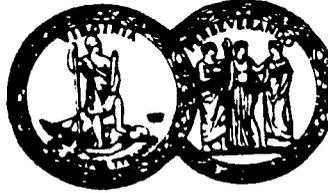


COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION



MISCONDUCT: 190.15  
Evidence-  
Weight and sufficiency.

DECISION OF COMMISSION

In the Matter of

Edwin S. Herring, Jr., Claimant  
████████████████████

Newport News Shipbuilding &  
Dry Dock Co.  
Newport News, Virginia

Employer

Date of Appeal

To Commission: August 30, 1974

Date of Hearing: October 15, 1974

Decision No.: 6470-C

Date of Decision: October 17, 1974

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-74-1969) dated August 15, 1974.

ISSUE

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?

FINDINGS OF FACT AND OPINION

The claimant appealed from a decision of the Appeals Examiner which disqualified him for benefits effective June 23, 1974, for having been discharged for misconduct in connection with his work.

Newport News Shipbuilding and Dry Dock Company was the claimant's last employer for whom he worked as a welder from April 5, 1971, through June 11, 1974.

Separation information furnished by the employer stated as follows:

". . . Discharged - leaving the job without permission and violation of the no strike clause."

At the hearing conducted by the Appeals Examiner, two employer representatives, the personnel supervisor and an employment representative, appeared and testified. According to the employer, the claimant in a group of eight welders left their work site at approximately 1:00 p. m., June 11, 1974, and went to the personnel office to discuss their wages. At the personnel office they were informed that this was not the proper way to handle this problem and that the grievance procedure under the provisions of the union contract should be used. The employees were advised to return to work. According to the employer, the group then spoke to the superintendent before returning to their jobs between 2:00 and 2:30 p. m. The employees, including the claimant, were then terminated for "leaving the job without permission in violation of the no strike clause."

The claimant testified at the hearings conducted by the Appeals Examiner and the Commission. The claimant stated that during their lunch hour, the group of non-union employees simply discussed the subject of specialist rating which other welders had received. They decided to "go on up to the office and ask about the specialist rate." Before they left, apparently the group was approached by their foreman. The employer representative stated that the foreman told the claimant that "he could not give him permission to go and that he would need to make an appointment" but that "he could not stop him from going." The claimant felt that he was never told by the foreman that he could not go to the personnel office. The claimant also testified that "I didn't have a complaint, I just wanted some information about the specialist rate . . . we couldn't quite understand who . . . would receive it and who wouldn't. . . we just wanted to find out . . . how could we become eligible."

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 the term "misconduct" is limited to conduct which evinces a willful or wanton disregard of an employer's interests as is found in deliberate or wanton violation of standards of behavior which the employer may reasonably expect of employees. The Commission has also consistently held that the burden of proof is upon the employer to prove misconduct on the part of the claimant.

In the present case, the employer has failed to carry this burden. Although hearsay evidence was presented by the employer representatives, the foreman who had first hand knowledge concerning whether or not the claimant was given permission to go to the personnel office, did not testify. When weighed with the claimant's testimony given under oath, the Commission cannot conclude that the claimant was denied permission to visit the personnel office and thus insubordinate or that his subsequent actions constituted a strike.

The Commission thus finds, after a thorough review of the entire record, that the claimant was discharged for reasons which do not constitute misconduct under the Act.

DECISION

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

A handwritten signature in black ink, appearing to read "B. Redwood Councill". The signature is fluid and cursive, with a large initial "B" and "C".

B. Redwood Councill  
Assistant Commissioner