



**JOHN B. GOLDHAMER, MBA, J.D. Equivalent**

Glen Allen, Virginia

[www.Linkedin.com/in/JohnGoldhamer](http://www.Linkedin.com/in/JohnGoldhamer)

[www.JohnGoldhamer.com](http://www.JohnGoldhamer.com)

**I can Hammer out any Problem!**

John B. Goldhamer is an “*Authored Tax Law Expert*” with *Education and Experience in all Business Disciplines*, including J.D. Equivalent Legal Education, Finance, Marketing, MBA, Accounting, and Information Systems. John’s *Free Position Papers* are *Educational, Entertaining, and Empowering* that provide definitions, procedures, website links for cross reference and Table of Contents for easy review

**12 GOOD CAUSES FOR LEAVING A JOB AND RECEIVING VIRGINIA UNEMPLOYMENT**

Based on the Virginia Employment Commission (VEC) Case Law, Rules, and Regulations

**TABLE OF CONTENTS**

Definitions .....	2 - 5
State Unemployment Weekly Maximum Benefit Amounts .....	6
VEC Procedures .....	6
Claimant Notice of Telephonic Fact Finding Interview .....	6
Whether or Not You Voluntary Resigned Your Position without Good Cause .....	6
Telephonic Fact Finding Interview .....	7
Question- Resigned Job, but Can I still receive Virginia Unemployment Benefits? .....	7
Issues .....	7
1. Did the employee voluntary leave their position? .....	
2. Was the voluntary leave covered under the twelve (12) good reasons listed in The [Virginia] Guide For Effective Unemployment Insurance Adjudication? .....	
Application of Law – Virginia Unemployment Insurance Guidance Documents .....	8
<u>[Virginia] Guide For Effective Unemployment Insurance Adjudication, lists Twelve (12) “Good Causes”</u>	
a. Definition of Good Cause .....	8
b. Attendance at School or Training Course .....	9
c. Conscientious Objection .....	9
d. Distance to Work and Transportation .....	10
e. Domestic Circumstances .....	10
(1) Care of Parents .....	10
(2) Unemancipated Infants .....	10
(3) Child Care .....	11
(4) Health of Children .....	11
(5) Spouses .....	11
(6) Living Expenses .....	11
f. Health or Physical Condition .....	11
g. Retirement or Pension .....	12
h. Leaving for Another Job .....	12
i. Termination of Employment Due to Change in Ownership .....	12
j. Full-time Versus Part-time Work .....	13
k. Union Relations .....	13
l. Working Conditions .....	13 - 15
(1) Hours of Work, (2) Wages, (3) Conditions at the Job Site, (4) Relations with Supervisor, (5) Relations with Fellow Employees, (6) Working Conditions-Morals (7) Working Conditions-Safety	
U.S. Department of Labor- Most States have 10 Good Cause criteria based on an Individual’s Risk .....	15
Conclusion- Clearly, the Claimant voluntarily resigned for a “Good Cause.” .....	15
Summary Conclusion- Claimant asks to be Awarded Full Unemployment Benefits .....	15
VA Guide for Effective Unemployment Insurance-Adjudication-cover, forward, preface, VEC appeals website	

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**Definitions**

VEC FAQ's - Glossary

<http://www.vec.virginia.gov/faqs/glossary>

16VAC5-10-10 of the Virginia Administrative Code "Definitions"

<https://law.lis.virginia.gov/admincode/title16/agency5/chapter10/section10/>

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**Act** - The Virginia Unemployment Compensation Act as set out in Title 60.2 (§ 60.2-100 et seq.) of the Code of Virginia. Commission means the Virginia Employment Commission as defined in § 60.2-108 of the Code of Virginia.

**Actively Seeking Work** - That you *personally* visit several employers each week in your efforts to find work. You are required to provide the VEC, when requested, with information about each employer or company you visit while seeking work. These visits are called *job contacts*. (\*)

**Actively Seeking Work - Job Contacts** - You must conduct an *active work search* and report two (2) or more Job Contacts each week. (\*) Resumes are acceptable job contacts if that is the employer's requirement. Certain occupations require the use of resumes as the usual and customary means of soliciting work. If you have one of these occupations, *faxing, mailing, and Emailing resumes to prospective employers will be acceptable in lieu of personally contacting employers*. The VEC has also made the decision to permit telephone calls as an allowable method of making work search contacts. If a *claimant fails to provide enough information to verify a job contact* then the Commission cannot exercise its option to do so, but it does not establish falsification. [www.vec.virginia.gov/book/export/html/915](http://www.vec.virginia.gov/book/export/html/915)

**Base Period** - The base period is the first four of the last five completed calendar quarters prior to the effective date of your claim. If your claim is filed in January, February, or March 2009, your base period is October 2007 through September 2008. If your claim is filed in April, May, or June 2009, your base period is January 2008 through December 2008. If your claim is filed in July, August, or September 2009, your base period is April 2008 through March 2009. If your claim is filed in October, November, or December 2009, your base period is July 2008 through June 2009. The wages earned in the base period determine your monetary entitlement. Determine your base period.

**Benefits** - The compensation payable to an individual, with respect to his unemployment, under the unemployment insurance law of any state or under any federal program in which such compensation is payable in accordance with applicable state law.

**Blind Ad** - Any job announcement or advertisement where the name of the employer/company is not provided. Responses to blind ads for jobs or openings are not acceptable as job contacts.

