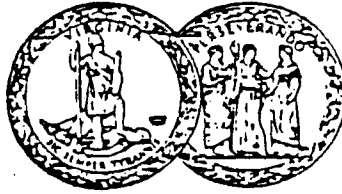


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Lucette Critton
[REDACTED]

Sola Optical USA, Inc.
Colonial Heights, Virginia .

Date of Appeal
to Commission: February 11, 1992

Date of Hearing: April 16, 1992

Place: RICHMOND, VIRGINIA

Decision No.: 37762-C

Date of Mailing: April 25, 1992

Final Date to File Appeal
with Circuit Court: May 15, 1992

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This case came before the Commission on appeal by the employer from a Decision of Appeals Examiner (UI-9111362), mailed January 31, 1992.

APPEARANCES

Employer Representative

ISSUE

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

FINDINGS OF FACT

On February 11, 1992, the employer filed a timely appeal from the Appeals Examiner's decision which held that the claimant was qualified to receive benefits, effective July 7, 1991. That decision was based upon the Appeals Examiner's conclusion that the claimant had been discharged for reasons that would not constitute misconduct in connection with her work.

Prior to filing her claim for benefits, the claimant last worked for Sola Optical USA, Inc. as a Quality Assurance Technician. She was employed from January 29, 1990, until July 8, 1991. At the time of her separation, the claimant was working from 4:00 p.m. until 12:30 a.m., five days per week, and was paid \$4.88 an hour.

The company's rules, regulations, procedures and benefits are contained in a handbook that is provided to all employees at the time they are hired. The claimant had received a copy of that handbook. One section of the handbook, entitled "Counselling and Corrective Action," informs employees that there may be situations that occur which are deemed to be grounds for immediate termination. By way of illustration, 11 situations were listed that would constitute a basis for immediate dismissal. Knowingly entering false data on a time sheet or misuse of the time clock was one of those 11 situations listed. Another portion of the handbook deals with attendance. The first paragraph of that section provides:

Regular attendance is required during all scheduled working hours. This includes reporting to work on time and continuing to work until the end of the work period.

On July 3, 1991, the claimant reported for work as scheduled. The work week ended on July 6, 1991; however, the claimant was not scheduled to return to work until July 9, 1991, because she was taking two days of vacation after the July 4th holiday. She completed her time sheet to indicate that she had reported at 4:00 p.m. and left at 12:30 a.m.

The claimant's immediate supervisor left work that day at approximately 5:00 p.m. While she was waiting outside the plant, the supervisor noticed the claimant drive by in her car at approximately 5:05 p.m. The claimant had experienced some difficulty with swelling in her feet. Therefore, she left her job, drove to her home to change shoes, and returned to the company premises approximately 30 minutes later. The claimant knew that she was required to obtain the permission of a supervisor before leaving the company premises. She also knew who was the acting supervisor in the absence of her regular supervisor. She did not request permission from the supervisor to leave work.

Shortly after returning to the company premises, the claimant informed the supervisor on duty what she had done. The supervisor told her that she should discuss it with her regular supervisor when she reported back for work the following week. The claimant continued to work for the balance of her shift; however, she did not request her time sheet to record her absence from the plant. Also, she did not discuss the time reporting situation with the supervisor on duty.

On July 8, 1991, the claimant's regular supervisor contacted her at home. At that time, the claimant was informed that she was being discharged. The company took this action because the claimant had left work without the permission of a supervisor. A contributing factor to the decision to discharge the claimant was the fact that she had not made any attempt to modify her time sheet for July 3, 1991. As a result, the claimant had certified that she had worked eight hours, when in actuality, she had worked less than a full shift.

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 her 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).

The Commission must disagree with the Appeals Examiner's evaluation of the evidence in this case. The claimant's conduct in walking off her job without receiving permission to do so manifested a willful disregard of the employer's interests and the duties and obligations that the claimant owed to the company. Furthermore, the claimant admitted that she knew that she must receive permission from a supervisor before leaving her duty station; however, she simply did not do so. Her admission serves

to underscore the deliberate nature of her actions. The Commission has previously held that walking off the job without prior permission from the employer constitutes misconduct in connection with work. Simonson v. Sligh Plumbing & Heating Company, Commisison Decision 36655-C (November 27, 1991).

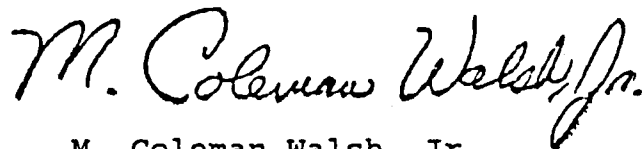
In addition, the claimant knowingly provided the employer with false information on her time sheet. Even though she had turned in her time sheet at the beginning of the shift, she knew when she returned from changing her shoes that her time sheet no longer accurately reported the hours that she worked. She did not make any effort to either modify her time sheet or discuss it with the supervisor that was on duty. Her actions, therefore, amounted to a deliberate, knowing violation of the company rule that prohibited falsifying time sheets.

Under these circumstances, the claimant was discharged for misconduct in connection with her work. In fact, either of the two reasons advanced by the employer, standing alone, would be sufficient to establish a prima facie case of misconduct. The claimant has not proven any mitigating circumstances for her failure to obtain permission to leave work, or her failure to take proper steps to correct her time sheet. Therefore, she must be disqualified as provided in Section 60.2-618(2) of the Code of Virginia.

DECISION

The Appeals Examiner's decision is hereby reversed. The claimant is disqualified from receiving benefits, effective July 7, 1991, because she was discharged for misconduct connected with her work. This disqualification shall remain in effect for any week benefits are claimed until the claimant performs services for an employer during thirty days, whether or not such days are consecutive and she subsequently becomes totally or partially separated from such employment.

The case is referred to the Deputy who is requested to investigate the claimant's claim for benefits and to determine if she has been overpaid any sum of benefits to which she was not entitled and which she must repay the Commission as a result of the disqualification imposed by this decision.



M. Coleman Walsh, Jr.
Special Examiner