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CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 750018

DENNIS KLIMKO,

Appellant,

v.

VIRGINIA EMPLOYMENT COMMISSION,

Appellee.

APPENDIX

GEORGE WM. WARREN, IV
Hall, Hall & Warren
Suite 206--Heritage Building
1001 East Main Street
Richmond, Virginia 23219
Counsel for Appellant

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VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

IN THE MATTER OF

DENNIS KLIMKO, CLAIMANT
INTERSTATE CLAIM - OHIO
S.S. NO. 286-38-3787

v.

VIRGINIA EMPLOYMENT COMMISSION
and
SINGER FRIDEN DIVISION
WASHINGTON, D.C., EMPLOYER

PETITION

TO AN HONORABLE JUDGE OF THE SAID COURT:

Your Petitioner, Dennis Klimko, respectfully requests a review of the decision No. 5702-C rendered by the Virginia Employment Commission on June 16, 1972, on the following grounds:

(1) That the decision of B. Redwood Council, Assistant Commissioner of the Virginia Employment Commission, is erroneous and contrary to the law.

(2) That the findings of fact by the Examiner are erroneous and contrary to the evidence.

Respectfully,

DENNIS KLIMKO

By Counsel

/s/ Geo. Wm. Warren, IV ,p.q.

George Wm. Warren, IV
Executive Director
METROPOLITAN RICHMOND LEGAL AID PROJECT
18 North Eighth Street
Richmond, Virginia 23219

ORDER

This cause came before the Court on the 12th day of December, 1973, upon a Petition for Judicial Review of the proceedings of the Virginia Employment Commission, which review was concerned with the decision of the Virginia Employment Commission that the petitioner, Dennis Klimko, was disqualified from receiving unemployment compensation benefits, and with the Answer and exhibits filed by the Virginia Employment Commission in response to the Petition.

The Court, having heard the argument of counsel, having examined the Record of Proceedings of the Virginia Employment Commission and having considered the contents of said record and the case authorities and arguments of counsel, is of the opinion and does ADJUDGE that the actions of the Virginia Employment Commission do comport with requirements of procedural due process for the reasons as set forth in the letter opinion of July 26, 1974, and does further ADJUDGE that the findings of the Virginia Employment Commission that the petitioner, Dennis Klimko, refused to accept, without good cause, an offer of available, suitable work, are supported by the Record filed in the case and that there is no evidence of fraud.

It is further ADJUDGED that effective February 6, 1972, the petitioner, Dennis Klimko, is disqualified from receiving benefits under § 60.1-58 (c) of the Code of Virginia (1950), as amended, for having failed, without good cause, to accept suitable work when offered, such disqualification to continue for the period of unemployment next ensuing until the petitioner has performed services for an employer for thirty (30) days, whether or not such days are consecutive.

The petitioner hereby objects and excepts to the entry of this Order.

This cause is ordered stricken from the docket.

Circuit Court of Arlington County
Virginia

WILLIAM L. WINSTON
JUDGE
PAUL D. BROWN
JUDGE
CHARLES S. RUSSELL
JUDGE
CHARLES H. DUFF
JUDGE

WALTER T. MCCARTHY
JUDGE RETIRED

COURT HOUSE
ARLINGTON, VIRGINIA

July 26, 1974

George William Warren, IV, Esquire
Hall, Hall & Warren
206 Heritage Building
1001 E. Main Street
Richmond, Virginia 23219

W. Thomas Hudson, Esquire
Assistant Attorney General
Virginia Employment Commission
P. O. Box 1358
Richmond, Virginia 23211

Re: Klimko v. Virginia Employment Commission, et al.
At Law No. 15755

Gentlemen:

I have reviewed with interest the very thorough Memoranda of authorities which you have submitted in this case, together with some of the cases cited therein. Defense counsel has pointed out that the Supreme Court has taken jurisdiction of Steinberg v. Fusari, 364 F.Sup. 922, in which a decision may be expected in December which will probably be dispositive of this case. However, in view of the long delay since it was filed, I do not think that the parties should be required to await this result at the trial court level. Trial courts have an obligation to adjudicate the questions which litigants present to them as promptly as full consideration and active dockets will permit. If every case were retained under consideration until some hoped-for appellate resolution of the pending question in another case, hopeless congestion would probably result.

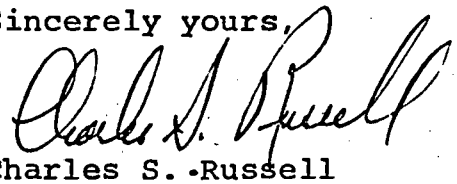
I have reached the conclusion, from the authorities which you have cited to me, that the expectancy of future unemployment compensation benefits is not such a property right as to fall within the due process clause of the Fourteenth Amendment. Board of Regents v. Roth, 408 U.S. 564; Fleming v. Nestor, 363 U.S. 603. The right of the Plaintiff to unemployment compensation is not vested, but is contingent upon his proving entitlement thereto for each two-week period under the statute. Unlike welfare payments (see Goldberg v. Kelly, 396 U.S. 254) his entitlement is not dependent upon his need, but rather depends upon a showing of eligibility based upon past employment, discharge without fault, and non-availability of similar suitable work. Unlike welfare benefits, unemployment compensation is limited as to time, being available only for a maximum period of twenty-six weeks. Unlike welfare benefits, which are provided by the largesse of taxpayers, or retirement benefits, which are vested property rights when based in part upon the employee's own contributions, unemployment compensation is based upon contributions made entirely by employers. For all of these reasons, the benefits sought by Plaintiff appear to fall short of the property rights protected by the due process clause.

