UNEMPLOYMENT COMPENSATION COMMISSION OF VIRGINIA

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Decision of Commissioner

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In the Matter of	X	Appeal from Examiner
	X	
Velma W. Mink, Claimant	X	Date of Appeal: July 11, 1958
Claim #27	X	
[redacted]	X	Date of Hearing: July 23, 1958
	X	
Sweet-Orr & Comany, Inc.	X	Decision No.: 3261-C
Pulaski, Virginia	X	
	X	Date of Decision: July 30, 1958
Employer	X	
	X	Place: Richmond, Virginia

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This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. S-6739-6703) dated June 28, 1958.

ISSUES

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

(2) Did the claimant voluntarily quit her employment without good cause?

FINDINGS OF FACT

This case comes on as an appeal from decision No. S-6739-6730 of the Appeals Examiner dated June 28, 1958. The Examiner's decision held the claimant ineligible from May 12, 1958, through June 27, 1958, by reason of unavailability for work. The decision further held the claimant subject to a seven week disqualification, if and when she should prove her availability, for having voluntarily left work without good cause.

Claimant last worked at Sweet-Orr & Company, Inc., Pulaski, Virginia, where she was employed from February 11, 1957, through April 25, 1958. Prior to that her principal work experience was with Jefferson Mills and Blue Bell Manufacturing Company. Sweet-Orr, her last employer, submitted a separation report indicating the claimant had been terminated for failure to comply with a company rule requiring absent employees to report, or call in, within three days. Following her last day of work, April 25, 1958, the claimant, a mother of five

children, lost the services of her baby sitter and on the Monday following called her employer to report that she would be unable to work that week. She remained away without further word to the employer until Friday when she went by to pick up her check and found she had been terminated. The claimant did not take the matter up with her union or otherwise protest because she did not want to "cause any trouble." She admits knowledge of the employer's three day rule but felt that it was applicable only in case of illness. She strongly felt that she had given sufficient notice of her absence when she called the employer the first of the week.

The claimant filed for benefits on May 12, 1958, and between that date and June 27, 1958, the date of her hearing before the Examiner, she had sought work with six employers, but she had restricted her minimum acceptable wage to $50.00 per week and she was unavailable for work on the night shifts. Claimant's usual and customary work is industrial.

OPINION AND DECISION

Two issues are raised in this appeal: (1) Was the claimant able and available for work as required by Section 60-46(c) of the Act and (2) If eligible was she then subject to disqualification under Section 60-47 (a) for having voluntarily left work without good cause.

The determination of eligibility under Section 60-46 is a pre-requisite for determination of disqualification under 60-47. Disqualifications may be imposed only upon eligible claimants. Dan River Mills v. Unemployment Compensation Commission of Virginia and Carolyn P. Jones, 195 Va. 997, 81 S. E. (2d) 620.

The initial question for resolve therefore is, was the claimant able and available for work as required by Section 60-46(c). No question is raised concerning the claimant's physical or mental capacity to perform saleable services. She is therefore able to work.

The meaning of the phrase "available for work" is not susceptible to a similar concise definition. It has been the subject of interpretation in countless decisions of this Commission and the courts of every American jurisdiction, including several occasions by our Supreme Court of Appeals. The requirement is composed of many elements. Among other things a claimant must sincerely desire to work in preference to remaining idle and he must actively and unrestrictively seek suitable employment. In reviewing the previous administrative practice of this Commission our Supreme Court has said:

> "The administrative practice of the Virginia Commission has consistently applied the principle that to be 'available

> for work' a claimant must be actively and unrestrictively seeking suitable employment in the market where he resides. Despite frequent amendments to sections 60-46 and 60-47 in other particulars, the General Assembly has not seen fit to change such administrative interpretation of these statutes."Dan River Mills v. Unemployment Compensation Commission of Virginia and Carolyn P. Jones, 195 Va. 997, 81 S. E. (2d) 620.

In the instant case the claimant's search has been limited. She has made an average of only one employer contact weekly, though perhaps this is explicated to some extent by the fact that present economic conditions in her labor market area have greatly reduced the job openings. The facts further reveal that the claimant's exposure to the labor market is not unequivocal. She is restricting her availability to a minimum weekly wage of $50.00 and her hours to daytime work. A willingness to be employed conditionally, where suitable work could be excluded, is not unrestricted availability for work.

In Unemployment Compensation Commission of Virginia v. Steve Tomko et als. , 192 Va. 463, 65 S. E. (2d) 524 (1951), the Supreme Court of Appeals declared in plain and expressive language that availability means unrestricted availability.

> "As used in the Statute", the Court said, "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." (Emphasis added).

