



VIRGINIA EMPLOYMENT COMMISSION

DECISION OF APPEALS EXAMINER

NOTICE: This decision becomes final unless appealed in writing by any party named setting forth the grounds upon which the appeal is sought either at the office where the claim was filed or by mail to the Appeals Section, Virginia Employment Commission, P.O. Box 1358, Richmond, Virginia 23211, not later than midnight of

July 17, 1985

In the matter of:

Claimant:

Harry T. Bottoms

Last 30-Day Employing Unit:

Pan American World Airways

Subsequent Employing Unit:

INTERSTATE--PENNSYLVANIA

Appellant:

☒ Claimant

☐ Last 30-Day Employing Unit

☐ Subsequent Employing Unit

Claimant's S.S.
No.:

Decision No.:

UI-85-4344

Date Deputy's
Determination:

Date Referred
or Appealed:

May 28, 1985

Date of Hearing:

June 14, 1985

Place of Hearing:

Richmond, VA

Date of Decision:

June 20, 1985

Date of Mailing:

June 26, 1985

APPEARANCES: None

STATUTORY PROVISION(S) & POINT(S) AT ISSUE: Code of Virginia, Section 60.1-52(b) Was the claimant's unemployment the result of a labor dispute in active progress and if so does he meet the exceptions set forth in the Act?

FINDINGS OF FACT: The claimant's claim for unemployment compensation was referred to the Chief Appeals Examiner pursuant to the provisions of Section 60.1-61 of the Code of Virginia inasmuch as it appeared that his unemployment may have been the result of a labor dispute in active progress. Accordingly, a telephonic hearing was scheduled with respect to that issue for June 14, 1985, at which time no one called in to participate at the hearing.

The claimant had filed a claim for unemployment compensation, effective March 3, 1985, at which time he had last worked as a reservation sales agent for Pan American World Airways of Alexandria, VA, through February 27, 1985. The claimant gave "lack of work" as his reason for separation.

The employer returned separation information in which the last day of employment was given as February 27, 1985, however, it was further stated that the claimant's unemployment had been the result

of a labor dispute in active progress. The employer gave no further explanation of this reply on the separation report. The employer also noted that the claimant was given a definite date to return to work on March 12, 1985, but did not do so until March 28, 1985.

OPINION: Section 60.1-52(b) of the Virginia Unemployment Compensation Act provides:

"An unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that:

(b) His total or partial unemployment is not due to a labor dispute in active progress, or to shutdown or start-up operations caused by such dispute which exists (1) at the factory, establishment, or other premises (including a vessel) at which he is or was last employed, or (2) at a factory, establishment, or other premises (including a vessel) either within or without this State which (a) is owned or operated by the same employing unit which owns or operates the premises at which he is or was last employed, and (b) supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that:

(1) He is not participating in or financing or directly interested in the labor dispute; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises (including a vessel) at which the labor dispute occurs, any of whom are participating in or financing or directly interested in the dispute."

Although the burden is generally on the claimant to show that he meets the eligibility requirements of the Act for a particular week, the Appeals Examiner feels that there is a preliminary burden which must be met in cases where it is asserted that an individual's unemployment may be the result of a labor dispute in active progress. Here, the claimant had stated that he was separated due to a lack of work and the employer has made the mere assertion that his unemployment was due to a labor dispute without providing any facts or details to support this contention. This Appeals Examiner feels that the employer must bear the risks of nonpersuasion in situations where the claimant asserted a lack of work as being the cause of his unemployment and the employer wishes to assert another reason. Here, the

Appeals Examiner feels that the employer has failed to establish that the claimant's unemployment was the result of a labor dispute in active progress and therefore, it is not necessary for the claimant to affirmatively establish that he has met the exceptions set forth in the aforementioned provision of the Act. (Underscoring supplied)

The employer has, however, made an assertion that the claimant was offered work on March 12, 1985, but did not return until March 28, 1985. This does bring up the possibility of a refusal of work under the provisions of Section 60.1-58(c) of the Code of Virginia and this matter should be referred back to the Deputy for further investigation of this.

DECISION: It is held that the claimant's unemployment commencing March 3, 1985, has not been shown to have been the result of a labor dispute in active progress.

The Deputy is instructed to investigate the employer's contention that the claimant declined to return to work when it was offered starting March 12, 1985, and to enter any further determinations in connection with his claim as are deemed necessary.


Charles A. Young, III
Appeals Examiner