

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Valerie L. Culpepper

Quality Cleaners
Roanoke, Virginia

Date of Appeal
to Commission:

May 18, 1991

Date of Review:

June 17, 1991

Place: RICHMOND, VIRGINIA

Decision No.:

35909-C

Date of Mailing:

July 1, 1991

Final Date to File Appeal

with Circuit Court: July 21, 1991

---oOo---

This case is before the Commission on appeal by the employer from Appeals Examiner's decision UI-9106043, mailed May 3, 1991.

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 reversed an earlier Deputy's determination and found the claimant to be qualified for unemployment compensation, effective February 17, 1991, with respect to her separation from the employer's services.

Prior to filing her claim, the claimant last worked for Dick Cook, t/a Quality Cleaners of Roanoke, Virginia, between August 27, 1990, and February 15, 1991. Her position was that of a counter clerk.

The employer had promulgated a series of rules in September, 1990, which the claimant acknowledged that she had received. They provide in pertinent part:

16. All employees are to have a friendly and caring attitude while at work. Counter personnel are to have personality (friendliness, courtesy, and kindness) and treat customers with the utmost respect. Be alert to what you have been trained for and do it correctly. . . .
20. Employee misconduct will be recorded with employee's signature in the employee file. If the employee misconduct is not resolved, the employee will be dismissed without recourse to the company.

During the course of her employment, there were no particular problems with the claimant's performance until the last two weeks that she worked. Coincidentally, this was about the same time she was getting ready to go on maternity leave.

In late January or early February a customer came in to pick up an order which the claimant could not find because she had recorded the individual's name incorrectly. The manager observed the claimant interacting with the customer as if to accuse her of giving a false name when she came in with the order. The matter was resolved without any formal complaint being filed over the incident. Shortly thereafter, a second incident occurred which was reported to the manager by another employee. The claimant was alleged to have said to a customer: "You don't know how nasty I can get." Again there was no specific customer complaint recorded with respect to this incident.

The manager observed part of the third incident which involved a pair of pants which was missing from a customer's order when he came to pick it up. Although the manager was aware of the problem, she never actually heard the words spoken between the claimant and the customer. Nevertheless, the customer did make a complaint that the claimant had been rude to him.

Another customer made a complaint that the claimant had rudely interrupted a conversation between her and another counter clerk concerning her coat which contained spots that could not be removed. Shortly after this incident, the manager told the claimant that she would be written up due to the complaint she had received.

Several days later, the manager presented the claimant with a written document which detailed what were alleged to be four customer complaints about her attitude and alleged rudeness. This document contained no disclaimer to the effect that the claimant's signature was required only to acknowledge receipt rather than agreement, and it did not provide a space for her to list any disagreement she might have with it. The claimant refused to sign it because she did not think it was accurate. She was then terminated from her job.

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, 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 Branch case involved the interpretation of an employer rule concerning garnishments. In that case, it was specifically held that an employer rule must be construed most strictly against its maker and most liberally in favor of the employee.

Due to the disruption to the workplace caused by having to bring in a witness to certify that a written reprimand had been given to someone who refused to acknowledge receipt of it, the Commission can conceive of situations in which requiring employees to sign reprimands would represent a reasonable rule. Nevertheless, the safeguards necessary to support such a rule have not been shown to have existed in this case.

No employer can reasonably require an employee to sign a reprimand with which they do not agree without making it clear that their signature does not indicate agreement and without giving them space on the document to explain their own disagreement with the reprimand. This is where the rule in the case at hand falls short.

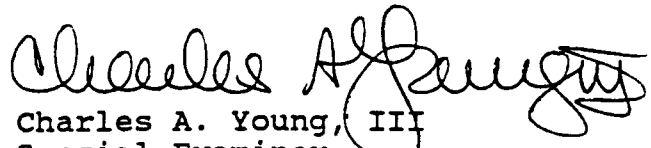
It is apparent from viewing the reprimand document that it is inaccurate. The manager said that four customer complaints had been received when in fact there were only two. Inasmuch as the information on the reprimand was not corrected, the claimant was perfectly justified in refusing to sign it, since there was no indication that her signature was required only to acknowledge receipt and she was not given the chance to express her disagreement on the document itself.

Although undoubtedly the claimant made errors in judgment concerning how she related to customers during the last two weeks of her employment, these incidents are not the reason why she became unemployed. From the sequence of events as related by the employer representative, it is clear that the only reason she lost her job was due to her refusal to sign the reprimand which the manager prepared on February 15, 1991. Absent a showing on the part of the employer that this refusal constitute misconduct in connection with work, the Commission can only find that her discharge was for reasons insufficient to impose a disqualification 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 February 17, 1991, with respect to her separation from the services of Dick Cook, t/a Quality Cleaners.


Charles A. Young, III
Special Examiner