

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Wayne L. Davis
████████████████████

Stone Container Corp.
Cincinnati, Ohio

Date of Appeal
to Commission: March 5, 1990

Date of Hearing: December 19, 1990

Place: RICHMOND, VIRGINIA

Decision No.: 33438-C

Date of Mailing: January 18, 1991

Final Date to File Appeal
with Circuit Court: February 7, 1991

---oOo---

This case came before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-8808782), mailed February 16, 1990.

APPEARANCES

Claimant
Attorney for Employer

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 March 5, 1990, the claimant filed a timely appeal from the Appeals Examiner's decision which disqualified him from receiving benefits, effective August 21, 1988. That disqualification was based upon the Appeals Examiner's conclusion that the claimant had been discharged for misconduct connected with his work.

Prior to filing his claim for benefits, the claimant last worked for Stone Container Corporation of Sandston, Virginia. He was employed by this company from May 11, 1977, through September 20, 1988. He worked as a corrugator offbearer. His duties were to remove sheets of manufactured corrugated board as they came off a conveyer at the end of the corrugator, and properly stack them for storage. The claimant also had important quality control responsibilities. He was required to measure the corrugated board to ensure that it had been cut and "scored" to the correct specifications. In the event that any of the boards were improperly cut or scored, he was required to take prompt corrective action. Under those circumstances, he would be required to notify either the machine operator or his immediate supervisor, using a telephone or buzzer that was located near his duty station. It usually takes an employee two weeks or less to become competent in performing the duties of an offbearer. The claimant had demonstrated to his supervisor that he was a very skilled, capable offbearer.

The company has promulgated plant rules to govern the conduct of its employees. Plant rule #2 prohibits neglect or carelessness in performing assigned duties, loafing, incompetence, and inefficiency. Plant rule #3 prohibits insubordination and disrespect to and/or profanity or abusive language directed toward a supervisor, guard, or other management representatives. A single violation of rule #3 could result in immediate dismissal; however, the company retains the right to invoke a lesser penalty if warranted by the circumstances.

In April of 1987, and twice during March of 1988, the claimant received written warnings regarding his failure to properly carry out his quality control responsibilities. Two of the written warnings specifically informed him that one of his primary responsibilities was to check the corrugated board for proper length and scoring, and to take appropriate action whenever he found a deficiency. He was also informed that his failure to carry out this responsibility could cost the employer substantial amounts of money in wasted product.

During the first two weeks of August, 1988, the claimant was counseled by his immediate supervisor on a daily basis regarding his failure to adhere to the proper "end of the run" procedure. Whenever a particular order or run had been completed, a light would flash on near the claimant's duty station. It was his responsibility to switch the corrugator from the automatic to the manual mode. This procedure

was specifically designed to prevent the boards from jamming at the end of each run so that the next order could be manufactured without shutting down the corrugator. Since all of the employees on the claimant's crew worked on an incentive basis, it was in their best interests to increase efficiency and decrease waste as much as possible. This would include limiting the amount of down time for the corrugator.

During August of 1988, the claimant consistently failed to switch the corrugator from the automatic to the manual mode when the end of the run light came on. As a result, jams were occurring at the end of virtually every order which resulted in a decrease of productivity and an increase in product waste. The claimant's immediate supervisor counseled him a number of times regarding the proper procedure to follow at the end of a run. On those occasions, the claimant accused his supervisor of harassment and stated that what he was doing was correct and he intended to continue.

On August 16, 1988, the claimant's immediate supervisor consulted with the shift supervisor about the claimant's neglect of his duties. The decision was reached to suspend the claimant for three days for violating plant rule #2. The claimant's supervisor advised him at 2:40 p.m. that a meeting would be held immediately following the conclusion of that shift. The shift was scheduled to end at 3:00 p.m. The claimant's supervisor told him to meet him in the plant superintendent's office. The supervisor also told the claimant that he was not to leave the plant until he had spoken with him. The claimant did not stay for that meeting. When he did not arrive by 3:10 p.m., his immediate supervisor searched the premises for him. He reported to the shift supervisor that the claimant was not in the employee locker room and that his vehicle was not in the company parking lot. The claimant was paged over the plant intercom system, but did not respond since he had already left the premises. As a result, the claimant's supervisor pulled his timecard in order to force the claimant to meet with him at the beginning of the shift the following day.

On August 17, 1988, the claimant reported for work shortly before 5:00 a.m. When he discovered that his timecard had been pulled, he spoke with his immediate supervisor. The supervisor informed him that the timecard had been pulled so they could have the meeting that had been scheduled for the previous day. The supervisor instructed the claimant to wait in the lunch room while he got the work started on his shift. In addition, the supervisor was having to wait for a union shop steward to arrive so that a union representative would be present when the suspension was administered. The shop steward did not arrive until shortly after 6:00 a.m. that morning. At approximately 6:20 a.m., the supervisor went to the lunch room and informed the claimant that they were ready to begin the meeting. The claimant refused to attend that meeting. He told the supervisor that he did not have to obey him since he was not on company time. After making that statement, the claimant left the company premises.

