

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF APPEALS EXAMINER

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Decision No.: UI-73-43

Date: February 28, 1973

MISCONDUCT: 45.15  
Attitude toward employer-  
Competiting with employer  
or aiding competitor

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ISSUE

Was the claimant discharged for misconduct in connection with his work?

FINDINGS OF FACT

The employer appealed from a determination of the Deputy which declared the claimant not subject to a disqualification for benefits effective November 26, 1972, as a result of his separation from his last employment.

Jets Service, Inc., Jacksonville, Florida, was the claimant's last employer for whom he had worked at Camp Pickett, Virginia, as manager and supervisor from July 1, 1971, through July 18, 1972.

The employer had a contract to furnish kitchen police for the mess hall serving the military cadre at the installation. The claimant was paid \$150.00 per week to supervise the operation.

In April 1972, the employer obtained a second contract to open and operate several additional mess halls for a seven-week's period serving meals to logistical training exercises. The employer instructed the claimant to supervise these mess halls in addition to the work he already was performing. The claimant requested that he be paid an additional \$150.00 per week for the added work. The employer told the claimant that he had in mind paying him a bonus at the completion of the contract equivalent to \$150.00 per week. At one time while the contract was in operation, the employer had given the claimant an extra \$150.00. He received his usual \$150.00 per week throughout the other six weeks the contract was in operation.

In early June 1972, the employer's contract with the military installation came up for renewal effective July 1, 1972. The claimant submitted a bid for the contract in competition with his employer but he was not the low bidder and therefore did not get the contract. When the employer learned of the claimant's bid he was discharged.

The claimant felt that his action in bidding against the employer was justified by the employer's failure to pay him what he had expected for his services on the seven-week's contract.

OPINION

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

Generally, there are certain duties or implied obligations which arise out of the relationship between the employer and worker. An employee, by virtue of his relationship to his employer, is obligated to deal with him in good faith. A material breach of this obligation constitutes misconduct if it is prejudicial to the employer's interests. This claimant's action of competitively bidding against the employer for a contract was an act of disloyalty and an intentional substantial disregard of the employer's interests. The fact that the employer had not paid him all of the money he expected for his services in fulfilling a second employer contract did not relieve him of his duties and responsibilities to his employer. It is concluded that the claimant was terminated for reasons which constitute a discharge for misconduct connected with work as that term is used in the Virginia Act. (Underscoring supplied.)

DECISION

The determination of the Deputy holding that no disqualification be imposed in connection with the claimant's separation from his last employment is hereby reversed. It is held that the claimant is disqualified for benefits effective November 26, 1972, for any week benefits are claimed until he has performed services for an employer during thirty days, whether or not such days are consecutive because he was discharged for misconduct in connection with his work.

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NOTE: Decision affirmed by the Commission in Decision No. 5920-C, dated March 27, 1973.