

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Virindia Johnston
[REDACTED]

Kennedy's Piggly Wiggly Stores,
Incorporated
Norton, Virginia

Date of Appeal

to Commission: March 31, 1988

Date of Hearing: June 14, 1988

Place: RICHMOND, VIRGINIA

Decision No.: 030052C

Date of Mailing: June 28, 1988

Final Date to File Appeal

with Circuit Court: July 18, 1988

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This is a matter before the Commission as the result of an appeal filed by the employer from the Decision of Appeals Examiner (UI-8801695), mailed March 10, 1988.

APPEARANCES

Employer Representative
Attorney for Claimant

ISSUE

Was the claimant discharged from employment due to misconduct in connection with work as provided in Section 60.2-618.2 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The employer filed a timely appeal from the Appeals Examiner's decision which affirmed an earlier Deputy's determination to qualify the claimant for benefits, effective December 27, 1987 with respect to her separation from the employer's services.

The Findings of Fact made by the Appeals Examiner have been reviewed and are hereby adopted by the Commission with certain additions to be discussed in the following paragraph.

At one point after her husband left her, the claimant was offered the opportunity to go on an unpaid leave of absence in the hope that she could resolve her domestic problems. She simply could not afford to do this because she was responsible for the care of her two children and had no way of supporting her family in the meantime. The incident concerning the out-of-date WIC voucher occurred on her husband's birthday and she was particularly upset over her personal situation on that date. The final incident which brought about her discharge occurred on Christmas Eve when, again, she was having particular difficulty coping with her separation from her husband.

OPINION

Section 60.2-618.2 of the Code of Virginia 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, et al, 219 Va. 609, 249 S.E.2d 180 (1978), the Supreme Court of Virginia defined misconduct as follows:

"In our view, an employee is guilty of 'misconduct connected with 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 case of Miller v. J. Henry Holland Corporation, Commission Decision 7470-C, (February 9, 1976), the Commission went on to state:

"On the other hand, mere inefficiency, incapability, mistake or misjudgment has never been tantamount to misconduct. The Commission has also consistently held that the burden is upon the employer to prove misconduct."

In the present case, there is no question that the claimant was aware of the employer's rules and that the incidents which occurred amounted to repeated violations of those rules so as to bring about her discharge. The Commission concludes that this represented negligence of such a high degree and recurrence as to come within the definition in Branch, supra, so as to place the burden on the claimant to establish mitigating circumstances if she is to avoid a disqualification under this section of the Code.

After a careful review of the record, it is concluded that the claimant has successfully established such mitigating circumstances. First, the Commission was favorably impressed by her total candor in responding to questions concerning the incidents that led to her separation. She did not deny any of them, nor did she attempt to place the blame on others. This negates any implication that she had lost interest in her job or was recklessly indifferent to her employer's needs.

The second and more important factor which mitigates against the imposition of a disqualification under this section of the Code is the obvious stress under which she was placed after her husband left her with two children to support. For nearly seven years, it appears that the claimant was a satisfactory employee until her separation from her husband. Thereafter, in the space of only a few months, all of the incidents which led to her discharge occurred. That the employer realized she was undergoing severe personal problems is evident from the fact that she was offered a leave of absence to take care of them. Her failure to take advantage of this offer was reasonable under the circumstances since she needed to continue working in order to support her family. While the Commission takes no issue of the employer's decision to discharge the claimant after she had committed the violations and had received the necessary warnings to support such an action under the rules, the timing of the incidents themselves in relation to her emotional situation convinces the Commission that the Appeals Examiner correctly found her not to be disqualified under this section of the Code.

DECISION

The decision of the Appeals Examiner is hereby affirmed.

It is held that the claimant is qualified for unemployment compensation, effective December 27, 1987, with respect to her separation from the services of Kennedy's Piggly Wiggly Stores, Incorporated.


Charles A. Young, III
Special Examiner