

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of

James McAfee, Claimant
████████████████████

Harvey's Chevrolet Corporation
Radford, Virginia

Employer

Date of Appeal

To Commission: July 8, 1975

Date of Hearing: November 18, 1975

Decision No.: 7446 -C

Date of Decision: February 2, 1976

Place: Richmond, Virginia

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This is a matter before the Commission on appeal by the employer from the decision of the Examiner (No. UI-75-5066), dated July 1, 1975.

ISSUE

Was the claimant discharged for misconduct in connection with his work within the meaning of § 60.1-58 (b) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT AND OPINION

The claimant was last employed by Harvey's Chevrolet Corporation, Radford, Virginia, from February 14, 1975, through April 1, 1975. The claimant, in filing his claim for benefits, stated that he was laid off and reiterated the same in his fact finding interview with the deputy. The claimant failed to appear at the Appeals Examiner's hearing or the Commission hearing.

At the hearing before the Commission the employer representative appeared and testified that the claimant had been employed as a night watchman. During the claimant's time of employment tires were found to be missing from the employer's storage area. The employer learned that some of the tires were sold to an individual working at a local service station. The employer representative went to the service station and purchased two of the tires. After making the purchase the employer informed the seller that the serial numbers matched those of the tires stolen from his place of business. The seller then informed the employer that he had purchased the tires from the claimant.

Later that same day the employer confronted the claimant with the fact that he had been told that the claimant sold the stolen tires to the individual at the service station. When asked if he did sell the tires to the service station, the claimant refused to make any comment. The employer, therefore, discharged the claimant.

Section 60.1-58 (b) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that a claimant was discharged for misconduct connected with his work. Misconduct has been consistently interpreted as a willful and wanton disregard of the employer's interests as is found in deliberate violations of the employers rules or disregard of standards of behavior which an employer has the right to expect of his employee.

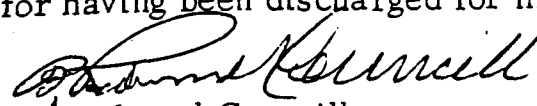
In the present case the employer has testified under oath that he purchased tires, which were stolen from his place of business, from a local service station. After doing so he was informed by the seller that the service station purchased the tires from the claimant, who was employed by the employer as a night watchman. When confronted with this information by the employer, the night watchman refused to comment.

It appears to the Commission that the failure on the part of the claimant to deny such accusation was damning to his interest. Certainly, the theft of property from an employer or the subsequent sale of such property to another would constitute misconduct as would disqualify the claimant from receipt of benefits. The refusal to deny such accusation when confronted with the same by one's employer would lead to an extremely negative inference. The mere refusal to explain such allegations to one's employer when questioned about them might also be considered misconduct for it is certainly within the legitimate interests of the employer to demand an explanation concerning such allegations.

The Commission realizes that it is not a court of law sitting in judgment of a criminal charge. Therefore, there is no requirement that a charge of misconduct be supported beyond a reasonable doubt. In the present case it is of the opinion that in view of the totality of the circumstances the claimant was guilty of misconduct in refusing to comment on the allegations when asked to do so by the employer. It is the opinion of the Commission, furthermore, that in view of his failure to deny such allegations when confronted with the same by his employer, and his failure to appear and give any testimony to the contrary, that the claimant did sell the stolen tires to the local service station and in so doing was guilty of misconduct.

DECISION

The decision of the Appeals Examiner is reversed. It is held that the claimant is disqualified from receipt of benefits for having been discharged for misconduct connected with his work.


B. Redwood Council
Director of Appeals