To forestall any misunderstanding regarding the legal consequences of restricting one's employment exposure, regardless of the existence or non existence of job openings, the Court commented in its concluding remarks:

> "To be entitled to such benefits the individual must be unemployed because of lack of work and yet must be available for work. He must be ready and willing to accept work without attaching to his willingness to work restrictions or conditions not usual or customary in the occupation, and this is so even though there be no work at hand or available to him." (Emphasis added).

Although the Tomko case did not deal with identically the factual situation we have here, the applicability of the principles enunciated is inescapable. Two subsequent cases make this a certainty. Reference is made to the cases of Louise Jones v. Unemployment Compensation Commission of Virginia and Dan River Mills, Inc., and Margaret S. Holly v. Unemployment Compensation Commission of Virginia and Dan River Mills, Inc., decided by the Corporation Court of Danville at the December term 1952. Both of these claimants had restricted their willingness to work to exclude third shift or night work, just as the claimant in the instant case has done; both had work experience as factory workers - just as the claimant in the case before us and both gave domestic responsibilities as their reason for their restriction - cases almost identical to the one now to be decided. The lower court, on authority of the Tomko case held these claimants unavailable for work and hence not eligible for benefits. The petition for appeal was denie by the Supreme Court at its June, 1953, term. Since these cases this Commis has denied benefits in numerous instances under similar factual circumstances. Where an individual's work history shows that he is an industrial worker and his labor market area is comprised of employers whose work is suitable and who customarily operate on more than one shift, the claimant must be available for such shifts. The case books are filled with decisions from other jurisdictions concurring with the principles announced in the Tomko decision. They are too numerous to mention in detail, but it is interesting to note that the Virginia Court took its lead in the Tomko case from a situation factually similar to the one here on appeal. The authority cited was Ford Motor Company v. Appeal Board, 316 Mich 468, 25 N.W. (2d) 586. In that case, decided by the Supreme Court of Michigan, the claimant because of domestic responsibilities was restricting her availability to work on the afternoon shift. Our Virginia Court also cited the case of Judson Mills v. South Carolina Unemployment Compensation Commission, 204 S. C. 37, 28 S. E. (2d) 535 which again dealt with a situation almost identical to the one now before this Commission.

The rule against restrictions which would exclude suitable employment is equally applicable to wage restrictions and the fact that an individual feels he must earn a given minimum because of his personal needs or circumstances will not justify such a restriction where it eliminates jobs paying the prevailing rate in the area and for which the claimant but for this restriction would qualify. See, P[illegible]e Mills v. Mississippi Employment Security Commission, 89 S (2d) 727 (1956).

The claimant's restriction to a minimum wage of fifty dollars per week would exclude the possibility of her employment in some occupations for which she could qualify and which would be suitable for her.

It may appear to the casual observer, and often to the rejected claimant, that the law forbidding restrictions on availability is unreasonably harsh, and that it does not take into consideration the particular problems confronting the individual. Such reprobation results from failure to understand the real purposes of the unemployment insurance program. The availability requirement is its backbone. More than any other single provision it distinguishes unemployment insurance from general relief. The program was not designed nor intended to pay benefits on a basis of need, nor as a compensation to persons for services previously rendered. It is not a governmental subsidy payable automatically to all those in an unemployed status. Unemployment compensation does not guarantee an individual that he will get a particular job, nor that he will get one which meets the needs of all of his personal circumstances.

It temporarily insures against the wage loss occasioned by unemployment only where the insured is unrestrictively available, and actively seeking, suitable work. "Suitable" in the sense used does not mean suited to the claimant's wants or needs. It means suited to his capacities, mental and physical; suited to his prior training and experience; reasonably accessible to his residence and affording working conditions, including a wage, which is not substantially below that being paid for similar work in the locality.

When a claimant because of personal responsibilities, domestic or economic, must limit his exposure to a particular species of suitable work, his unemployment is a composite product of the condition of the labor market and his own personal job specifications. The Act does not insure against such hazzard.

Because of her restricted availability this Commission is constrained to concur in the Appeals Examiner's holding with regard to section 60-46(c). Accordingly, the Examiner's decision holding the claimant ineligible from May 12, 1958 through June 27, 1958 is hereby sustained and affirmed.

Having thus disposed of the initial issue of eligibility there is no need to inquire into the matter of disqualification. That portion of the Appeals Examiner's decision requiring imposition of a disqualification of seven weeks under section 60-47(a) is hereby set aside. The Commission is of the opinion that the question of disqualification in this particular case is a matter which should be passed on initially by the Deputy if and when the claimant proves her availability for work.

Jno. Q. Rhodes, Jr., Commissioner