Even if it should be contended that the unemployment compensation benefits are vested property rights, I see no reason why the hearing and adjudication which were provided the Plaintiff in this case would fail to provide him with due process of law. See Torres v. New York State Department of Labor, 408 U.S. 949, and Arnett v. Kennedy, 94 Sup. Ct. 1633 (April 1974).

Counsel for Defendant should prepare an appropriate order which, after submission to Plaintiff's counsel for approval as to form, should be forwarded for entry.

With kindest regards, I am

Sincerely yours,



Charles S. Russell
Judge

CSR:kw

NOTICE OF APPEAL

COMES NOW, Petitioner, Dennis Klimko, by counsel, pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia, and hereby gives notice of his intention to apply to the Supreme Court of Virginia for a writ of error and supersedeas to the Circuit Court of the County of Arlington regarding the decision and order of the Honorable Charles S. Russell, Judge, rendered on the 5th day of September, 1974.

ASSIGNMENTS OF ERROR

Petitioner hereby assigns the following as error:

(1) The determination by the trial court that the expectation of continued entitlement to future unemployment compensation benefits is not such a vested property interest as to entitle his interest therein to the protection of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States of America.

(2) The determination by the trial court that the procedural scheme utilized by the Supreme Court of Virginia for terminating Petitioner's on-going unemployment compensation benefits was not violative of his constitutional rights as accorded him under the due process requirements of the Fourteenth Amendment to the Constitution of the United States of America.

(3) The decision and opinion of the trial court were contrary to the law and the evidence.

STATEMENT

COMES NOW the Petitioner, by counsel, pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia and states that there will be no transcript, or statement of facts, testimony or other incidents of the case to be hereafter filed in this matter.

FACT FINDING REPORT

Claimant's Name Dennis Klimko Social Security Account Number 285-38-3787

Issue Offer of Work Liable State Virginia

Claimant's Statement: On January 27, 1972 I accepted job referral from local employment service of the bureau, this was for an office machine serviceman, with Mr. Steve Zimmer, 5411 Market St., Youngstown, Ohio, at a rate of pay of $500 per month. I did investigate said referral and on 2-2-72 and on 2-9-72 I talked with the owners, who informed me that my weekly wage would be $81 after deductions. Also, I was told I would use company truck, but that there would be times when I would be required to use my own car. My household bills are rent each month $130 plus utilities. I have a wife and child, plus other bills. The last job I had as a machine serviceman I was paid $152 a week and all benefits and fringes paid, plus car, This was in Washington, D. C. in 10-71. I talked to the employer and tried to get more money, but was unsuccessful and so I told the employer I just could not accept this offer of work because of these wages. The above facts are true to the best of my knowledge and belief.

(signed) Dennis Klimko
Claimant's signature

Examiner's Statement: Mr. Steve Zimmer owner, stated by phone to Mr. (illegible) this date that pay to start was $500 per month, and more pay if employee was worth it after hire, depending on work. This pay was a little in excess of hire, because claimant did have experience and employer felt claimant was qualified

for job and would have worked out and a definite offer of work was made to claimant on 2-9-72. Claimant refused, not enough pay.

(signed) Robert G. Owens
Claims Examiner's Signature
YO 869-0

Mr. Ken Martin, local ES supervisor, stated that the rate of pay offered is prevailing in this area.

(signed) Robert G. Owens
Claims Examiner's Signature
YO 869-0

Local Office address and number:

2026 South Avenue
Youngstown, Ohio

X
UI UCFE

VIRGINIA EMPLOYMENT COMMISSION
NOTICE OF DEPUTY'S DETERMINATION

App. 11

CLAIMANT

Dennis Klimko
7378 Glenwood Ave.
Youngstown, Ohio 44512

EMPLOYER

Singer Friden Division
2100 L. St.
Washington, D. C.

S. S. No. 286-38-3787

☐ Re-determination

This determination is based upon the section of law checked below. Complete section is quoted on reverse side.

☐	Sec. 60.1–23	Not Unemployed	(D–8)
☐	Sec. 60.1–52(b)	Labor Dispute	(D–6)
☐	Sec. 60.1–52(d)	Vacation	(D–10)
☐	Sec. 60.1–52(e)	Failure to Report	(D–2)
☐	Sec. 60.1–52(g)	Able and Available	(D–9)
☐	Sec. 60.1–52(h)	Pension	(D–9)
☐	Sec. 60.1–58(a)	Left Work Voluntarily	(D–4)
☐	Sec. 60.1–58(b)	Discharge–Misconduct	(D–3)
☒	Sec. 60.1–58(c)	Refusal–Suitable Work	(D–5)
☐	Sec. 60.1–132	Receiving Benefits to Which Not Entitled	(D–1)
☐	_____		Other

You are hereby notified that based on facts obtained in connection with your claim for unemployment compensation filed on 10-31-71 the undersigned deputy pursuant to section of the Virginia Unemployment Compensation Act shown above renders the following determination:

☐ Claimant disqualified, effective 2-13-72
☒ Claimant declared ineligible, from _____ through _____.
☐ Claimant not subject to disqualification under the section of law indicated above and declared eligible for benefits effective _____.

REASON FOR THE ABOVE DETERMINATION

This claimant, who is classified as Service Technician Office Equipment, and who has been unemployed since October, 1971, was referred by the Local Office in Youngstown, Ohio to a job as Office Machine Serviceman at a pay rate of $500.00 per month. He accepted the referral, but refused the job offer because of the pay rate. Information from the Local Office stated that $500.00 per month was within the prevailing scale in that area for similar work.

