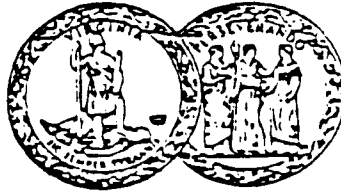


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

David W. Jefferson
[REDACTED]

Heritage Garden Center, Inc.
Grafton, Virginia

Date of Appeal

to Commission: March 3, 1992

Date of Hearing: April 15, 1992

Place: RICHMOND, VIRGINIA

Decision No.: 37934-C

Date of Mailing: April 17, 1992

Final Date to File Appeal
with Circuit Court: May 7, 1992

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This case is before the Commission on appeal by the claimant from Appeals Examiner's decision UI-9118220, mailed February 14, 1992.

APPEARANCES

Employer Representative

ISSUE

Was the claimant discharged from employment due to 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 claimant filed a timely appeal from the Appeals Examiner's decision which affirmed an earlier Deputy's determination and disqualified him for unemployment compensation, effective November 3, 1991, for having been discharged due to misconduct in connection with work.

The findings of fact made by the Appeals Examiner have been reviewed and are hereby adopted by the Commission with certain corrections and additions to be discussed in the following paragraph.

The owner saw other members of the claimant's crew working to load a truck while he appeared to be standing around doing nothing. As he took the claimant aside, he told him that "this was it." The claimant's response was to begin laughing, thereby prompting the owner to discharge him.

OPINION

Section 60.2-618(2) of the Code of Virginia provides a disqualification if it is found that a claimant was discharged from employment due to misconduct in connection with work.

In the case of Branch v. Virginia Employment Commission, 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.

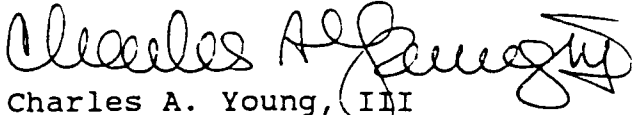
Insubordination, the failure to follow the reasonable instructions of or to show reasonable respect for one in a position of authority, has been consistently held to constitute misconduct in connection with work. Seay v. One-Hour Valet, Commission Decision 3270-C (August 13, 1958); Vines v. Committee of Judges Systems, Commission Decision 9661-C (September 7, 1977); Anderson v. Glass Marine, Incorporated, Commission Decision 13211-C (April 8, 1980).

The Commission agrees with the Appeals Examiner that the claimant was discharged due to insubordination. He was specifically warned at the safety meeting that the topic was considered serious, and that his apparent disregard of this as demonstrated by his laughing during the presentation was not acceptable. He was later found away from his assigned crew doing nothing, and chose to laugh in the owner's face when he tried to impress upon him the seriousness of the situation. The Commission concludes that this amounted to a prima facie case of insubordination and misconduct in connection with his work for which he has failed to show mitigating circumstances. Accordingly, he should remain disqualified for benefits under this section of the Code.

DECISION

The decision of the Appeals Examiner is hereby affirmed.

The claimant is disqualified for unemployment compensation, effective November 3, 1991, for any week or weeks benefits are claimed until he has performed services for an employer during 30 days, whether or not such days are consecutive and he has subsequently become totally or partially separated from such employment, because he was discharged due to misconduct in connection with work.


Charles A. Young, III
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)