SUITABLE WORK: 150.2
Distance to work
Transportation and Travel

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

In the Matter of:

Virene Creasy [redacted]

Comdial
Charlottesville, Virginia

Date of Appeal
to Commission: June 6, 1985

Date of Hearing: September 12, 1985

Place: RICHMOND, VIRGINIA

Decision No.: 25357-C

Date of Mailing: November 12, 1985

Final Date to File Appeal
with Circuit Court: December 2, 1985

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This is a matter before the Commission on appeal by the claimant from the Decision of Appeals Examiner (UI-85-3718), mailed May 31, 1985.

APPEARANCES

Attorney for Claimant

ISSUE

Did the claimant fail without good cause either to apply for or accept suitable work when offered as provided in Section 60.1-58 (c) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The first two paragraphs of the Findings of Fact of the Appeals Examiner are hereby adopted by the Commission.

The claimant was certified by the Commission to participate in the Dislocated Worker Program in January of 1985. She expressed an interest in trying to obtain employment as a commercial cleaner. The Commission referred the claimant to a job at the Raddison Hotel in the center of Charlottesville, Virginia. The claimant applied

for the work but was not hired. On April 24, 1985, the claimant was offered a referral to a job as a maid at the Hilton Hotel, which is located several miles north of Charlottesville, Virginia. The job paid $3.50 an hour and would have required working a schedule of 8:00 a.m. until 4:00 p.m., Monday through Saturday, with two days off during the week. The hours, wages, and conditions of that job were prevailing for the same or similar work in the labor market area.

The job at the Hilton Hotel is either twenty or twenty-four miles from the claimant's home, depending on the route taken. The hotel is not accessible except by private automobile since no public transportation extends to the hotel's location.

The claimant reported for the referral to the Hilton Hotel. When the job was subsequently offered to her, she declined to accept it. She refused the job because since the interview, her automobile insurance had lapsed; and she could not legally operate her car until the insurance was reinstated. The claimant's automobile insurance lapsed because she did not have enough money to pay the insurance and also provide for her family, make her house payment, and pay other bills that she had at the time.

OPINION

Section 60.1-58 (c) of the Code of Virginia provides a disqualification if the Commission finds that a claimant failed, without good cause, either to apply for available suitable work when so directed by the Commission or to accept suitable work when offered.

This provision of the law also requires the Commission to take into account a number of specific factors in determining whether or not a particular offer of work is suitable. The statute provides that:

> "In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience, his length of unemployment and the accessibility of the available work from his residence." (Underscoring added)

It is clear from the language of the statute that the Commission is required to consider the question of accessibility in any case arising under the provisions of Section 60.1-58 (c) of the Code of Virginia. Cases involving the issue of the accessibility of offered

work from a claimant's residence are certainly not new to the Commission. Generally speaking, the Commission has held that transportation to and from work is the personal responsibility of the employee. However, there are some qualifications to this rule. In the case of Lambert v. G.E., Decision No. 6357-C, (July 3, 1974), the Commission quoted with approval the following language from Carter v. Mitchell, Decision No. UI-74-450 (March 21, 1972):

> "While it is certainly true as a general proposition that transportation connected with the labor market is a personal problem, transportation in connection with a particular place of employment is not necessarily personal. In determining if a job is suitable for a particular claimant, the Commission shall consider, among other things, the accessibility of the available work from his residence. The place of employment to which the claimant was offered a referral was inaccessible except by private auto . . . the claimant's inability to provide this type of transportation renders the job unsuitable. It is concluded, therefore, that the claimant would not be subject to the disqualifying provisions of the Act."

In the present case, the job offered to the claimant was accessible to her from her residence only by way of a private vehicle. The claimant could not legally operate her car on the state roads since her insurance had lapsed. Accordingly, the job at the Hilton Hotel was not suitable work with respect to this claimant since it was not genuinely accessible to her.

In his decision, the Appeals Examiner reasoned that the claimant's lack of transportation was due to circumstances that were within her control. He reached this conclusion after engaging in an analysis of the claimant's finances and opined that the claimant could have left other bills "slide" in order to pay her insurance premium. However, for several reasons, the Appeals Examiner's reliance on that analysis is misplaced.

First, Section 60.1-58 (c) of the Code of Virginia does not authorize the Commission to consider why a particular job is inaccessible to a claimant. The statute sets forth accessibility as a mandatory factor to be considered in determining suitability, and questions of accessibility must be resolved on a case-by-case basis. Second, if the Commission were to engage in that type of analysis, a veritable Pandora's box could be opened, which may require the Commission to then consider why a claimant lost her transportation, if it were due to an accident, whether or not the claimant was at fault, and countless other considerations, which

may not be germaine to the issue of whether a particular offer of work was suitable. In similar cases, the Commission has been extremely careful to avoid that type of analysis. For example, in those cases where a claimant leaves work voluntarily because his income is insufficient to meet his expenses, the Commission has steadfastly refused to analyze the claimant's finances since doing so would be highly subjective. (See, Lonnie Durst v. United Masonry, Inc. of Virginia, Decision No. 24702-C, March 8, 1985; James E. Rapp, Jr. v. Dick Harris & Son Trucking Co., et al, Decision No. 24838-C, April 3, 1985) Third, there is persuasive judicial authority which takes a contrary position from that adopted by the Appeals Examiner. In the case of Richard Brown v. V.E.C., et al, Law No. 7294 (April 12, 1982), the Circuit Court for the City of Alexandria, Virginia, considered a case involving a claimant's loss of transportation. In that instance, the claimant's automobile had been totalled in an accident. The claimant did not carry any collision insurance and was financially unable to purchase another car or rent one. The Appeals Examiner's decision, which was affirmed without opinion by the Commission, found that the claimant left work voluntarily without good cause since it was within his control to have obtained collision insurance for his vehicle. Upon a petition for judicial review, the Circuit Court reversed the Commission's decision and found that where a car was absolutely necessary to the claimant's job and he was unable to replace it, his leaving work was for a compelling and necessitous reason and was with good cause. While the Brown case does not deal with the issue of suitable work, it is analogous and instructive with reference to the instant case. The court in Brown found that the claimant had good cause to leave work when he was financially unable to replace his vehicle and rejected the notion that a finding of good cause would be precluded from a claimant's failure to obtain a particular type of automobile insurance. The court's reasoning in Brown is applicable here. The Commission should not impose a disqualification for refusing an offer of suitable work when the claimant's refusal was due to her inability to pay her automobile insurance.

Therefore, in view of the foregoing, the Commission is of the opinion that the job offered to the claimant was not suitable work since it was not accessible to her from her residence. Since the job was not suitable, no disqualification may be imposed based upon the claimant's decision to refuse the job offer.

DECISION

The Decision of Appeals Examiner is hereby reversed. It is held that no disqualification may be imposed based upon the claimant's refusal to accept the offer of work from the Hilton Hotel.

M. Coleman Walsh, Jr.
Special Examiner