COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

# DECISION OF COMMISSION

In the Matter of:

Bridgett A. Beckner
[redacted]

Harris Teeter Super Markets
Roanoke, Virginia

Date of Appeal
to Commission: January 7, 1992

Date of Hearing: March 23, 1992

Place: RICHMOND, VIRGINIA

Decision No.: 37487-C

Date of Mailing: April 2, 1992

Final Date to File Appeal
with Circuit Court: April 22, 1992

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This case is before the Commission on appeal by the claimant from Appeals Examiner's decision UI-9113998, mailed December 31, 1991.

## APPEARANCES

Employer Representative, Attorney for Claimant

## ISSUES

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?

Was the claimant discharged from employment due to misconduct in connection with work as provided in Section 60.2-618(2) of the Code of Virginia (1950), as amended?

## FINDINGS OF FACT

The claimant filed a timely appeal from the Appeals Examiner's decision which reversed an earlier Deputy's determination and disqualified her for unemployment compensation effective August 11, 1991, for having left work voluntarily without good cause.

Prior to filing her claim, the claimant last worked for Harris Teeter Super Markets of Roanoke, Virginia, between May 12, 1984 and August 16, 1991. Her position was that of floral manager at one of the employer's stores.

In her position as floral manager, the claimant worked between 40 and 44 hours per week, earning $7.60 per hour. On August 9, 1991, she was indefinitely suspended from her job due to a large inventory shortage which was found in the claimant's department. Although a certain shrinkage in inventory due to the perishable nature of the commodity is to be expected, the employer felt that the claimant's shortage was too high to be explained by this alone. A security investigation was conducted; and, although there was no evidence presented to indicate that the claimant was deliberately or willfully taking funds or merchandise from the store, it was determined that she simply could not handle her department. Accordingly, on August 13, 1991, the employer offered to train her for the position of cashier at a pay rate of $6.00 per hour. After thinking the matter over, the claimant informed the employer on Friday, August 16, that she would not take the offered position and would resign instead.

Although the employer representative at the hearing would not say for sure that the claimant would have been fired had she not resigned, the cashier's position had been created especially for her as representing the only thing available for her within the company. Considering her past association with the company, she was offered the position at $1.00 an hour more than the company normally offers beginning cashiers. The claimant had actually filed her claim for unemployment compensation on August 13, 1991, before the employer offered her the cashier's position; however, Commission records reflect that she received vacation and severance pay in an amount sufficient to exceed her weekly benefit amount for the first four weeks she claimed.

## 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.

Section 60.2-618(2) of the Code of Virginia provides a disqualification if it is found that a claimant was discharged from employment due to misconduct in connection with work.

The argument has been advanced on behalf of the claimant to the effect that she was actually terminated because she was suspended with no prospects of other employment at the point she filed her claim for benefits. The Commission would agree with this argument if the claimant had been truly unemployed at that point so as to

have the "current period of unemployment" necessary for a separation issue to arise under the provisions of Section 60.2-528B(1) of the Code.

In fact, this was not the case. Although the claimant did not realize it at the time, she was actually not unemployed when she filed her claim for benefits, inasmuch as she received accumulated vacation and severance pay in excess of her weekly benefit amount which was allocated to the first four weeks she claimed. That severance pay represented wages under the provisions of Section 60.2-229 of the Code which, because they were in excess of her weekly benefit amount, prevented her from being considered unemployed as defined in Section 60.2-226 of the Code. At the point the claimant first was unemployed, her separation was not due to the fact that she had been suspended; rather, it was due to the fact that she had turned down the alternate work which the employer had offered to her. This is properly considered as a voluntary quit under the doctrine enunciated in the case of Harvey v. Eastern Microfilming Sales & Service, Inc., Commission Decision 6085-C (September 13, 1973).

The facts in this case bear a strong resemblance to those found in the case of Young v. Mick or Mack, Commission Decision 24302-C (December 11, 1984). In that case, the claimant had been an assistant store manager who was removed from his position after violating store policies, but was offered alternate work as a stock clerk at a pay reduction of approximately one third. He refused so as to become unemployed and the Commission rejected the argument that, since the demotion had been deserved, the alternate work was suitable. In finding that the claimant did have good cause to reject it, it was stated:

> 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.

In this case, the claimant had management experience, but was offered only a demotion to a clerical position for which she would have had to have been trained at a pay reduction of approximately 21 percent. Considering this reduction as well as the fact that

she had not had sufficient time to explore the labor market area for work more in line with her prior training and experience, the Commission concludes that the offered work was not suitable at that time. Accordingly, she had good cause for her resignation and she should not be disqualified under this section of the Code.

## DECISION

The Decision of Appeals Examiner is hereby reversed.

The claimant is qualified for unemployment compensation effective August 11, 1991, with respect to her separation from the services of Harris Teeter Super Markets.

Charles A. Young, III
Special Examiner