

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Vivian K. Rasnake
[REDACTED]

Pepsi Cola Bottling Company
of Norton
Norton, Virginia

Date of Appeal
to Commission: September 30, 1986

Date of Hearing: April 6, 1987

Place: RICHMOND, VIRGINIA

Decision No.: 27729-C

Date of Mailing: July 31, 1987

Final Date to File Appeal
with Circuit Court: August 20, 1987

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This is a matter before the Commission on appeal by the claimant from the Decision of Appeals Examiner (UI-86-4611), mailed September 26, 1986.

APPEARANCES

Attorney for Claimant, Attorney for Employer

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 September 30, 1986, the claimant filed a timely appeal from a Decision of Appeals Examiner. That decision held that she was disqualified from receiving benefits effective April 20, 1986. That disqualification was based upon the Appeals Examiner's finding that the claimant left work voluntarily without good cause.

The claimant was last employed by Pepsi Cola Bottling Company of Norton, Virginia. She worked for this company from September 9, 1982, through April 23, 1986. She was employed as a quality control employee.

On March 17, 1986, the claimant was left as the only quality control employee on the production line. The other quality control employee had been transferred to train a new lab technician. As a result, all production line duties and the responsibility for maintaining the coding procedures fell upon the claimant.

On April 4, 1986, a chemical salesman came to the plant. He spoke to the claimant, and they engaged in some casual conversation. During the course of the conversation, the chemical salesman remarked about how hard the employees were working. The claimant stated to him that the bottle washers had been working for thirty-six hours straight. Later that day, the salesman made a remark to the company vice president, who was responsible for the plant's day-to-day operations, concerning this situation. The vice president later confronted the claimant regarding this statement, advising her that she had no right to make such a remark and that matters of that type were none of her "G-- D--- business."

On April 23, 1986, the claimant was confronted with two situations, both of which demanded her immediate attention. One of these problems was on the production line, and the other was upstairs and concerned regulating the syrup flow. While she was upstairs, the vice president approached to within a foot of her and, in an extremely loud, angry voice said that bottles of a certain product had been "running for fifteen minutes without a G-- D--- code." When the claimant attempted to explain the problem she was facing, the vice president continued that this was her "G-- D--- job" and that he did not "want to hear any G-- D--- excuses." The vice president was so close to the claimant and was speaking so angrily that he inadvertently spit on her face during the course of these remarks.

The claimant was greatly offended by the language that was used toward her. The claimant has religious convictions against the use of profanity and she, herself, does not use profane language. After this last incident occurred, she went to speak with the operations manager, who is a subordinate of the vice president. The operations manager could not immediately speak with her, and the claimant then elected to quit her job as a result of the profanity and abusive language that had been directed toward her by the company vice president.

It is not unusual for profanity to be used by employees at the plant. However, there is no evidence in the record to support a finding that employees direct profanity at each other or that the company condones such conduct.

OPINION

Section 60.2-618.1 of the Code of Virginia provides a disqualification if the Commission finds that a claimant left work voluntarily without good cause.

In construing the meaning of the phrase "good cause," the Commission has consistently held that an individual leaves work voluntarily without good cause unless the reason for leaving is of such a compelling and necessitous nature as would leave him no other reasonable alternative other than quitting work. In the case of Lee v. Virginia Employment Commission, et al, 1 Va. App. 82, 335 S.E. 2d 104 (1985), the Virginia Court of Appeals adopted the Commission standard that an employee who for some reason becomes dissatisfied with his work must first pursue every available avenue open to him in order to alleviate or correct the condition of which he complains.

However, the Commission has not required claimants to exhaust every available alternative in cases where that claimant was subjected to extremely profane, abusive language or unduly harassing conduct by a superior. In the case of Blevins v. Musser Lumber Company, Commission Decision No. 25091-C (July 5, 1985); aff'd, Circuit Court of Smyth County (November 8, 1985), the claimant quit his job after being subjected to intensely profane, abusive language by the company president. The claimant quit his job immediately after the incident occurred. In that case, the Commission stated:

While it is recognized that workers should anticipate and accept the use of profane language which might be usual and customary at a particular place of business, language of this nature directed at the individual by one in authority over him can give good cause for quitting. . . . It is concluded that, regardless of the reason which brought it about, the language directed at this claimant was so abusive that he had good cause in voluntarily leaving his employment.

In the case of Cox v. White Park Coal Company, Appeals Examiner Decision No. S-10272-10029 (February 3, 1961); aff'd by Commission Decision No. 3659-C (March 6, 1961), the Appeals Examiner stated:

In every employer-employee (sic) relationship, each individual has the right to expect to be treated fairly, and to be spoken to in a normal and customary manner. When either party departs from this practice and uses either abusive, or profane language, he creates a condition which would cause continued association to become extremely unpleasant. From the testimony of the claimant, under oath, it appears that he voluntarily quit his job when he was talked to in an extremely abusive and profane manner by his employer. In view of these facts, it is the opinion of the Examiner that the claimant has demonstrated good cause for leaving his job, and he would not be subject to the disqualifying provisions of the Act.

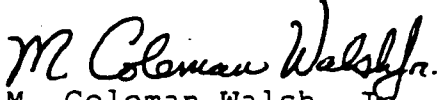
Like the claimants in the Blevins and Cox cases, the claimant here was subjected to extremely profane, abusive language by one of the company's more prominent officers. Not only was the language abusive, but the manner in which he spoke to the claimant, resulting in his inadvertently spitting in her face, goes far beyond the type of conduct any employee could reasonably anticipate as being acceptable. It goes without saying that if an employee engaged in this type of conduct toward a superior, the employee would not only be a likely candidate for dismissal, but that dismissal would be for misconduct connected with work within the meaning of the Virginia Unemployment Compensation Act. Accordingly, the Commission is of the opinion that the claimant did have good cause for leaving work based upon the profane, abusive language directed at her by a company official.

DECISION

The Decision of Appeals Examiner is hereby reversed. It is held that the claimant is qualified to receive benefits effective April 20, 1986, based upon the circumstances surrounding her separation from work.

The case is referred to the Deputy with instructions to carefully review the claimant's claim for benefits and to determine

if she has complied with the eligibility requirements of the Act for each week benefits have been claimed.


M. Coleman Walsh, Jr.
Special Examiner