

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Michael E. Simonson
[REDACTED]

Sligh Plumbing & Heating Company
Hopewell, Virginia

Date of Appeal
to Commission: September 17, 1991
Date of Hearing: November 21, 1991
Place: RICHMOND, VIRGINIA
Decision No.: 36655-C
Date of Mailing: November 27, 1991
Final Date to File Appeal
with Circuit Court: December 17, 1991

---oOo---

This case came before the Commission on appeal by the employer from a Decision of Appeals Examiner (UI-9111419), mailed September 13, 1991.

APPEARANCES

Two Employer Representatives, Two Observers

ISSUE

Was the claimant discharged for misconduct connected with work as provided in Section 60.2-618(2) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On September 17, 1991, the employer filed a timely appeal from the Appeals Examiner's decision which held that the claimant was qualified to receive benefits, effective June 23, 1991. The basis for that decision was the Appeals Examiner's conclusion that the claimant had been discharged for reasons that would not constitute misconduct connected with work.

Prior to filing his claim for benefits, the claimant last worked as many as thirty days for Sligh Plumbing & Heating Company of Hopewell, Virginia. He worked for this company from October 16, 1990, until June 19, 1991. He performed a variety of tasks associated with the installation, repair, and maintenance of heating and air conditioning systems. He was a full time employee and was paid \$8.00 an hour.

The employer paired the employees in two-man teams who were dispatched to various jobs on a daily basis. The claimant was paired with one of his closest friends who had introduced him to the company president. The claimant's friend was responsible for the employer's vehicle that the two of them used during the course of the day; however, neither the claimant nor his friend were in a supervisory capacity over the other. Both of them were responsible directly to the company president.

On May 1, 1991, the employer implemented a new attendance policy because of problems that the company was experiencing with several employees. Under that policy, any employee who was absent without notifying the company would be suspended without pay for one week. A second violation of that rule would result in termination.

On June 19, 1991, the claimant and his co-worker were dispatched to a particular job site. While on the job, the claimant and his co-worker had a dispute. As a result, the claimant left the job site and walked home. The claimant did not call the company president to advise him that there were any difficulties. Each of the company trucks is equipped with a two-way radio. The company president could have been contacted on the radio had the claimant attempted to do so. Additionally, the company's office was approximately the same distance from the job site as the claimant's home.

The company president arrived on the job site at approximately 10:30 a.m. and discovered that the claimant was not there. The claimant's co-worker went to his home in an apparent attempt to get him to return to work. The disagreement between the two of them continued, and the claimant did not go back to work.

On June 20, 1991, the claimant reported for work. At that time, he was informed that he had been discharged for walking off the job.

OPINION

Section 60.2-618(2) of the Code of Virginia provides a disqualification if the Commission finds that a claimant was discharged for misconduct connected with his work.

This particular language was first interpreted by the Virginia Supreme Court in the case of Branch v. Virginia Employment Commission, 219 Va. 609, 249 S.E.2d 180 (1978). In that case, the Court held:

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.

The disqualification for misconduct is a serious matter which warrants careful consideration. The burden of proof is on the employer to prove by a preponderance of the evidence that the claimant was discharged for reasons which would constitute misconduct connected with his work. Dimes v. Merchants Delivery Moving and Storage, Inc., Commission Decision 24524-C (May 10, 1985); Brady v. Human Resource Institute of Norfolk, Inc., 231 Va. 28, 340 S.E.2d 797 (1986).

In this case, the Commission must disagree with the Appeals Examiner's analysis. It is apparent that the claimant did not violate the newly adopted attendance policy; however, that was not the reason for his dismissal. The claimant was discharged for walking off the job. That conduct clearly manifests a willful disregard of the employer's interests and the duties and obligations that the claimant owed to the company. The claimant never attempted to contact the employer to advise that there was a problem, even though he had the means to do so by using the two-way radio in the truck. Also, the claimant could just as easily have walked to the company's office to report a problem rather than walking to his home.

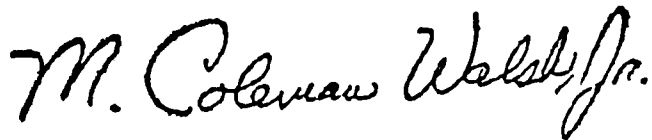
The claimant's decision to walk off the job without making any contact whatsoever with the employer constitutes work-connected misconduct for which no mitigation has been proven. Therefore, the claimant must be disqualified from receiving benefits pursuant to the provisions of Section 60.2-618(2) of the Code of Virginia.

DECISION

The decision of the Appeals Examiner is hereby reversed. The claimant is disqualified from receiving benefits, effective June 23, 1991, because he was discharged for misconduct connected with

his work. This disqualification shall remain in effect for any week benefits are claimed until he performs services for an employer during thirty days, whether or not such days are consecutive, and he subsequently becomes totally or partially separated from such employment.

The case is remanded to the Deputy with instructions to view the claimant's claim for benefits and to determine if he has been overpaid any sum of benefits to which he was not entitled and is liable to repay the Commission as a result of the disqualification imposed by this decision.



M. Coleman Walsh, Jr.
Special Examiner

NOTICE TO CLAIMANT

IF THE DECISION STATES THAT YOU ARE DISQUALIFIED, YOU WILL BE REQUIRED TO REPAY ALL BENEFITS YOU MAY HAVE RECEIVED AFTER THE EFFECTIVE DATE OF THE DISQUALIFICATION. IF THE DECISION STATES THAT YOU ARE INELIGIBLE FOR A CERTAIN PERIOD, YOU WILL BE REQUIRED TO REPAY THOSE BENEFITS YOU HAVE RECEIVED WHICH WERE PAID FOR THE WEEK OR WEEKS YOU HAVE BEEN HELD INELIGIBLE. IF YOU THINK THE DISQUALIFICATION OR PERIOD OF INELIGIBILITY IS CONTRARY TO LAW, YOU SHOULD APPEAL THIS DECISION TO THE CIRCUIT COURT. (SEE NOTICE ATTACHED)