COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

In the Matter of:

Stella L. Jennings

Craddock Terry, Inc.
Halifax, Virginia

Date of Appeal to Commission: February 8, 1993

Date of Review: March 23, 1993

Place: RICHMOND, VIRGINIA

Decision No.: 41241-C

Date of Mailing: March 24, 1993

Final Date to File Appeal with Circuit Court: April 13, 1993

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This case came before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-9220726), mailed January 29, 1993.

ISSUE

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 8, 1993, the claimant filed a timely appeal from the Appeals Examiner's decision which disqualified her from receiving benefits, effective November 8, 1992. The basis for that disqualification was the Appeals Examiner's conclusion that the claimant had left her 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, with the exception of the last sentence of the fourth paragraph, they are adopted by the Commission. In addition, the Commission makes the following findings of fact.

An acknowledgement appears on the warning notice immediately above the date and the line provided for the employees signature. That acknowledgement states as follows:

> THE ABOVE OFFICIAL WARNING AND DISCIPLINARY ACTION WAS ISSUED IN MY PRESENCE WITH A WRITTEN COPY PROVIDED FOR ME. MY SIGNATURE INDICATES RECEIPT OF THE WARNING BUT DOES NOT NECESSARILY INDICATE AN ADMISSION OF THIS VIOLATION. HOWEVER, AN EMPLOYEE WHO FAILS TO SIGN THE WARNING IS PRESUMED TO HAVE TERMINATED HIS/HER EMPLOYMENT AND WILL NOT BE ALLOWED TO RESUME WORK.

After leaving the plant on November 11, 1992, the claimant did not contact the employer or take any action to preserve her job. She reported to the South Boston office of the Virginia Employment Commission on November 13, 1992, and filed her claim for benefits.

OPINION

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).

In this case, it is clear from the record that the employer had no intention of discharging the claimant on November 11, 1992. Instead, the only objective that the employer had at that time was to administer the written warning for the claimant's failure to comply with the instructions of a supervisor which occurred on November 6, 1992. The claimant knew or should have known that signing the warning would not necessarily be construed as an admission that she had violated any company policy. She was also aware that she would not be permitted to return to work until she signed the warning.

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. Accordingly, in order to avoid the statutory disqualification, the claimant must prove that she had good cause for leaving her job.

Since the claimant failed to appear for the Appeals Examiner's hearing, the evidence before the Commission is completely insufficient to show good cause. Based upon the circumstances that existed on November 11, 1992, there was no substantial, compelling or necessitous reason for the claimant's decision to walk off the job and relinquish gainful employment. If she disagreed with the written warning, she could have indicated that disagreement on the notice itself prior to signing it. If she believed that the company was treating her unfairly, she could have continued to work for Craddock Terry until such time as she found another job that she liked better. Therefore, the Commission must conclude that good cause has not been proven.

It would be appropriate to note that, even if the Commission construed the claimant's separation as being a discharge, she would still be subject to a disqualification from receiving benefits. On November 6, 1992, the claimant refused to comply with a reasonable instruction given to her by a supervisor. When the written warning for that offense was administered on November 11, 1992, the claimant again refused a reasonable instruction to sign the warning to acknowledge receiving it. Her conduct on these two occasions were insubordinate since she had no reasonable basis for refusing to comply with the instructions that had been given to her. The Commission has consistently held that insubordination constitutes misconduct in connection with work. Guynn v. Kahn & Feldman, Inc., Commission Decision 4105-C (October 25, 1963); Anderson v. Glass Marine, Inc., Commission Decision 13211-C (April 8, 1980); See generally, Ware v. Adesso Precision Machine Co., Commission Decision 31397-C (July 25, 1989). Thus, even under a discharge theory, the claimant would be subject to the statutory disqualification.

DECISION

The Appeals Examiner's decision is hereby affirmed. The claimant is disqualified from receiving benefits, effective November 8, 1992, because she 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 she subsequently becomes totally or partially separated from such employment.

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)