It has been previously held that a claimant is subject to a disqualification if it is found that he failed, without good cause, to apply for or accept available suitable employment when so directed by the local Employment Service Office.

It is the opinion of the Deputy that since the work offered this claimant was in line with his previous work experience, paid the prevailing rate for similar work in the area and was for the usual and customary hours, it was suitable employment.

In view of the above, it is the decision of the Deputy this claimant is subject to a disqualification as provided in Section 60.1-58 (c) of the Virginia Unemployment Cont.

(Mrs.) M. M. Dixon

M. M. Dixon Deputy,
Virginia Employment Commission

APPEAL RIGHTS

*APPLIES TO FEDERAL DETERMINATIONS
Findings, with respect to whether you performed Federal civilian service, the amount of your remuneration from a Federal agency, the period of your Federal civilian service, and the reason for separation from any Federal agency, are made by the Federal agency. If you wish further information regarding any of these findings, or if you believe that any of these findings are incorrect, you may request the Federal agency to give you additional information or to reconsider and correct any such findings.

APPLIES TO ALL DETERMINATIONS
This determination becomes final unless notice of appeal therefrom is filed within five days after it is delivered in person, or within ten days after it is mailed to last known address. Such appeal must be filed in writing, and shall set forth the grounds upon which the appeal is sought, and shall be filed (1) through the Local Office where this claim was filed or (2) at the Central Office of the Virginia Employment Commission, P. O. Box 1360, Richmond, Virginia 23211.

FINAL DATE FOR APPEAL IS 3-1-72.

NOTE: If any appeal is filed from this determination claimant should continue to report to the Local Office on his regular reporting day in order to receive credit for each week in case the determination contained herein is reversed or revised as a result of the appeal.

Address of Local Office:

Dept. of Employment Security
2026 South Ave.
Youngstown, 2, Ohio

Determination to Claimant: 2-28-72 ☒ Mailed ☐ In Person
Determination to Employer: 2-28-72 ☒ Mailed ☐ In Person

VEC-B-54.1 (R. 7-1-70)

Dennis Klinko
286-38-3787

Compensation Act and will remain disqualified for any week benefits are claimed until he has performed services for an employing unit during thirty days whether or not such days are consecutive.

OHIO-36

OHIO BUREAU OF UNEMPLOYMENT COMPENSATION
1[illegible] SOUTH FRONT STREET, P.O. BOX 1618
COLUMBUS, OHIO 43216

App. 13

NOTICE OF INTERSTATE APPEAL

1. NAME: Dennis (First) Klinko (Middle) (Last)

2. LOCAL MAILING ADDRESS: 7378 Glenwood Ave (No.) (Street or Rural Route)

Youngstown Ohio 44512 (City) (State) (Zip Code)

3. If you are planning to change your address:

Beginning _____ my new address will be:

4. I appeal and request a hearing for the following reasons:

Inccepted a referral slip for H.D. 2 miners under false information $500.00 per month, a company car and benefits. After 3 interviews, $500.00 salary per month, no car available and benefits paid by Claimant. the job classification was to be service technician. As stated by 2 immers it was hauling heavy equipment and delivery of supplies. and some office machine work in 7 counties.

5. You may attend a hearing in this State or in the State against which you are appealing. In which State do you plan to attend a hearing?

Ohio (State)

Dennis Klinko (Claimant's signature)

DISTRIBUTION
Original (White) — Liable-State Interstate Claims Unit
Duplicate (Yellow) — OHIO BOARD OF REVIEW (Attach liable-State Determination)
Triplicate (Blue) — OHIO Local Office
Quadruplicate (White) — Claimant

IB-101 (R 7-9-62)
7530-163-1090

Claimant: Do not write in this box

6. Soc. Sec. Acct. No. 286 38 3787

UI ☑ UCFE ☐ UCX ☐ Other ☐

7. Liable State Virginia

8. (a) Appeal from:
(1) Determination ☒
(2) Redetermination ☐
(3) Referee's Decision ☐
(b) which was dated 2-28-72
(c) Handed to Claimant ☐ date _____
(d) Mailed to Claimant ☐ Postmark date _____

9. Appeal filed:
(a) in person ☑ on 3-2-72 (date)
(b) by mail: ☐
(1) postmark date _____
(2) receipt date _____

10. Claims Taker's Signature
Ruth Liberti

11. FOR USE OF LIABLE STATE

MAR 1972

12. Use L. O. stamp or enter L.O. address and number.

APPEALS SECTION

Interstate Claims Section

BOARD OF REVIEW
Ohio Bureau of Employment Services
145 South Front Street P. O. Box 1618
Columbus, Ohio 43216

Claimant:

DENNIS KLIMKO
7378 Glenwood Avenue
Youngstown, Ohio 44512

Employer:

SINGER FRIDEN DIVISION
2100 L. Street
Washington, D. C.

NOTICE OF HEARING

Appeals Section

Ohio (Agent State) _____ (Code)

Date of Mailing March 16, 1972

SSA No. 286-38-3787

Appeal Against The State Of: Virginia

Docket No. Agent State

You are notified to appear on Friday March 31, 1972 (Date) at 9:00 a.m. (Time) in _____ (Room No.) Board of Review, OBES, 2026 South Ave. (Number and Street) Youngstown (City) Ohio (State) for a hearing on [X] claimant's [ ] employer's appeal from a [X] determination [ ] redetermination

[ ] appeals decision issued by Virginia (liable State) State Employment Security Agency,

dated February 28, 1972 which [X] denied [ ] allowed benefits for the period

effective February 13, 1972 because claimant

refused suitable work.

cc: OBES
2026 South Ave.
Youngstown, Ohio 44501

Appeals Unit
Virginia Employ. Comm.
P.O. Box 1358
Richmond, Va. 23211

Signature

TO THE EMPLOYER: See the other side of this sheet for instructions.

