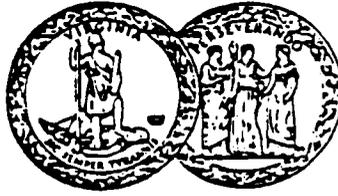


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Charles A. Dawson
[REDACTED]

Old Dominion Job Corps
Monroe, Virginia

Date of Appeal

to Commission: March 7, 1986

Date of Review: March 26, 1986

Place: RICHMOND, VIRGINIA

Decision No.: 26734-C

Date of Mailing: March 28, 1986

Final Date to File Appeal

with Circuit Court: April 17, 1986

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This is a matter before the Commission as a result of an appeal filed by the claimant from the Decision of Appeals Examiner (UI-85-10009), mailed February 21, 1986.

ISSUE

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

FINDINGS OF FACT

The claimant filed a timely appeal from the Appeals Examiner's decision which reversed an earlier Deputy's determination and disqualified him for benefits effective November 17, 1985, for having been discharged from employment due to misconduct in connection with work.

The claimant was last employed as an instructor at the Old Dominion Job Corps Center in Monroe, Virginia, between August, 1981, and November 14, 1985.

In mid 1984, the company which contracted to run the center changed. The center itself continued to operate under rules and regulations set down by the United States Department of Labor. One of those regulations requires that instructors possess valid teaching certificates. At the time of this change, the claimant did possess such a certificate; however, it was due to expire July 1, 1984. In order to renew it, it was the claimant's responsibility to show that he had taken nine credit hours of approved courses.

The claimant had taken one course in 1983; however, this was insufficient to meet the requirements to renew his certificate. When he signed his last contract of employment on April 27, 1984, it contained the following language: "Continued employment is contingent upon satisfactory performance and continuance of our contract with the Department of Labor. Other conditions of employment include: Currently none." Shortly thereafter, he signed a copy of his job description in which it was stated that the qualifications required a bachelor's degree and Virginia teacher's certification.

Ninety days after signing the contract, the question of the claimant's teaching certificate was brought up since by then the old one had expired. At his annual performance review, the question arose again. Although the employer had been able to obtain a waiver of the requirements with respect to the claimant and other instructors, this waiver was contingent upon their taking active measures to obtain the necessary certification. On August 13, 1985, the claimant was given official written notice that he was being reprimanded at step 3 of the employer's progressive discipline policy. In that reprimand it was stated: "We are at the stage now where your continued employment is based on either your securing and supplying proof of certification or your supplying proof of enrollment and pursuit of necessary credits in Fall Semester. Failure to do so will be cause for termination of employment."

After receiving this reprimand, the claimant did look into enrolling at Liberty University to take courses so as to obtain the necessary certification. He did not do this, however, because he was told by an individual at the center that efforts were being made to have a course taught by Virginia Tech at the center itself. The claimant felt that this would be far more convenient and less expensive for him and, therefore, he dropped the idea of enrolling at Liberty University. The course at the center did not materialize, and by November of 1985, the claimant had lost the chance to enroll anywhere else. On November 14, 1985, he was notified that he was being terminated for failing to meet the requirements to become certified or to make the required progress for doing so.

OPINION

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

In the case of Branch v. Virginia Employment Commission and Virginia Chemical Company, 219 Va. 609, 249 S.E. 2d 180 (1978), the Supreme Court of Virginia defined 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 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."

In the present case, the claimant's first argument against imposing a disqualification under this section of the Act is that he was not employed under a requirement that he possess a valid teaching certificate. It was specifically pointed out that on the contract itself a sentence read "Other conditions of employment include: Currently none" and this language meant that the job description which the claimant later signed acknowledging that certification was a requirement for his position was not incorporated into the written contract. The Commission must reject this argument.

At the time the contract was signed on April 27, 1984, the claimant possessed a valid teaching certificate which was not due to expire until July 1 of that year. Therefore, it was not necessary to specify in the contract that the certificate was required. There is an implication in the contract that such a condition might later be required inasmuch as the language specifically read "currently none". Thus, the employer did leave open the possibility that specific requirements could be later made a part of the contract. This is exactly what was done when the claimant signed the job description in which he acknowledged that possession of a valid teaching certificate was a requirement of his position.

Additionally, the claimant focused only upon that sentence in the contract involving other conditions of employment. The sentence

before that which states: "Continued employment is contingent upon satisfactory performance and continuance of our contract with the Department of Labor" is actually quite significant in this matter. While the claimant did argue that the employer had not shown that there was a state requirement that as an instructor at the Job Corps center he had to possess a teaching certificate, this was a requirement of the federal agency, the Department of Labor, which administers the Job Corps program. Thus, the requirement that the claimant possess a teaching certificate was a reasonable employer rule designed to protect a legitimate business interest, namely the continuance of the contract to run the center. Since failure of the claimant to obtain his teaching certificate could jeopardize the employer's contract with the Department of Labor, it is apparent that such a requirement was contemplated by the contract of hire even without the addition of the job description.

The claimant also made the argument that he was not treated the same as other individuals similarly situated or that he was not given a specific deadline by which to obtain certification or make progress toward getting it. The Commission finds that both of these arguments are in error. Unrebutted testimony from the employer established that the other instructors without teaching certificates "scrambled around" and were enrolled in courses leading toward certification. Furthermore, the written warning which the claimant received on August 13, 1985, informed him in no uncertain terms that he either had to supply proof of certification or proof of enrollment in pursuit of the necessary credits in the "Fall Semester". While this may not be a specific date, it is a determinable date based upon the latest date that an institute of higher education would accept registration for courses in its fall semester. Furthermore, it is obvious that on November 14, 1985, the claimant had missed any reasonable deadlines for enrollment in a fall semester, and he had failed to meet the conditions for continued employment as set down in the August 1985 warning. This amounted to a willful violation of the employer's rule and constituted a prima facie case of misconduct in connection with his work.

The fact that the claimant may have found it impractical to take the courses does not constitute mitigating circumstances for his failure to do so. It is apparent that he had been given over a year since the expiration of his teaching certificate to show progress toward renewal, and this would have only required that he enroll in two courses. The Commission does not feel that this represented a substantial imposition upon him in terms of time or money. Furthermore, the mere hope that the employer would have been able to obtain an on-center course through Virginia Tech did not justify

his decision to drop his plans to enroll at Liberty University. There is no indication that he was told that this was acceptable, and therefore, the requirements of the warning that he enroll in "Fall Semester" still applied. Inasmuch as the claimant has failed to show mitigating circumstances for his conduct, it is concluded that he should be disqualified under this section of the Act.

DECISION

The Decision of Appeals Examiner is hereby affirmed. It is held that the claimant is disqualified for unemployment compensation effective November 17, 1985, for any week or weeks benefits are claimed until he has performed services for an employer during thirty days, whether or not such days are consecutive, and he has subsequently become totally or partially separated from such employment, because he was discharged from employment due to misconduct in connection with work.

When this decision becomes final, the Deputy is instructed to calculate what benefits may have been paid to the claimant after November 17, 1985, which she will be liable to repay to this Commission as a result of this decision.


Charles A. Young III
Special Examiner

NOTICE TO CLAIMANT

IF THE DECISION STATES THAT YOU ARE DISQUALIFIED, YOU WILL BE REQUIRED TO REPAY ALL BENEFITS YOU MAY HAVE RECEIVED AFTER THAT DATE. 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 WISH TO DISPUTE YOUR OBLIGATION TO REPAY THESE BENEFITS TO THE COMMISSION, YOU MUST FILE A TIMELY APPEAL.