

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Brian Hogan
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Commonwealth of Virginia
Richmond, Virginia

Date of Appeal
to Commission: June 30, 1988

Date of Hearing: September 2, 1988

Place: RICHMOND, VIRGINIA

Decision No.: 030609C

Date of Mailing: September 12, 1988

Final Date to File Appeal
with Circuit Court: October 2, 1988

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This is a matter before the Commission on appeal by the employer from the Decision of Appeals Examiner (UI-8804521), mailed June 20, 1988.

APPEARANCES

Three Employer Representatives

ISSUE

Was the claimant discharged for misconduct in connection with work as provided in Section 60.2-618.2 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The employer filed a timely appeal from the Decision of Appeals Examiner which declared the claimant qualified for benefits effective March 13, 1988.

The Virginia Department of Taxation was the claimant's last thirty-day employer for whom he worked from August 24, 1984 through March 5, 1988. In June of 1986, the claimant in

preparation for relocating to Atlanta, Georgia, to perform services for his employer was instructed to submit three common carrier bids for relocating. He inquired of his supervisor as to whether or not he could move himself, and was advised that he could submit a fourth bid. A fourth bid was submitted and accepted by the employer as the low bid. The bidding company of the low bid was owned by the claimant, but the employer was unaware of this fact.

As a result of a later investigation, the claimant was charged with three offenses, falsification of State documents, grand larceny, and tortuous injury to the Commonwealth of Virginia. As a result of the investigation and these charges, the claimant was discharged by his employer for a group three offense in violation of the standards of conduct of the employer. The Circuit Court of the City of Richmond subsequently heard the charges on May 6, 1988, and nol-prossed the charge of false representation. The claimant plead nolo contendere to the grand larceny charge, and after the court inquired as to whether or not the claimant fully understood his actions, found that the evidence justified a finding of guilty of grand larceny. The claimant was ordered to pay restitution to the Commonwealth and the case was taken under advisement by the Court for possible dismissal.

OPINION

Section 60.2-618.2 of the Code of Virginia provides a disqualification if it is found that a claimant was discharged for misconduct in connection with work.

In the case of Branch v. Virginia Employment Commission, et al, 219 Va. 609, 249 S.E.2d 180 (1978), the Supreme Court of Virginia defined misconduct as follows:

In our view, an employee is guilty of "misconduct connected with his work" when he deliberately violates a company rule reasonably designed to protect the legitimate business interests of his employer, or when his acts or omissions are of such a nature or so recurrent as to manifest a willful disregard of those interests and the duties and obligations he owes his employer Absent circumstances in mitigation of such conduct, the employee is "disqualified for benefits", and the burden of proving mitigating circumstances rests upon the employee.

In the case now before the Commission, the record clearly shows that the claimant was guilty of grand larceny against his employer. His plea of nolo contendere was tantamount to an admission of guilt. Also, based upon the evidence stipulated, the Court found that it was sufficient to support a finding that the claimant was guilty of grand larceny. An act of dishonesty or stealing from ones employer is an act of such a nature as to manifest a willful disregard of the employer's interests and the employee's duties and obligations to the employer. An employer has a right to expect honesty and forthrightness from its employees. Any breach of this conduct by the employee constitutes misconduct in connection with work.

The fact that the employer accepted the low bid for the relocation submitted by the claimant does not mitigate his actions, especially since the employer was unaware of the claimant's ownership interest in the company that was awarded the bid. Therefore, it is concluded that the claimant was discharged for misconduct in connection with work within the meaning of that term as used in the Code.

DECISION

The Decision of Appeals Examiner is hereby reversed.

It is held that the claimant is disqualified effective March 13, 1988, for any week benefits are claimed until he has performed services for an employer during thirty days, whether or not such days are consecutive and subsequently becomes totally or partially separated from such employment for having been discharged for misconduct in connection with work.

The Deputy is directed to determine the amount of benefits paid the claimant subsequent to March 13, 1988, which he is liable to repay the Commission.


Edwin R. Richards
Special Examiner