**Burden of Proof** - The necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause. Black's Law Dictionary

**Burden of Proof, Unemployment Compensation Benefits** - The burden of proof is on the *employer to show misconduct* by a preponderance of evidence. Once the employer has proven misconduct, the burden shifts to the *claimant to prove mitigating circumstances*. When Claimant is Discharged (fired), then the burden is on the *employer to prove the claimant was fired due to misconduct*. When Claimant Quits, then the *employer must show the claimant was not forced to quit*, and once established the *claimant must show good cause for leaving*. [Virginia Unemployment Compensation- What Employers Need To Know](#)

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**Calendar Quarter** - The period of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st.

**Claim** -- A notice of unemployment filed to request a determination of eligibility and the amount of benefit entitlement or to claim benefits.

**Claimant** - An unemployed individual who files a claim for unemployment compensation.

**Covered Employment** - Employment as defined in Section 60.2-612 through Section 60.2-618 of the Code of Virginia performed for an employer or federal employment as in Chapter 85, Title 5, U.S. Code

**Duration of Benefits** - The number of total weeks of benefits a claimant may potentially draw during a benefit year. §60.2-602, §60.2-607

**Earned Income** - According to the IRS, all income from employment, such as Wages; Salaries; Commissions; Bonuses; Tips; and other taxable employee compensation derived from paid work for working for an organization or the profit from owning a business. Examples of Income that are *Not Earned Income* are: Interest, Dividends, Retirement Income [Pension or 401(k) Withdrawals] Social Security Benefits, Unemployment Benefits, Alimony, and Child Support.

**Employer** - An employing unit that meets the liability requirements under the law and is required to pay unemployment insurance taxes. §60.2-210

**Employment** - Any service performed by an individual for remuneration under any written or oral contract of hire with an employing unit. §60.2-212 (Exemptions to "employment," Section §60.2-219.)

**Executive or Corporate Officer** - Is (i) the president, vice-president, secretary, treasurer or other officer, elected or appointed in accordance with the charter and bylaws of a corporation and (ii) the managers elected or appointed in accordance with the articles of organization or operation agreement of a limited liability company. It does not include persons with the title of director or LLC member. A Corporate Officer who is a primary owner of the legal entity and files a claim for benefits will require a determination if the officer is unemployed through no fault of their own and beyond their control.

**Extended Benefits** (EB) - Unemployment benefits paid to a claimant after regular benefits have been exhausted, during periods of prescribed high national or state unemployment levels. §60.2-610, 611

**In-Person Hearing** - A hearing where the parties, witnesses and representatives personally appear before the appeals examiner or special examiner.

**Interstate Claimant** - An individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term interstate claimant shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the commission finds that this exclusion would create undue hardship on such claimants in specified areas.

**Liable Employer** - The employing unit for whom a claimant last worked during 30 days, whether or not such days were consecutive, or 240 hours prior to filing an initial, additional claim for benefits.

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**Maximum Benefit Amount** - The total amount of benefits that an individual may receive during his benefit year. (This amount is determined by multiplying his weekly benefit amount and the number of weeks of benefits for which he may qualify.) §60.2-607

**Monetary Determination** - A written notice issued to inform an individual whether or not he meets the employment and wage requirement necessary to establish entitlement to compensation under a specific unemployment insurance program, and, if entitled, the weekly and maximum benefit amounts the individual may receive and the duration of benefits payable.

**Nonmonetary Determination** - A decision made by the deputy based on facts related to an "issue" under the following conditions: (1) the present, past, or future benefit rights of a claimant are involved; (2) a week of unemployment is claimed and the determination affects such week or could result in a reduction of the monetary award; (3) there are identifiable documents showing the type and disposition of an issue, the material facts considered in arriving at the determination, and if it involves the denial of benefits, is issued in the form of a written determination notice to the claimant. (No determination denying benefits may be issued until the claimant has been afforded an opportunity to furnish any facts he may have relating to disqualifying information received from other sources.)

**Partially Unemployed Individual** - An individual who during a particular week (i) had earnings, but less than weekly benefit amounts, (ii) was employed by a regular employer, and (iii) worked, but less than his normal customary full-time hours for such regular employer because of lack of full-time work.

**PIN** - It is your personal identification number. You must use it each time you claim your weekly benefits through the VRS. You will be asked to provide the last four digits if you make a telephone inquiry about your claim. Your PIN will be sent to you in a separate mailing after you file your claim. It is very important that you keep the number confidential and do not share it.

**Qualification For Benefits** - After filing application for benefits, the VEC will decide if you meet three separate requirements: 1) Monetary eligibility; 2) Separation qualification; and 3) Weekly eligibility.

**Minimum Benefit** - In Virginia, an individual must have *earned income at least a total of \$3,000 in two quarters in the base period*. The Minimum Benefit is \$60 per week.

**Maximum Benefit** - In Virginia, an individual must have *earned income at least \$18,900.01 in two quarters during the base period* for the maximum weekly benefit amount. The Maximum Benefit amount is \$378 per week. [www.vec.virginia.gov/pdf/uitransactben.pdf](http://www.vec.virginia.gov/pdf/uitransactben.pdf)

(Base Period is the first four of the last five completed calendar quarters prior to the claim date)

**Qualifying Wages** - The amount of wages in covered employment an individual must have within the two highest quarters within his base period in order to be entitled to compensation.

