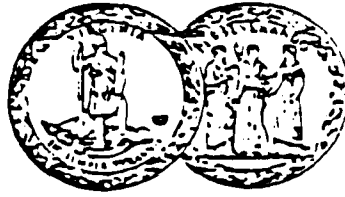


COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Sharon R. Alsip  
████████████████████

Department of the Army  
Newport News, Virginia

Date of Appeal  
to Commission: September 16, 1994

Date of Review: October 19, 1994

Place: RICHMOND, VIRGINIA

Decision No.: 46659-C

Date of Mailing: October 27, 1994

Final Date to File Appeal  
with Circuit Court: November 16, 1994

---oOo---

This case is before the Commission on appeal by the claimant from Appeals Examiner's decision UCFE-9411669, mailed September 2, 1994.

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 June 5, 1994, for having left work voluntarily without good cause.

The findings of fact made by the Appeals Examiner have been reviewed and are hereby adopted by the Commission with certain corrections and additions to be discussed in the following paragraphs.

The word "would" is hereby placed between "claimant" and "accept" in the second sentence of the fourth paragraph. A comma is placed after the word "internship" in the same sentence. The phrase "did not want" is hereby substituted for "declined" in the second sentence of the fifth paragraph. The phrase "not wanting the assignment" is hereby substituted for "declining the transfer" in the third sentence of the sixth paragraph. The phrase "to consider going to" is hereby substituted for "of the assignment at" in the following sentence. In the last sentence of the same paragraph, the claimant's target grade is hereby amended to read, "GS-9." The phrase "Department of the Army" is hereby substituted for "DA" where ever it appears in the findings of fact.

The mobility agreement the claimant signed contained no expiration date or any other indication that it was to last no more than 18 months. The claimant offered no evidence to back up her contention that "backlash" from filing her grievance would have affected her career had she taken the assignment at Ft. Leavenworth, Kansas. She had apparently become engaged to someone working at Ft. Monroe and, during the period of her unpaid leave of absence, she married him and moved to the Washington, DC area. She filed her claim for unemployment compensation after her leave of absence expired, and her resignation became effective May 31, 1994.

#### OPINION

As a preliminary matter, the Commission finds it necessary to comment upon the contention the claimant raised at the first session of the hearing that the wrong employer had been joined in her case. Although the Appeals Examiner was initially inclined to remand the matter, the Commission finds that the decision not to do so was the proper one. This is because the claimant was a civilian employee of the Department of the Army which had sent an attorney to the hearing prepared to go forward with the case. There has been no showing of prejudice to the employer with respect to notice in the case.

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.

In the case of Kerns v. Atlantic American, Incorporated, Commission Decision 5450-C (September 20, 1971), the Commission held:

It is established that the burden is upon the employer to produce evidence which establishes a prima facie case that the claimant left his

employment voluntarily. The employer assumes the risk of non-persuasion in showing a voluntary leaving. Once a voluntary leaving is shown, the burden of coming forward with evidence sufficient to show that there are circumstances which compel the claimant to leave his employment and that such circumstances amount to good cause as set out in the Unemployment Compensation Act, devolves upon the claimant.

Had this claimant resigned her job only to avoid an immediate and impending discharge, her separation would have been properly considered as a termination under the provisions of Section 60.2-618(2) of the Code. This is because any such resignation would be voluntary only to the extent of how she wished her separation to be reflected in the employer's record, with the decision that she was no longer working having already been made unilaterally by the employer. Nevertheless, the record is clear that the claimant resigned as part of a settlement agreement in which she freely and voluntarily entered into, while at the same time she had a job available to go to at Ft. Leavenworth, Kansas. The fact that she was to go on a 180-day leave of absence without pay before her resignation was to become effective is of no consequence, inasmuch as she met the definition of being "unemployed" under the provisions of Section 60.2-226 of the Code as soon as she went on that leave of absence.

In the case of Lee v. Virginia Employment Commission, 1 Va. App. 82, 335 S.E.2d 104 (1985), the Virginia Court of Appeals affirmed the following standard for establishing good cause for voluntarily leaving work:

The Commission has adopted and held firmly to the premise that an employee, who for some reason, becomes dissatisfied with his work, must first pursue every available avenue open to him whereby he might alleviate or correct the condition of which he complains before relinquishing his employment. . . . He must take those steps that could be reasonably expected of a person desirous of retaining his employment before hazarding the risks of unemployment.

