COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

In the Matter of:

Gail L. Hampe

[redacted]

Krisp Pak Company, Inc.
Norfolk, Virginia

Date of Appeal to Commission: November 17, 1992

Date of Hearing: August 31, 1993

Place: RICHMOND, VIRGINIA

Decision No.: 40365-C

Date of Mailing: March 3, 1994

Final Date to File Appeal with Circuit Court: March 23, 1994

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This case is before the Commission pursuant to a remand order from the Circuit Court for the City of Norfolk (Case No. C93-264), entered April 2, 1993.

APPEARANCES

Attorney for Employer

ISSUES

Did the claimant leave work voluntarily without good cause as provided in Section 60.2-618(1) of the Code of Virginia (1950), as amended?

Was the claimant discharged for misconduct connected with work as provided in Section 60.2-618(2) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On November 17, 1992, the employer filed a timely appeal from the Appeals Examiner's decision (UI-9216456), which was mailed on October 27, 1992. In that decision, the Appeals Examiner concluded that the

claimant was qualified to receive benefits, effective August 30, 1992.

On January 29, 1993, the Commission issued a decision that affirmed the decision of the Appeals Examiner. The employer filed a timely Petition for Judicial Review. Thereafter, the Commission requested that the case be remanded for re-argument, and the employer consented to that request. Consequently, the case was remanded to the Commission pursuant to an order entered on April 2, 1993, by the Circuit Court for the City of Norfolk.

On August 20, 1993, the Commission mailed a notice to all parties and counsel for the employer. The notice informed the parties that a hearing would be conducted at 1:30 p.m. on August 31, 1993, to receive oral argument in the case. Only the employer's attorney appeared to participate in that proceeding.

Prior to filing her claim for benefits, the claimant was last employed by Krisp Pak Company, Inc., of Norfolk, Virginia. She worked for this company between November 16, 1989, and August 21, 1992. The claimant performed services as a salesperson and office worker. She was paid $8.00 an hour.

On June 2, 1992, the claimant was placed on a paid maternity leave. She was scheduled to return to work on July 13, 1992. The employer hired a temporary worker to cover the claimant's job while she was on leave.

The office manager overheard that the claimant may not be returning to work. Consequently, on July 10, 1992, the office manager contacted the claimant to discuss the situation. At that time, the claimant told the office manager that she would not be returning to work because she had been unable to arrange for a permanent babysitter.

In light of this development, the employer decided to hire the temporary worker as a permanent replacement for the claimant. This individual had already made plans to take a two-week vacation. Since the claimant had intended to give the employer a two-week notice, she agreed to work from July 17, 1992, until July 31, 1992, to provide coverage while her replacement was on vacation. During that time, the claimant's mother provided child care; however, due to medical problems she was unable to do so on a permanent basis.

The employer later asked the claimant to provide coverage for another employee who was taking vacation. The claimant agreed to do so, and she worked from August 14, 1992, through August 21, 1992. The claimant did not work for the employer after August 21, 1992, since the other employee had returned from her vacation and no other work was available at that time.

On September 1, 1992, the claimant filed her claim for unemployment compensation benefits. Her claim was backdated to an effective date of August 30, 1992, in accordance with agency regulations.

OPINION

Section 60.2-618 of the Code of Virginia provides, in pertinent part, as follows:

> An individual shall be disqualified for benefits upon separation from the last employing unit for whom he has worked thirty days or from any subsequent employing unit:
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> 1. For any week benefits are claimed until he has performed services for an employer during thirty days, whether or not such days are consecutive, and subsequently becomes totally or partially separated from such employment, if the Commission finds such individual is unemployed because he left work voluntarily without good cause. As used in this chapter "good cause" shall not include (i) voluntarily leaving work with an employer to become self-employed, or (ii) voluntarily leaving work with an employer to accompany or to join his or her spouse in a new locality. An individual shall not be deemed to have voluntarily left work solely because the separation was in accordance with a seniority-based policy.
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> 2. For any week benefits are claimed until he has performed services for an employer during thirty days, whether or not such days are consecutive, and subsequently becomes totally or partially separated from such employment, if the Commission finds such individual is unemployed because he has been discharged for misconduct connected with his work.