**Severance And Dismissal Pay** - For the purpose of taxation and benefits, all payments made by an employer at or subsequent to an employee's separation, except that payments which are exclusively for services performed prior to separation shall not be treated as severance or dismissal pay. Such payments may be allocated by the employer for any period following separation so long as such allocation is at a weekly rate at least equal to the average weekly wage received by such employee during the last calendar quarter preceding the separation, and will in such cases be deemed to have been paid in those weeks covered by the allocation.

*If no allocation is made by the employer, payments will be deemed allocated to the last day of work.*

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**Suitable Work** - Many factors are taken into consideration in determining whether work is suitable. These factors include your *previous work experience, your physical and mental fitness, risk to your health, safety, or morals, and the distance from your home*. You must report all job offers that you decline when you file your weekly claim for benefits.

**Telephone Hearing** - A hearing where all parties, witnesses and representatives participate before the appeals examiner by way of a telephone conference call.

**Total Unemployment** - The unemployment of an individual for any week in which he performs no work and has no wages payable to him, whether or not he is attached to an employing unit's payroll.

**Unemployment Compensation** - The state program that provides benefits to individuals covered under state and federal unemployment compensation laws, supplemental extended compensation (payable to eligible individuals under other provisions of state and/or federal laws during periods of high unemployment) and other special programs which compensate individuals involved in situations which adversely affect their employment status through no fault of their own.

**Unemployment Insurance** - The program term, which encompasses all state and federal unemployment compensation laws and related programs, is administered by the state and federal Unemployment Insurance Services.

**The [Virginia] Guide For Effective Unemployment Insurance Adjudication, 2010** - A synthesis of the basic legal principles followed by adjudicators and judges in resolving issues that arise under the Virginia Unemployment Compensation Act, Title 60.2. Its dual aims are to provide training for new Agency adjudicators and a reference for veteran adjudicators. [www.vec.virginia.gov/vecportal/unins/pdf/effectiveuiadjudication.pdf](http://www.vec.virginia.gov/vecportal/unins/pdf/effectiveuiadjudication.pdf)

**Wages** - All remuneration payable for personal services including commission, bonuses, tips, back pay, dismissal pay, severance pay, and any payment made by an employer to an employee during his employment, thereafter. The cash value of all remuneration payable in any other medium other than cash.

**Waiting Week** - The first week of eligibility in a claim year is a waiting week and is not paid. Only one waiting period week is served in a benefit claim year. §60.2-612.9

**Week** - Seven consecutive days *beginning on Sunday and ending the following Saturday at midnight*.

**Weekly Benefit Amount** (WBA) - The weekly benefits payable to a totally unemployed individual. The amount is based on prior earnings. §60.2-602

**Workers' Compensation** - A mandatory insurance requirement for most employers. It provides statutory benefits to covered workers who are injured in their employment. Virginia law requires every employer who regularly employs more than two employees part-time or full-time to carry workers' compensation coverage. *Glossary of Workers' Compensation Terms*:  
[www.vwc.state.va.us/sites/default/files/documents/VWC-Glossary-of-Terms.pdf](http://www.vwc.state.va.us/sites/default/files/documents/VWC-Glossary-of-Terms.pdf)

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**State Unemployment Weekly Maximum Benefit Amounts**

Unemployment Taxes are paid by the employer organization to the federal government and the state, which then pays the unemployed person. Just like medical insurance benefits, unemployment benefits are simply another “*Employee Benefit*” to the employee, but it is considered “*Wage Income*,” and is taxable to the unemployed person at the Federal level, but it is exempt in Virginia.

Each state provides its own *Unemployment Monetary Determination* or *Weekly Benefit Amount*. The current U.S. unemployment weekly benefit maximum amount, average is \$422; from a high of \$1,103 per week for 30 weeks for Massachusetts to a low of \$235 per week for 26 weeks for Mississippi. Virginia unemployment maximum weekly benefit at \$378 per week for 26 weeks is *near* the average.

<https://ows.doleta.gov/unemploy/content/sigpros/2010-2019/July2017.pdf>

**VEC Procedures**

The VEC (Virginia Employment Commission) procedures are that after you apply online for unemployment benefits, you will receive an *Award Statement* listing your *Monetary Determination*, which currently is a maximum of \$378 Gross per week for a maximum of 26 Weeks. Some applicants might receive less money and a shorter time span. If you worked in another state within the last 18 months, then you might receive more money by filing with that state.

It is recommended that you have 10% Federal Taxes withdrawn from your unemployment benefit payments. Of the 41 states that tax wages, 5 states completely exempt unemployment benefits from tax (California, New Jersey, Oregon, Pennsylvania, and Virginia). VA Code §58.1-322 (C)(25)

Filing and receiving unemployment benefits will not appear on credit reports. Credit reports only list credit and debt-related information. Only a former employer’s Payroll Department and the VEC will know about your filing and receiving unemployment benefits.

The VEC only communicates by U.S. Mail and will refer to you as “*The Claimant*.”

**Claimant Notice of Telephonic Fact Finding Interview**

By U.S. Mail, the Claimant will receive a “*Claimant Notice of Telephonic Fact-Finding Interview*” stating:

A telephone fact-finding interview may be conducted by a Deputy of the Virginia Employment Commission in connection with your unemployment insurance benefits on \_\_\_\_\_ at \_\_\_\_\_.

