



DECISION OF COMMISSION

In the Matter of:

Sherrod O. Ware

Adesso Precision Machine Co.
Norfolk, Virginia

Date of Appeal
to Commission: January 1, 1989
Date of Hearing: June 1, 1989
Place: RICHMOND, VIRGINIA
Decision No.: 31397C
Date of Mailing: July 25, 1989
Final Date to File Appeal
with Circuit Court: August 14, 1989

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This is a matter before the Commission on appeal by the employer from the Decision of Appeals Examiner (UI-8808338), mailed December 12, 1988.

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

On January 3, 1989, the employer filed a timely appeal from the decision of the Appeals Examiner which held that the

claimant was qualified to receive benefits, effective August 7, 1988. The basis for that decision was the Appeals Examiner's finding that the claimant had been discharged for reasons that would not constitute misconduct connected with work.

Prior to filing his claim for benefits, the claimant worked for Adesso Precision Machine Company of Norfolk, Virginia. He worked for this employer as a sheet metal mechanic from September 27, 1987 through August 4, 1988. He was a full-time employee and was paid \$10.00 per hour.

Pursuant to a long standing policy, the employer paid its employees every Monday. Generally, the only exceptions to this policy occurred when a holiday fell on Monday. Under those circumstances, paychecks would be issued to employees on the preceding Friday. On Friday, July 29, 1988, paychecks were issued to all employees because the company president, who signed all of the checks, was scheduled to be admitted into the hospital.

After he received his paycheck, the claimant cashed it. Sometime that weekend, the claimant's wallet was stolen along with his pay for that week. When he reported for work on Monday, August 1, 1988, he inquired with the company vice-president to see if he would get his next paycheck early. The claimant was particularly concerned about getting his next paycheck because he had to pay an overdue electric bill. The company vice-president told the claimant that he would probably not be able to get his paycheck early since he had just gotten paid a few days before (see Tr. 19, 23).

Later than week, the claimant again inquired about getting his paycheck early. When his inquiry did not meet with success, he was given permission to leave work early and he made other arrangements to pay the electric bill. The claimant became upset when another individual inquired about his financial problems and said that the company vice-president had shared the information with him. The company vice-president had not disclosed to anyone that the claimant was having financial problems, although he did mention that the claimant had requested that he receive his paycheck early. The claimant himself had told two employees that he had requested his paycheck early because of problems he was having with paying an electric bill.

On the afternoon of August 3, 1988, the claimant angrily confronted the vice-president. He raised his voice and yelled at him, calling him a liar and directing profanity at him. This occurred in the presence of other employees. As a result of

this conduct, the claimant was discharged. The claimant was informed of his discharge when he reported for work on August 4, 1988.

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 with work.

This particular language was first 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 and 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.

The disqualification for misconduct is a serious matter which warrants careful consideration. The burden of proof is on the employer to prove by a preponderance of the evidence that the claimant was discharged for reasons which would constitute misconduct connected with his work. See, Dimes v. Merchants Delivery Moving and Storage, Inc., Commission Decision 24524-C (May 10, 1985); Brady v. Human Resource Institute of Norfolk, Inc., 231 Va. 28, 340 S.E.2d 797 (1986).

The Commission has consistently held that insubordination constitutes work connected misconduct since it breeds discontent among employees and jeopardizes the harmony of labor-management relationships. See, Gynn v. Kahn & Feldman, Incorporated, Commission Decision 4105-C (October 25, 1963). Insubordination can manifest itself in one of two ways. First, an employee can deliberately refuse to follow the reasonable, legitimate instructions of a supervisor. In so doing, he demonstrates a deliberate defiance for proper authority. Second, an employee could participate in conduct which shows a flagrant disrespect for a supervisor's position and authority.

