed him to return to work the following morning and made no mention that he had hired an individual to replace the claimant. The claimant stated that the employer made no mention to him during the two weeks after the incident that he was going to be replaced by another individual. On the day that the other individual appeared at the employer's place of business, the employer notified the claimant that he had a chance to get another experienced driver and hired him to take the claimant's place.

The claimant filed his claim effective July 8, 1973. During the week ending July 14, 1973, no contacts have been shown by the claimant with prospective employers. During the weeks ending July 21, 1973, July 28, 1973, and August 4, 1973, the claimant made contacts with five prospective employers during each week. During the week ending August 11, 1973, the claimant contacted two prospective employers.

OPINION

Section 60.1-58 (a) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that an individual left work voluntarily without good cause.

In the instant case, the claimant felt that he was being treated wrongly and after having loaded and prepared his truck for the next day, informed his employer that he was quitting and left work. Upon reflection after arriving home, he decided that he would return to work the next day and telephoned his employer to so inform him. The employer agreed to let him come back to work and did not tell him that a replacement who had been hired would replace him in two weeks.

It is obvious, therefore, that the employer wished to allow the claimant to return to work, and, by his actions in allowing him to return to work without any penalty or mention that a replacement had been hired, at the very least implied condonation of the incident. (Underscoring supplied)

The claimant, therefore, was once again working for the employer as though he had never mentioned quitting. His termination after two weeks was not a voluntary quit, but a termination of the employment relationship by the employer rather than the claimant. Accordingly, no disqualification can be imposed under § 60.1-58 (a) of the Act since the individual is not unemployed because he left work voluntarily, without good cause, but rather is unemployed because the employer chose to terminate the employment relationship. (Underscoring supplied)

Section 60.1-52 (g) of the Virginia Unemployment Compensation Act provides in part that in order to be eligible for benefits the claimant must be "available for work." Normally, availability requires that a claimant be conducting a search for employment during each week for which he seeks benefits.

According to the claim cards filed by the claimant, he contacted no prospective employers during the week ending July 14, 1973, and therefore, he cannot be considered as meeting the availability requirements. During the weeks ending July 21, 1973, July 28, 1973, and August 4, 1973, the claimant contacted five prospective employers each week and has, therefore, demonstrated an active search for work. During the week ending August 11, 1973, the claimant contacted two prospective employers and, thus, also has met the availability requirements of the Act.

DECISION

The decision of the Appeals Examiner disqualifying the claimant effective July 8, 1973, for having left work voluntarily without good cause is hereby reversed. The claimant did not meet the eligibility requirements of the Act for the week ending July 14, 1973. It is further held that the claimant did meet the eligibility requirements of the Act for the period July 15, 1973, through August 11, 1973.