COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

In the Matter of:

Teresa A. Luther
[redacted]

Dynamic Engineering, Inc.
Newport News, Virginia
(Last 30-Day Employing Unit)

Virginia Living Museum
Newport News, Virginia
(Subsequent Employing Unit)

Date of Appeal to Commission: January 16, 1993

Date of Review: March 1, 1993

Place: RICHMOND, VIRGINIA

Decision No.: 40782-C

Date of Mailing: March 2, 1993

Final Date to File Appeal with Circuit Court: March 22, 1993

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This case came before the Commission on appeal by the claimant from a Decision of Appeals Examiner (EUC-9220637), mailed January 8, 1993.

ISSUES

Did the parties receive a fair, impartial hearing as mandated by the provisions of Section 60.2-620(A) of the Code of Virginia (1950), as amended?

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?

FINDINGS OF FACT

On January 16, 1993, the claimant filed a timely appeal from the Appeals Examiner's decision which disqualified her from receiving benefits, effective July 19, 1992. The basis for that disqualification was the Appeals Examiner's finding that the claimant had voluntarily left her job with the Virginia Living Museum under circumstances that would not constitute good cause. In a separate letter which was filed simultaneously with the appeal, the claimant complained about the Appeals Examiner's conduct prior to and during the hearing. The Commission has interpreted that letter as a contention by the claimant that she did not receive a fair hearing as required by law.

Prior to filing her claim for benefits, the claimant last worked for as many as 30 days for Dynamic Engineering, Inc. of Newport News, Virginia. She was a full-time administrative assistant and was paid slightly more than $22,000 annually at the time she was laid off due to a lack of work. This occurred in January of 1992. The claimant subsequently applied for a job at the Virginia Living Museum in Newport News, Virginia. The claimant was hired and worked a total of 29 days from May 18, 1992, through June 26, 1992. She worked for the museum as a reservation coordinator.

On June 18, 1992, the claimant submitted her resignation, which was effective June 26, 1992. The claimant quit her job because she had been unable to find a full-time position in Newport News that paid a salary equal to what she had made while working for Dynamic Engineering. The claimant made the decision to sell her home and move to Chantilly, Virginia to try and find a job where she was making the same salary so she could support her two children.

At the time she left her job with the museum, the claimant did not have a definite assurance of other employment. The claimant and her children resided with her parents in Chantilly while she began searching for work. During mid-August of 1992, the claimant received an offer of full-time work from World Airways, Inc., which was located in Herndon, Virginia. The claimant began that job on September 8, 1992.

The Appeals Examiner's hearing was originally scheduled to be conducted in person on January 6, 1993. By consent of both parties, that hearing was conducted telephonically. Because an in-person hearing had originally been scheduled, copies of the relevant documents had not been mailed to the parties. During the hearing, the Appeals Examiner accurately summarized those documents for the parties, and they were introduced into the record as exhibits without objection.

In her letter complaining about the Appeals Examiner's conduct, the claimant maintained that, prior to the commencement of the hearing, the Appeals Examiner was unresponsive to questions that she and the employer representative posed to him. Neither the claimant nor the employer made any reference to this during the hearing, and as a result, the record of the hearing neither supports nor rebuts those allegations. The claimant made the following allegations with respect to the Appeals Examiner's conduct during the hearing:

> When the conference call began both (the employer representative) and I tried on several occasions to ask (the Appeals Examiner) questions, but he was VERY SHORT and would not answer any of our questions. He would only say "Do you want to continue with this hearing or not." During the entire conference call (the Appeals Examiner) spoke to us like we were kids and not like professionals.

> He was very disrespectful and very rude. At the end of the conference call (the Appeals Examiner) never told us that the hearing was over, he just hung up.

The Commission's review of the evidentiary record reveals that on one occasion during the hearing the Appeals Examiner asked the question regarding whether one of the parties wished to continue with the hearing. That question was raised during the time the Appeals Examiner was describing the exhibits for the record and there was an issue regarding the contents of the document in question.

There were occasions when the Appeals Examiner was abrupt and short with both the claimant and the employer representative. Notwithstanding this aspect of his demeanor, both parties were given a full opportunity to present all of the relevant evidence that they had concerning the issues that were before the Appeals Examiner for adjudication. Both parties were afforded the right to question the other following their testimony. Both parties were afforded the opportunity to offer rebuttal evidence and to make a closing statement prior to the conclusion of the hearing.

Following the claimant's closing argument, the Appeals Examiner stated "There being no additional testimony and evidence to offer, this hearing is closed." A few seconds after that statement had been made, the tape recorder was turned off; however, it cannot be determined from the record whether the telephone conference call was simultaneously terminated with the hearing.

OPINION

Section 60.2-620(A) of the Code of Virginia provides, in pertinent part, as follows:

> Appeals filed under Section 60.2-619 shall be heard by an appeal tribunal appointed pursuant to Section 60.2-621. Such appeal tribunal, after affording the claimant and any other parties a reasonable opportunity for a fair hearing, shall have jurisdiction to consider all issues with respect to the claim since the initial filing thereof.