The following issue(s) has been raised concerning your eligibility for unemployment compensation:

**WHETHER OR NOT YOU VOLUNTARY QUIT YOUR EMPLOYMENT WITH GOOD CAUSE**

Issues such as pension, vacation, severance, holiday pay, etc. that may affect your entitlement to unemployment benefits may be discussed during this hearing.

**THE EMPLOYER MAY PARTICIPATE IN THE INTERVIEW**

**PROCEDURES FOR THE PROCEEDING**

The deputy will call you at the scheduled time. Please answer your phone promptly; do not wait for the deputy to leave a message because the hearing will start without you if you do not answer when called.

**USE OF THE TELEPHONE:**

Once the proceeding begins each party will have the opportunity to speak and present its case fully. Each party will have the opportunity to question other participants.

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It is important to:

1. Identify yourself before speaking.
2. Speak clearly and slowly into the telephone.
3. Do not interrupt the speaker. The deputy will afford each party the opportunity to address all information presented by the other party.
4. If, at any time during the proceeding, you have difficulty hearing the conversation, notify the Deputy immediately.
5. If you lose the connection, hang up and wait for the Deputy to call you again to continue the proceeding.

**Telephonic Fact Finding Interview**

Generally, the VEC will request a “*Telephonic Interview*” or “*Telephonic hearing*” with a “Deputy” who might not be an attorney, but usually a person who has been with the VEC a long time.

The company or an “*Agent of the company,*” such as *Equifax Unemployment Cost Management* or *Talx* has the right to participate the “*Telephonic Interview*” to present their side of the issue.

If you received a *Separation and Release Agreement* stating that the company or its Agent will *not* challenge Unemployment, then make sure you list it on the VEC-B-60.MV “*Claimant’s Statement Concerning Voluntary Quit-Leave of Absence*” and mention it in the “*Telephonic Interview.*”

In addition, *if it is true*, you should explain that you were told you were “*Not a good fit.*”

Stress that you were “*Doing your job to the best of your ability.*” This shows the Deputy that you were trying to do a good job for the company.

If the company or an “Agent,” does not attend, then the Deputy might quickly end of the “Telephonic Interview,” which may be good and mention that the *Notice of Deputy’s Determination* will be mailed. You might receive a letter in about 3 weeks that you won and then the VEC will pay your Unemployment Benefits retroactively.

**Question**

I resigned from an organization where I had worked for many years. Can I still receive *Virginia Unemployment Benefits*?

**Issue**

1. Did the employee voluntarily leave their position?
2. Was the voluntary leave covered under the twelve (12) good reasons listed in The [Virginia] Guide For Effective Unemployment Insurance Adjudication?

Usually, if an employee leaves a position, they are not eligible for Virginia Unemployment Benefits unless it is for one of the twelve good causes. In order to constitute good cause it has been held that the reason for leaving must be so compelling or necessitous that the individual has no reasonable alternative except to leave the job.

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Application of Law – Virginia Unemployment Insurance Guidance Documents

The [Virginia] Guide For Effective Unemployment Insurance Adjudication, 2010, lists  
 Twelve (12) “*Good Causes*” for receiving Unemployment Benefits.

<https://www.vec.virginia.gov/vecportal/unins/pdf/effectiveuiadjudication.pdf>

The purpose of this Guide is to familiarize the reader with the principles of unemployment insurance law in Virginia, including statutes, regulations, Commission decisions, and rulings of the Courts. It is organized into three main sections: Eligibility, Disqualification, and Miscellaneous. Generally, each topic includes a statement of the applicable law and, if appropriate, a digest of typical issues that cites decisions on point.

2.	Good Cause . . . . .	67
	a. Definition of Good Cause . . . . .	67
	b. Attendance at School or Training Course . . . . .	69
	c. Conscientious Objection. . . . .	70
	d. Distance to Work and Transportation . . . . .	71
	e. Domestic Circumstances . . . . .	73
	(1) Care of Parents. . . . .	74
	(2) Unemancipated Infants. . . . .	74
	(3) Child Care . . . . .	74
	(4) Health of Children . . . . .	76
	(5) Spouses . . . . .	76
	(6) Living Expenses. . . . .	76
	f. Health or Physical Condition. . . . .	78
	g. Retirement or Pension . . . . .	79
	h. Leaving for Another Job . . . . .	79
	i. Termination of Employment/Ownership . . . . .	83
	j. Full-time v. Part-time Work . . . . .	85
	k. Union Relations . . . . .	86
	l. Working Conditions. . . . .	86
	(1) Hours of Work . . . . .	86
	(2) Wages . . . . .	87
	(3) Conditions at the Job Site. . . . .	90
	(4) Relations with Supervisor . . . . .	91
	(5) Relations with Fellow Employees. . . . .	93
	(6) Working Conditions--Morals. . . . .	93
	(7) Working Conditions--Safety. . . . .	94

**a. Definition of Good Cause**

Once a voluntary leaving has been found, the adjudicator must then see if the claimant has established good cause for that action. See *Kerns v. Atlantic American, Inc.*, VL 190.1. In order to establish good cause....

*it must be shown that the reason for leaving employment was so necessitous and compelling as to leave no alternative but to quit and that prior to leaving, the claimant made every effort that a reasonable person desirous of maintaining employment would pursue in order to protect his job.* See *Manning v. Tidewater Regional Transit*, Commission Decision 13598-C, (May 6, 1980), VL 235.25 and *Lee v. Virginia Employment Commission and General Service Administration*, 1 Va. App. 82, 335 S.E.2d 104 (1985), VL 515.05.

