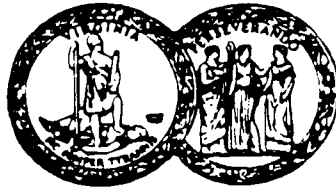


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of

Howard D. Fulk, Claimant
████████████████████

Rocco Farm Foods, Inc.
Harrisonburg, Virginia

Employer

Date of Appeal

To Commission: June 19, 1975

Date of Hearing: July 22, 1975

Decision No.: SUA -3

Date of Decision: August 11, 1975

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. SUA -75 -5), dated May 15, 1975.

ISSUES

Did the claimant leave work voluntarily without good cause within the meaning of § 60.1-58 (a) of the Code of Virginia (1950), as amended?

Was the claimant available for work during the week or weeks for which he claims benefits within the meaning of §60.1-52 (g) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT AND OPINION

The findings of fact and opinion of the Appeals Examiner with respect to the issue of voluntary leaving are adopted by the Commission. With respect to the claimant's availability, the Commission finds that the claimant lives approximately seven miles from Harrisonburg and the claimant does not drive. Furthermore, during the weeks before the Commission during which benefits were claimed, the claimant made the following search for work: For the weeks ending December 28, 1974, January 4, 1975, January 11, 1975, and January 18, 1975, the claimant failed to contact any prospective employers; he contacted one prospective employer each week during the weeks ending January 25, 1975, February 1,

1975, and February 8, 1975; during the weeks ending February 15, 1975, February 22, 1975, March 1, 1975, March 8, 1975, and March 15, 1975, the claimant failed to contact any prospective employers; he contacted one employer per week during the weeks ending March 22, 1975, March 29, 1975, and April 5, 1975; during the week ending April 12, 1975, he again contacted one employer and worked four days earning wages in the amount of \$22.50; during the week ending April 19, 1975, the claimant contacted but one employer and during the week ending May 3, 1975, the claimant stated he was sick and unable to work.

Section 60.1-52 (g) of the Virginia Unemployment Compensation Act provides that in order to be eligible for benefits, a claimant must be able and available for work. Generally, to be considered available for work, a claimant must demonstrate a genuine attachment to the labor market by engaging in an active and earnest search for work. The burden of proof of establishing an active and earnest search for work rests with the claimant.

Since the claimant has reported that he was sick and unable to work during the week ending May 3, 1975, the Commission must conclude that he was not able to work that week and, therefore, not meeting the eligibility requirements of § 60.1-52 (g).

The other weeks during which the claimant has claimed benefits must be examined to determine if the claimant has engaged in an active and earnest search for work. During the weeks in which he contacted no prospective employers he cannot, by any stretch of the imagination, be said to have been engaged in an active or earnest search for work. Therefore, the Commission is of the opinion that the claimant has failed to meet the availability requirements for the periods beginning December 22, 1974, through January 18, 1975, and February 9, 1975, through March 15, 1975.

The Commission, based on the judicial decisions in Virginia Employment Commission v. William H. Coleman, 204 Va. 18 (1963), and Kathleen Lally Smith v. Virginia Employment Commission and United Air Lines, Inc., Cir. Ct. Arlington County, No. 16864, May 23, 1975 (letter opinion dated May 12, 1975), concludes that one contact per week with a prospective employer is not sufficient to demonstrate an active and unrestricted search for work. Accordingly, the Commission holds that the claimant did not meet the eligibility requirements of the Act from the period from January 19, 1975, through February 8, 1975; March 16, 1975, through April 5, 1975; and April 13, 1975, through April 26, 1975. Although the claimant made but one contact during the week ending April 12, 1975, in view of the fact that he did obtain employment for four days, it is concluded that he was attached to the labor market during that period of time and, therefore, available for work.

Although the Appeals Examiner apparently ruled the claimant unavailable for work because of transportation problems due to a lack of ownership of a car, we emphasize that ownership of a car is not a prerequisite to receipt of unemployment compensation. Lack of available transportation is a factor to be considered in determining availability, but notwithstanding such factor, if a claimant can through dependancy upon others obtain sufficient transportation to engage in an active, earnest, unrestricted search for work and could accept employment if offered, then he must be considered available for work. In the present case we need not reach the issue of sufficient transportation in view of the fact that the claimant has failed to engage in an active and earnest search for work.

DECISION

The Commission finds that the claimant was available for work during the week ending April 12, 1975. The deputy is directed to determine his entitlement for benefits for that week after making the proper adjustment for partial earnings. The Commission holds that the claimant did not meet the eligibility requirements of the Act during the periods from December 22, 1974, through April 5, 1975, and from April 13, 1975, through May 3, 1975.



B. Redwood Council
Assistant Commissioner