

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

---c0o---

Decision No.	TEC-1	MISCONDUCT:	300.3
Date:	Oct. 27, 1961	Manner of performing work:	Quantity of work

---

This is a matter before the Commission on appeal by the employer from the decision of the Examiner (No. TEC(UCFE)-25-23) dated September 21, 1961.

ISSUES

- (1) Has the claimant been available for work during the week or weeks for which he claims benefits?
- (2) Was the claimant discharged for misconduct in connection with his work?

FINDINGS OF FACT

Trovato Electric Company, Inc., the claimant's last employer, appealed a decision of the Appeals Examiner which held the claimant eligible for unemployment insurance benefits free from the imposition of a disqualification in connection with his separation from work.

The record reflects that the claimant had been warned repeatedly because of deliberate inefficiency and negligence in his work performance. It appears that at the beginning of his employment the claimant performed his job properly and efficiently. Subsequently, however, he began deliberately slowing down, his employer describing his performance in this manner: "That after a period of one month he was found to be deliberately Gold Bricking and slowing down on his production." The claimant does not deny that he was not warned about the situation. After warnings failed to correct his performance and attitude, the claimant was discharged. (Underscoring Supplied)

The claimant had been claiming benefits for approximately eight weeks at the time of the Examiner's hearing. During that period he had applied to but eight different employers in the large metropolitan area of Arlington and Alexandria.

OPINION AND DECISION

The employer presented evidence to the Commission which established that the claimant had deliberately slowed down his work performance. The record shows a series of warnings about such conduct. Under these circumstances, the Commission feels that the claimant was discharged for misconduct in connection with his work. (Underscoring Supplied)

The claimant's activity in searching for work has not been such as would justify the conclusion that he is genuinely in the labor market. He made but eight employer contacts in an eight week period. Such a search in this claimant's particular labor market area cannot be characterized as "active." An active search for employment is the availability test laid

down by the Virginia Supreme Court of Appeals.

The decision of the Appeals Examiner is hereby reversed. The claimant is ineligible for benefits from July 25, 1961, through September 21, 1961, the date of the Examiner's hearing.

Should he ever meet the eligibility requirements of the Virginia Unemployment Compensation Act and there has been no intervening 30-day employment, he shall be disqualified from the receipt of benefits for seven weeks with a commensurate reduction in his total potential benefits for having been discharged for misconduct connected with his work.