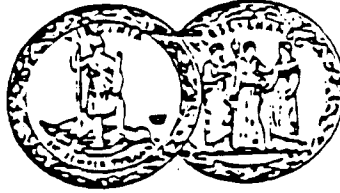


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:
Grant Hearn

U. S. Army
Indianapolis, Indiana

Date of Appeal to Commission: September 17, 1993
Date of Hearing: November 22, 1993
Place: RICHMOND, VIRGINIA
Decision No.: 43652-C
Date of Mailing: November 30, 1993
Final Date to File Appeal with Circuit Court: December 20, 1993

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This case came before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UCX-9313989), mailed September 9, 1993.

APPEARANCES

None

ISSUE

Did the claimant fail, without good cause, either to apply for available, suitable work when so directed by the Commission or to accept suitable work when offered as provided in Section 60.2-618(3) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On September 17, 1993, the claimant filed a timely appeal from the Appeals Examiner's decision which disqualified him from receiving benefits, effective July 18, 1993. The basis for that disqualification was the Appeals Examiner's conclusion that the claimant had failed, without good cause, to apply for available, suitable work when so directed by the Commission.

Prior to filing his claim for benefits, the claimant was last employed by the United States Army. He was in the army from November 15, 1989 until March 31, 1993, when he was honorably discharged. While he was in the army, the claimant worked as an electronics technician and was paid \$20,916 annually.

The claimant filed his claim for benefits on April 19, 1993. In accordance with Commission regulations, his claim was backdated to an effective date of April 18, 1993. When the claimant registered with the Job Service Division of the agency, he provided information regarding his work history. From June of 1982 until October of 1986, he worked as the Producer/Director of Public Affairs for a television station. From April of 1987 until November of 1989, he held a full-time position as a video switcher with Liberty Broadcasting. During this same time, he held a comparable part-time position with another television station. Based upon these jobs and his work with the U. S. Army, the claimant was classified as an electronics technician or an electronics mechanic.

On July 16, 1993, a representative with the Job Service Division contacted the claimant at home and offered him a referral to a job with Dibrell Brothers Tobacco Company. The position was as an administrative assistant in the sample room. The employee who filled that position would be responsible for tying tobacco samples, packing, and maintaining records. The pay was \$6.50 an hour and would involve 40 hours of work each week. The job was seasonal and would not have lasted beyond January.

The rate of pay and hours of work were commensurate for this type of work in the labor market area. There were no unusual conditions of work with respect to this job. If the claimant had been hired for this position, he would have been required to finance his own health insurance which would have cost approximately \$200 per month.

The Job Service representative asked the claimant to contact him on Monday, July 19, 1993 regarding his interest in applying for the position. The claimant contacted the representative as requested. He informed the Job Service representative that he would not apply for the position. His primary concern involved a moral issue. The claimant believed that it was morally wrong to manufacture and sell tobacco products. At the time the referral was offered, the claimant and his wife were residing with his father. The claimant's father was the pastor of a local church in Chatham, Virginia who had preached "on the evils of tobacco." In addition, the claimant was concerned about the temporary nature of the position, the significant reduction in pay compared to his job with the U. S. Army, and the lack of health insurance benefits. For all of these reasons, he chose to refuse the referral and did not interview for the position at Dibrell Brothers Tobacco Company.

OPINION

Section 60.2-618(3) of the Code of Virginia provides a disqualification if the Commission finds that a claimant failed, without good cause, either to apply for available, suitable work when so directed by the Commission, or to accept suitable work when offered. This statute also provides as follows:

- 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:
 - (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.

In evaluating an offer of work or a referral to new work, the Commission must first examine the job in light of similar work in the locality to determine if it meets the "prevailing standards" test set out in Section 60.2-618(3)(c) of the Code of Virginia. If that test is successfully met, then the Commission must evaluate the job in light of the factors that are unique to the applicant who is offered the job or referral. Those factors are set out in Section 60.2-618(3)(b) of the Code of Virginia. After considering both the extrinsic and intrinsic factors related to the job, if the Commission determines that the work is suitable, then the claimant has the burden of proving good cause for refusing the offer or referral. Johnson v. V.E.C., 8 Va. App. 441, 382 S.E.2d 476 (1989).

The evidence in the record is sufficient to show that the position to which the claimant was referred satisfied the "prevailing standards" test set out in the statute. Nevertheless, the Commission must conclude that this job was not suitable for the claimant when the other statutory factors are considered.

First, the claimant raised significant moral objections to accepting a position in the tobacco industry. Second, the position that he was offered was not consistent with his prior training and experience. Third, the claimant had been unemployed between three

and four months when he refused the referral; however, this job represented a 35 percent decrease in pay when compared with his last job in the U. S. Army.

In the Johnson case, the Virginia Court of Appeals observed that a claimant should be afforded a reasonable opportunity to find work with a commensurate wage and benefits to his previous job before being required to accept lesser employment. Given the particular facts of this case, the Commission is not prepared to require this claimant to accept a referral to a job which is inconsistent with his prior training and experience and would pay 35 percent less than his most recent employment. When these considerations are coupled with the claimant's moral reservations about accepting work in the tobacco industry, the Commission is of the opinion that this particular job was not suitable for him. Therefore, no disqualification may be imposed upon his receiving unemployment insurance benefits.

DECISION

The Appeals Examiner's decision is hereby reversed. The claimant is qualified to receive benefits, effective July 18, 1993, since the job to which he was referred did not constitute suitable employment for him.

M. Coleman Walsh, Jr.
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Special Examiner