

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

MISCONDUCT: 435.05
Violation of Company
Rule — General.



DECISION OF COMMISSION

In the Matter of:

James L. Prince
████████████████████

General Offshore Corporation
Chesapeake, Virginia
(Last 30-Day Employer)

Mid-Atlantic Repair,
Incorporated
Chesapeake, Virginia
(Subsequent Employer)

Date of Appeal
to Commission: December 29, 1987

Date of Hearing: January 21, 1988

Place: RICHMOND, VIRGINIA

Decision No.: 29576-C

Date of Mailing: February 12, 1988

Final Date to File Appeal
with Circuit Court: March 3, 1988

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This is a matter before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-8710761), mailed December 8, 1987.

APPEARANCES

None

ISSUE

Was the claimant discharged for misconduct connected with his work as provided in Section 60.2-618.2 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

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

The claimant filed a timely appeal from a Deputy's determination which held him disqualified from receiving unemployment compensation benefits,

effective October 25, 1987, based upon reasons of separation from the claimant's subsequent employer.

The claimant's subsequent employing unit was Mid-Atlantic Leasing Corporation, where he worked from August 25, 1987, through September 28, 1987, as a full-time tractor trailer driver.

One day just prior to the claimant's separation from employment, the claimant drank a beer while he was on his lunch break. The employer learned that the claimant had had a beer and then had continued to drive the employer's vehicle. The employer discharged the claimant on September 28, 1987, for drinking and driving. Although duly notified of the hearing scheduled on this appeal, neither the 30-day employer nor the subsequent employing unit appeared or responded to the Notice of Hearing.

OPINION

Section 60.2-618.2 of the Code of Virginia provides a disqualification if the Commission finds that a claimant was discharged for misconduct connected with his work.

This language was interpreted by the Virginia Supreme Court in the case of Branch v. Virginia Employment Commission, et al., 219 Va. 609, 249 S.E.2d 180 (1978). In that case, the court held:

In our view, an employee is guilty of "misconduct connected with his work" when he deliberately violates a company rule reasonably designed to protect the legitimate business interests of his employer, or when his acts or omissions are of such a nature or so recurrent as to manifest a willful disregard of those interests or the duties and obligations he owes his employer. ... Absent circumstances in mitigation of such conduct, the employee is "disqualified for benefits", and the burden of proving mitigating circumstances rests upon the employee.

In this case, the claimant was discharged by the employer for drinking on the job. The claimant consumed a beer with his lunch on the day before his dismissal. However, the claimant testified at the Appeals Examiner's hearing that he was unaware of any company rule which prohibited such conduct.

The Commission has previously addressed the issue concerning the necessity of an employer to communicate rules, regulations and policies to employees. In the case of Granger v. Wornom's Drug Store, Commission Decision 4750-C (June 13, 1968), the claimant was discharged for violating a company policy which prohibited employees from having personal funds on them while on duty. However, the claimant had not been advised of the existence of that rule. In holding that the claimant was not subject to a disqualification, the Commission stated:

The burden of proving misconduct lies with the employer. For an employee to be guilty of misconduct in connection with her work because of the violation of a company policy, the company policy must be sufficiently, clearly defined that the employee either knew or should have known of the policy. The evidence before the Commission does not show that there was such a clearly defined company policy.

However, the rationale expressed in the Granger case does not mean that the lack of actual knowledge of a company rule will afford a claimant an absolute defense from a disqualification for misconduct. If the claimant knew or reasonably should have known that his conduct was inconsistent with his job responsibilities, the employer's policies or the legitimate business interests of the employer, he could be subjected to the disqualification for misconduct even if he didn't have actual knowledge of the company rule in question. (Underscoring supplied)

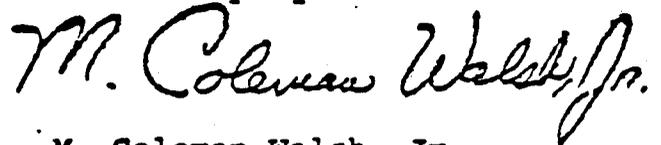
Here, the Commission is of the opinion that the claimant, as a tractor trailer truck driver, knew or should have known that his employer would not countenance the consumption of alcoholic beverages during the course of the work day. While there is no evidence that the claimant was intoxicated as a result of drinking one beer, even that amount of alcoholic beverage could slow his reflexes and create a greater degree of risk to himself and to other members of the driving public.

Therefore, the Commission is of the opinion that the claimant's conduct in consuming alcoholic beverages during the work day constitutes misconduct connected with his work. In the absence of any evidence of mitigating circumstances, the disqualification provided in Section 60.2-618.2 of the Code of Virginia should be imposed.

DECISION

The Decision of Appeals Examiner is hereby affirmed.

It is held that the claimant is disqualified from receiving benefits, effective October 25, 1987, for having been discharged for misconduct connected with his work. This disqualification shall remain in effect for any week benefits are claimed until he performs services for an employer during thirty days, whether or not such days are consecutive, and subsequently becomes totally or partially separated from such employment.



M. Coleman Walsh, Jr.
Special Examiner