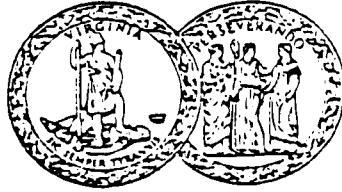


COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of

Steven J. Sysko, Jr.  
████████████████████

Virginia Stage Company  
Norfolk, Virginia

Date of Appeal  
To Commission: July 17, 1984  
Date of Review: August 9, 1984  
Place: RICHMOND, VIRGINIA  
Decision No.: 23806-C  
Date of Decision: August 28, 1984  
Date of Mailing: August 31, 1984  
Final Date to File Appeal  
with Circuit Court: September 20, 1984

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This matter comes before the Commission on appeal by the claimant from the decision of the Appeals Examiner (UI-84-4684) mailed June 28, 1984.

ISSUE

Whether or not the claimant is able to work, is available for work and is actively seeking and unable to obtain suitable work as provided in Section 60.1-52(g) of the Code of Virginia (1950), as amended?

FINDINGS OF WORK

The claimant filed a timely appeal from Appeals Examiner Decision No. UI-84-4684, dated June 22, 1984, which affirmed a deputy's determination declaring the claimant ineligible for unemployment compensation from April 29, 1984 through May 26, 1984.

Prior to filing his claim for unemployment compensation, the claimant worked as technical director for the Virginia Stage Company in Norfolk, Virginia through the end of April 1984 when his contract expired. He had also arranged to perform for Old Dominion University as a scenic painter for a dramatic production beginning July 1, 1984.

This job was to last from four to six weeks and the claimant then had expectations of returning to work for the Virginia Stage Company.

During the week beginning April 29, 1984, the claimant reported to the local office of the Commission in Norfolk, Virginia and filed his claim for unemployment compensation. At that time, he informed the claimstaker that he was planning to leave the state and go to Vermont and he inquired as to his eligibility requirements. He was informed that he should report to a local office in the state where he was going to file continued claims and he was also informed that he had to make a search for work during the weeks he was gone. The claimant then left Virginia on May 1, 1984 to travel to Massachusetts and Vermont and he returned to Virginia on May 25, 1984. He filed four courtesy claims through an unemployment compensation office in Springfield, Vermont covering the period April 29, 1984 through May 26, 1984.

The claimant's aunt in Vermont got married on May 12, 1984 and the claimant was involved in preparing his parent's home to receive guests for that wedding prior to the date it occurred. He continued to visit with his parents in Vermont the next two weeks before returning to Virginia.

On April 30, 1984, prior to leaving on his trip, the claimant put in an application with Systems Management Corporation of Norfolk, Virginia. He gave his address as being in Norfolk, Virginia and gave a Virginia telephone number to be contacted. On that application (Claimant Exhibit No. 2), he applied for the position of manager and under the heading "Referral Source," the claimant wrote: "need for unemployment." On May 4, 1984 but also within the first week claimed, the claimant put in an application with the Grand Union Company in Vermont. He indicated that he was only available for full-time work and would not consider a part-time job; however, he stated that he was only available until July 1, 1984, a total of 55 days. He further noted at the bottom of the application that he had a full-time job starting July 1, 1984 and he did not completely fill out the application when asked to give detailed descriptions of his job duties.

During the week ending May 12, 1984, the claimant contacted two employers in Vermont. One was P&C Foods where the claimant stated that he was applying for a management position, full-time and that he was only interested in working between 9:00 a.m. and 6:00 p.m., Monday through Friday. He stated on the face of this application (Claimant Exhibit No. 4): "I have a full-time job starting July 1, 1984." The other job contact the claimant made during the week was with the Bryant Company of Springfield, Vermont. On his application (Claimant Exhibit No. 3), the claimant stated that he was applying for the job of draftsman and he expected to receive \$350 per week. This was \$50 per week higher than his pay on his previous job which represented the highest wages the claimant listed on all work experience in any of the exhibits.

On his claim for the week ending May 19, 1984, the claimant contacted two employers: the New England Tube and Machine Company, Inc., of North Bennington, Vermont and the the John A. Russell Corporation of Rutland, Vermont. On his application to the former employer (Claimant Exhibit No. 5), the claimant gave his address as being Norfolk, Virginia and gave a Virginia telephone number to be contacted. He also stated that he was interested in a position in management and that he expected \$10 per hour as salary. He further indicated that he was only interested in working full-time, Monday through Friday. With respect to the latter employer, the claimant again gave his Virginia address and telephone number and stated he was only interested in a management position even though the employer was a general contractor and had spaces to indicate if the applicant was interested in a position as a laborer, carpenter, equipment operator or office worker. On the same application, the claimant showed experience as a carpenter and a laborer.

With respect to the week ending May 26, 1984, the claimant showed two job contacts: one with Howard Johnson's in Springfield Vermont and the other with McDonald's in Springfield, Vermont. On the former application (Claimant Exhibit No. 7), the claimant gave his address and telephone number in Vermont and stated that he was interested in only a management, full-time, morning or afternoon position. He also did not complete the application by filling in all information concerning his prior employment. With respect to the McDonald's application (Claimant Exhibit No. 8), the claimant gave his address and telephone number in Vermont and stated that he was only available for full-time work during the days Monday through Friday.