Instructions To The Claimant

Reason For This Hearing: The hearing is being held to give you a chance to present your evidence and your side of the case at or near your place of residence. The record of the hearing will be sent to the State against which you are appealing. That State will consider this record and other available evidence in deciding on your appeal.

Subject Of The Hearing: The hearing will cover the decision named above and may include all questions affecting your right to benefits up to the time of the hearing.

Appearance: If you do not appear at the hearing your appeal may be dismissed or it may be decided on the basis of other available evidence, depending on the rule followed in the State against which you are appealing.

Postponement: This hearing will be postponed only for good cause. If for any reason you cannot come to the hearing, notify the local office at once.

IMPORTANT: There are more instructions on the other side of this sheet.

IB-102 (3-68)

APPEALS SECTION
VIRGINIA EMPLOYMENT COMMISSION
RICHMOND, VIRGINIA

TRANSCRIPTION OF TESTIMONY

IN THE MATTER OF:

Dennis Klimko

Interstate Claim - Ohio

S. S. No. 286-38-3787

Appellant

Singer Friden Division

Washington, D. C.

Appellee

APPEALS EXAMINER'S HEARING

Friday, March 31, 1972

Youngstown, Ohio

BEFORE:

Thomas A. Klikie, Jr., Referee

Ohio Bureau of Unemployment Compensation

OHIO BUREAU OF UNEMPLOYMENT COMPENSATION
145 SOUTH FRONT STREET, P.O. Box 1618
COLUMBUS, OHIO
FRIDAY, MARCH 31, 1972
9:00 O'CLOCK, A. M.

In the Matter of:

Dennis Klimko
Interstate Claim - Ohio
S. S. No. 286-38-3787
Appellant

Singer Friden Division
Washington, D. C.
Appellee

The above-mentioned matter came on for hearing, pursuant to notice, in the Local Office of the Ohio Bureau of Unemployment Compensation, 145 South Front Street, P.O. Box 1618, Columbus, Ohio, before Thomas A. Kilkie, Jr., Referee, of the Ohio Bureau of Unemployment Compensation, on Friday, March 31, 1972, at 9:00 o'clock, A.M.

APPEARANCES

Dennis Klimko, Claimant, 7378 Glenwood Ave, Youngstown, Ohio

STATEMENT BY THOMAS A. KILKIE, JR., REFEREE
OHIO BUREAU OF UNEMPLOYMENT COMPENSATION

This is a hearing in the claim of Dennis Klimko, 7378 Glenwood Avenue, Youngstown, Ohio 44512, S. S. No. 286-38-3787, Docket # Virginia Agent State.

Heard before the Referee , Thomas A. Kilkie, Jr., at Youngstown, Ohio, on March 31, 1972. Appearances: Claimant appeared in person.

This matter comes before the Referee at the request of the Virginia authorities following the filing of an appeal by the claimant on March 2, 1972, from a Notice of Deputy's Determination of the Virginia Employment Commission, dated February 28, 1972. In their determination of February 28, 1972, the Virginia authorities held that claimant is hereby notified that based on facts obtained in connection with his claim for unemployment compensation filed on October 31, 1971, the claimant is disqualified effective February 13, 1972, for the reason that claimant is classified as a service technician-office equipment and has been unemployed since October of 1971. He was referred by Local Office in Jefferson, Ohio to a job as office machine serviceman at the pay rate of $500.00 per month. He accepted the referral but refused the job offer because of the pay rate. Information from the Local Office stated that the $500.00 per month was within the prevailing rate for similar work. In view of the above, it is the decision of the Deputy that this claimant is subject to disqualification as provided in Section 60.1-58 (c) of the Virginia Unemployment Compensation Law and will remain disqualified for any week benefits are claimed until he has performed services for an employing unit during thirty days whether or not such days are consecutive.

Dennis Klimko, AFTER FIRS BEING DULY SWORN
WAS CALLED AND EXAMINED BY THOMAS A. KILKIE, JR.

Q. You heard me read into the record, sir, your name, your address, your social security number. Were they correct as read?

A. Yes, sir.

Q. At this time, sir, I must tell you that this is what is known as an interstate or an agent state hearing. In a proceeding such as this, Ohio has nothing whatever to do with the decision. Our purpose here is to attempt to secure sufficient information to enable the authorities in Virginia to arrive at a proper decision

in your claim. When this hearing is completed, we send the transcript to Virginia; and after they receive it, they make their own decision and communicate directly with you. Now, sir, for record, are your currently employed?

A. No,Sir.

Q. Where did you work last?

A. Friden in Washington, D. C.

Q. When did you last work there?

A. I worked up to the end of November.

Q. Of 1971?

A. I mean, to the end of October of '71. Right.

Q. What did you do there, sir? What was your job?

A. I was a service technician, called a customer service representative.

Q. What type of an operation was this, sir?

A. I used to take calls on all the post office equipment that Friden had out, different,in Maryland, Virginia and the District and service it and sell maintenance contracts.