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In Lee, the Court of Appeals cited the following construction of the phrase 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.

b. Attendance at School or Training Course

With one exception, a claimant who leaves work to attend school or training cannot establish good cause for having voluntarily quit. See McLaughlin v. Eighth Sea, Inc., Commission Decision 6068-C (August 17, 1993) AA 40. Numerous past decisions on this subject have spoken of the commendable personal desires of such individuals to further their education which do not meet the "good cause" requirements for avoiding a disqualification.

The exception is a statutory one, found in Section 60.2-613 of the Code. (See "Approved Training" elsewhere in this Guide.) If a claimant leaves work which is deemed to be "unsuitable" (not substantially equal or higher in terms of skill level or paying less than 80% of average weekly wages earned in adversely affected employment under the Trade Act of 1974) in order to enroll in training approved under Section 236(a)(1) of the Trade Act of 1974, then he cannot be disqualified for that separation for having left work voluntarily without good cause.

c. Conscientious Objection

A claimant who leaves work due to conscientious objection to some required aspect of the job may have good cause for doing so. If the evidence shows that an employer, who is made aware of a conflict between the job requirement and the claimant's genuine religious beliefs, cannot or will not make a reasonable accommodation, the work is not suitable for the claimant and he has good cause for leaving such work. In the case of Rohrer v. Buchanan County Sheriff Department, Commission Decision 22174-C, (March 2, 1984), VL 90 and SW 90, the claimant was a deputy engaged in serving court papers, warrants and subpoenas. At the time he was hired he informed the employer that his religious beliefs forbade carrying a gun, and for several years he performed his duties without having to do so. He quit his job after being told that, in the future, wearing a gun would be a requirement of his job.

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d. Distance to Work and Transportation

Where a claimant bases a decision to quit work upon a lack of transportation or the distance to the job, it is necessary to determine what distance is involved and whether the work is located within the individual's normal labor market area. Generally, if the work is located beyond the normal labor market area and the claimant has no alternative means of transportation, his leaving is for good cause. In the case of Campbell v. Shenandoah Sand and Gravel, Inc., Commission Decision 13080-C, (April 8, 1980), VL 150.2, the claimant worked for four months at a job located 60 miles from his home. He had no car and was able to commute with his supervisor and co-workers to the job site. When they quit, the claimant had no way to get to work since no public transportation was available. In awarding benefits, the Commission held that he should not be penalized for accepted work located at such a distance.

e. Domestic Circumstances

Domestic circumstances account for a high percentage of cases contested under this section of the Code. The general rule to follow is that stated in the Phillips case found earlier in this Guide. In Phillips, the claimant left work to care for her aged and infirm parents after acting upon a physician's advice and demonstrating that she was the only person available to provide such care.

(1) Care of Parents -- While the legal obligation of an adult child to care for his parents exists, it is a shared obligation among all siblings. Section 20-88 Code of Virginia. Thus, a claimant who has brothers and/or sisters who live near their parents cannot establish good cause within the meaning of the statute simply because he has no family and it is convenient for him to take on the responsibility of caring for the parents. Similarly, the desire of a claimant to move closer to his elderly parents who are capable of caring for themselves would not be sufficient to establish good cause for leaving work.

Certain circumstances may present themselves where an adult child may have good cause to stay with a sick parent. In AAA v. George & VEC, No. 2344-94-4 (Va. Ct. App. Jul. 5, 1995) the claimant was approved for three weeks of leave to attend to her sick mother in England. When the mother's condition worsened, the social worker at the hospital recommended the claimant stay in England for a period that extended beyond the pre-approved leave. Although the claimant contacted the employer through her husband and daughter to explain and document the situation, the employer sent the claimant a certified letter to the claimant that a failure to return to work on a specified day would be considered a voluntary resignation. The court found that the claimant took every step a reasonable person desiring to retain her employment would take and did not willfully disregard her obligations to the employer. Thus, the court held the claimant did not quit her job without good cause, and she was qualified for benefits.

(2) Unemancipated Infants -- Children under the age of 18 are unemancipated infants and, thus, legally under the authority of their parents. If such a child leaves work to accompany his parents to a new locality beyond a normal commuting distance, then such leaving is with good cause in response to a legal duty. However, when the child is 18 and moves with his parents because his job is only paying minimum wage and would not support him in an independent living situation, such a leaving has been held not to constitute good cause. See Kinard v. Pine Trees Inn, Decision UCX-139, (July 20, 1979), VL 155.05. Note, however, that other factors may show up in this type of case. A child might be legally an adult but have a medical condition which requires parental care. Evidence of this may well be enough to invoke the "necessitous and compelling with no reasonable alternatives" doctrine discussed earlier.

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(3) Child Care -- Of course, parents are legally obligated to provide for their children, including making such arrangements for child care as will allow them to work. Sometimes such arrangements require individuals to work less, creating possible weeks of unemployment. Other times, when child care arrangements fall through, an individual may feel compelled to quit work and later file a claim.

(4) Health of Children -- *Care of children can also be good cause for leaving even if babysitting is not an issue.* In *Dix v. Dan River Mills, Inc.*, Commission Decision 22450-C, (January 9, 1984), VL 155.1, the claimant left Virginia to move to Arizona for the sake of his children's health. Particularly notable in this case is the fact that good cause for leaving was found even though the written doctor's statement recommending the move was not obtained until after the separation. Presumably, this made no difference since presentation of such a doctor's statement to the employer could not have changed the ultimate fact that the claimant had to leave and there was nothing the employer could have done to accommodate the situation.