In this case, the evidence in the record clearly establishes that the claimant was flagrantly disrespectful of the vice-president's position and authority. The claimant, in a loud voice, directed profanity at the vice-president and called him a liar in the presence of other employees. This type of conduct is simply inexcusable and no employer need tolerate it. The claimant's conduct on August 3, 1988 manifested a willful disregard of the employer's interest and the duties and obligations he owed to his employer. Consequently, unless the claimant can prove mitigating circumstances, the disqualification provided by the statute must be imposed. (Underscoring supplied)

The evidence in the record suggests several points that could be argued as mitigation. First, the claimant asserted that the vice-president had told him that he would seek permission for him to receive his check early; but later discovered that the vice-president never made any inquiries. Also, he offered hearsay testimony that someone had told him that the vice-president disclosed the claimant's financial problems. Neither of these contentions, in light of the evidence in the record, would mitigate the claimant's conduct.

First, the Commission is not convinced from the record that any representation was made to the claimant that he would get his paycheck early or that inquiries would be made about that. Even if that was the case, the vice-president's failure to make any inquiries or to issue the check early does not justify the type of vituperative verbal assault that the claimant directed at him. Furthermore, the Commission is not persuaded from the record that the company vice-president improperly disclosed any confidential information about the claimant's financial problems. In fact, two witnesses testified that the claimant had told them that he was having financial problems because his check had been stolen and he had an overdue electric bill that he had to pay. The fact that the claimant was apparently willing to share that information with other employees clearly indicates that he did not consider that information confidential.

In his Opinion, the Appeals Examiner stated:

From his credible testimony, it is apparent that he had a financial problem and was misled to believe his predicament would be confidential and the repeated promises made by a corporate officer to consult with another officer would be carried out. The claimant did not threaten any of his supervisors or co-workers, and used language that would not be commonplace (sic) in the industry.

Whether or not the vice-president was indeed a liar, the employer has offered no policy that this statement would violate, and the statement itself is not of such magnitude as would constitute a willful disregard of the duties and obligations owed by the claimant to his employer.

It is apparent that the Commission does not agree with this analysis. First, while credibility findings of the Appeal Examiners are entitled to respect, the simple statement that testimony is credible does not constitute a true credibility finding. The Appeals Examiner could have mentioned specific things that persuaded him that one person's testimony was more credible. In the absence of such specificity, the Commission is not bound by a general finding, particularly in light of this record where three independent witnesses all corroborated the nature of the claimant's conduct on his last day of work. Second, the Commission has never required an employer to have a specific written rule or policy that prohibits insubordination. Regardless of whether the statements made would constitute a threat, the claimant's conduct on August 3, 1988 was clearly disrespectful of the company vice-president and his position. When this is coupled with the fact that it occurred in the presence of other employees, it is readily apparent that his actions did constitute a willful disregard of the duties and obligations he owed his employer.

For these reasons, the Commission must conclude that the claimant was discharged for misconduct connected with his work for which no mitigation has been shown. Accordingly, the disqualification provided in Section 60.2-618.2 of the Code of Virginia must be imposed.

DECISION

The decision of the Appeals Examiner is hereby reversed.

It is held that the claimant is disqualified from receiving benefits, effective August 7, 1988, because he was 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.

The case is remanded to the Deputy with instructions to examine the claimant's claim for benefits and to determine if he

has been overpaid any sum as benefits to which he was not entitled and is liable to repay to the Commission as a result of this decision.

M. Coleman Walsh, Jr.
M. Coleman Walsh, Jr.
Special Examiner

NOTICE OF CLAIMANT

IF THE DECISION STATES THAT YOU ARE DISQUALIFIED, YOU WILL BE REQUIRED TO REPAY ALL BENEFITS YOU MAY HAVE RECEIVED AFTER THE EFFECTIVE DATE OF THE DISQUALIFICATION. IF THE DECISION STATES THAT YOU ARE INELIGIBLE FOR A CERTAIN PERIOD, YOU WILL BE REQUIRED TO REPAY THOSE BENEFITS YOU HAVE RECEIVED WHICH WERE PAID FOR THE WEEK OR WEEKS YOU HAVE BEEN HELD INELIGIBLE. IF YOU THINK THE DISQUALIFICATION OR PERIOD OF INELIGIBILITY IS CONTRARY TO LAW, YOU SHOULD APPEAL THIS DECISION TO THE CIRCUIT COURT. (SEE NOTICE ATTACHED)