Q. What type of equipment was it, sir?

A. All postage equipment; scales, sealers, openers, inserters, and audio-postage machines and meter heads.

Q. Yes, How long did you work there, sir.

A. For three and a half years.

Q. Following your separation from here in October, did you come immediately to Youngstown?

A. Yes, sir.

Q. Is this your home?

A. Right.

Q. Since you returned from Washington, D., C., have you been, at all time, physically able to work?

A. Yes, Sir.

Q. In that time, have you been looking for a job?

A. Yes, I have.

Q. Have you had any referrals from the Bureau?

A. The Bureau here?

Q. Yes.

A. Yes, I had one referral.

Q. And where was that?

A. At Zimmer Company (phonetic).

Q. When did you get this referral?

A. Oh, I don't know the date. It's approximately two months ago.

Q. And, what type of work were you referred to?

A. Well, this is the part. I talked to Mr. Wartman downstairs.

Q. Do you know how to spell his name?

A. I think it's W-A-R-T-M-A-N.

Q. All right.

A. And he called me on the phone when I was home. It was early in the morning. He told me to get dressed and come right down, there, that he had a job. He didn't say the company. He said, I've got a job in your line of work, $500.00 a month, a company car and company benefits, and it sounded good. I told my wife. I got all dressed up in a suit and that and half hour later he called back and told me, he said, I made a mistake. The job ain't open yet. He said, I'll call you later on in the week. So, I waited and I heard from him and I came down here for the referral. I sat downstairs and I talked to Mr. Wartman and

he said, the job don't pay that much. He said, $500.00 a month. He said, but there's a company car with it and that's worth about $100.00 a month to you. We discussed it downstairs. He says, and you have the company benefits; and going by this, I accepted the referral slip and I went to Zimmer Company and I talked to the young Zimmer, Steve Zimmer, the son of the father that runs the company; and he does the screening. I filled out an application and he screened me out. He said he had other people in there; and when he was done, I left and I later come back and I talked to Mr. Quinn (phonetic), the service manager, I had an interview with him; and we talked about the job and what it consisted of; and he told me that there was no company cars and that you paid for all your company benefits; and he told me I would clear approximately $81.00 a week and this I didn't understand. The man down at the employment agency gave me a referral slip for a job that had a company car, benefits and $500.00 a month. Now, I've a lot of bills to pay. I've got rent, utilities, I'm raising a kid, I've got a wife, and all of a sudden, I've got to pay for all my stuff out of that. I don't even have a car. I'm driving my wife's old car around. I told them that, and they told me I'd have to use my own car. I've got to drive seven counties and I've got to deliver all paper and supplies, install heavy equipment and some trouble shooting on their equipment.

Q. What type of equipment do they handle?

A. They handle A. B. Dick Copy Machines: copiers, mimeograph equipment; and they wanted me because I've had nine years experience in office equipment, on addressograph equipment, on all Friden postage equipment, on copier machines, on pruning copiers. They wanted me. I told Mr. Quinn that I would think about it. I went home and talked to my wife, I sat down, figured out our bills and everything. I was disappointed because there was no car involved and this put

me in a bad position. They weren't paying me enough that I could buy a car to do this traveling with. This is five counties in Pennsylvania and two in Ohio So, we talked about it and I called up and I talked to Steve Zimmer again. I told him that I had talked with Mr. Quinn and (inaudible) him what he offered me. So, Steve told me, he says, well, a guy with your experience and that. He says, Mr. Quinn don't realize that you've had nine years in that. He says, I'll talk to my father. We'll get you more money; and he called me back in when he talked to his father. This is the third time I've been down there and I talked to Mr. Zimmer and he told me the same thing. He didn't offer me any more money or anything. It was the same layout. He told me I had to use my own car some of the time. They told me that I had to take an electronics test to go to school in Chicago; and I told them that I wasn't ready to take an electronics. test. I wasn't qualifed for it. For this sophisticated equipment they have, they require you to go to school; and they told me they says, we'll give you all the answers to the test and push you through. So, I was kind of leary about that. It wasn't enough money for me to live on; and I went home and I called them up later, after I talked to my wife. I talked to Steve Zimmer again and I told him, I said, I thought you were going to get me more money, talking to your father. I says... he said, well, he says, he won't do it. He said, that's it, experience or not; and that was the whole deal. I couldn't live on it and what they told me here wasn't what the job was. The job is more delivering of supplies and installing than it is technician work. So, I felt justified in turning it down.

Q. In your experience in this ype of work, do you have any knowledge as to what the prevailing rate for this type of work would be? What the average man performing the type of job would have received?

A. You mean for installing equipment?

Q. For the kind of job that you were offered?

A. Well, I'll tell you, I've been out of this area since '67

Q. Yes.

A. I don't know what the rate is here. When I was working with Friden I had company benefits. They paid all my insurance. Here I had to pay it $30.00 a month myself for it. No company car which all these companies, if you check addressop graph and all of them, supply you with a company car, full use.

Q. Did Friden supply you with a company car?

A. Yes, sir, I had a 1970 Ford and I was due for a new one when I left.. every two years; and the Friden in Youngstown here does the same thing; and your other companies around here do the same thing. That's why I didn't understand it. The man downstairs.. I asked Steve Zimmer about it and he says, Well, they've got misinformation down there. He says we don't have company cars and they shot me right down here and I feel justified in not accepting it.

Q. In this particular type of equipment, sir, is it the normal practice for the employer to furnish a car or truck or someother vehicle for use of the employee?

A. As long as I've been in the business, every company I've seen and every company I've worked for in Washington always supplied a car. I don't ...

Q. And this was in addition to the regular salary that they gave you for the job?

A. Yes, sir, definitely.

Now, most of your companies around here do to, in the Youngstown area. Zimmer runs a deal where he loads you on a truck where you install heavy equipment, where you deliver all the supplies in seven counties. He knocks down three different jobs with one guy and you do some technician work. He covers three jobs and then you've got to use your own car, which I'm using my wife's car now it's falling apart. I don't have my own car. So, I mean, if you check it out in this area, too, I think that job is below standard.

