

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Joan F. Wright
[REDACTED]

Prince Edward County
Department of Social Services
Farmville, Virginia

Date of Appeal
to Commission: April 1, 1992

Date of Hearing: May 14, 1992

Place: RICHMOND, VIRGINIA

Decision No.: 38232-C

Date of Mailing: June 15, 1992

Final Date to File Appeal
with Circuit Court: July 5, 1992

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This case came before the Commission on appeal by the employer from a Decision of Appeals Examiner (UI-9117049), mailed March 26, 1992.

APPEARANCES

Claimant; Observer with Claimant

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 April 1, 1992, the employer filed a timely appeal from the Appeals Examiner's decision which held that the claimant was qualified to receive benefits, effective October 20, 1991. The Appeals Examiner concluded that the claimant had left her job voluntarily for reasons that would constitute good cause.

Prior to filing her claim for benefits, the claimant was employed by the Prince Edward County Department of Social Services. She was a full-time eligibility worker and was paid \$15,000 a year. She worked for this employer from November 1, 1985, through October 4, 1991.

The claimant's husband, who was the family's primary bread winner, had been unemployed for over a year by the Spring of 1991. As a result, the claimant and her husband were experiencing financial difficulties. Those difficulties led to their defaulting on their mortgage. The mortgage company instituted foreclosure proceedings. Since the claimant and her husband did not have sufficient funds to pay the deficiency and redeem the mortgage, they retained an attorney to file a bankruptcy petition on their behalf. The filing of such a petition would have precluded the mortgage company from taking adverse action against the claimant and her husband. Although they had paid his fee in advance, the attorney failed to file the bankruptcy petition. Consequently, the mortgage company foreclosed on the claimant's residence.

The claimant and her husband attempted to have the foreclosure set aside. They retained the services of a consulting firm, known as "The Help Connection," which specialized in attempting to assist individuals who are being subjected to foreclosure proceedings or who needed to find alternative housing.

The claimant was not successful in her effort to have the foreclosure set aside. Although she and her husband did not vacate the premises, the mortgage company instituted further proceedings to obtain a court order requiring their eviction. The claimant, her husband and their two minor children were subsequently required to vacate the premises not later than October 15, 1991.

The claimant and her husband were unsuccessful in finding alternative housing in the Farmville-Nottoway-Prince Edward county area. They discovered that there was not a lot of housing available that would be adequate for them and their children. Also, when they did locate adequate housing, the landlords would conduct a credit check. At that time, the credit check would reflect the foreclosure, and the landlords were not willing to take the risk of renting to the claimant, even though her husband had found a job in September of 1991.

Eventually, the claimant was able to find housing, with the assistance of The Help Connection in Midlothian, Virginia. The claimant's new residence was approximately 70 miles from her job. The commuting time from her new residence to the job would have been approximately 90 minutes. As a result of the loss of her home through foreclosure proceedings, her inability to find alternative housing in the Farmville-Nottoway-Prince Edward county area, and the distance from her new residence to the job, the claimant voluntarily quit her job.

OPINION

Section 60.2-618(1) of the Code of Virginia provides a disqualification if the Commission finds that the 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 are 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. Virginia Employment Commission, 1 Va. App. 82, 335 S.E.2d 104 (1985). In any case arising under this statute, the claimant bears the burden of proving good cause for leaving work. Kerns v. Atlantic American, Inc., Commission Decision 5450-C (September 20, 1971).

The Commission has generally recognized that a personal reason could constitute good cause for leaving work if that reason was substantial, compelling, and necessitous. The Commission has frequently cited with approval the analysis set out in Bliley Electric Co. v. Board of Review, 158 Pa. Super. 548, 45 A. 2d 898 (1946), when the Pennsylvania court stated:

When, therefore, the pressure of real, not imaginary, substantial, not trifling, reasonable, not whimsical, circumstances compel the decision to leave employment, the decision is voluntary in the sense that the worker has willed it, but involuntary because outward pressures have compelled it. (Footnote omitted) Or to state it differently, if a worker leaves his employment when he is compelled to do so by necessitous circumstances or because of legal or family obligations, his leaving is voluntary with good cause, and under the Act he is entitled to benefits. The pressure of necessity or legal duty, or family obligations, or other overpowering circumstances and his capitulation to them transform what is ostensibly voluntary unemployment into involuntary unemployment.

The Commission, in the case of Smith v. Butner Plumbing and Heating Company, Commission Decision 449-C (May 11, 1949), was confronted with a situation similar to that presented by the present case. In the Smith case, the claimant left his job voluntarily and moved to a new locality after his landlord terminated his lease and required that he vacate the premises. The claimant was not able to find other housing in the Roanoke area that he could afford. In analyzing this situation, the Commission

cited cases from West Virginia and Iowa which, under similar circumstances, concluded that the claimants had good cause for quitting. The Commission then held:

Accepting the evidence as true, we are of the opinion that where a worker is forced by a landlord to vacate premises through no fault of the lessee, and such claimant is unable to find a place to live and is forced to move to another community in order to provide shelter for his family, the quitting is for good cause within the meaning of the law. The legislature removed the condition making good cause attributable to the employer. Manifestly this was done so as to meet a situation such as exists here.

Under the particular facts of this case, the Commission is of the opinion that the principles enunciated in the Bliley and Smith cases are applicable and require a finding of good cause. The claimant and her husband took reasonable steps to preserve their home by contesting the foreclosure proceedings through all of the means that were reasonably available to them. Unfortunately, their efforts were hampered by the failure of their attorney to file a bankruptcy petition. Notwithstanding that unfortunate development, the claimant and her husband continued to contest the foreclosure proceedings up to the point where they were ordered by the court to vacate the home. They made a reasonably diligent effort to locate alternative housing within the Farmville area, but were not successful. The claimant's new residence was 70 miles from her job, and it would not be reasonable to expect this claimant to commute that distance to and from work.

For these reasons, the Commission finds that the claimant did have good cause for quitting her job. Accordingly, no disqualification may be imposed upon her receiving unemployment insurance benefits.

DECISION

The Appeals Examiner's decision is hereby affirmed. The claimant is qualified to received benefits, effective October 20, 1991, based upon her separation from work with Prince Edward County Department of Social Services.

M. Coleman Walsh, Jr.
M. Coleman Walsh, Jr.
Special Examiner