COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

In the Matter of:

Thomas H. Edwards
[redacted]

Landmark Builders
Winston Salem, North Carolina

Date of Appeal to Commission: December 8, 1990

Date of Review: January 14, 1991

Place: RICHMOND, VIRGINIA

Decision No.: 34957-C

Date of Mailing: January 18, 1991

Final Date to File Appeal with Circuit Court: February 7, 1991

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This is a matter before the Commission on appeal by the employer from the Decision of Appeals Examiner (UI-9012476), mailed December 4, 1990.

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

The employer filed a timely appeal from the Decision of Appeals Examiner which declared the claimant qualified for benefits effective June 10, 1990.

Landmark Builders of the Triad was the claimant's last employer for whom he worked from May 24, 1984 through June 1, 1990. He was employed as a form carpenter and steel worker, being paid at the rate of $10.00 per hour. During his employment, the claimant worked in several areas of the triad region of North Carolina. He normally worked from 7:00 a.m. to 3:30 p.m., Monday through Friday.

The claimant was last employed by this employer on a job located at Cooleeme, North Carolina, a distance of approximately 94 miles, requiring the claimant to travel from his home in Woodlawn, Virginia, approximately one hour and thirty minutes. Prior to this assignment, the claimant had worked on a job assignment in Greensboro, North Carolina. The claimant's residence is located between Galax and Hillsville, Virginia.

On or about June 1, 1990, the claimant was advised that since the job was being completed in Cooleeme, he was being transferred to a job located between Greensboro and Burlington, North Carolina. The distance from the Galax office of the Commission to the job in the Greensboro/Burlington area was 98 miles. The claimant would be performing essentially the same duties and receive the same pay. In addition, because of the location of the job, the claimant would receive fifteen cents per mile for 48 miles traveled from the county line to the job site each day and he would receive pay for one half hour for travel time. He discussed the matter with the superintendent as to how long he would be on that job site and was advised that the job would last for approximately one or two months. The claimant did not report for work at the new job site. On the route taken by the claimant to the job site, there are two periods of time during the day in which heavy traffic plays a part in the time of commuting, between 7:00 a.m. and 8:00 a.m. and after 5:00 p.m.

OPINION

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

The Commission has consistently held that, when the employer changes the conditions of work or the duties or terms such as wages and the change causes the work to become unsuitable, a claimant would have good cause for voluntarily leaving. Loving v. Provident Mutual Life Insurance, Appeals Examiner's Decision UI-76-5014 (August 19, 1976); aff'd by Commission Decision 8477-C (September 28, 1976).

Section 60.2-618.3 of the Code of Virginia sets forth the guidelines for determining whether or not an offer of work is suitable and states:

> b. In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience, his length of unemployment and the accessibility of the available work from his residence.

> c. No work shall be deemed suitable and benefits shall not be denied under this title to any otherwise eligible individual for refusing to accept new work under any of the following conditions:
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> (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or . . .

In the present case, the only objection the claimant had to the new work offered was the time required to travel to and from work. The wages, hours, and other conditions of work would be deemed suitable to the claimant. In the present case, the job was accessible to the claimant since he had his own transportation and routinely drove a lesser distance to his job. The fact that it took longer to drive to this work site than the one the claimant had previously been employed does not automatically render the work unsuitable. It should be noted that the distance to the claimant's last job site was approximately 94 miles. The distance to the new job site was 98 miles. In addition, the claimant was to be paid fifteen cents per mile for 48 miles each day as a result of the extended commuting distance as well as one half hour's pay for commuting daily. The claimant's allegation that it took two hours and fifty minutes to drive to the work site fails to show that the job was unsuitable. Although there is testimony that heavy traffic was in the area, the heavy traffic did not become a factor until after 7:00 a.m., a time at which the claimant was to have been at work. The claimant presented no evidence as to the time of day it took him two hours and fifty minutes to get to the new job site. Because the claimant had been working outside the normal commuting distance for workers in his labor market area for approximately ten years, this factor will not be considered in determining the accessibility of the work from the claimant's residence.

The claimant's allegation that it took him two hours and fifty minutes to drive to the new job site is not credible. Exhibit 5, the official state map of North Carolina reflects that the 94 miles to the claimant's old job is about 82 miles on interstate highway. The claimant testified that it took one and one-half hours to drive this distance. The same map shows that of the 98 miles to the new job site it is practically all on four lane limited access highway. The claimant would have the Commission believe that he drove at an average speed of approximately 63 miles per hour to his old job and only approximately 35 miles per hour to the new site using about the same type of highway.

In the present case, while the job site was changed, the distance was not as great, and the Commission, therefore finds that the work was suitable for the claimant. The fact that the claimant did not wish to drive the distance is not good cause for voluntarily leaving such work. It is therefore concluded that the claimant left work voluntarily without good cause.

DECISION

The Decision of Appeals Examiner is hereby reversed. It is held that the claimant is disqualified effective June 10, 1990, for any week benefits are claimed until he has performed services for an employer during thirty days, whether or not such days are consecutive, and subsequently becomes totally or partially separated from such employment for having left work voluntarily without good cause.

The Deputy is directed to determine the amount of benefits paid the claimant subsequent to June 10, 1990, which he is liable to repay the Commission as a result of this decision.

Edwin R. Richards
Special Examiner

NOTICE TO CLAIMANT

IF THE DECISION STATES THAT YOU ARE DISQUALIFIED, YOU WILL BE REQUIRED TO REPAY ALL BENEFITS YOU MAY HAVE RECEIVED AFTER THE EFFECTIVE DATE OF THE DISQUALIFICATION. 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 THINK THE DISQUALIFICATION OR PERIOD OF INELIGIBILITY IS CONTRARY TO LAW, YOU SHOULD APPEAL THIS DECISION TO THE CIRCUIT COURT. (SEE NOTICE ATTACHED)