Q. Very well. All right, now, sir, is there any other reasons that you didn't accept the job?

A. I don't know what else I could say as far as the job wasn't up to the standard; the job didn't offer what they told me it did; the job down there itself isn't just technician, it's delivering and everything else, which I've never done before working for all the companies I've worked for: running addressograph Friden; and I've never run into this situation before. What about the part of me going to school? All right, I started school for electronics February 14th. Before then when I went on this interview, I had no electronics. They have a test you have to take in electronics before you qualify to go to Chicago to school; and I told them that I couldn't pass the test for it. I know I couldn't pass the test because I don't know any electronics; and Mr. Quinn, the service manager, told me that they would give the answers and push me into the school. Now, I was kind of leary about that because I wouldn't know what to do once I got into it. So, that there was one point I was leary on.

Q. Anything else at all that you think would be helpful to the Referee in Virginia in deciding in your case.

A. Only that I've been looking for a job. I have applications in all over. I've got eight applications in City Hall right now under the Veterans Affairs. I'm trying to get a job through them. I'm even going out of the line of work that I've been in for nine years. I'm going for K-Mart (phonetic). I'm trying to get jobs at the different appliance departments and stores. I've got applications in all over. If I take away, just like Mr. Zimmer told me.. If I decide to work for them, he said it would be rough at first but if I stuck with it, he said things would work out. He said the job wouldn't have been a lot of money and hard to live on. Mr. Zimmer told me this. He said that if I could make it and stick it out, he said, I'll be all right; and I told him that I had bills to pay, besides my rent and everything, and my bills total over what I would be clearing if I had to pay for my own benefits and everything. I mean, I figured it all out on paper; and I told him, if he wouldn't mind if bill collectors called him up;

and he says that he couldn't keep me on the payroll if they started bothering him. I mean, it's as simple as that. I realize his position and I realize that I have to pay bills and if I accept a job that doesn't pay me enough to pay them, then I'm going to be in trouble.

Q. Is that all, sir?

A. Yes. I have nothing else to say.

Q. If you have nothing more, sir, that will be all for this morning and as I told you earlier, we will send this transcript to Virginia and you'll hear directly from them.

The hearing is closed.

Dennis Klimko

CERTIFICATE

This is to certify that this is a copy of the proceedings had in a hearing before Thomas A. Kilkie, Jr., Referee, Ohio Bureau of Unemployment Compensation. In the matter of Dennis Klimko, Appellant, and Singer Friden Division, Appellee, on Friday, March 31, 1972, at 9:00 A.M. which proceedings were phonographically recorded, transcribed by me and herein appear.

Carolyn G. Harrison

Carolyn G. Harrison-Clerk Typist

Richmond, Virginia

May 9, 1972

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 April 23, 1972.

In the matter of:

Claimant

Dennis Klimko
7378 Glenwood Avenue
Youngstown, Ohio 44512

Employer

Singer Friden Division
2100 "L" Street
Washington, D. C.

INTERSTATE: Ohio

Appellant:	[ ] Employer [X] Claimant
Claimant's S.S. No.:	286-38-3787
Decision No.:	UI-72-520
Date Deputy's Determination:	February 28, 1972
Date Referred or Appealed:	March 2, 1972
Date of Hearing:	March 31, 1972
Place of Hearing:	Youngstown, Ohio
Date of Decision:	April 11, 1972
Date of Mailing:	April 13, 1972

APPEARANCES: Claimant

STATUTORY PROVISIONS & POINTS AT ISSUE: Code of Virginia Section 60.1-58 (c) Did the claimant fail without good cause to accept available, suitable work when so offered?

FINDINGS OF FACT: The claimant appealed from a determination of the Deputy which disqualified him for benefits effective February 13, 1972, for having failed without good cause to accept available, suitable work when so offered.

On February 9, 1972, the claimant, whose past work experience had been as a service technician and who had been unemployed and claiming benefits since October 31, 1971, was offered a job as office machine service man by an employer in Youngstown, Ohio. The wages of the job were $500.00 per month. The Ohio Agency has advised that these wages were prevailing for similar work in the area.

The claimant refused to accept the offer of work, because he felt the wages were not sufficient to meet his expenses.

OPINION: Section 60.1-58 (c) of the Virginia Unemployment Compensation Act provides a disqualification:

> "If it is determined by the Commission that such an individual has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the Commission or to accept suitable work when offered him, and the disqualification shall commence with the week in which such failure occurred, unless such failure occurred during the waiting period in which event the disqualification shall commence with the week following, and shall continue for the period of unemployment next ensuing until he has performed services for an employing unit during thirty days, whether or not such days are consecutive."

In determining whether any work is suitable, the Commission shall consider, among other things, as to whether the wages of the available work are substantially less favorable to the individual than those prevailing for similar work in the locality. Inasmuch as the wages of the job offered the claimant were prevailing for similar work in the area, the job was suitable employment from that viewpoint. With regard to the claimant's reasons for refusing the offered work, it is noted that the Commission has consistently held that a claimant can not justify a refusal to accept the offer of suitable work because his earnings on the job would not satisfy all of his needs and wants. The Virginia Act does not guarantee any minimum or maximum wage nor does it promise to any individual that his earnings will meet his expenses. The Act's sole requisite in this respect is that the wages must not be substantially less favorable to the individual than those prevailing for similar work in the locality. It is concluded that the claimant failed without good cause to accept available, suitable work when so offered on February 9, 1972.

