

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of

Robert J. Lee
[REDACTED]

City of Roanoke
Roanoke, Virginia 24011

Employer

Date of Appeal

To Commission: May 15, 1980

Date of Review: December 17, 1980

Decision No.: 14088-C

Date of Decision: January 13, 1981

Place: Richmond, Virginia

This is a matter before the Commission on appeal by the employer from Appeals Examiner's Decision (No. UI-80-2692), mailed on May 7, 1980.

ISSUE

Was the claimant discharged for misconduct in connection with his work as provided in Section 60.1-58(b) of the Code of Virginia (1950), as amended?

FINDING OF FACTS

The claimant was last employed by the City of Roanoke, Virginia from February 18, 1974, through February 5, 1980. From May of 1978, through February of 1980, the claimant was employed in the Food Stamp Department as an eligibility worker.

As an eligibility worker, the claimant interviewed applicants for food stamps and was responsible for verifying their income, members in the household, and the amount of resources available to them. The claimant was employed in a position of trust and considerable responsibility in dealing with the Food Stamp Program.

On February 5, 1980, the claimant was suspended from his job in accordance with the employer's operating procedure, number twenty-eight, which states that:

"Where an employee is charged with a crime for which

a jail or prison sentence is possible punishment or part of the possible punishment and a person convicted of such crime would not be suitable for continued employment in his particular job, such employee may be suspended until final disposition of the matter by the court trying the case."

The claimant was suspended from his job due to an indictment by the Circuit Court of the City of Roanoke on three counts of embezzling monies from the Hunton Life Saving and First Aid Crew, Incorporated. In making the decision to suspend the claimant, the employer considered the indictments and the claimant's responsibility for making decisions in his job. The indictments would leave the employer with a lack of trust in that individual until the matter had been resolved.

OPINION

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

The Virginia Supreme Court in Branch v. Virginia Employment Commission and Virginia Chemical Company, 219 Va. 609 248 S.E.2d 180 (1978), gave this definition of misconduct:

"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."

The Commission has also held that the burden of proof is upon the party alleging the misconduct. They must come forward and show by clear and convincing evidence that the acts which brought about the claimant's separation were of such to sustain a finding of misconduct in connection with work. (See James F. Porter v. Columbia Heights, Section 1 Corporation, Commission Decision No. 3178-C, dated January 6, 1958.)

In the instant case while the claimant was not discharged by his employer, he was suspended from his job and not allowed to continue his employment according to the employer's procedure. This Commission has consistently held that an individual on suspension by the employer has been discharged from his job and will be treated as such. The suspension was based solely upon an allegation of embezzlement and there was no showing by the employer that the allegation was more than an allegation at the time the claimant was

suspended. While the employer contends the claimant's job would have been compromised had he continued employment in the face of the indictments, there has been no showing by the employer that the claimant was separated from his job as of February 5, 1980, for acts which could be misconduct in connection with his work.

Accordingly, the Commission finds that the claimant was separated from work as of February 5, 1980, for reasons which would not be disqualifying under the aforementioned Section of the Code.

DECISION

The decision of the Appeals Examiner is hereby affirmed.


Edwin R. Richards
Special Examiner