

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Marie W. Alderson
[REDACTED]

Tultex Corporation
South Boston, Virginia

Date of Appeal

to Commission: April 5, 1996

Date of Review: May 16, 1996

Place: RICHMOND, VIRGINIA

Decision No.: 51212-C

Date of Mailing: May 17, 1996

Final Date to File Appeal
with Circuit Court: June 6, 1996

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This case came before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-9603639), mailed March 27, 1996.

ISSUE

Was the claimant able to work, available for work, and actively seeking and unable to obtain suitable work as provided in Section 60.2-612(7) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On April 5, 1996, the claimant filed a timely appeal from the Appeals Examiner's decision which held that she was ineligible to receive benefits for the claim week ending January 13, 1996. The basis for that decision was the Appeals Examiner's conclusion that the claimant was not available for work during that week.

The claimant is an employee of Tultex Corporation in South Boston, Virginia. She began working for that company in December of 1980.

During the claim week ending January 13, 1996, the employer had a temporary mass layoff. Work was available for employees on only

Tuesday, January 9, 1996. The claimant was scheduled to work that day beginning at 7:00 a.m.

The claimant could not report to work that day because of the severe winter storm that affected Virginia and other mid-Atlantic and Northeastern states. The roads in and around the claimant's residence had not been plowed and the driving conditions were extremely hazardous.

Because of the severe winter storm, the Governor declared a state of emergency on January 6, 1996. Executive Order Number Sixty (96) memorialized that declaration, and provided, in part, as follows:

On January 6, 1996, I verbally declared a state of emergency due to a threatening winter storm with blizzard conditions throughout the Commonwealth of Virginia with expected snowfall in excess of 12-24 inches throughout virtually all of the Commonwealth. The snow storm had the potential for extremely hazardous conditions including freezing rain, sleet, and high wind gusts resulting in devastating effects on public health and safety. In addition, this major winter storm had the potential to cause severe economic losses to affected businesses, including the agricultural community and livestock operations.

The health and general welfare of the citizens of the affected jurisdictions required that state action be taken to help alleviate conditions caused by the heavy snowfall and blizzard conditions. Potential emergencies included inability to provide fire, law enforcement and rescue services to stranded persons; search and rescue; blockage of critical roadways; inadequate medical supplies, fuel, food and other essentials, including loss of power to residents and the business community. I found that these conditions and consequences constituted a disaster warranting a declaration of emergency pursuant to Section 44-146.16 of the Code of Virginia.

As a result of this winter storm, the vast majority of state offices were closed throughout the Commonwealth. The Commission's South Boston local office was closed on January 8, 1996 and did not open until twelve noon on January 9, 1996.

After filing her appeal to the Commission, the claimant requested the opportunity to be heard and to present additional testimony. That request was made on April 30, 1996, one day after the 14 day period for requesting a hearing had passed. On its own motion, the Commission placed into the record a copy of Executive Order Number Sixty (96) and a copy of an E-mail message from the regional director of the VEC's Central Region verifying the offices in that region which were closed on January 8 and January 9, 1996.

OPINION

Section 60.2-612(7) of the Code of Virginia provides, in part, that an unemployed individual shall be eligible to receive benefits with respect to any week only if he is able to work, available for work, and actively seeking and unable to obtain suitable work.

In order to satisfy the eligibility requirements of this statute, a claimant must be able to perform some substantial saleable service, be willing to accept any suitable work which may be offered without attaching thereto restrictions or conditions not usual and customary in that occupation, and be actively and unrestrictively seeking employment in the labor market where he resides. U.C.C. v. Dan River Mills, Inc., 197 Va. 816, 91 S.E.2d 642 (1956); U.C.C. v. Tomko, 192 Va. 463, 65 S.E.2d 524 (1951); Dan River Mills, Inc. v. U.C.C., 195 Va. 997, 81 S.E.2d 620 (1954).

Since the claimant had filed a partial claim for benefits, different criteria apply than for those individuals who are totally unemployed. Under Regulation VR 300-01-6.2(F) of the Regulations and General Rules Affecting Unemployment Compensation, the following criteria is set out:

With respect to any week claimed, a partially unemployed claimant shall be deemed to be actively seeking work if he performs all suitable work offered to him by his regular employer. (emphasis supplied)

Under this regulation, a partially unemployed claimant would be denied benefits if he or she did not perform all suitable work offered by the employer. Nevertheless, before benefits could be denied under this regulation, there must be some showing that the offered work was suitable.

Section 60.2-618(3)(b) of the Code of Virginia provides the following guidance with respect to determining the suitability of an offer of work:

In determining whether or not any work is suitable work 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.

Under the facts of this case, the Commission is of the opinion that the work made available to the claimant on January 9, 1996, was not suitable. The claimant was unable to report to work because of the severe weather conditions that existed. The severity of those conditions and the potential danger to the health and safety of Virginia residents was clearly articulated in the Governor's declaration of a state of emergency. Those weather conditions represented a substantial degree of risk to the claimant's health and safety. Therefore, since the work offered was not suitable on that day, the claimant be held to be ineligible for benefits under the job search provisions of Section 60.2-612(7) of the Code of Virginia and Regulation VR 300-01-6.2(F).

DECISION

The Appeals Examiner's decision is reversed. The claimant has satisfied the job search provisions of Section 60.2-612(7) of the Code of Virginia and Regulation VR 300-01-6.2(F) for the period of January 7, 1996 through January 13, 1996, the claim week before the Commission.

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