

DECISION OF COMMISSION

In the Matter of:

Brian R. Goodman  
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J. W. Ferguson and Son, Inc.  
Richmond, Virginia

Date of Appeal  
to Commission: May 23, 1985  
Date of Review: June 21, 1985  
Place: RICHMOND, VIRGINIA  
Decision No.: 25210-C  
Date of Mailing: July 5, 1985  
Final Date to File Appeal  
with Circuit Court: July 25, 1985

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This is a matter before the Commission on appeal by the employer from the Decision of Appeals Examiner (No. UI-85-2891), mailed May 3, 1985.

ISSUE

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

FINDINGS OF FACT

The Findings of Fact of the Appeals Examiner are adopted by the Commission with the following addition. Those findings are as follows:

"The claimant filed a timely appeal from a Deputy's determination which disqualified him from benefits effective March 10, 1985, for reasons of separation from his employment.

J. W. Ferguson and Son, Inc., was the claimant's last employer where he worked from February 16, 1981, through January 21, 1985.

Following the claimant's last day of work, he notified the employer he had injured his back and was unable to work. He was under the care of a physician for this injury from January 22, 1985, through January 29, 1985. For several years the claimant has used drugs and while taking the prescribed medication for his back injury, he also utilized drugs. As a result, he was hospitalized around January 28, 1985, for his addiction to drugs. On January 29, 1985, the employer was informed of the claimant being hospitalized and shortly thereafter, the reasons for his being admitted to the hospital. On January 31, 1985, the claimant was terminated by the employer for failing to report for work as scheduled. The claimant remained hospitalized for his problem with drugs until March 3, 1985.

During his period of absence from work, the claimant's employer was advised of the reason for his continued absence either by the claimant or one of his relatives or a member of the hospital staff to which the claimant was admitted.

#### OPINION

Section 60.1-58 (b) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that a claimant was discharged for misconduct in connection with his work.

The Commission has consistently held that chronic, unexcused absenteeism from work constitutes misconduct in connection with work. The Commission also has held, in Elizabeth J. Hancock v. Mr. Casuals, Inc., #1, Commission Decision No. 6355-C (July 3, 1974):

"At most, all that is shown by the evidence is chronic absenteeism; however, it is absenteeism due to sickness, or injury rather than unexcused absenteeism. Mere absenteeism, attributable to illness or injury, when the employer has been notified of the illness or injury, will not amount to misconduct. The sine qua non of wanton disregard of the employer's interest or malevolent intent is absent in such cases."

In Rufus O. Cox v. Durham & Bush, Inc., Commission Decision No. 7248-C (December 5, 1975), the Commission held that the claimant's absence and hospitalization due to alcoholism was not misconduct in connection with work since the claimant's absence was due to an illness and the employer had been notified of his absence and hospitalization.

In this case, the claimant's absence was due to a drug addiction for which he was hospitalized. The Virginia General Assembly has recognized that drug addiction, like alcoholism, is an illness or disease which may require medical treatment.

Virginia Code Section 37.1 defines a "drug addict" as:

". . . A person who: (i) through use of habit-forming drugs or other drugs enumerated in the Virginia Drug Control Act (Section 54-524.1 et seq.) as controlled drugs, has become dangerous to the public or himself; or (ii) because of such drug use, is medically determined to be in need of medical or psychiatric care, treatment, rehabilitation or counseling;"

Mentally ill as:

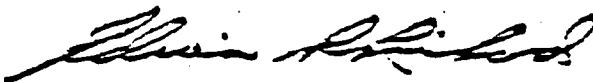
". . . Any person afflicted with mental disease to such an extent that for his own welfare or the welfare of others, he requires care and treatment; provided, that, for the purposes of Chapter 2 (Section 37.1-63 et seq.) of this title, the term 'mentally ill' shall be deemed to include any person who is a drug addict or alcoholic;" (See also Sections 37.1-203 and 37.1-208)

Since it is clearly the public policy of this Commonwealth to treat drug addiction as a health problem, this Agency in the absence of a statutory or judicial mandate to the contrary must comply with this policy.

In this case, the employer had been made aware of the claimant's hospitalization as the reason for his absence from work. While the claimant's absence for this reason was obviously not acceptable by the employer, there can be no finding of misconduct in connection with his work for such absence. (Underscoring supplied)

#### DECISION

The Decision of Appeals Examiner is hereby affirmed. It is held the claimant is qualified for unemployment compensation benefits effective March 10, 1985, with respect to his separation from employment with J. W. Ferguson and Son, Inc.

  
Edwin R. Richards  
Special Examiner