In Lee, the claimant was a federal government employee who had previously filed a grievance to protest his placement within the agency he worked for. In settlement of that grievance, a career development plan was established which provided both short and long term career goals. Nevertheless, due to budget cuts, the claimant found himself in a position with no known promotion potential. He then resigned without using the available grievance procedure in an attempt to enforce the original settlement agreement. This was found to be a voluntary resignation taken without good cause.

In the case at hand, although the claimant's grievance was initially turned down, she has not shown that he had exhausted all steps in that procedure prior to accepting the settlement by which she ended her association with the employer. Her bare assertion that "backlash" from her initial grievance would have made work at the assignment in Ft. Leavenworth, Kansas difficult, is not sufficient to establish that the terms or conditions of her employment had been rendered unsuitable. Additionally, the Commission finds that the claimant's contention that her mobility agreement was no longer valid since she had gone longer than the 18 months which the training was supposed to take to be simply incorrect based upon a plain reading of the agreement.

While the claimant is correct that the only position which was officially offered to her was the last one, the employer has presented sufficient evidence to indicate that four prior positions were discussed; however, due to her reluctance to accept them, the decision was made not to hold her to the mobility agreement with respect to them. The employer has also satisfactorily explained why the claimant was not declared to be a surplus trainee so as to be available to referrals outside of the MACOM. There is simply no evidence of any bad faith on the employer's part with respect to any of the circumstances which lead to the claimant's separation.

In the recent case of Riordon v. FM International, Inc., Commission Decision 45590-C (September 15, 1994), a claimant had accepted employment as an engineer involved in the dismantling of scientific equipment to be shipped to Greece and reinstalled at the University of Crete, with the understanding that he would assist in the reinstallation in Greece. Nevertheless, he signed no contract and, when he announced that changed domestic circumstances relating to his impending divorce and custody of his children would prevent him from going to Greece, he was terminated. In awarding benefits, the Commission noted:

This case may be distinguished from those in which, for example, a management trainee agrees with his employer to relocate upon completing his training and then reneges on that agreement. In that type of situation, the employer is agreeing to bear the expenses of training the individual in return for that individual's agreement to relocate. If the individual refuses, the employer has, in effect, wasted the cost of training. Although the Commission has in such cases found the claimant either to have left work voluntarily without good cause, or to have been discharge due to misconduct, the same type of situation does not exist here.

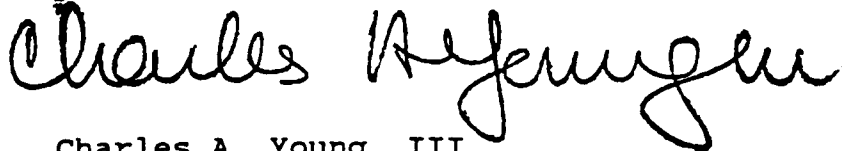
That this claimant may have become engaged to someone working at Ft. Monroe does not amount to the type of necessitous or compelling personal circumstances which would justify failing to accept the placement which was officially offered to her. She agreed that in return for the training she received, she would accept an assignment wherever the employer deemed appropriate within the MACOM, with the understanding that if she did not accept the assignment, she would lose her job. Her voluntary choice not to accept the assignment offered to her at Ft. Leavenworth, Kansas was made for reasons insufficient to constitute good cause so as to relieve her of a disqualification under this section of the Code.

#### DECISION

The decision of the Appeals Examiner is hereby affirmed.

The claimant is disqualified for unemployment compensation, effective June 5, 1994, for any week or weeks benefits are claimed until she has performed services for an employer during 30 days, whether or not such days are consecutive and she has subsequently become totally or partially separated from such employment, because she left work voluntarily without good cause

When this decision becomes final, the Deputy is instructed to calculate what benefits may have been paid to the claimant after the effective date of the disqualification, which she will be liable to repay the Commission as a result of this decision.



Charles A. Young, III  
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)