COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

In the Matter of:

Ronnie L. Meador
[redacted]

Bunker Hill Packing Corp.
Bedford, Virginia

Date of Appeal to Commission: February 16, 1993

Date of Review: March 31, 1993

Place: RICHMOND, VIRGINIA

Decision No.: 40827-C

Date of Mailing: April 1, 1993

Final Date to File Appeal with Circuit Court: April 21, 1993

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This case came before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-9301235), mailed February 3, 1993.

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 February 16, 1993, the claimant filed a timely appeal from the Appeals Examiner's decision which disqualified him from receiving benefits, effective November 29, 1992. The basis for that disqualification was the Appeals Examiner's conclusion that the claimant had left his job voluntarily for reasons that would not constitute good cause.

The findings of fact of the Appeals Examiner are supported by the evidence in the record. Accordingly, they are adopted by the Commission with the following additions.

In addition to disagreeing with the warning notice, the claimant refused to sign it because he believed that by doing so he would be admitting that he was guilty of the offenses listed. After refusing to sign the warning notice, the claimant stated to his supervisor that he could tell the company president that he was quitting.

During the Appeals Examiner's hearing, the first witness that was called to testify was the claimant's supervisor. After the supervisor had testified, he was permitted to remain in the hearing room while the claimant offered his testimony. Thereafter, the supervisor was recalled to respond to some of the statements that the claimant had made.

OPINION

As a preliminary matter, the Commission must address the Appeals Examiner's failure to sequester the claimant's supervisor after he had testified during the employer's case in chief. The provisions of Regulation VR 300-01-4.2F of the Regulations and General Rules Affecting Unemployment Compensation provides, among other things, that, "The Appeals Examiner shall exclude any other witnesses from the hearing until such time as their testimony is to be taken." Although this regulation is silent with respect to allowing witnesses to remain in the hearing room after they have testified, the procedure followed by the Appeals Examiner defeats the entire purpose of sequestering witnesses. After the claimant's supervisor had testified during the case in chief and had been cross-examined, he should have been excused from the hearing room and recalled if his testimony was needed on rebuttal.

Because of this error, the Commission has no alternative but to disregard the supervisor's testimony that was offered after the claimant had testified. Thus, in making its findings of fact, the Commission has considered only the supervisor's testimony that was offered during the employer's case in chief.

Section 60.2-618 of the Code of Virginia delineates five circumstances when a claimant may be disqualified from receiving unemployment compensation benefits. Subsection 1 of the statute provides a disqualification if the Commission finds that a claimant left work voluntarily without good cause. Subsection 2 provides a disqualification if the Commission finds that a claimant was discharged for misconduct in connection with 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).

This case is virtually indistinguishable from Jennings v. Craddock-Terry, Commission Decision 41241-C (March 24, 1993). In the Jennings case, the claimant left her job after refusing to sign a warning notice. The claimant was aware that she would not be allowed to return to work without signing the notice; however, she persisted in her refusal and walked off the job. In finding that the claimant had voluntarily quit her job the Commission made the following observations:

> The claimant voluntarily chose not to sign the warning. She also chose to leave the company premises and not to return. These facts are sufficient to establish a prima facie case that the claimant voluntarily left her job. Had she simply signed the warning notice to acknowledge that she had received a copy of it, she would have been permitted to return to work.

The same analysis applies with equal force to the present case. The claimant had the choice of signing the warning and continuing to work, or leaving the premises. His decision to follow the latter course of action represent a conscious decision on his part to relinquish gainful employment rather than sign the warning notice. Therefore, the claimant's separation was properly determined to be a voluntarily leaving of work. Consequently, in order to avoid the statutory disqualification, the claimant must prove that he had good cause for quitting his job.

The claimant has advanced two reasons for his actions on the day in question. First, he believed that the disciplinary action that the company was taking was inappropriate. He felt this way because he did

not believe that he had done anything the previous day that would justify a warning. Second, he would not sign the warning notice because he believed that would constitute an admission that he was guilty of the offenses listed. Neither of these circumstances, either separately or collectively, would amount to good cause for quitting work.

Assuming, without deciding, that the employer was not justified in disciplining the claimant, that did not create a situation where he had no other alternative other than to quit his job. Under such a circumstance it is obvious that the claimant would be distressed. Nevertheless, he could have signed the warning notice and indicated his disagreement in the section of the notice entitled "Comments." Also, the claimant could have undertaken to look for and obtain another job that he would have liked better. Had he pursued that alternative, he could have made the transition from one job to another without exposing himself to the economic hazards of unemployment.

The claimant's belief that he would be admitting culpability by signing the warning notice simply has no foundation whatsoever. The acknowledgement that precedes the space designated for the employee's signature simply states, "I have read this notice and understand it." The plain meaning of those words clearly refutes the claimant's belief that signing the notice would constitute an admission of guilt.

For these reasons, the Commission must conclude that the claimant has not proven good cause for voluntarily leaving his job. Therefore, the disqualification provided by the statute must be imposed.

DECISION

The Appeals Examiner's decision is hereby affirmed. The claimant is disqualified from receiving benefits, effective November 29, 1992, because he left work voluntarily without good cause.

This disqualification shall remain in effect for any week benefits are claimed until the claimant performs services for an employer during 30 days, whether or not such days are consecutive, and he subsequently becomes totally or partially separated from such employment.

This case is referred to the Deputy who is requested to investigate the claimant's claim for benefits and to determine if he has been paid any sum of benefits to which he was not entitled and which he must repay the Commission as a result of the disqualification imposed by this decision.

M. Coleman Walsh, Jr.
M. Coleman Walsh, Jr.
Special Examiner

NOTICE TO CLAIMANT

IF THE DECISION STATES THAT YOU ARE DISQUALIFIED, YOU WILL BE REQUIRED TO REPAY ALL BENEFITS YOU MAY HAVE RECEIVED AFTER THE EFFECTIVE DATE OF THE DISQUALIFICATION. IF THE DECISION STATES THAT YOU ARE INELIGIBLE FOR A CERTAIN PERIOD, YOU WILL BE REQUIRED TO REPAY THOSE BENEFITS YOU HAVE RECEIVED WHICH WERE PAID FOR THE WEEK OR WEEKS YOU HAVE BEEN HELD INELIGIBLE. IF YOU THINK THE DISQUALIFICATION OR PERIOD OF INELIGIBILITY IS CONTRARY TO LAW, YOU SHOULD APPEAL THIS DECISION TO THE CIRCUIT COURT. (SEE NOTICE ATTACHED)