

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



MISCONDUCT: 255.1
Disobedience

DECISION OF COMMISSION

In the Matter of

Zelda V. Vines, Claimant
[REDACTED]

Committee of Judges Systems
Commonwealth of Virginia Magistrate
Supreme Court of Virginia
Richmond, Virginia

Employer

Date of Appeal

To Commission: May 13, 1977

Date of Hearing: July 7, 1977

Decision No.: 9661-C

Date of Decision: September 7, 1977

Place: Richmond, Virginia

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This is a matter before the Commission on appeal by the claimant from the decision of the Appeals Examiner (No. UI-77-1596), dated April 22, 1977.

ISSUE

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

FINDINGS OF FACT AND OPINION

The claimant was last employed as a magistrate in the Fifteenth Judicial District of Virginia. She served in that capacity from June 1, 1976, through January 26, 1977.

One of the claimant's primary duties as a magistrate was to fix the terms and amounts of bail with respect to those individuals in her jurisdiction charged with the commission of a crime. The claimant, as all other magistrates in the Fifteenth Judicial District, was given a recommended bond schedule to control what amount of bail should be set for various offenses. The claimant understood that the setting of the amount of bail rested within her discretion as a judicial officer and she proceeded to discharge her duties in the summer of 1976, without formal training from her superiors. On August 31, 1976, the claimant set bond for two defendants charged with assault and battery at \$ 1,000.00. On September 17, 1976, the claimant's immediate supervisor, the Judge for the Stafford County General District Court, wrote her a letter informing that some of the bonds she had been setting on criminal charges seemed higher than appeared to be justified.

He stated:

" . . . please use caution to avoid excessive amounts, especially involving misdemeanors and refer to the bond schedule where ever applicable."

On October 13, 1976, the claimant set bond for a defendant accused of assault and battery at \$ 1,000.00, the maximum possible fine which could be imposed under the Code of Virginia. On October 20, 1976, the claimant set bond for an individual accused of stealing pumpkins with a total value of \$ 13.75, at \$ 1,000.00. On November 3, 1976, the claimant set bond for an individual accused of assault and battery at \$ 1,000.00. These actions gave rise to a second letter of warning on November 9, 1976, from the Judge of the General District Court of the claimant's jurisdiction. The letter stated:

"The charges are assault and battery and while I do not know all the circumstances alleged, this appears to be grossly excessive bonds for such charges. In the future you should refer to the bond schedule in these cases. Imposition of such bonds as these constitutes serious miscarriages of justice in most cases and we cannot allow them to continue."

Subsequent to this letter cautioning the claimant to refer to the bond schedule in fixing the amount of bond, the claimant set bond for an individual accused of assault and battery at \$ 1,000.00; she set bond for an individual accused of trespassing at \$ 1,000.00; on December 1, 1976, she set bond for an individual accused of felonious assault at \$ 2,500.00. The claimant acknowledged that she did not follow the bond schedule but used the maximum possible fine which could be imposed under the Code of Virginia for determining what amount of bond was set. She was discharged when she continued to set excessive bonds in disregard of the bond schedule.

The claimant, by counsel, argued that since the fixing of bonds was within the discretion of the magistrate, the claimant's setting of bonds was merely an error in judgment not tantamount to misconduct in connection with her work.

Section 60.1-58 (b) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that an individual is discharged for misconduct in connection with her work. The Commission has consistently adopted the definition of misconduct which appears in 48 Am. Jur., Social Security and Unemployment Compensation, Section 38:

"Misconduct must be an act of wanton or wilful disregard of the employer's interests, a deliberate violation of the employer's rules, a disregard of standards of behavior which the employer has a right to expect of his employees, or negligence in such a degree or recurrence as to manifest culpability, wrongful intent, or evil design, or show an intentional substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Neither is mere inefficiency, unsatisfactory conduct, error in judgment or the like to be deemed misconduct."

Using such rationale, the Commission has held that acts of insubordination or unreasonable refusals of a subordinate to comply with reasonable instructions of his superiors, constitute misconduct within the meaning of the Act. (See Bobby M. Carter v. Atlantic Tire Service, Inc., Commission Decision No. 5466-C, (September 20, 1971.)

In the case presently under consideration, the claimant acknowledged that she did not comply with the bond schedule which was furnished to her by her superiors but, rather, used a method of her own invention in fixing the amount of bonds. It is the opinion of the Commission that the instruction that the claimant comply with the bond schedule was a reasonable directive, and she has presented no compelling justification for her failure to comply with it. It is also apparent that the claimant's refusal to comply with the bond schedule constituted far more than mere error in judgment, but rose to the level of a wilful disregard of a clear and reasonable directive by her employer. The claimant suggests that the failure to follow a reasonable and clear directive was an error in judgment which cannot be deemed misconduct; to so hold would be to extend the concept of error in judgment to a magnitude which would undermine the very purpose of the misconduct provision. It is concluded, therefore, that the claimant's actions in continuing to set excessive bonds without regard to the established bond schedule was in direct disregard of reasonable instructions of her employer and did constitute misconduct in connection with her work.

DECISION

The decision of the Appeals Examiner is hereby affirmed.


Kenneth H. Taylor
Assistant Director of Appeals