

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of

Lloyd A. Young
████████████████████

Mick or Mack
Roanoke, Virginia

Date of Appeal
To Commission: October 23, 1984

Date of Review: December 11, 1984

Place: RICHMOND, VIRGINIA

Decision No.: 24302-C

Date of Decision: December 11, 1984

Date of Mailing: December 13, 1984

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

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This is a matter before the Commission on appeal by the claimant from the decision of the Appeals Examiner (No. UI-84-7323) mailed October 15, 1984.

ISSUE

Did the claimant leave work voluntarily without good cause as provided in Section 60.1-58(a) of the Code of Virginia (1950), as amended?

DECISION

Mick or Mack of Roanoke, Virginia was the claimant's last employer for whom he worked as an assistant store manager. He began with the company on December 2, 1981 and his last day of work was August 27, 1984. At the time of his separation from employment, he had worked as an assistant manager for approximately 13 to 14 years, and his salary was \$386 for a 40 to 45 hour work week.

On or about August 18, 1984, the claimant received a one week disciplinary suspension. Upon his return to work, he was advised that he would be transferred to another store to work as a stock clerk for \$6.25 per hour. Although he voiced his objection to the demotion, particularly the reduction in pay, the employer's manager indicated that there was no other work available for him and that he could report

to its store located in Vinton at 8:00 a.m. the next day. The claimant responded by tendering his resignation.

The wage offered to the claimant for the stock clerk position is slightly higher than that which prevails for similar work in his labor market. The Vinton store, which is located six miles from his residence, is considered to be within a reasonable commuting distance for the locality.

At the time of his separation from employment, the claimant had no other prospects of work.

OPINION

Section 60.1-58(a) of the Code of Virginia (1950), as amended, provides a disqualification if it is found that an individual voluntarily left his employment without good cause.

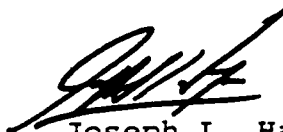
In reaching his conclusion that the claimant left work voluntarily without good cause, the Appeals Examiner focused on the cause of the demotion and reasoned that since the claimant had intentionally violated company policy, the demotion was well deserved. The Commission is of the opinion that since the claimant was not discharged from his employment as a result of the policy violation, the Examiner's analysis was inappropriate. At present, there is no case law which suggests that it is necessary to consider the motivation for an offer of new work. The analysis should be the same regardless of whether the change in the terms or conditions results from a reduction in force or for disciplinary reasons. In determining whether any work is suitable for an individual, the Commission considers such factors as his experience and prior training, his physical ability to perform the work, the degree of risk to his health, safety and morals, the accessibility of the work from his residence and his length of unemployment.

In this case, it is clear that the claimant has considerable retail managerial experience. It is the policy of the Commission to give claimants a reasonable time to obtain work in their usual skill before requiring them to show a willingness to accept work below their skill in order to be eligible (See generally Commission Decision No. 384-C, Helen Fitzgerald v. Dan River Mills, Incorporated, dated September 24, 1948). To require this claimant to accept a reduction in earnings of almost one third and to perform the duties of a stock clerk before giving him some opportunity to explore other alternatives in the labor market is contrary to Commission precedent. Accordingly, it is the opinion of the Commission that the continuing work offered by the employer was not suitable; therefore, the claimant left his employment voluntarily but with good cause within the meaning of that term as used in the Act.

DECISION

The decision of the Appeals Examiner, which disqualified the claimant for benefits for having voluntarily left his employment without good cause, is hereby reversed. It is held that no disqualification should be imposed in connection with the claimant's separation from his last thirty-day employment.

The claims deputy is instructed to determine the claimant's eligibility for benefits during the weeks claimed.



Joseph L. Hayes
Special Assistant
Commission Appeals

NOTICE TO CLAIMANT

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.