

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Melissa K. Singleton
[REDACTED]

Karen R. Wilds
Chesapeake, Virginia

Date of Appeal
to Commission: May 25, 1993
Date of Hearing: June 18, 1993
Place: RICHMOND, VIRGINIA
Decision No.: 42406-C
Date of Mailing: July 8, 1993
Final Date to File Appeal
with Circuit Court: July 28, 1993

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This case came before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-9306800), mailed May 4, 1993.

APPEARANCES

None

ISSUES

Does the claimant have good cause to reopen the Appeals Examiner's hearing as provided in Regulation VR 300-01-4.2I of the Regulations and General Rules Affecting Unemployment Compensation?

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 May 25, 1993, the claimant filed a timely appeal from the Appeals Examiner's decision which disqualified her from receiving benefits, effective March 7, 1993. The basis for that disqualification was the Appeals Examiner's conclusion that the claimant had been discharged for misconduct connected with her

work. In addition to filing her appeal, the claimant requested that the Appeals Examiner's hearing be reopened. In support of that request, the claimant asserted that she had not received notification of the hearing.

The Commission scheduled a hearing for 10:00 a.m. on June 14, 1993. The purpose of that hearing was to take evidence and testimony regarding the claimant's request for a reopening of the appeals hearing. Written notice of the Commission hearing was mailed to the claimant at her correct, last known address on June 8, 1993. A letter accompanied that notice which informed the claimant that, in lieu of personally appearing for the hearing, she could submit a sworn affidavit. At the time and place designated for the hearing, the claimant neither appeared nor submitted an affidavit.

The Appeals Examiner's hearing was scheduled for 11:00 a.m. on April 29, 1993. Written notice of that hearing was mailed to the claimant's correct, last known address on April 13, 1993. At the time and place designated for the hearing, only the employer appeared to participate.

The findings of fact of the Appeals Examiner are supported by the evidence in the record. Accordingly, they are adopted by the Commission.

OPINION

Regulation VR 300-01-4.2I of the Regulations and General Rules Affecting Unemployment Compensation provides, in pertinent part, that an Appeals Examiner's hearing may be reopened upon a showing of good cause. In the case of Engh v. United States Instrument Rentals, Commission Decision 25239-C (July 12, 1985), the Commission held:

In order to show good cause to reopen a hearing, the party making such a request must show that he was prevented or prohibited from participating in the hearing by some cause which was beyond his control and that, in the face of such a problem, he acted in a reasonably prudent manner to preserve his right to participate in future proceedings.

This case presents an issue concerning whether the claimant received the notice of the appeals hearing. Under Virginia law, proof of mailing of a letter which was properly addressed and posted raises a presumption that the letter was received by the addressee. Hartford Fire Ins. Co. v. Mutual Savings & Loan Co., 193 Va. 269, 68 S.E.2d 541 (1952). While this presumption is not conclusive, denial of receipt by the addressee creates a question of fact that must be resolved by the fact finder. Manassas Park Dev. Co. v. Offutt, 203 Va. 382, 124 S.E.2d 29 (1962).

The only evidence before the Commission in support of the reopening request is the claimant's unsworn assertion that she did not receive notification of the hearing. That unsworn assertion is simply insufficient to overcome the presumption of delivery and carry her burden of proving good cause to reopen the case. Accordingly, the reopening request must be denied.

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 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 Appeals Examiner's opinion represents a correct application of the law to the facts proven by the record. Accordingly, the Commission adopts that opinion and finds that the claimant was discharged for misconduct connected with her work for which no mitigating circumstances were proven. Therefore, she must be disqualified from receiving benefits as provided by the statute.

DECISION

The claimant's request that the Appeals Examiner's hearing be reopened is hereby denied.

The Appeals Examiner decision is hereby affirmed. The claimant is disqualified from receiving benefits, effective March 7, 1993, 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 30 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 is liable to repay the Commission as a result of the disqualification imposed by the decision.

M. Coleman Walsh, Jr.
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)