COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

VOLUNTARY LEAVING: 155.1
Domestic Circumstances
— Children, Care of.

DECISION OF COMMISSION

In the Matter of:

Ernestine Goodwyn [redacted]

National Health Labs, Inc.
Delaware Corporation
La Jolla, California

Date of Appeal to Commission: April 29, 1988

Date of Hearing: June 14, 1988

Place: RICHMOND, VIRGINIA

Decision No.: 30177-C

Date of Mailing: July 8, 1988

Final Date to File Appeal with Circuit Court: July 28, 1988

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This is a matter before the Commission as the result of an appeal filed by the claimant from the Decision of Appeals Examiner (UI-8803741), mailed April 27, 1988.

APPEARANCES

Claimant, Representative for 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

The claimant filed a timely appeal from the Appeals Examiner's decision which affirmed an earlier Deputy's determination and disqualified her for benefits effective March 6, 1988, for having left work voluntarily without good cause.

Prior to filing her claim, the claimant's last thirty-day employer was National Health Laboratories, Inc., of La Jolla, California, between January 14, 1986, and January 15, 1988. She worked out of the employer's Richmond, Virginia, office as a driver, making $5.23 per hour.

The claimant's job involved a route to pick up medical specimens from various clients of the employer. The claimant's route was entirely in the local area of Richmond, and she worked from 10:30 a.m. until 7 p.m., Monday through Friday.

Being unmarried with a six-year-old daughter who attends elementary school, the claimant had the sole responsibility of arranging for child care for the period of time after her daughter got out of school until she finished her job in the evening. She had worked it out so as to take her half-hour meal break in order to pick her daughter up at school and drop her off at her sister's home some seven miles away. She could then return to finish her daily route without any difficulty. When first hired, the claimant was told there was a possibility that, as business demands dictated, the routes could change. Despite this, she had no idea that they could change as drastically as she was told in November of 1987. At that time, her supervisor indicated that, due to an increase in business, she was to be assigned to an out-of-town route which went to Emporia, Virginia, and back. This meant that she would no longer be able to take her daughter from school to her sister's when the change was made effective January 1988. Because her sister had no car and because the school bus from her daughter's school did not run near her sister's home, the claimant knew that she would be facing a serious problem in providing for child care in the future.

The claimant attempted to get her supervisor to change the routes around so that she would still be nearby in the afternoon so as to be able to continue with the child care arrangement she had previously made. One such possibility was discussed; however, it would have taken over an hour, rather than just thirty minutes, for her to transport her daughter and get back on the route. Although the claimant was willing to do this, her supervisor indicated that he could not permit company time to be used in such a manner. Additionally, the person who had previously done the out-of-town route was to be assigned to do paperwork in the employer's office in the afternoon due to his prior experience in this area. The claimant did seek to find somewhere else to place her daughter in the evenings, but found no child care provider who would be willing to keep her after 6 p.m. She offered to pay friends to provide transportation; however, no one would agree to do this. Although she did not think about the possibility of

paying for a taxicab, she later found out that to do so would have cost her over $22 a day. Because she could not work out satisfactory arrangements for the care of her daughter while she was driving a route out of town, the claimant resigned her job just before the new assignment was to become effective.

Although duly notified of the hearing before the Commission for the purpose of taking additional testimony and evidence concerning what efforts might have been made to accommodate the claimant's child care problems, no employer representative appeared at that hearing, and there was no response from the employer to the notice of it. Additional testimony at the hearing was taken from the claimant concerning the actual distance between her daughter's school and her sister's home, the actual cost of taxi service for the round trip, as well as the claimant's response to the statement being made by the employer representative at the end of the hearing concerning attempts to work out a route which might have still allowed her to pick up her daughter from school on a daily basis. Additionally, Commission records reflect that the claimant had subsequent employment with Critical Care Services, Inc., starting in February, 1988, and that she was still employed there as of March 25, 1988, which was several weeks after her claim for benefits was made effective.

OPINION

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.

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. Stated in other terms, the claimant must have made every effort to eliminate or adjust with his employer the differences of which he complains. He must take those steps that could be reasonably expected of a person desirous of retaining his employment before hazarding the risks of unemployment. See, Lee v. Virginia Employment Commission, et al, 1 Va. App. 82, 335 S.E.2d 104 (1985).

In the case of Phillips v. Dan River Mills, Inc., Commission Decision 2002-C (June 15, 1955), the Commission stated:

> Therefore, where the pressure of real, not imaginary, substantial, not trifling, reasonable, not whimsical, circumstances

> compel the decision to leave employment, the worker leaves voluntarily but with good cause. The pressures of necessity, of legal duty, or family obligations or other compelling circumstances, and the worker's capitulation to them, will not penalize his right to benefits if he once again reenters the labor market.

In the case at hand, the claimant did have a legal obligation to provide proper care for her six-year-old daughter after school. Although she had made satisfactory arrangements in this regard when she drove the local route within the city of Richmond, that arrangement could not be continued if she were to take the route requiring her to be out of town at the time her daughter got out of school. It is apparent from the evidence that the claimant did make a reasonable effort to find some other arrangements which would allow her to keep her job as well as to properly care for her daughter after school. Her failure to explore the possibility of taxi service which was apparently relied upon by the Appeals Examiner is really of no importance since the cost would have been prohibitive. It has been previously held that the Commission has never required that an employee do something which, if performed, would in no way alter a given situation. See, Dudding v. Mountain National Bank, Commission Decision 5510-C (November 18, 1971). (Underscoring supplied)

The Appeals Examiner cut off a statement the employer representative was making just before the end of his hearing. From what got into the record, it would appear that there was some attempt to adjust the routes so that the claimant would still be able to pick up her daughter after school; however, the time involved would have been considerably increased. If such an option was offered to the claimant and if she refused it, then it might well be concluded that she had left work voluntarily without good cause. Despite this, when the employer chose not to make an appearance before the Commission after being specifically noted that additional testimony would be taken on this point, the Commission has no choice but to accept the claimant's uncontroverted testimony that such a change was discussed and she wanted to accept it; however the supervisor decided that it could not be implemented, since the time involved exceeded her meal break. From this, it is concluded that the claimant did exhaust all reasonable alternatives to resolve the situation with her employer prior to quitting her job for reasons she has shown to have been necessitous and compelling. Accordingly, she should not be disqualified under this section of the Code.

Although not part of the proceedings before the Commission, the fact that the claimant has had other employment subsequent to the service performed for National Health Laboratories, Inc., raises issues which must be considered further. Specifically, it should be determined whether or not she had wages during any weeks for which benefits may have been claimed and whether there might be a subsequent separation to consider. Because of this, the case should be referred to the local office Deputy for further proceedings.

DECISION

The Decision of Appeals Examiner is hereby reversed. It is held that the claimant is qualified for unemployment compensation effective March 6, 1988, with respect to her separation from the services of National Health Laboratories, Inc.

This matter is remanded to the local office Deputy who is instructed to inquire further into the claimant's subsequent employment with Critical Care Services, Inc., so as to determine if she has any wages which might affect her benefits during any weeks for which benefits were claimed, as well as to determine whether there might be a subsequent separation which might require the issuance of another determination.

Charles A. Young, III
Special Examiner