COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

In the Matter of:

James D. Boardwine
[redacted]

Tennessee Investment
Casting Company
Bristol, Tennessee

Date of Appeal
to Commission: November 7, 1991

Date of Review: December 16, 1991

Place: RICHMOND, VIRGINIA

Decision No.: 37072-C

Date of Mailing: December 20, 1991

Final Date to File Appeal
with Circuit Court: January 9, 1992

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This case came before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-9114370), mailed October 25, 1991.

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 November 7, 1991, the claimant filed a timely appeal from the Appeals Examiner's decision which disqualified him from receiving benefits, effective September 1, 1991. The basis for that disqualification was the Appeals Examiner's finding that the claimant had left work voluntarily for reasons that would not constitute good cause.

Prior to filing his claim for benefits, the claimant last worked for Tennessee Investment Casting Company of Bristol, Tennessee. He worked for this employer as a grinder from February 15, 1989, until August 26, 1991. At the time of his separation from work, the claimant was working full-time and was paid $5.50 an hour.

In September of 1990, the claimant had a back operation. In December of 1990, he returned to work with the company, but experienced some complications. Consequently, he decided to return to school to complete work on an accounting degree. He enrolled in school in January of 1991. He continued working for the employer on a part-time basis, approximately 20 to 24 hours weekly. While he was working part-time, he noticed an improvement in his physical condition. In April of 1991, the claimant's physician certified him as being able to return to full-time work without restriction.

The claimant resumed working full-time during the summer of 1991, after the Spring school semester had ended. After working full-time for several weeks, the claimant began experiencing pain in his back, neck and shoulders which he believed was related to the back surgery he had the previous year. The claimant mentioned this to the plant manager who offered to transfer him to another job. The claimant declined because the job would still require prolonged standing and heavy lifting. This was the only time he discussed his medical condition with the plant manager.

In August of 1991, the claimant was making his plans to resume his education. At that time, he did not know what type of class schedule he would have. As a result, he could not tell the employer with any degree of certainty what his availability would be for working during the Fall semester. At the same time, the claimant's wife was entering the last stages of pregnancy. The claimant believed that he needed to be at home more frequently to be of assistance to his wife.

The employer had part-time work available for the claimant had he chosen to work during the Fall semester. The claimant and his supervisor had discussed a part-time schedule that would have involved working Tuesdays and Thursdays. Once the claimant's class schedule was finalized, he had conflicts on those days and would not have been able to work that schedule.

As a result of his continuing problems with his back, his wife's pregnancy, and his desire to return to school to resume his education, the claimant voluntarily left his job on August 26, 1991. The employer had other jobs available had the claimant requested a transfer. At the time he quit his job, the claimant did not have a definite assurance of other employment. The claimant did not return to his doctor for further examination or treatment.

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 interpreting the meaning of the phrase "good cause," the Commission has consistently limited it to those factors or circumstances which was so substantial, compelling and necessitous as would leave a claimant no reasonable alternative other than quitting work. Accord, Phillips v. Dan River Mills, Inc., Commission Decision 2002-C (June 15, 1955); Lee v. V.E.C., 1 Va. App. 82, 335 S.E.2d 104 (1985). In cases arising under this statute, the burden of proof is upon the claimant to establish good cause for leaving work. Kerns v. Atlantic American, Inc., Commission Decision 5450-C (September 20, 1971).

In this case, the claimant made the decision to quit his job as a result of a combination of reasons. First, he was continuing to experience back problems. Second, he believed that he needed to spend more time at home due to the fact that his wife was in the advanced stages of pregnancy. Third, the claimant enrolled in college for the Fall semester of 1991 in order to continue his education. These reasons, either singly or collectively, do not constitute good cause.

The Commission has held that a claimant may have good cause for leaving work that is detrimental to his health. In those cases, however, the Commission has predicated a finding of good cause upon the claimant showing that he acted upon competent medical advice, when applicable, and that he had taken all reasonable steps short of quitting in order to resolve the situation with his employer. Weakley v. Sperry Marine Systems, Commission Decision 6680-C (April 7, 1975); Weaver v. Ideal Laundry & Dry Cleaners, Commission Decision 3153-C (October 16, 1957).

The basis for these requirements is clear. If a worker has a medical condition that is caused or aggravated by his job, one reasonable alternative would be to put the employer on notice of that fact. By doing so, the employer would be given the opportunity to accommodate the claimant by transferring him to another job or modifying the terms and conditions under which he works. In this regard, the advice of the attending physician is of great value in properly assigning the job duties that do not adversely affect the claimant's health in a significant way. Unfortunately, the claimant did not inform the employer of the severity of his medical condition. Although he mentioned his back problems to the plant manager on one occasion, he refused the offer of a transfer. The record does not reflect that he informed the employer of the full extent of his back problem or requested a change in his duties. Had he done so, it is possible that some modification of his duties could have been made that would have enabled him to continue work. Further, he did not seek any assistance from his doctor. Regardless of the cost, that would have been a reasonable alternative where something as important as his health was at issue.

The claimant did not provide any medical evidence to establish that his wife's pregnancy was of such a nature as would compel him to quit his job in order to spend more time at home. Therefore, that reason could not constitute good cause for quitting work. Finally, the claimant's desire to continue his education, although very commendable, does not constitute a compelling or necessitous reason that left him no alternative other than quitting work.

Therefore, the Commission must conclude that the claimant has not shown that the reasons which prompted him to quit his job constituted good cause, as that phrase has been interpreted by the Commission and the courts. Consequently, he must be disqualified from receiving benefits as provided by the statute.

DECISION

The decision of the Appeals Examiner is hereby affirmed. The claimant is disqualified from receiving benefits, effective September 1, 1991, because he left work voluntarily without good cause.

This disqualification shall remain in effect for any week benefits are claimed until he performs services for an employer during thirty days, whether or not such days are consecutive, and he subsequently becomes totally or partially separated from such employment.

M. Coleman Walsh, Jr.
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)