(5) Spouses -- *If a claimant quit to care for a spouse and did not move, the situation is similar to those previously discussed with respect to parents and children.* Medical documentation of the spouse's condition (and presumably that of a child or parent) need not be required if there is no dispute on this issue between the parties or the Commission. See *Wright v. Russell County CETA Program and Virginia Employment Commission*, Circuit Court of Russell County, Action No. 5304, (January 19, 1983), VL 155.35 and VL 190.15.

(6) Living Expenses -- Other domestic circumstances which might prompt a resignation center around housing and living expenses. Just because a claimant feels that it is financially expedient to leave work to move in with relatives or to an area with a lower standard of living does not mean that good cause exists for the separation. In the case of *Durst v. United Masonry Inc. of Va.*, Commission Decision 24702-C, (March 7, 1985), VL 155.3, it was held: In this regard, the Commission has consistently refrained from considering the matter of an individual's finances. At best, such an analysis would be highly subjective since it involves questions of personal taste, habit, and ability to manage money, all of which may vary from one person to the next.

f. Health or Physical Condition

A claimant may have left work voluntarily because of his own health, physical condition or concern. Even if there is no change in his job duties, the work can be found to be unsuitable giving rise to good cause for leaving it. See *Weakley v. Sperry Marine Systems*, Commission Decision 6680-C, (April 7, 1975), VL 235.05. This case involved an award of benefits to a claimant who left work due to health conditions after informing her employer of the problem and trying unsuccessfully to perform alternate work.

In denying benefits, the Commission cited two factors on which an individual alleging health reasons for leaving work needs to bear the burden of proof to demonstrate good cause. They are:

1. The claimant must produce competent medical evidence to show he was precluded from working because of a medical condition and/or that a physician directed or advised the claimant to permanently leave employment due to a health problem; and

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2. The claimant took such steps which a reasonable person would take who is desirous of retaining employment (i.e., exhaust all reasonable alternatives to unemployment), including informing the employer of the health problem and requesting a transfer or a leave of absence.

g. Retirement or Pension

An individual who retires from work may or may not have left voluntarily. Mandatory retirement due to age or health would not represent a voluntary act on the claimant's part although it would raise questions of availability for work under Section 60.2-612(7) of the Code, as well as a reduction of benefits because of the receipt of a pension under Section 60.2-604. What appears to be a voluntary retirement may actually be the result of a lack of work situation under the rationale of the Gannaway case.

Frequently, an employer faced with a layoff situation will offer inducements to older workers to exercise their retirement options. If those inducements are in lieu of a layoff, then a claimant who takes it may well be found to have good cause for doing so. Examples of such inducements include the crediting of extra service, the waiver of minimum age for retirement, or a cash benefit payment.

h. Leaving for Another Job

Frequently, an adjudicator will be faced with the situation in which a claimant quits work in order to go to another job which either did not materialize or which came to an end prior to becoming the claimant's last 30-day employer. Such a voluntary separation is for good cause if it is shown that (1) the new job represented an improvement in the claimant's circumstances; (2) the claimant had a reasonable expectation that it was for a non-temporary, indefinite duration; and (3) the claimant had actually secured the new job prior to quitting.

In *Taylor v. Tazewell County School Board*, Decision SUA-196, (May 27, 1977), VL 365.05, the claimant had been a custodian and bus driver at \$2.75 per hour. He quit this job upon being promised employment as a machinist trainee with a salary of \$3.55 per hour and a definite starting day. After resigning his job with the school board, he reported to the new job only to be told that economic conditions prevented the company from hiring him at that time.

i. Termination of Employment Due to Change in Ownership

Although previously discussed under the heading of "Voluntary," cases where an individual claimant was also an official partner, corporate officer or major shareholder in the employer's business also need to be mentioned here. While the sale of a claimant's personal interest in the business resulting directly in his unemployment may represent a voluntary leaving of work, the question of good cause for that action is still open.

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j. Full-time Versus Part-time Work

Situations arise in which a claimant leaves work because it is only part-time, it having been a secondary job before the loss of the primary one. (Situations where hours have been reduced will be discussed later under "Working Conditions.") In the case of McLamb v. Larasan Realty Corp., Commission Decision 7691-C, (April 23, 1976), VL 450.4, the claimant had been notified that he was to be laid off from his full-time job at the end of the month. Then he gave notice that he was quitting his part-time job because that income alone would not support him. In denying benefits, the Commission stated:

Although the claimant had been released from his employment that was the primary source of his income, it was not mandatory he give up his part-time employment at the time he did. If he had not resigned, he could have possibly negotiated with the company for work that would remunerate him to the extent so he could have remained with the employer. ...

k. Union Relations

The situation may arise in which a claimant has left work voluntarily for reasons attributable to a union agreement with the employer or to internal union by-laws. Note that these situations assume a voluntary leaving and are distinct from those discussed previously. For instance, the employer and employees may have abandoned the union contract. There is no labor dispute involved since the master contract remains in force and the employer offers all workers the chance to stay on at the same rate of pay and under the same conditions of work. If the claimant quits only because he may be subject to sanctions for doing non-union work, this would be a purely personal reason not amounting to good cause. He would still have the reasonable alternative of continuing to work as he had done before because under Virginia law, his right to work is protected. See Code Section 40.1-58.

l. Working Conditions

The final category to be discussed in this subsection is also one of the broadest. Previously, good cause for leaving has been viewed from the perspective of external factors affecting the claimant's decision. As noted before, the Code applies no limitation of good cause findings to work-related reasons. Working conditions can constitute good cause for leaving and the more recurrent situations will be covered here. This coverage is not exhaustive.

