VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

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Decision No: 3534-C

Date: August 3, 1960

SUITABLE WORK - 150.15
Distance to work
Removal from locality

This is a matter before the Commission on appeal by the employer from the decision of the Examiner (No. IS-2806-2826) dated June 6, 1960.

ISSUES

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

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

FINDINGS OF FACT

This case is an appeal from the decision of the Appeals Examiner dated June 6, 1960, by the employer in which the claimant was declared eligible for unemployment compensation benefits from February 24, 1960, through May 17, 1960, the period covered by his continued claims. The pertinent facts are not in dispute. The record reflects that the claimant was last employed by the Lester Lumber Company, Inc., Martinsville, Virginia, from February 3, 1959, through January 29, 1960. The claimant voluntarily left his employment in order to take a job with another employer in Bluefield, West Virginia. The record reflects that the claimant explored the nature of his new employment, finding that it was permanent and that it represented a distinct financial advantage to him. Less than 30 days after he had commenced work on this new job, he was separated due to lack of work. The job the claimant resigned in Martinsville has been available for him during the period for which he claims benefits.

Since filing his claimant hs has made numerous employer contacts in the labor market in which he resides in an effort to find work, without placing undue restrictions upon his employability.

OPINION AND DECISION

That the claimant voluntarily left his employment is evident from the record. The claimant, however, contends that his reasons for leaving constitute good cause. This contention is not contested by the employer. Likewise the recor substantiates the conclusion that the claimant's leaving was with good cause. He had determined through reasonable efforts that the new job in West Virginia was of a permanent nature. There was nothing to indicate that he would be laid off within a few days. This Commission has uniformly held that a claimant has good cause for leaving employment if he does so in order to take another job which he believes to be more advantageous to him.

While the employer does not take issue with the conclusion that the claimant voluntarily quit with good cause, it does contend that the claimant should be disqualified for refusing to accept an offer of suitable employment. It argues that since the employer has offered to re-employ the claimant at its

Martinsville operation, the claimant's failure to accept renders him subject a disqualification. It is admitted that in order for the claimant to accept this offer, he would be required to move back to Martinsville. There is no question that the claimant's old job has been available to him since he left it, nor is it questioned that an offer to return to this job was communicated to him in West Virginia. The only issue before us relates to the suitability of the employment that was offered.

§ 60-47 of the Code of Virginia, which imposes a disqualification upon a claimant who refuses to accept suitable work when offered him, admonishes the Commission in determining the suitability of a work offer to 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 this residence." (emphasis supplied)

In the case of Dan River Mills, Inc., v. Unemployment Compensation Commission of Virginia and Carolyn P. Jones, 195 Va. 997, the court held that a claimant in order to be eligible for benefits need not be available for work in the locality where he last resided, or was last employed. If he registers for work in the new locality, and labor-market conditions there afford reasonable opportunity for work, he is available for work. Even if it appears that he might more readily have been employed had he remained in his former locality, he is nevertheless available for work if he is willing to take work in the new locality where he is residing.

The claimant in that case had quit her job and moved to another state. After filing a claim for benefits in the new state, she made an active and unrestrictive search for employment in the locality in which she was residing. Her former employer indicated that her old job was still available, but did not communicate an offer of re-employment to her.

The employer in the case before us contends that because no offer of employment was made in the Carolyn Jones case it can be distinguished from the case at bar. Since the Carolyn Jones case clearly holds that a claimant need not be available for work in the locality where he was last employed in order to be eligible for unemployment benefits, we do not agree that the actual communication of the offer in this instance would alter the determination. It is necessary only that he be available in the area in which he is residing at the time of filing his claim.

In the case of Unemployment Compensation Commission of Virginia and John D. Jones vs. Dan River Mills, Inc., 197 Va. 816, the court in discussing the question of suitable employment, made this observation.

> "An employee cannot, without good cause, refuse to accept suitable employment and claim benefit payments (U.C.C. of Virginia v. Tomko, supra), but his right to the payment is unaffected by his refusal to accept work which is manifestly unsuitable in the light of existing circumstances."

It further held that:

> "Under this remedial legislation a claimant is not required to be available for work which has been shown to

be unsuitable. The problem of determining when work is suitable and when it is unsuitable, under the facts and circumstances of each particular case, has been delegated to the Commission....."

As previously noted the statute requires that the Commission consider the accessibility of the available work from the claimant's residence in determining whether or not it is suitable. If the claimant was residing within reasonable commuting distance from Martinsville, there would be no question concerning the job's suitability. However, Freeman, West Virginia, where the claimant now resides, is approximately 164 miles from Martinsville, Virginia, the site of the offered employment. Clearly the claimant could not reasonably be called upon to commute this distance. It would mean, therefore, that the claimant would have to move his residence to Martinsville or else take up temporary living quarters for himself in that city in order to take the offered job. The fact that the claimant was formerly employed in Martinsville can be of no signigicance in our determination, for the employer agrees that the claimant's employee relationship has be severed and it was done so for reasons which constitute "good cause". This Commission does not feel that the law contemplates acceptance by a claimant of every offer of employment regardless of its nature of location. This conclusion, we feel, is amply supported by the John Jones case. It is equally well supported by administrative and judicial decisions of other jurisdictions. (Underscoring Supplied)

The Commission does not feel that the employment offered was suitable in view of the inaccessability of the employment from the claimant's residence. (Underscoring Supplied)

The employer argues that it should not receive the benefit wage charge against its account for tax rating purposes. Therefore, asserts the employer, it follows that the claimant should not receive benefits. Such an argument is without merit. Decisions relating to a claimant's entitlement to benefits cannot turn on any considerations of where the benefit wage charge will fall. (Underscoring Supplied)

Since the claimant has been making an active and unrestrictive search for employment in the locality in which he resides, he is hereby declared eligible for benefits, without disqualification, from February 24, 1960, through May 17, 1960.