The Deputy disqualified the claimant effective February 13, 1972. Section 60.1-58 (c) of the Virginia Act, however, provides that a claimant shall be disqualified beginning with the week in which the disqualifying act occurred. The claimant, therefore, should be disqualified with the week commencing on February 6, 1972.

DECISION: The determination of the Deputy is hereby amended. It is held that the claimant is disqualified effective February 6, 1972, for any week benefits are claimed until he has performed services for an employing unit during thirty days, whether or not such days are consecutive, because he failed without good cause to accept available suitable work when so offered.

Ogene Pitts, Appeals Examiner

OP:reh

OHIO-35

OHIO BUREAU OF UNEMPLOYMENT COMPENSATION
145 SOUTH FRONT STREET, P.O. BOX 1618
COLUMBUS, OHIO 43216

App. 28

NOTICE OF INTERSTATE APPEAL

1. NAME: Dennis Klinko
(First) (Middle) (Last)

2. LOCAL MAILING ADDRESS: 7318 Glenwood Ave
(No.) (Street or Rural Route)
Youngstown Ohio 44512
(City) (State) (Zip Code)

3. If you are planning to change your address:

Beginning _____ my new address will be:

4. I appeal and request a hearing for the following reasons:

See attached IB 11

5. You may attend a hearing in this State or in the State against which you are appealing. In which State do you plan to attend a hearing?

Ohio
(State)

Dennis Klinko
(Claimant's signature)

DISTRIBUTION
Original (White) — Liable-State Interstate Claims Unit
Duplicate (Yellow) — OHIO BOARD OF REVIEW (Attach liable-State Determination)
Triplicate (Blue) — OHIO Local Office
Quadruplicate (White) — Claimant

IB-101 (R 7-9-62)
7530-163-1090

Claimant: Do not write in this box

6. Soc. Sec. Acct. No. 286 | 38 | 3787

UI ☑ UCFE ☐ UCX ☐ Other ☐

7. Liable State Virginia

8. (a) Appeal from:
(1) Determination ☐
(2) Redetermination ☐
(3) Referee's Decision ☑
(b) which was dated 4-13-72
(c) Handed to Claimant ☐
date _____
(d) Mailed to Claimant ☐
Postmark date _____

9. Appeal filed:
(a) in person ☑
on 4-20-72 (date)
(b) by mail: ☐
(1) postmark date _____
(2) receipt date _____

10. Claims Taker's Signature
Carolyn Shannon

11. FOR USE OF LIABLE STATE

12. Use L. O. stamp or enter L.O. address and number.

APR 1972 V. E. C. APPEALS SECTION

YOUNGSTOWN — OHIO

IB-11 (R 1-61)
55516
OHIO — 36

Budget Bureau Number 44-R 1004.1

FACT FINDING REPORT

Claimant's Name Dennis Klinko Social Security Account Number 286 33 3787

Issue Appeal Liable State Virginia

CLAIMANT'S STATEMENT: I appeal the decision dated 4-13-72. I feel I was misinformed at the time I was given a referral to Zimmer Co. by the Ohio Employment Office. I was told this was my line of work, I would have company benefits, company car and $500.00 a month salary.

I had three interviews, when I talked to Mr. Quinn Service Manager and he informed me there were no company benefits & no company car, he figured out what I would clear after Social Security, hospitalization & taxes, the amount would be $81.00. This was not wages of a technician. The job also had duties other than a technician.

If I was given the correct information at the time

The above facts are true to the best of my knowledge and belief Dennis Klinko
(Claimant's Signature)

EXAMINER'S STATEMENT: (Include here any properly identified information reported by persons other than the claimant) Employers order shows - will drive company car or receive paid hospitalization, vacation & sick leave. Mr. Mikolich from Board of Control advises that in some instances after referral that job specifications have changed. He was not definite if this was changed.

Use Local Office stamp or enter Local Office address and number:

2028 South Avenue
YOUNGSTOWN — OHIO

APR 1972
REC. VA.
Interstate Claims Section

C. Shannon
(Claims Examiner's Signature)

Interview Date 4-20-72

Itinerant Point Location

If additional space is needed, use and sign reverse side.

IB-11 (R 1-61)
55516
OHIO — 36

Budget Bureau Number 44-R 1091.1

FACT FINDING REPORT

Claimant's Name Dennis Klinks Social Security Account Number 286 38 3787

Issue Appeal Liable State Virginia

CLAIMANT'S STATEMENT: of the referral I would not have accepted.

The job also required deliveries being made.

I feel benefits should be paid because I was misinformed.

I contacted Mr. Wertman from E Service 4-12-72 and he stated he did not realize what the job was all about and he would keep looking out for any other available jobs.

All similar jobs pay benefits, provide you a car.

Zimmer Company is a small Company & can't afford to pay these benefits. Mr. Zimmer himself did tell me if I felt I could not live on the salary offered it would not

The above facts are true to the best of my knowledge and belief Dennis Klinks
(Claimant's Signature)

EXAMINER'S STATEMENT: (Include here any properly identified information reported by persons other than the claimant) be wise to accept the job. I was also required to go to school in Chicago.

I have a wife & child & just could not afford to live on $81.00 a week.

Dennis Klinks

Use Local Office stamp or enter Local Office address and number:

[illegible]
YOUNGSTOWN [illegible]

C. Shannon
(Claims Examiner's Signature)

Interview Date 4-20-72

Itinerant Point Location

If additional space is needed, use and sign reverse side.

