COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

ABLE & AVAILABLE: 160.05
Effort to Secure Employment or Willingness to Work — General.

DECISION OF COMMISSION

In the Matter of

Lorraine A. Cronin [redacted]

Prison Fellowship
Reston, Virginia

Date of Appeal To Commission: January 14, 1985

Date of Hearing: February 21, 1985

Place: RICHMOND, VIRGINIA

Decision No.: 24636-C

Date of Decision: February 26, 1985

Date of Mailing: February 28, 1985

Final Date to File Appeal with Circuit Court: March 20, 1985

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This is a matter before the Commission on appeal by the claimant from the decisions of the Appeals Examiner (No. UI-84-9178 and No. UI-84-9177) mailed January 4, 1985.

APPEARANCES

Claimant, Representative for Claimant

ISSUE

Has the claimant met the availability requirements of the Act for the week or weeks for which she claims benefits within the meaning of Section 60.1-52(g) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The findings of fact of the Appeals Examiner are adopted by the Commission with the following correction. The last sentence in the second paragraph should read as follows:

> "For the aforementioned employer, she had worked as a business administrator."

These findings are as follows:

> "The claimant appealed the determination of the Deputy issued under the provisions of Section 60.1-52(g) of the Code which declared her ineligible for benefits, from November 4, 1984, through November 24, 1984, because she was not available for work during the weeks claimed.
>
> The claimant was last employed by the Prison Fellowship of Reston, Virginia, and worked from February of 1983, through October 5, 1984. She performed services as a clerical worker, working approximately six hours a day on an average of 24 hours a week. She was earning $5.25 per hour at the time of separation. For the aforementioned employment she had worked as a business administrator.
>
> During the period from November 4, 1984, through November 24, 1984 the claimant contacted several employers each week while seeking work, however she was seeking only part-time work which would not require her to work more than 30 hours per week.
>
> The claimant was clear and emphatic in her testimony that she could not work more than 30 hours a week because of her responsibility to her two children and family.
>
> She later secured work with a tentative starting date of January 2, 1984 (sic) in a part-time position working from 9:00 a.m. till 1:00 p.m."

OPINION

Section 60.1-52(g) of the Virginia Unemployment Compensation Act provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he is able to work, is available for work, and is actively seeking and unable to obtain suitable work.

The single issue before the Commission in this case is whether or not a claimant may satisfy the aforementioned eligibility requirements by restricting her availability to part-time work. For the reasons to follow, the answer is no.

The claimant in this case has cited numerous cases from jurisdictions, including Pennsylvania, Vermont, Michigan, Idaho, Delaware, Connecticut and California, that she contends supports her argument that a search for part-time work may be sufficient to comply with the search for work requirements. The unemployment compensation program is a federal/state venture wherein the state must administer the program in accordance with certain federal requirements. There is no federal requirement that limits the power of the states to suspend eligibility based on an individual's unavailability for full-time work. See generally Blount v. Smith, D.C.Pa. 1977, 440 F.Supp. 528. The statutes of Virginia and the decisions of its tribunals and courts of competent jurisdiction are thus controlling in this case. (Underscoring supplied)

The leading case in Virginia on the question posed is Unemployment Compensation Commission v. Tomko, 192 Va. 463. Although the present case may be distinguishable on its facts, it is analogous and the principles adopted therein are dispositive to the resolution of the issue presently before the Commission. In Tomko, the Virginia Supreme Court had this to say in part:

> "As used in the statute, the words 'available for work' imply that in order that an unemployed individual may be 'eligible to receive benefits' he must be willing to accept any suitable work which may be offered to him, without attaching thereto restrictions or conditions not usual and customary in that occupation but which he may desire because of his particular needs or circumstances. Stated conversely, if he is unwilling to accept work in his usual occupation for the usual and customary number of days or hours, or under the usual and customary conditions at or under which the trade works, or if he restricts his offer or willingness to work to periods or conditions to fit his particular needs or circumstances, then he is not available for work within the meaning of the statute.
>
> The courts have universally held that a claimant who undertakes to limit or restrict his willingness to work to certain hours, types of work, or conditions, not usual and customary in the trade, is not 'available for work.'

