



DECISION OF COMMISSION

In the Matter of:

Michael S. Stevens
████████████████████

Copy Systems, Inc.
Richmond, Virginia

Date of Appeal
to Commission: October 1, 1985

Date of Hearing: December 4, 1985

Place: RICHMOND, VIRGINIA

Decision No.: 25853-C

Date of Mailing: December 12, 1985

Final Date to File Appeal
with Circuit Court: January 1, 1986

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This is a matter before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-85-7101), mailed September 28, 1985.

APPEARANCES

Attorney for Claimant, Attorney for Employer, One Observer

ISSUE

Was the claimant discharged for misconduct connected with his work as provided in Section 60.1-58 (b) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On October 1, 1985, the claimant initiated a timely appeal from a Decision of the Appeals Examiner which disqualified him from receiving unemployment insurance benefits effective July 15, 1985. This disqualification was imposed based upon the Appeals Examiner's

finding that the claimant had been discharged by his last thirty-day employing unit for reasons which constitute misconduct connected with his work.

Prior to filing his claim for benefits, the claimant last worked for Copy Systems, Inc., of Richmond, Virginia. This employing unit was his last thirty-day employing unit, and he performed services as a service technician from May 1, 1984, through May 15, 1985. At the time of his separation from work, the claimant was earning a salary of \$15,600 per year.

During the course of his employment, the employer had received complaints from customers concerning the claimant's attitude and comments he would make. Some of the customers interpreted the claimant's remarks and conduct as being rude and offensive. In most instances, the customers did not reveal any specifics concerning the allegations, and the employer, in turn, did not share anything with the claimant other than the general comment that the complaints had been received.

In 1985, the employer received some specific complaints which were brought to the attention of the claimant. On January 25, 1985, the claimant was given a written disciplinary evaluation concerning an incident at the Mail Box Company. The specific customer complaint was reviewed with the claimant, and he was placed on a ninety-day probation beginning January 25, 1985. The claimant was told that any more complaints about his performance would force the company to terminate him. On this particular occasion, the customer had accused the claimant of being rude and making statements to the effect that the customer was very picky about the service provided the copy machines. In actuality, the claimant was working on the machine when a client of the customer in question came in and began a discussion regarding the relative merits of various copy machines. The individual indicated to the claimant some interest in obtaining a copier, and the claimant did encourage this person to contact his employer's sales department.

On April 17, 1985, the claimant received a second disciplinary evaluation. The employer had received other complaints since January 25, 1985, and the claimant was put on notice that any further complaints would result in his dismissal. This second disciplinary evaluation was prompted primarily by a complaint the employer received from M J Consultants, Inc. This client complained to the employer, both by telephone and by letter. The claimant was accused of being uncooperative, and the client evidently took some offense at a characterization made by the claimant that the copier was like a "Model-T".

The claimant was unaware that his employer had sold this machine to the client within the last two years. The company encouraged service technicians to be alert for situations where a client may require upgrading of current equipment. The claimant thought this was such a case and, in discussing it with the client, stated that the current copier was like a Model-T in light of the rapid, vast technological changes that had occurred within the industry.

The claimant was subsequently discharged by the employer on May 15, 1985. Since the second disciplinary evaluation, the employer had received another complaint from Macke Foods. The claimant was accused of being rude to the key operator with this customer, and the customer claimed that the claimant attempted to attribute all of the copier problems to the key operator. When the claimant was confronted by the employer with this matter, he explained that this customer had experienced some fairly frequent turnover with the employees who operated the copier, and the key operator with whom he was dealing was relatively new. He had attempted to explain the operation of the copier to her in some detail in an attempt to be helpful. He was not rude to her and did not attempt to attribute all of the problems with the copier to the key operator.

OPINION

Section 60.1-58 (b) 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 Vernon Branch, Jr. v. Virginia Employment Commission and Virginia Chemical Company, 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."

In cases involving an allegation of misconduct, the burden of proof is upon the employer to demonstrate that the acts complained of did occur and were of such a nature or so recurrent as to constitute a willful or deliberate disregard of the duties and obligations owed to the employer.

In this case, the claimant was discharged by the employer based upon customer complaints that had been received. Essentially, the claimant did not perform to the employer's satisfaction with respect to the client relations aspect of his job. Implicit in any employer-employee relationship is the understanding that employees will be respectful and courteous to the employer's customers and patrons. Repeated, recurrent acts of rudeness and discourtesy to the employer's customers, if proven, could constitute misconduct connected with work. However, in the present case, the Commission is not convinced that such acts have been proven.

The employer's case rests upon the three specific incidents discussed in the findings of fact and the general, unspecified complaints that were received but were not discussed in any meaningful way with the claimant. The evidence in the record does support a finding that the employer received complaints from some of its customers concerning the claimant's conduct. The only evidence the employer presented regarding the specific allegations was almost exclusively hearsay. None of the employer's clients actually appeared to testify at the hearing. Instead, the employer submitted copies of letters received, together with copies of phone messages that had been taken when clients would call and register a complaint. Such evidence, especially in light of the claimant's sworn testimony, is insufficient to establish that the claimant was rude and offensive on such a recurring basis as would constitute a deliberate or willful disregard of the employer's interest.

Therefore, for the reasons set forth herein, the Commission is of the opinion that the claimant was discharged for reasons which do not constitute misconduct connected with his work and that no disqualification may be imposed under the terms of Section 60.1-58 (b) of the Code of Virginia.

DECISION

The Decision of Appeals Examiner is hereby reversed. It is held the claimant is qualified to receive unemployment insurance benefits, effective July 14, 1985, in that he was discharged by his last thirty-day employing unit for reasons which do not constitute misconduct connected with work.

The case is hereby remanded to the Deputy with instructions to review the claimant's claim for benefits and to determine whether he has complied with the eligibility requirements of the Act for each week benefits have been claimed.

M. Coleman Walsh, Jr.
Special Examiner