VIRGINIA EMPLOYMENT COMMISSION

DECISION OF APPEALS EXAMINER

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Decision No.: UI-73-1804

Date: October 1, 1973

ABLE AND AVAILABLE: 215.1
Government requirements - License and permit

ISSUES

(1) Has the claimant been available for work during the week or weeks for which she claims benefits?

(2) Did the claimant fail without good cause to accept suitable work when so offered?

FINDINGS OF FACT

The claimant appealed from two determinations of the Deputy which declared her ineligible for benefits from July 1, 1973, through August 11, 1973, and from August 12, 1973, through August 25, 1973.

On June 5, 1973, the claimant signed a statement certifying that she could not accept full-time work, because she was waiting for an opening at Tysons' Korvette Store. The claimant had last worked as manager of the beauty salon at this store on June 8, 1973, at which time it was closed. Although the employer reported she was permanently laid off due to lack of work, the claimant felt the employer might reopen the store and return her to her job.

When she filed her claim for the two weeks ending July 14, 1973, the claimant did not list the names of any employers to whom she had applied for work and explained the reason for not looking for work as follows:

> "Designated by Glenby Company to work at Tysons' McLean when opened by Korvettes."

When she filed her claim for the two weeks ending July 28, 1973, the claimant did not list the names of any employers to whom she had applied for work but stated:

"Have contacted salons but refused temporary jobs; because I am designated to open and manager salon at Tyson's Co., McLean, Virginia (who ever opens Korvettes, Sears, etc) (I do not want to misrepresent myself to any employer.) Temporary lay-off (at Tysons) because of store closed. Lansburghs worked for least dpt. Glemby Co. of N. Y."

When she filed her claim for the two weeks ending August 11, 1973, the claimant reported that on August 6, 1973, she had contacted one employer whose address is in New York and who has leased beauty salons in Virginia and Maryland for work as a beauty salon manager and gave the results as "waiting for application". The claimant also reported that on August 10, 1973, she had registered with N. R. N. Employment Company, Rockville, Maryland for work as a beauty salon manager.

When she filed her claim for the two weeks ending August 25, 1973, the claimant reported that on August 19, 1973, she had contacted a beauty salon in Rockville, Maryland for work as a manager-stylist but indicated on the claim that she could not accept work there because she had no Maryland license. She reported having contacted a beauty salon on August 21, 1973, as a manager-stylist, but could not accept work there because she had no D. C. license. She reported having contacted another beauty salon on August 24, 1973, but did not indicate the location of this employer.

On the latter claim, the claimant stated that on August 20, 1973, she reactivated her D. C. license with the annotation that "took three weeks".

At the hearing, the claimant testified that she had filled out her continued claim forms truthfully and completely. She later testified in the hearing that she had made about five employer contacts per week but had not listed some places because telephone calls to employers indicated that they were not hiring. The claim ant has a license to operate a beauty salon in Virginia. She had no license to operate salons in the State of Maryland or the District of Columbia until August 20, 1973. The claimant felt, however, that employers in the District of Columbia would have waited until her license was approved if she had found work there.

OPINION

Section 60. 1-58 (c) of the Virginia Unemployment Compensation Act provides a disqualification if it is found a claimant failed without good cause to accept suitable work when so offered.

In considering whether any work is suitable, the Commission shall consider, among other things, as to whether or not the wages, hours, and conditions of work were substantially less favorable to the individual than those prevailing for similar work in the area.

The claimant has not indicated, however, that the wages, hours and conditions of work of the temporary jobs offered to her during the two claim weeks ending July 28, 1973, made the work unsuitable employment. She has stated that she refused to accept temporary jobs because she was designated to open and manage a salon at Tysons Corner, McLean, Virginia, at some future time.

It has been consistently held in past decisions that the Unemployment Compensation Act does not distinguish between temporary and permanent employment. The only requirement of the Law is that the work which is offered must not have wages, hours of work or conditions of work which are substantially less favorable to the individual than those prevailing for similar work in the locality. Although the claimant certainly had reason to desire permanent employment, this would not be good cause for failing to accept temporary, suitable work. If she had accepted one of the temporary jobs offered, she still could have continued to seek permanent work of the type she desired and, if it were found, transferred to it. Since the claimant, however, has not received prior notice that her refusal of suitable work is at issue and the matter was not covered at the hearing, it would be inappropriate for the Appeals Examiner to rule that her refusal to accept temporary job offers was disqualifying.

Section 60.1-52 (g) of the Virginia Unemployment Compensation Act provides, in part, that in order to be eligible for benefits a claimant must be available for work. Generally, to be considered available for work, among other things, a claimant must show she is actively and earnestly looking for work which she is ready and willing to accept, without placing any undue restrictions upon her employability.

It is apparent that the claimant was initially restricting her availability to her chances of becoming reemployed by her former employer. She later was restricting her availability to permanent work only and had been applying to employers, the majority of which were located in Maryland and the District of Columbia, where she was not licensed to perform the type of work she was seeking until August 20, 1973. It is concluded that the claimant was so restricting her availability that she did not meet the requirements of the Act.
(Underscoring supplied)

DECISION

The determinations of the Deputy are hereby affirmed. It is held that the claimant had not met the eligibility requirements of the Act from July 1, 1973, through August 25, 1973, the claim weeks before the Appeals Examiner.

The Deputy is directed to determine and rule upon the issue as to whether or not the claimant failed without good cause to accept suitable work when so offered.

NOTE: The decision was affirmed by the Commission in Decision No. 6115-C dated November 1, 1973.