COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

VOLUNTARY LEAVING: 500.3
Wages: Failure or Refusal to pay.

DECISION OF COMMISSION

In the Matter of:

Wendell L. Saville
[redacted]

Russell's Roofing Co., Inc.
Winchester, Virginia

Date of Appeal to Commission: April 13, 1993

Date of Hearing: June 24, 1993

Place: RICHMOND, VIRGINIA

Decision No.: 42268-C

Date of Mailing: June 25, 1993

Final Date to File Appeal with Circuit Court: July 15, 1993

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This case came before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-9305443), mailed April 7, 1993.

APPEARANCES

None

ISSUE

Did the claimant leave work voluntarily without good cause as provided in Section 60.2-618(1) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On April 13, 1993, the claimant filed a timely appeal from the Appeals Examiner's decision which disqualified him from receiving benefits, effective January 17, 1993. The basis for that disqualification was the Appeals Examiner's finding that the claimant had left his job voluntarily for reasons that would not constitute good cause.

Prior to filing his claim for benefits, the claimant last worked for Russell's Roofing Company of Winchester, Virginia. He was employed by this company from January 28, 1988, until January 21, 1993. He worked as a full-time sheet metal worker. He was paid $11.75 an hour. In addition, the claimant, like all employees, received two weeks of paid vacation. The employer also paid the medical insurance premiums for the employees.

On January 15, 1993, the owner and president of the company had a meeting with the employees. The claimant did not attend this meeting because he was absent due to an illness in his family. During the meeting, the owner of the company informed the employees that he would be making some changes because business had not been good. The employees were advised that they would be required to contribute one half of their health insurance premiums. In addition, they were advised that they would receive only one week of paid vacation. Furthermore, the employer informed the employees that those who drove company vehicles from the employer's premises to the job sites would be paid for their time only one way. Previously, employees who drove the vehicles were paid at their hourly rate from the time they left the company premises until they returned the company vehicle to those same premises at the end of the day.

The claimant heard about these changes from his co-workers. The claimant was most disturbed by the employer's decision not to pay the truck drivers for the full round trip that they would have to make each day. Accordingly, the claimant contacted the Virginia Department of Labor and Industry (DLI). The claimant was informed by a representative of that agency that the employer was required to pay its employees for all "work performed," and that returning a company vehicle from the job site to the company's premises constituted "work performed." DLI confirmed this information in writing (See, Commission Exhibit 11).

On or about January 22, 1993, the claimant had a discussion with the company owner regarding the changes that he had instituted. When they discussed the decision that employees would not be paid for a full round trip when driving company vehicles, the claimant told the owner that he couldn't do that. The claimant did not state that he had received confirmation of that fact from DLI. The owner made it clear to the claimant that he was sticking by his decision and that no one was going to tell him how to run his business. At that time, the claimant resigned because the employer would not be paying him for work performed as required by state law. Since the company owner was taking such a firm position on this issue, the claimant did not believe it would do any good to mention his conversation with DLI. The employer performed work at a number of job sites. Some of those job sites were as much as a 90-minute drive from the employer's premises.

OPINION

Section 60.2-618(1) of the Code of Virginia provides a disqualification if the Commission finds that the claimant left work voluntarily without good cause.

In interpreting the meaning of the phrase "good cause," the Commission has consistently limited it to those factors or circumstances which are so substantial, compelling, and necessitous as would leave a claimant no reasonable alternative other than quitting work. Accord, Phillips v. Dan River Mills, Inc., Commission Decision 2002-C (June 15, 1955); Lee v. Virginia Employment Commission, 1 Va. App. 82, 335 S.E.2d 104 (1985). In any case arising under this statute, the claimant bears the burden of proving good cause for leaving work. Kerns v. Atlantic American, Inc., Commission Decision 5450-C (September 20, 1971).

When determining whether good cause existed for a claimant to voluntarily leave employment, the Commission and the reviewing courts must first apply an objective standard to the reasonableness of the employment dispute and then to the reasonableness of the employee's efforts to resolve that dispute before leaving the employment. In making this two-part analysis, the claim must be viewed from the standpoint of a reasonable employee. Umbarger v. V.E.C., 12 Va. App. 431, 404 S.E.2d 380 (1991).

The Commission must disagree with the Appeals Examiner's assessment of this case. The employer's insistence that the claimant and other similarly situated employees drive the company vehicles from the job site to the company's premises at the end of each day without being paid for their time violated the provisions of Section 40.1-29 of the Code of Virginia. The act of returning a company vehicle to the employer's shop location at the end of the day constitutes "work performed" within the meaning of this statute. Thus, the employer's failure to pay an employee under these circumstances constitutes a violation of the law. (emphasis added)

The Commission is of the opinion that when an employer imposes terms and conditions of employment that contravene federal or state law, particularly as it relates to something as essential to the employment contract as the payment of wages, such a job has become unsuitable. The Commission reaches that conclusion because the failure of an employer to comply with federal or state wage laws would create a condition of work that was substantially less favorable to the individual than those prevailing for similar work in the locality. Code of Virginia, Section 60.2-618(3)(c)(2). (emphasis added)

In a similar case, Fields v. Bristol Home Health Services, Commission Decision 40968-C (May 12, 1993), the Commission was confronted with a situation where the employer did not pay the claimant her wages at least twice per month as required by state wage

and hour laws. This failure persisted for a period of two and a half months, despite multiple inquiries from the claimant regarding when she would be paid for her services. In that case, the Commission found that the claimant had good cause for leaving work based upon the employer's failure to comply with the applicable wage and hour law.

The Commission is not persuaded by the employer's contention that the claimant should have informed him of his conversation with the representative from DLI. Although the employer asserted that he did not know about the statute in question, it is a well-established principle that citizens are presumed to have knowledge of the law. Furthermore, in this particular case, the law in question was not some obscure statute or arcane agency regulation. It should have been readily apparent to the employer that he was asking his employees to perform work for him without receiving compensation. There are few statutory violations more obvious than this. If the employer found it necessary to change the terms and conditions under which he was compensating his employees, then it was incumbent upon him to make certain that those changes complied with applicable federal and state laws.

Under these circumstances, the Commission must conclude that the claimant has proven good cause for leaving his job. Consequently, no disqualification may be imposed upon his receiving unemployment insurance benefits.

DECISION

The decision of the Appeals Examiner is hereby reversed. The claimant is qualified to receive benefits, effective January 17, 1993, based upon his separation from work with Russell's Roofing Company, Inc.

M. Coleman Walsh

M. Coleman Walsh, Jr.
Special Examiner