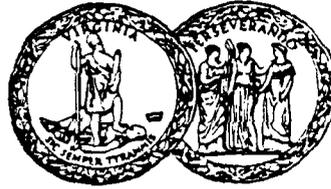


COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of

Helen A. Pryor, Claimant  
████████████████████

Office of Secretary of Defense  
F & AO - Washington  
Washington, D. C.

Employer

Date of Appeal

To Commission: February 1, 1975

Date of Hearing: March 18, 1975

Decision No.: UCFE -246

Date of Decision: April 25, 1975

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. UCFE -74 -80), dated January 23, 1975.

ISSUE

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

FINDINGS OF FACT AND OPINION

The claimant was last employed by the Department of Defense, Office of the Assistant Secretary of Defense, for whom she had worked from September, 1964, through October 12, 1973. At the time of her separation she was employed as a secretary at the GS-8 rating. The Federal agency in response to the Commission's request for wage and separation information, has submitted on Form ES-931, Request for Wage and Separation Information, the following reason for the claimant's separation from employment:

Removal: insubordination based on your refusal to submit to a psychiatric evaluation as part of a fitness for duty examination as documented in July 1973.

At the hearing before the Appeals Examiner the claimant stated that although she had been notified that she was scheduled for psychiatric examination, she did not receive such notice until after the time for the examination. The claimant

advanced the argument that there was no reasonable basis for her employer to request a psychiatric evaluation and even if there was a reasonable basis, she did not receive notice of such scheduled examinations until after the date that they were scheduled and was, therefore, deprived of any opportunity to have counsel or other representation.

Section 60.1-58 (b) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that an individual was discharged due to misconduct in connection with her work.

The Commission has consistently held that where a claimant fails to abide by reasonable rules or requests of his employer that the claimant is guilty of insubordination and such conduct amounts to misconduct in connection with work. In the opinion of the Commission, the record clearly reveals that the claimant failed to take psychiatric examinations as requested by her employer. Although the claimant contends that she did not receive her employer's instructions to take such examinations prior to the time of the examinations, it is obvious that the claimant was told on several occasions that the examinations would be necessary. Her awareness of her employer's request and her later failure to comply with them would clearly amount to insubordination if it is shown that the requests were reasonable on the part of the employer.

The only evidence submitted by the employer is that the claimant failed to submit to psychiatric examinations as directed. However, the employer has failed to submit any evidence as to why the requests for psychiatric examination were made. Absent any evidence as to the reasons that the request for psychiatric examination were made, it is impossible for the Commission to conclude that these requests were reasonable. Without any evidence to the contrary, it is just as probable to conclude that the request for psychiatric examination was arbitrary and capricious as it is to conclude that such requests were reasonable.

The Commission has consistently held that the burden of proof is upon the employer to establish misconduct on the part of the claimant. Where the employer states that the claimant has failed to comply with the rules and requests of the employer there must be at least a prima facie showing that such rules or requests were reasonable. In view of the potentially grave implications of psychiatric examinations, the possible unreasonable excesses or abuses by the employer in this situation, and the lack of any showing of the reasonableness of the request, it is concluded that no misconduct exists on the part of the claimant in failing to honor the requests for psychiatric examination.

### DECISION

The decision of the Appeals Examiner disqualifying the claimant for having been discharged for misconduct in connection with her work is hereby reversed. In view of the fact that the claimant has stated that the matter of looking for work

has been discussed with some friends and that she has been looking for work through the ads in the newspapers, the deputy is directed to carefully determine the claimant's eligibility for the weeks benefits are claimed.



B. Redwood Councill  
Assistant Commissioner