(1) Hours of Work -- It has long been recognized that an employer retains the fundamental right to schedule the work of an employee, including the imposition of reasonable amounts of overtime work. Furthermore, it is understood that some jobs involve seasonal fluctuations such as the "Christmas rush" in the retail trade and at the post office, planting and harvest in agriculture, Mother's Day for florists, and the summer boom in tourism and construction trades. During these peak times, it is not unusual for persons in such lines of work to be expected to work extra long hours. There are, however, limits beyond which an individual may have good cause to quit work in which the hours are excessive.

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(2) Wages -- Frequently, a determination of "good cause" will be required in cases where a claimant has left work due to complaints over wages. If there is a detrimental change in the wages which is so substantial as to render continued work unsuitable, then good cause will be found for the separation. In *Decker v. Hereth, Orr, & Jones*, Commission Decision 13641-C, (May 2, 1980), VL 500.1, the claimant was hired to sell bonds and promised a draw against commissions generated by his sales. After a few months, the employer took away the draw and wanted him to continue on commission only. When he quit, it was found to be with good cause.

(3) Conditions at the Job Site -- If a claimant cites the conditions at work (meaning, here, those general physical conditions under which the work was customarily performed as opposed to specific complaints about harassment, supervisors, pay or the like which will be discussed hereafter) as prompting a voluntarily leaving, he must show that the work was unsuitable, and, again, the adjudicator is reminded that Commission expert testimony on this point is most helpful.

(4) Relations with Supervisor -- Contrast the previous case to that in which the claimant leaves work due to specific complaints concerning his supervisor (as opposed to mere philosophical differences). In Decision UI-71-2859, (January 18, 1972), VL 515.05, the claimant was faced with a supervisor who not only usurped her authority, but who also insulted and demeaned her personally even after she had tried to conform to her wishes that she take on additional duties.

In awarding benefits the Commission stated: The claimant could not reasonably be expected to have continued in her capacity as store manager in the face of the continuing insults from and degradation of her position by the one individual to whom she must look for guidance and help in the proper performance of her duties.

(5) Relations with Fellow Employees -- People frequently leave work due to complaints concerning co-workers. These can range from simple personality conflicts to acts of physical violence. If the employer is not informed of the problem, generally good cause cannot be shown since the chance to resolve the differences has not been allowed to occur by the claimant. A change of work areas, shifts or disciplinary action on the part of the employer could all act to eliminate the problem of which the claimant complains. See *Bolden v. City of Alexandria*, Commission Decision 30472-C, (July 15, 1988), VL 515.4.

(6) Working Conditions - Morals -- In the case of *Spencer v. A. N. Clanton, D.O.*, Decision UI-74-3319, (December 26, 1974); aff'd by Commission Decision 6581-C, (February 20, 1975), VL 515.5, the claimant was working as a receptionist for a doctor with an alcohol problem. The doctor's wife wanted her to tell patients who were scheduled for times when the doctor was incapacitated due to his problem that he had been called away on an emergency. Benefits were awarded as it was held:

Conditions of work are seldom, if ever, ideal in every respect; and at times a worker is expected to accept the conditions provided they have not reached such a degree of unreasonableness that would impel an ordinarily prudent person to leave her employment. It is apparent from this claimant's testimony that her working conditions had become so intolerable that she could not reasonably be expected to continue. This is especially true where she was expected to cover-up for the employer by making false statements to the employer's patients.

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(7) Working Conditions--Safety -- Safety considerations have prompted many people to quit their jobs. In *Terrell v. Mecklenburg Correctional Center*, Commission Decision 24036-C, (November 21, 1984), VL 515.65, the claimant was a prison guard who had been previously assaulted on the job and became so fearful of the working environment that he quit. In denying benefits, the Commission quoted 76 Am.Jur. 2d, Unemployment Compensation, 68 which states:

While a claimant's honest fear of the work itself may constitute good cause for refusing proffered employment, neither a groundless, an unreasonable, a pathological, or a phantasmal fear, nor a fear due to hazards different or greater than those to which the employee was previously accustomed, even though he is oppressed by such fear or anxiety, answers the requirements of good cause. (Emphasis added)

U.S. Department of Labor- Most States have 10 Good Cause criteria based on an Individual's Risk

Most state laws allow for refusal of suitable employment for 'Good Cause,' which is defined in state law. Criteria for 'Good Cause' may include, but are not limited to the degree of risk to an individual's:

1. Health,
2. Safety
3. Morals,
4. Individual's Physical Fitness,
5. Prior Training,
6. Experience,
7. Earnings,
8. Length of Unemployment,
9. Prospects for Securing Local Work in a Customary Occupation,
10. Distance of the Available Work from the Individual's Residence.

<https://www.dol.gov/coronavirus/unemployment-insurance>

Conclusion

Usually, if an employee leaves a position, they are not eligible for Virginia Unemployment Benefits unless it is for one of the twelve exceptions.

In the Telephonic Fact Finding Interview, the Claimant should state:  
Clearly, the Claimant voluntarily resigned for a "Good Cause."