The employer bears the burden of proving that the claimant left work voluntarily. Shuler v. V.E.C., 9 Va. App. 147, 384 S.E.2d 122 (1989). Once that has been established, the burden of proof is on the claimant to demonstrate good cause for leaving work. Kerns v. Atlantic American, Inc., Commission Decision 5450-C (September 20, 1971). In construing the meaning of the phrase "good cause," the Commission has limited it to those circumstances which are so substantial, compelling and necessitous as would leave a claimant no

reasonable alternative other than quitting work. Accord, Phillips v. Dan River Mills, Inc., Commission Decision 2002-C (June 15, 1955); Lee v. V.E.C., 1 Va. App. 82, 335 S.E.2d 104 (1985).

If the employer does not prove that the claimant left work voluntarily, then the separation would be treated as a discharge pursuant to the provisions of Section 60.2-618(2) of the Code of Virginia. In that event, a disqualification would be imposed only if the claimant had, without mitigation or justification, deliberately violated a company rule reasonably designed to protect the legitimate business interests of the employer, or engaged in acts or omissions which, by their nature or recurrence, manifested a willful disregard of the employer's interests and the duties and obligations owed to the employer. Branch v. V.E.C., 219 Va. 609, 249 S.E.2d 180 (1978); V.E.C. v. Gantt, 7 Va. App. 631, 376 S.E.2d 808 (1989), aff'd on rehearing en banc, 9 Va. App. 225, 385 S.E.2d 247 (1989).

In this case, the employer has argued that the claimant should be disqualified from receiving benefits because she left work voluntarily without good cause. In making this argument, the employer has contended that the Commission must look at the circumstances that led to the claimant's decision to relinquish her full-time employment in July of 1992. If the claimant had filed her claim for benefits immediately after working her two-week notice, the Commission would agree with the employer's argument. Nevertheless, the claimant's intervening period of employment with the company prior to filing her claim for benefits puts this case in a different light.

When a claimant files a claim for benefits, the Commission must first determine whether that claimant is unemployed as defined under the statute. If the claimant is unemployed and monetarily eligible for benefits under Section 60.2-612(1) of the Code, the Commission must next determine why the claimant is unemployed. In making this determination, the statute specifically directs the Commission to examine a claimant's separation from the last 30-day employing unit and any subsequent employing unit.

If, prior to filing a claim, the claimant had not worked for any subsequent employing unit, then any disqualification issue would be based solely on the claimant's separation from the last 30-day employing unit. Where, as here, the claimant did not work for a subsequent employing unit, but worked for the 30-day employing unit during several non-consecutive periods, the Commission must examine the claimant's most recent separation prior to filing the claim since that separation would be the immediate cause of the claimant's current period of unemployment.

Here, when the claimant filed her claim for benefits on September 1, 1992, she was unemployed because the employer did not have any

further work for her after August 21, 1992. As a practical matter, the claimant's unemployment was involuntary at that point by virtue of the fact that no further work was available when the other employee returned from her vacation. Such a separation is a discharge under the statute, but not one that would be due to misconduct in connection with work.

In urging the Commission to reach a different conclusion, counsel for the employer argued that the result reached by the Appeals Examiner was neither fair nor equitable to the employer since the claimant could have returned to a permanent, full-time job had she resolved her child-care problems. Implicit in this argument is the notion that the Commission should disregard separations from temporary or part-time jobs that result in periods of unemployment. The Commission is not persuaded by this argument.

If the General Assembly had intended for the statute to be interpreted in this fashion, it would have been a simple matter to add some modifiers to the language of Section 60.2-618. Furthermore, the Commission's interpretation of the statute has been followed by the agency for a number of years, and the General Assembly has not seen fit to amend the law. Also, the employer's argument ignores the fact that many claimants are able to establish monetary entitlement based solely on part-time or temporary employment during their base periods. In many of those cases, the Commission might be required to examine remote events that had no reasonable relationship to a claimant's unemployment if the employer's argument was adopted.

For these reasons, the Commission must reject the employer's argument and conclude that the claimant's unemployment was because she had been laid off due to a lack of work following August 21, 1992. Consequently, no disqualification may be imposed upon the claimant's receipt of unemployment insurance benefits.

DECISION

The Appeals Examiner's decision is affirmed. The claimant is qualified to receive benefits effective August 30, 1992, based upon her separation from the employer.

M. Coleman Walsh Jr.

M. Coleman Walsh, Jr.
Special Examiner