Attached to the claimant's courtesy claims were notices of a transient claim showing that the claimant had left Norfolk, Virginia and expected to return on or about May 25, 1984 or May 27, 1984. On one statement, he indicated that the reason for coming to Vermont was to attend his aunt's wedding and on the other two notices, he indicated that he came to Vermont for the purpose of a "visit."

The claimant told the employers he applied to that he was only available for work until July 1, 1984 and in response to the question of what would have happened had he been offered work in Vermont which might conflict with his work back in Virginia beginning July 1, 1984, the claimant stated that he was not willing to give up the job in Virginia.

#### OPINION

Section 60.1-52(g) of the Virginia Unemployment Compensation Act provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he is able to work, is available for work and is actively seeking and unable to obtain suitable work. An individual who leaves his normal labor market area for a major portion of any week is presumed to be unavailable for work within the meaning of this section.

This presumption may be overcome if the individual establishes to the satisfaction of the Commission that he has conducted a bona fide search for work and has been reasonably accessible to suitable work in the labor market area in which the individual spent the major portion of the week to which the presumption applies (under-scoring supplied).

In the present case, the Appeals Examiner appropriately cited the cases of Unemployment Compensation Commission v. Tomko, 192, Va. 463, 65 S.E.2d, 524 (1951) and Virginia Employment Commission v. Meredith, 206 Va. 206, 142 S.E.2d (1965) as establishing the general principle that the burden in cases of eligibility is upon the claimant to show that he has met the eligibility conditions.

In the opinion of the Supreme Court in the Tomko case, supra, the court stated:

"As used in this section, 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 section."

In this case, the evidence clearly indicates that the claimant went to Vermont for the purpose of visiting his parents and attending his aunt's wedding. This is established by the forms which were attached to the back of his courtesy claims and by his own testimony. The work search he conducted was only incidental to the trip which had been planned in advance.

Starting with the first job contact the claimant listed, it is apparent that serious doubts exist as to whether or not he conducted a bona fide work search. His first job contact was in Norfolk; yet, he was planning to be gone for a month when he left his local telephone number at which he could be contacted. He also plainly stated on that application that his referral source was "need for unemployment." The second job application submitted during that week with the Grand Union Company in Vermont also fails to show that the claimant was genuinely interested in a job with that company. This is because he stated that he was only interested in full-time work but was only available until July 1, 1984, a total of 55 days.

With respect to the second week claimed, the application for P&C Foods showed a clear restriction to full-time work; yet, it contained a notice that he was only available until July 1, 1984. The claimant's restriction to working only daytime hours, Monday through Friday, was a further restriction upon his employability. This is because the application, itself, seems to indicate that it is for work in a grocery store and grocery stores are customarily open on Saturdays and in the evenings. With respect to his application with the Bryant Company, the claimant stated that he wished to be considered for a position of a draftsman at a pay scale considerably higher than he had ever made before. When this is combined with the fact that he was only interested in working until July 1, 1984, the validity of such an application becomes questionable.

For the third week claimed, the fact that both of the claimant's applications gave his Virginia address and telephone number is an indication that if the employers were interested in him, it would not be possible to contact him to come in for an interview for possible employment.

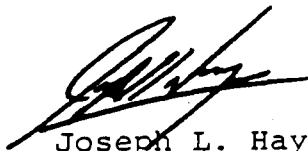
With respect to the final week in this claims series, the claimant made applications at two restaurants which could reasonably be expected to be open very late at night and on weekends. By limiting himself only to consideration for a management position and by stating that he was only interested in working daytime hours, Monday through Friday, the claimant was not giving himself maximum exposure to potential jobs with those employers.

After a careful review of the evidence submitted to support the claimant's contention that he made an active search for work during the weeks in question, certain other questions are raised with respect to whether or not it was a bona fide search. It would certainly appear that if the claimant had a genuine interest in finding work in Vermont and since he knew he was coming back to Virginia in July, it would have been reasonable for him to contact employment agencies which might send him out on part-time temporary jobs. Such job contacts are conspicuously absent from his work search. When all of these factors are combined, it becomes apparent that the claimant's work search was conducted not in the interest of finding employment; but rather only to become eligible for unemployment compensation. This is not a bona fide work search so as to overcome the presumption that the claimant was unavailable for work by virtue of being out of his normal labor market area during the four weeks in question. It is, therefore, concluded that the Appeals Examiner correctly declared the claimant ineligible for benefits during those weeks.

DECISION

The decision of the Appeals Examiner is hereby affirmed.

It is held that the claimant was not meeting the eligibility requirements of the Act from April 29, 1984 through May 26, 1984, the claim weeks before the Commission.



Joseph L. Hayes  
Special Assistant  
Commission Appeals

NOTICE TO CLAIMANTS

IF THE DECISION STATES THAT YOU ARE DISQUALIFIED, YOU WILL BE REQUIRED TO REPAY ALL BENEFITS YOU MAY HAVE RECEIVED AFTER THAT DATE. IF THE DECISION STATES THAT YOU ARE INELIGIBLE FOR A CERTAIN PERIOD, YOU WILL BE REQUIRED TO REPAY THOSE BENEFITS YOU HAVE RECEIVED WHICH WERE PAID FOR THE WEEK OR WEEKS YOU HAVE BEEN HELD INELIGIBLE. IF YOU WISH TO DISPUTE YOUR OBLIGATION TO REPAY THESE BENEFITS TO THE COMMISSION, YOU MUST FILE A TIMELY APPEAL.