The [Virginia] Guide For Effective Unemployment Insurance Adjudication, 2010, lists Twelve (12) "Good Causes" for receiving Unemployment Benefits.

Number \_\_\_ applies to the Claimants situation, where the Claimant voluntarily resigned for \_\_\_.

Summary Conclusion

At the end of the Telephonic Fact Finding Interview, the Claimant should state:

Therefore, the Claimant asks that the Virginia Employment Commission Deputy to conclude the Fact-Finding Interview that Claimant voluntarily resigned for a "Good Cause" and that the Claimant be Awarded Full Unemployment Benefits.

Thank you for your consideration and please let Claimant know the *results of this request*.

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GUIDE FOR EFFECTIVE UNEMPLOYMENT INSURANCE ADJUDICATION

Office of Commission Appeals

VIRGINIA EMPLOYMENT COMMISSION

(Online edition)

<https://www.vec.virginia.gov/vecportal/unins/pdf/effectiveuiadjudication.pdf>

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By

Virginia Employment Commission  
Richmond, Virginia

Fifth Edition

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FOREWORD

The **Guide for Effective Unemployment Insurance Adjudication** in Virginia is a synthesis of the basic legal principles followed by adjudicators and judges in resolving issues that arise under the **Virginia Unemployment Compensation Act**, Title 60.2. Its dual aims are to provide training for new Agency adjudicators and a reference for veteran adjudicators. Although it does not purport to cover every contingency, it does summarize the fundamental considerations and is designed to make the task of researching the law easier for adjudicators. Interested parties and their representatives, as well as the general public, will also find the Guide a useful tool in gaining a better understanding of unemployment law in Virginia. Unemployment insurance law in Virginia is constantly evolving; therefore, the material presented herein only represents the current state of evolution. The **Guide** will be updated periodically to reflect changes in the law.

The Guide was developed in 1992 by the Office of Commission Appeals, and went through an extensive revision in 2009-2010. The revisions encompassed changes in the statutory authority as well recent Court of Appeals cases that altered or explained past precedent. Also in 2010, the Guide graduated from a text-only booklet to a web-based resource available on the Virginia Employment Commission's website. This step was taken to promote access to this important tool.

The primary authors of the original edition were Patrice T. Johnson and Charles A. Young, III. J. Steven Sheppard, III provided invaluable editing and comments, and Ogene Pitts, Edwin R. Richards, and M. Coleman Walsh, Jr. contributed ideas, suggestions, and critical review that aided the authors immeasurably. Thanks are due to Norma C. Turner for her administrative assistance and Margie Chism for her fine graphic artwork.

\_\_\_\_\_  
M. Coleman Walsh  
Chief Administrative  
Law Judge

\_\_\_\_\_  
Dolores Esser  
Commissioner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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PREFACE

The purpose of this Guide is to familiarize the reader with the principles of unemployment insurance law in Virginia, including statutes, regulations, Commission decisions, and rulings of the Courts. It is organized into three main sections: **Eligibility, Disqualification, and Miscellaneous**. Generally, each topic includes a statement of the applicable law and, if appropriate, a digest of typical issues that cites decisions on point.

Citations of decisions include cross-references to the subsection of the Commission's Precedent Decision Manual in which the decision may be found. The Manual is organized into eight divisions, which are referred to herein by the following abbreviations:

Able and Available	AA
Labor Dispute	LD
Miscellaneous	MS
Misconduct	MT
Procedure	PR
Suitable Work	SW
Total and Partial Unemployment	TP
Voluntary Leaving	VL

Because each division is subdivided, the code number that follows the abbreviation refers to the Manual, which further describes the type of case. For example, Able and Available 155.1 refers to "Domestic Circumstances--Care of Children."

The Guide is intended to serve as a convenient reference tool to facilitate research. It is by no means all encompassing, and although it offers brief summaries of cases, it cannot substitute for the Precedent Decision Manual, which sets forth the full text of decisions. Similarly, it does not eliminate the need for examination of the Code and the Regulations.

The principles summarized herein are not set in stone and are subject to modification as changes in the statutes, regulations, and case law occur. With proper use, it should promote consistency in adjudication and provide meaningful assistance to interested parties, their advocates, and others who desire ready access to the law affecting unemployment compensation in Virginia.

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1/3/2021

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- Guide for Effective Unemployment Insurance Adjudication  
(<https://www.vec.virginia.gov/vecportal/unins/pdf/effectiveuiadjudication.pdf>) [4]
- Precedent Decision Manual (<https://www.vec.virginia.gov/unemployed/appeals/precedent>) [5] - The Precedent Decision Manual contains over 500 VEC and court cases that interpret the provisions of the Virginia Unemployment Compensation Act. This is a useful research tool especially for claimants, employers, attorneys and accountants.
- Precedent Decision Manual Supplement  
(<https://www.vec.virginia.gov/unemployed/appeals/precedent/supplement/toc>) [6] (\*\*formerly Guidance Documents - Case Decisions) - In addition to the Precedent Decision Manual, the VEC has identified a number of case decisions that are frequently cited in its opinions. These case decisions have been designated as guidance documents, and are a useful supplement to the Precedent Decision Manual.
- Virginia Administrative Code  
(<http://law.lis.virginia.gov/admincodeagencylist/title16/agency5/>) [7]
- Virginia Unemployment Compensation Act (<http://law.lis.virginia.gov/vacode/title60.2/>) [8]

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