> In Ford Motor Co. v. Appeal Board, 316 Mich. 468, 25 N.W.(2d) 586, it was held that a claimant who restricted her availability for employment to the afternoon shift in order that she might care for her two children earlier during the day, was not 'available for work' so as to be eligible for unemployment compensation benefits. Other cases of like import are referred to in that opinion. See also, Corrado v. Director of Division of Unemployment, 325 Mass. 711, 92 N.E.(2d) 379; Valenti v. Board of Review, 4 N.J. 287, 72 A.(2d) 516; Mills v. South Carolina Unemployment Compensation Comm., 204 S.C. 37, 28 S.E.(2d) 535.
>
> The same principle, we think, applies in the cases now before us."

In addition, the Virginia Unemployment Compensation Act does not distinguish between temporary, part-time, or full-time employment. The only requirement of the law is that the work be suitable. See generally Virginia F. Martin v. Climate Trane Air Conditioning Co., Decision of Appeals Examiner No. UI-74-2148, (September 4, 1974); affirmed by Commission in Decision No. 6474-C, (October 18, 1974). (Underscoring supplied)

The administrative practice of the Virginia Employment Commission has consistently applied the principle that to be "available for work" a claimant must be actively and unrestrictively seeking suitable employment in the labor market where he resides. Despite frequent amendments to Sections 60.1-46 and 60.1-47 (now Sections 60.1-52 and 60.1-58, respectively) in other particulars, the General Assembly has not seen fit to change such administrative interpretation or these statutes. Dan River v. Unemployment Compensation Commission, 195 Va. 997. (Underscoring supplied)

The undisputed facts in this case are that this claimant restricts her willingness to work to 30 hours per week or less due to family responsibilities. Such a restriction, as can be seen from the above, fails to satisfy the eligibility requirements of the Virginia Act.

The claimant's representative also alleges that she has been denied the right to call witnesses. The Commission also finds this allegation without merit. Among the witnesses requested was the Unemployment Compensation Claims Deputy who issued the monetary and non-monetary determinations in this case. He argues

that the Deputy issued a determination declaring the claimant eligible for a weekly benefit amount of $62 for a duration of 16 weeks on November 20, 1984, and then on November 27, 1984 and December 3, 1984, issued determinations denying benefits without obtaining additional evidence. The monetary determination was based solely on the claimant's wages during the base period (July 1, 1983 through June 30, 1984). The non-monetary determination was based on the statement made by the claimant to the local office representative on October 23, 1984. The claimant's representative has obviously confused the meaning of these determinations. The VEC Monetary Determination issued to the claimant on November 20, 1984 states in Section B that:

> "If entitlement is indicated . . . , you become eligible to receive these benefits for weeks claimed only when you meet, among other conditions, the eligibility requirements of Section 60.1-52 of the Code of Virginia . . . and are not disqualified under Section 60.1-58 of the Code of Virginia."

A determination of eligibility for unemployment compensation benefits gives rise to only a conditional entitlement to weekly benefits, subject to cessation if a claimant subsequently becomes reemployed, and subject to other subsequent determinations by the compensation authorities which alter a claimant's eligibility status. Daniels v. Com., Unemployment Compensation Board of Review, Pa.Cmwlth. 1983, 465 A.2d 726.

The claimant's representative also proffered the testimony he intended to solicit from two other individuals regarding the claimant's qualifications to perform certain jobs. Among other things, the Hearings Officer is vested with the authority to control the order of proof and rule upon the admission of evidence. Since the proffer clearly showed the testimony of the requested witnesses, as well as the Claims Deputy, to be immaterial and irrelevant to the issue, the exclusion of those witnesses was proper.

After having reviewed the entire record in this case, the Commission cannot find error in the proceedings conducted by the Deputy or the Appeals Examiner and concludes that the claimant has not met the eligibility requirements of the Act during the weeks at issue.

DECISION

The decisions of the Appeals Examiners are hereby affirmed. It is held that the claimant has not met the eligibility require-

ments of the Act from October 7, 1984 through November 24, 1984, the claim weeks before the Commission.

Joseph L. Hayes
Special Assistant
Commission Appeals