

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Jerry L. Morrison
████████████████████

JTM Pizza, Inc.
Danville, Virginia

Date of Appeal

to Commission: November 8, 1991

Date of Hearing: January 14, 1992

Place: RICHMOND, VIRGINIA

Decision No.: 35309-C

Date of Mailing: March 2, 1992

Final Date to File Appeal
with Circuit Court: March 22, 1992

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This case is before the Commission pursuant to an order of the Circuit Court of Halifax County dated November 8, 1991, remanding the case to the Commission for the consideration of additional evidence.

APPEARANCES

Claimant, Observer with Claimant, Attorney for Employer

ISSUE

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

FINDINGS OF FACT

Commission Decision 35309-C dated April 22, 1991, affirmed an earlier Appeals Examiner's decision and held the claimant qualified for benefits effective November 11, 1990, with respect to his separation from the services of JTM Pizza, Inc. The employer filed an appeal to the Circuit Court of Halifax County and pursuant to an order dated November 8, 1991, the court remanded the case for a rehearing and for the receipt of evidence

regarding the claimant's criminal conviction. The Commission hearing was held on January 14, 1992, in Richmond.

The claimant was employed by JTM Pizza, Inc., of Danville, Virginia, from March 23, 1988, to August 11, 1990, as a store manager earning \$400 per week.

During the course of the claimant's employment, bank deposits for April 26, 1990, and May 9, 1990, totaling \$1,390.58 were missing. The owner wrote a counselling letter to the claimant dated June 26, 1990, in which he advised him that the only conclusion he could reach was that the two deposits were never made. The claimant was held responsible for the missing money and starting with the payroll ending July 7, 1990, \$25 per week was deducted from his wages. The claimant was further advised that any future incidents of this nature would not be tolerated and would result in his immediate termination. The claimant advised the employer that he did make the deposit on April 26, 1990, but that he did not make the deposit on May 9, 1990, because he was not the closing manager on that day. However, because he felt responsible for the money, he agreed to pay \$25 per week.

The employer checked the deposit slips for August 5, 1990, and learned that the bank had no record of the deposit for that day. The claimant prepared that deposit and was accompanied to the bank by a manager trainee. As a result of the missing deposit, the claimant was discharged by the employer on August 6, 1990.

The claimant was charged criminally with three counts of grand larceny by embezzlement and was tried in the Circuit Court of Halifax County on April 25, 1991. He was found guilty and on June 4, 1991, he was sentenced to two years and six months in the penitentiary on each count. The sentence was suspended on the condition that he be placed on five years supervised probation.

OPINION

Section 60.2-618.2 of the Code of Virginia provides for a disqualification if the Commission finds that a claimant was discharged due to misconduct connected with work.

In the case of Branch v. Virginia Employment Commission, 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 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 evidence of record, along with evidence of the claimant's conviction for grand larceny by embezzlement, is sufficient to establish that he appropriated the employer's funds which he was responsible for depositing in the bank. His conduct constitutes a willful disregard of the interest, duties and obligations which he owed his employer, and constitutes misconduct connected with work.


The claimant has not come forward to present evidence sufficient to mitigate his conduct; accordingly, he should be disqualified from receiving unemployment compensation benefits based on the aforementioned section of the Code.

DECISION

The decision of the Appeals Examiner is hereby reversed.

The claimant is disqualified for benefits effective November 11, 1990, for any week benefits are claimed until he has performed services for an employer during 30 days, whether or not such days are consecutive, and he subsequently becomes totally or partially separated from such employment, because he was discharged due to misconduct connected with work.

The Deputy is instructed to calculate what benefits may have been paid to the claimant which he is liable to repay to the Commission as a result of this decision.


Willie C. Thompson, Jr.
Special Examiner