The claimant returned to the plant later that same afternoon. At that time, the company administered a three-day disciplinary suspension for his violation of plant rule #2. On August 24, 1988, the claimant was informed that he was being suspended an additional ten days without pay for his insubordinate refusal to attend the two meetings with his supervisor. In the written memorandum that was given to the claimant regarding this suspension, he was informed that this was a final warning and that any future acts of misconduct or violations of any plant rules would result in his immediate discharge.

The claimant served his suspension and returned to work on September 6, 1988. On September 14, 1988, the claimant failed to detect that 289 boards in a 440 board run had been cut two inches too short. This was not discovered until September 16, 1988. As a result, those boards were not usable and had to be thrown away. This resulted in a \$1,300 loss to the company. The employer's investigation of this incident revealed that the claimant had not informed either his supervisor or the corrugator operator that there was a problem with this particular run. On September 20, 1988, the claimant was terminated.

Following his disciplinary suspension in August of 1988, the claimant filed a claim for benefits, effective August 21, 1988. He reopened that claim for benefits following his termination on September 20, 1988. The Deputy issued two separate determinations adjudicating both separations. In both instances, the Deputy ruled that the claimant was qualified to receive benefits. The Appeals Examiner's decision reversed one of those determinations and held that the claimant was disqualified, effective August 21, 1988. Additionally, the Appeals Examiner vacated the Deputy's determination that adjudicated the claimant's separation on September 20, 1988. The Appeals Examiner took that action because the claimant had not purged the prior disqualification by working for an employer for at least thirty days.

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 particular language was first interpreted by the Virginia Supreme Court in the case of Branch v. Virginia Employment Commission, 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 claimant 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. 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).

Normally, the employer-employee relationship is not severed during a disciplinary suspension since it is, by definition, only suspended. Nevertheless, when an individual files a claim for unemployment compensation while on a disciplinary suspension, the events leading to the suspension must be considered as a separation under Section 60.2-618 of the Code of Virginia to determine if a disqualification should be imposed. Accord, Wright v. Basics Food Warehouse, Commission Decision 26868-C (May 9, 1986); Felder v. General Motors Corp., Commission Decision 31218-C (January 6, 1989). The primary purpose of Virginia's unemployment insurance law is to provide temporary financial assistance to workers who become unemployed through no fault of their own. Ford Motor Co. v. U. C. C., 191 Va. 812, 63 S.E.2d 28 (1951); U. C. C. v. Tomko, 192 Va. 463, 65 S.E.2d 524 (1951). Therefore, if a claimant becomes unemployed due to a disciplinary suspension, that suspension must be analyzed in light of the provisions of Section 60.2-618(2) of the Code of Virginia in order to ensure that the fundamental purpose of the statute is carried out.

In this case, the claimant was suspended for a total of 13 work days without pay as a result of two separate disciplinary actions. The claimant's persistent failure to comply with the end of the run procedure, despite numerous warnings and counselings, shows a degree of indifference and willful neglect that not only violated the company rule but manifested a willful disregard of the claimant's duties and obligations to the employer. Hupp v. Worth Higgins & Associates, Inc., Commission Decision 25019-C (August 7, 1985); accord, Blubaugh v. R. R. Donnelley & Sons Co., Commission Decision 19940-C (November 23, 1983), aff'd, Circuit Court of Rockingham County, Law No. 6882 (February 25, 1985).

Furthermore, the claimant's willful, deliberate refusal to meet with his supervisor on August 16 and August 17, 1988, constitutes

insubordination which this Commission has consistently held amounts to work connected misconduct. Gwynn v. Kahn & Feldman, Inc., Commission Decision 4105-C (October 25, 1963); Vines v. Committee of Judge's System, Commission Decision 9661-C (September 7, 1977); Anderson v. Glass Marine, Inc., Commission Decision 13211-C (April 8, 1980).

The claimant contended that he was discharged for union activities, and not for any wrongful conduct on his part. He further argued that his insubordination should be excused because he was not acting "rationally" due to the stress and pressure that he was enduring at the hands of the employer. There is no credible evidence in the record to support these contentions. Consequently, the claimant has not proven mitigating circumstances for the conduct that led to his suspensions in August of 1988. V.E.C. v. Gantt, 7 Va. App. 631, 376 S.E.2d 808 (1989). Therefore, the Commission must conclude that the claimant was discharged for misconduct in connection with his work for which no mitigating circumstances have been proven. Accordingly, he is disqualified from receiving benefits, effective August 21, 1988. Since the claimant did not perform services for an employer during at least 30 days following the effective date of that disqualification, the issue regarding his separation from work on September 20, 1988, is moot.

DECISION

The decision of the Appeals Examiner is hereby affirmed. The claimant is disqualified from receiving benefits, effective August 21, 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 he subsequently becomes totally or partially separated from such employment.

The case is referred to the Deputy with instructions to determine if the claimant has been paid any sum as benefits to which he was not entitled and is liable to repay the Commission as a result of the disqualification imposed by this decision.

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