

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of

Thomas W. Porter, Claimant
[REDACTED]

Wilson Trucking Company
Roanoke, Virginia
Employer

Date of Appeal
To Commission: October 17, 1975
Date of Hearing: December 11, 1975
Decision No.: 7340-C
Date of Decision: January 5, 1976
Place: Richmond, Virginia

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This is a matter of the Commission on appeal by the claimant from the decision of the Examiner (No. UI-75-6702), dated October 7, 1975.

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ISSUES

Did the claimant voluntarily leave his last employment without good cause within the meaning of § 60.1-58 (a) of the Code of Virginia (1950), as amended?

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?

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FINDINGS OF FACT AND OPINION

The findings of fact by the Appeals Examiner are adopted by the Commission. In the present case the claimant, after working approximately four and a half hours on July 7, 1975 was told to "clock out" until he had conformed with the employer's grooming policy and that he would not be able to continue employment unless he complied. Since the record establishes that the employer was the moving party in the termination, it is the opinion of the Commission that the claimant did not voluntarily leave employment and is not subject to disqualification pursuant to § 60.1-58 (a) of the Virginia Unemployment Compensation Act.

The issue before the Commission is whether the claimant's failure to cut his hair in conforming with the employer's grooming standards constituted

misconduct within the meaning of § 60. 1-58 (b).

The employer's policy concerning grooming in effect when the claimant was hired stated as follows:

"All employees of Wilson Trucking Corporation will present a neat and acceptable appearance at all times while on duty. This means that there will be no extremes in clothing, including dress length, make-up, or hair styles which would include beards, mustaches and hair cuts." (Transcript p. 13).

New instructions were issued on June 3, 1975, which stated that the length of hair was not to be over the collar and not to cover more than one-third of the ear.

The employer representatives testified that complaints had been received concerning the appearance of some of the truck drivers. No complaint had been received from customers concerning the claimant who worked at the terminal as a dock hand or laborer. His hours of work were from 3:30 a. m. to 12 noon.

This is a case of first impression for the Commission. A review of the numerous court and administrative decisions in other states reveals the absence of any single rule or standard as dispositive of whether a claimant's failure to comply within grooming standards constitutes misconduct.

In Consolidated Construction Co. v. Patrick I. Casey DIL HR, the Wisconsin Circuit Co., Dare County, No. 139-388 (1973) held that a claimant who had shoulder length hair and a full beard in violation of a grooming code which was adopted as a safety measure because employees operated rotary tools, saws, and torches was discharged for misconduct (emphasis added). Similar results were reached when it was established that the grooming codes related to sanitary measures, such as preparing and serving food, (Decision of Appeals Referee, Alabama No. 6718-AT-72) or where the claimant's personal appearance was detrimental to the employer's business.

The majority of decisions, however, hold that when the claimant's hair length or grooming style does not interfere with the performance of his job duties or result in any detriment to the employer then the claimant is not subject to disqualification. See Lattanzio v. Unemployment Compensation Bd. of Rev., Pa. 336 A. 2d 595; Board of Rev. v. Lawrence J. Boyle, Commonwealth Court of Pennsylvania No. 1554 C. D. 1974, 11-19-75; Edward Winter v. State of Alaska, Alaska Superior Court, 3rd Judicial District No. 72-6090, 12-12-73.

In the present case no evidence was presented by the employer to establish that the claimant's personal appearance was in any way detrimental to their business or that his long hair affected his ability to perform the work required of him as a dock hand.

After a complete review of the entire record it is the opinion of the Com-

mission that the claimant was terminated for reasons which do not constitute misconduct under the Act.

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DECISION

The decision of the Appeals Examiner is reversed. The Deputy is directed to determine the claimant's eligibility for benefits for the weeks claimed.

William B. Purser

William B. Purser
Deputy Commissioner