VIRGINIA EMPLOYMENT COMMISSION
INTER-OFFICE COMMUNICATION

To: Mr. Councill

From: Robert L. Simpson, Jr.

Subject: Dennis Klimko
S. S. No. 286-38-3787

Ref: your 10c

Please have someone contact Ohio. We need the Ohio representative's name, position, and information as to whether the prevailing wage for a service technician in the Youngstown area includes a company car and company fringe benefits, (hospitalization, retirement, etc.).

RLS

Bay—
Will you attempt to get this information right away via telephone?
Thanks.
RC
6/14/72

Date June 14, 1972/jj

Mr. Councill June 15, 1972

Mr. Dick Reddington, Labor Market Analyst, of the Ohio Agency advises that in general most companies in the Youngstown Area furnish cars or panel trucks.

If not they pay mileage for use of private cars.

It varies as to what other fringe benefits are furnished.

Bob -- Jim Burks obtained this information from the Ohio agency via phone this A.M.

The Claimant agreed to this -
Can we get this
Confirmed in writing?

Will get out letter today 7-20-72

OHIO BUREAU OF EMPLOYMENT SERVICES

JOHN J. GILLIGAN, *Governor*

2026 South Avenue
Youngstown, Ohio

WILLIAM E. GARNES, *Administrator*

July 25, 1972

Mr. Robert Simpson
Assistant Attorney General
P. O. Box 1358
Richmond, Virginia 23211

Dear Sir:

In reference to your call to our Mr. Reddington concerning Service Technicians, this particular occupation usually provides panel trucks to make service calls.

There are also other employers who furnish automobiles for use during working hours to make service calls or the employer and the employee work out some sort of reimbursement for use of the employee's own automobile.

I hope this information is what you need. If there are any other questions, or if we can help you in any other way, please feel free to contact our office.

Sincerely yours,

Doris D. Keenan

(Mrs.)Doris D. Keenan,
Employment Service Manager

DDK:plw

RECEIVED
JUL 27 1972
LEGAL DIVISION
V. E. C. 2

VIRGINIA EMPLOYMENT COMMISSION

---oOo---

Notice of Hearing on Appeal

---oOo---

TO: Dennis Klimko
Claimant

7378 Glenwood Avenue S. S. No. 285-38-3787

Youngstown, Ohio 44512
Address

Singer Friden Division
Employer

2100 "L" Street

Washington, D. C.
Address

---oOo---

The above claimant has filed an appeal from the decision of the Examiner, (No. UI-72-520) dated April 11, 1972.

Therefore, you, and each of you are hereby notified that on the 15th day of May, 1972 the Virginia Employment Commission will convene in its offices in the Hearing Room (third floor) of the Virginia Employment Commission Building, 703 East Main Street, Richmond, Virginia, at 2:30 p.m., for the purpose of reviewing the record and hearing any new evidence in connection with the said appeal. This will consist of a review of the evidence previously submitted in this case and no appearances are necessary. Any party to this appeal may appear, however, if he so desires for the purpose of submitting evidence which he has not previously submitted. If you intend to appear for the hearing report to Room 334.

Given under my hand this 5th day of May, 1972.

cc: Mr. E. R. Richards, Interstate

B. Redwood Councill
B. Redwood Councill
Assistant Commissioner

VIRGINIA EMPLOYMENT COMMISSION

---oOo---

Decision of Commission

---oOo---

In the Matter of	§	Appeal from Examiner
	§	
Dennis Klimko, Claimant	§	Date of Appeal: April 20, 1972
Interstate Claim - Ohio	§	
S. S. No. 286-38-3787	§	Date of Hearing: May 15, 1972
	§	
Singer Friden Division	§	Decision No.: 5702-C
Washington, D. C.	§	
	§	Date of Decision: June 16, 1972
Employer	§	
	§	Place: Richmond, Virginia

---oOo---

This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UI-72-520) dated April 11, 1972.

ISSUE

Did the claimant fail, without good cause, to accept available, suitable work when so offered within the meaning of § 60.1-58 (c) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The Findings of Fact by the Appeals Examiner are adopted by the Commission. In addition, it is found that the claimant left work with his former employer on October 27, 1971. He filed for unemployment benefits effective October 31, 1971, and claimed benefits for twelve consecutive weeks. He made three contacts during each of these weeks and reported the results of these contacts as that the employers were "not hiring."

On January 28, 1972, the claimant was referred to an employer and received a definite offer of work. The wages paid were prevailing for the area; however, the claimant would be required to use his automobile in this employment at least part of the time. Employers in the claimant's location usually provided a company car or paid mileage. In addition, this particular employment did not include paid fringe benefits. Fringe benefits were furnished by employers on a variable basis, not a prevailing basis, in the claimant's labor market area.

The claimant refused the job offer because it did not include a company car and fringe benefits similar to those which he had received in his previous employment.

OPINION

The opinion of the Appeals Examiner is adopted by the Commission. In addition, although the job offered did not include a full-time company automobile, or mileage, and the prevailing conditions include either a company furnished car or mileage for use of private cars, here the claimant would not be required to use his private car on a full-time basis. The wages were otherwise prevailing for the area. The Commission is of the opinion, therefore, that the wages or conditions of employment were not substantially less favorable so as to make the work unsuitable.

The Commission further notes that the claimant had been unemployed for a considerable period of time before he received the job offer on January 28, 1972. It is of the opinion, therefore, that the claimant did not have good cause to refuse the offer of employment merely because the wages and other compensation were slightly less than he had received in the past.

DECISION

The decision of the Examiner is affirmed.

B. Redwood Councill
Assistant Commissioner