

VIRGINIA EMPLOYMENT COMMISSION

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Decision of Commission

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In the Matter of	§	Appeal from Examiner
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Yvonne N. Newkirk, Claimant	§	Date of Appeal: January 20, 1972
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	§	Date of Hearing: February 14, 1972
Virginia National Bank	§	
Norfolk, Virginia	§	Decision No. : 5585-C
	§	
Employer	§	Date of Decision: February 18, 1972
	§	
	§	Place: Richmond, Virginia

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This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UI-71-2769) dated January 7, 1972.

ISSUES

Was the claimant available for work for the week or weeks for which she claims benefits pursuant to § 60.1-52 (g), Code of Virginia (1950), as amended?

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

FINDINGS OF FACT

The claimant was last employed for Virginia National Bank, Norfolk, Virginia, for whom she worked as a clerk in the Stocks and Bonds Department from September 21, 1966, through November 19, 1971. The employer, in response to the Commission's request for separation and wage information, stated that the claimant was "terminated because of numerous errors and tardiness."

The claimant stated at the Appeals Examiner's hearing held on January 6, 1972, regarding the employer's charge of tardiness: "I was late several times I would say that I would be late some days between five to seven minutes mainly due to parking or traffic problems, and the last day I worked, I was fifteen minutes late" The claimant also stated that she was warned "once or twice every two weeks, at least" regarding her tardiness. In a letter to the Commission from the claimant dated January 19, 1972, regarding tardiness, the claimant indicated the aforesaid statements given to the Appeals Examiner were "mis-statements" and that she had never been warned in writing nor warned verbally "other than in casual conversation."

In letter to the Commission postmarked February 12, 1972, the claimant indicated that her starting time for work was 8:30 a. m., but that she was unable to sign her time sheets until she could get to her desk which was located in the main vault area, and also that she was unable to get to her desk until the vault area was pumped with air, which process took approximately five minutes. Therefore, she indicated that it was at least 8:35 a. m. before she could sign her time sheets.

The claimant filed her claim for benefits on November 21, 1971. During the two-week claim period from November 21, 1971, through December 4, 1971, the claimant reported that she had contacted one employer for work and that she had registered with a state employment service and asked friends about possible job opportunities. During the period from December 5, 1971, through January 1, 1972, the claimant reported to several employers each week to whom she had applied for work.

OPINION

Section 60.1-52 (g) of the Virginia Unemployment Compensation Act provides in part that a claimant, in order to be eligible for benefits, must be "available for work." Generally to be considered available for work a claimant must show that he is actively and earnestly looking for work, is ready and willing to accept all offers of suitable work, and does not place undue restrictions upon his employability.

The Commission is of the opinion that the claimant has not met the eligibility requirements of the Act for the claim period from November 21, 1971, through December 4, 1971, but has indicated an earnest, active, and diligent search for work for the claim period from December 5, 1971, through January 1, 1972.

Section 60.1-58 (b) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that an individual was discharged for misconduct in connection with her work. This Commission has consistently held that the conduct of an employee, which will be construed as misconduct within the meaning of the above section, is an act of willful disregard of the employer's interest, a deliberate violation of the employer's rules, a disregard of the standards of behavior which the employer has the right to expect of his employees, or a substantial disregard of the employee's duties or obligations to the employer.

In accordance with this definition, persistent tardiness is generally considered misconduct. Only an isolated case of tardiness, which does not materially interfere with the employer's business does not fall within the above definition. This is so because punctuality is as much an accepted fact of adult experience as is compliance with the unspoken command of a red traffic signal and is well within standards of behavior which the employer has a right to expect of his employees.

The claimant maintains that she was unaware of the place she should be at 8:30 a. m. each morning: at her desk, or on bank property; and therefore, her confusion in this matter absolves her of the charges of tardiness made by the employer. This contention does not alter the fact that the employer considered the claimant tardy and warned her of the same on many occasions. If the claimant was unaware as to at what designated point she should be at the 8:30 a. m. hour, it was incumbent upon her to seek clarification from her immediate supervisor and not to continue to arrive at times she deemed proper. It is sufficient that the employer made his dissatisfaction known to the claimant and reinforced this dissatisfaction in the form of warning her that she was not living up to her duty to be punctual.

Although the claimant, in unnotarized letters to this Commission, referred to her testimony under oath at the Appeals Examiner's hearing, regarding her admissions of tardiness and the warnings rendered her by her employer as nervous misstatements, this Commission finds the claimant's credibility lacking in that requisite degree of persuasion necessary to convince this Commission that the claimant did not realize and was not fully aware that her employer considered her tardiness as a substantial interference with her employment. The repetition of this tardiness despite warnings can only be construed by this Commission as an abandonment by the claimant of her duty to be punctual.

By the claimant's own admission she was frequently late for work and was warned numerous times of this, but disregarded these warnings; therefore, this Commission is of the opinion that there is no reasonable basis but to conclude that the claimant was guilty of misconduct in connection with her work.

DECISION

The decision of the Appeals Examiner is hereby affirmed. It is held that the claimant has not met the eligibility requirements of the Act from November 21, 1971, through December 4, 1971. It is also held that the claimant, after being given credit for her week of waiting period ending December 11, 1971, is disqualified effective December 12, 1971, from receiving benefits for having been discharged for misconduct in connection with her work, such disqualification to remain in effect until the claimant has worked for an employing unit for 30 days, whether or not such days are consecutive.



B. Redwood Councill
Assistant Commissioner