In the case of King v. Southeastern Public Service Authority of Virginia, Commission Decision 31196-C (January 30, 1989), the employer argued that, for various reasons, it had not been afforded a reasonable opportunity for a fair hearing. In rejecting that argument, the Commission provided the following analysis which illustrates the principles applicable in cases such as these:

> [T]he hearing that was conducted was a fair hearing. All of the parties had the opportunity to appear before an impartial fact finder, to confront all witnesses, to review all documentary evidence, to cross-examine all witnesses who testified, and to orally argue the case to the Appeals Examiner. Both parties were afforded a meaningful opportunity to present all of the evidence they brought with them to the hearing concerning the issue the Appeals Examiner had to decide. The Commission does not mean to suggest that the Appeals Examiner's hearing was perfect. No hearing is perfect. Fortunately, due process requires only that the parties be afforded a reasonably fair opportunity to have their case heard in a meaningful manner. That opportunity was afforded to both parties.

It is clear from the record that the claimant and the employer were given a reasonable opportunity to present all of their evidence, to cross-examine one another, and to orally argue the case. Although they did not have the opportunity to view all of the documents that were placed in the record as evidence, the Appeals Examiner correctly summarized the material contents of those documents. The parties were afforded the opportunity to have the hearing continued until such time as they could be provided copies; however, neither of them took advantage of that opportunity and both parties waived any objection to the admission of the documents into the record. The only remaining issue, therefore, is whether the parties were denied their right to have the case heard by an impartial fact finder by virtue of the Appeals Examiner's actions prior to and during the hearing.

The Commission is of the opinion that the due process requirement of impartiality would not be met if the Appeals Examiner's conduct (1) demonstrated manifest bias or prejudice towards a party; or (2) barred or made it unreasonably difficult for a party to present relevant, material evidence; or (3) was so egregious and outrageous as would shock the conscience of reasonable people. Undue abruptness, discourtesy, or occasional intemperate remarks would not necessarily show a lack of impartiality on the part of the presiding Appeals Examiner.

The record in this case does not fully support the allegations that the claimant has made. It does show, however, that there were occasions when the Appeals Examiner was short and abrupt with both parties, and that could have been reasonably perceived as rudeness. Although the Commission does not condone rudeness or discourtesy by any of its employees, the Appeals Examiner's conduct did not fall within any of the criteria cited in the preceding paragraph. Therefore, the Commission concludes that both parties received a fair, impartial hearing of the case.

Section 60.2-618(1) of the Code of Virginia provides a disqualification if the Commission finds that a claimant left work voluntarily without good cause.

In interpreting the meaning of the phrase "good cause," the Commission has consistently limited it to those factors or circumstances which were 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. Virginia Employment Commission, 1 Va. App. 82, 335 S.E.2d 104 (1985). In any case arising under this statute, the claimant bears the burden of proving good cause for leaving work. Kerns v. Atlantic American, Inc., Commission Decision 5450-C (September 20, 1971).

In this case, the best evidence in the record establishes that the claimant voluntarily left her job with the Virginia Living Museum because she was not satisfied with her salary. The claimant had been looking for a job which would have paid an annual salary at least equal to what she had received when she worked for Dynamic Engineering. While the claimant's concern and wish is certainly understandable, her decision to quit a job paying an annual salary of $19,000, without first securing a definite assurance of other work, does not satisfy the requirement of good cause.

The Commission has consistently held that personal financial difficulties, problems with housing, the sufficiency of someone's wages to meet his or her needs, or the belief that it would be financially expedient to relocate to another area, would not constitute good cause. Sutherland v. Piggly Wiggly Supermarket, Commission Decision 3066-C (January 16, 1957); Durst v. United Masonry, Inc. of Va., Commission Decision 24702-C (March 7, 1985); Rapp v. Dick Harris & Son Trucking Company, Commission Decision 24838-C (April 5, 1985); Jackson v. Techdyn Systems Corporation, Commission Decision 36680-C (October 31, 1991), aff'd, Circuit Court of Fairfax County, Law No. L111551 (April 16, 1992). The philosophical basis for this position is rooted in the fact that the unemployment insurance statute is designed to provide temporary financial assistance to individuals who are unemployed due to no fault of their own. As the Commission stated in the Sutherland case:

> None of us are entirely free from the problems of finance and the Unemployment Compensation Act was never intended as a complete solution to those problems. Essentially, the Act provides a measure of security against the loss of employment arising out of some frailty of the business economy. Primarily, it insures a suitable job, or the compensation for the loss of such job, but it does not insure to any person that all of his individual needs or wants will be satisfied. But where, as in

> the instant case, a claimant, possessed of a suitable job commensurate with her training and prior experience and paying the prevailing wage, vacates her job with the hope of improving her lot, she must be held to have assumed the risk involved.

Here, there is no evidence to support the conclusion that the claimant's job with the Virginia Living Museum was unsuitable. Although the job paid less than her previous employment and may not have fully utilized all of her skills, those considerations are offset by the fact that, at the time she accepted the job, she had been unemployed for approximately four months.

For all of these reasons, the claimant's decision to quit suitable employment without first securing a definite assurance of another job is insufficient to establish good cause under the statute. Therefore, she must be disqualified from receiving benefits in accordance with the provisions of Section 60.2-618(1) of the Code of Virginia.

DECISION

The Commission finds that the parties received a fair, impartial hearing before the Appeals Examiner.

The Appeals Examiner's decision is hereby affirmed. The claimant is disqualified from receiving benefits, effective July 19, 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.

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

M. Coleman Walsh, Jr.

M. Coleman Walsh, Jr.
Special Examiner