

COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Cynthia M. Baker  
[REDACTED]

Norfolk Shipbuilding & Drydock  
Corporation  
Norfolk, Virginia

Date of Appeal

to Commission: January 24, 1991

Date of Hearing: April 4, 1991

Place: RICHMOND, VIRGINIA

Decision No.: 35294-C

Date of Mailing: April 8, 1991

Final Date to File Appeal  
with Circuit Court: April 28, 1991

---oOo---

This case is before the Commission on appeal by the employer from Appeals Examiner's decision UI-9015413, mailed January 18, 1991.

APPEARANCES

Claimant, Observer

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 employer filed a timely appeal from the Appeals Examiner's decision which affirmed an earlier Deputy's determination and found the claimant to be qualified for unemployment compensation, effective December 2, 1990, with respect to her separation from the employer's services.

Prior to filing her claim, the claimant last worked for the Norfolk Shipbuilding & Drydock Corporation of Norfolk, Virginia,

between February 1, 1988 and December 5, 1990. Her position was that of a nondestructive testing inspector.

At the end of March, 1990, the claimant's supervisor first mentioned that he wanted to see her progress in her job by becoming certified as an ultrasonic tester at Level II. He did not tell her that he was requiring her to be certified at any specific date, nor did he tell her that her continued employment depended upon her becoming certified. Thereafter, he noted that the claimant seemed uninterested in progressing as he had suggested. Indeed, she virtually admitted as much by stating that she was not interested in advancing within the company and that she might be seeking work elsewhere.

On December 5, 1990, the supervisor called the claimant in to tell her that he was going to require her to work in the area of ultrasonic testing. She told him that she was not interested in that type of work and the meeting ended. The claimant later stated that she wanted to see the "shop notes" which had been written up on her by the supervisor. He appeared to be upset at this and suddenly told her that he was giving her a deadline of January 11, 1991, to be certified if she wished to keep her job. He asked her if she understood what he was saying; however, she was too stunned at this sudden turn of events to respond. She was not even sure if it was possible to take the necessary classes to become certified by that time. Before she could say anything, the supervisor told her to pack up her things and leave.

#### 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).

When a member of management tells subordinate employees that they are expected to do something, the supervisor, by virtue of his or her position, has the right to expect an acknowledgment from the subordinates that they have heard and understand the instruction. Under such circumstances, silence on the part of a subordinate employee could be found to constitute insubordination.

In this case, the Commission is unable to conclude that a preponderance of the evidence establishes that the claimant simply glared at the supervisor and willfully refused to answer him after he told her that he was expecting her to be certified to perform certain operations by January 11, 1991. Her testimony to the effect that she was stunned by this sudden and unexpected statement, as well as the fact that she did not think it was possible to become certified within thirty days, certainly make her reluctance to immediately respond understandable. The Commission is unable to conclude that the employer has carried the burden of showing that her failure to respond came after such repeated questions or such a length of time as would indicate a deliberate act of insubordination on her part. Accordingly, her discharge was not due to misconduct, and she should remain qualified for benefits under this section of the Code.

#### DECISION

The Decision of Appeals Examiner is hereby affirmed.

It is held that the claimant is qualified for unemployment compensation, effective December 2, 1990, with respect to her separation from the services of the Norfolk Shipbuilding & Drydock Corporation.



Charles A. Young, III  
Special Examiner