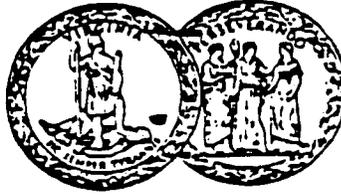


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Ramona E. Jordan
[REDACTED]

Newport News Shipbuilding, Inc.
Newport News, Virginia

Date of Appeal to Commission: October 4, 1991
Date of Hearing: December 5, 1991
Place: RICHMOND, VIRGINIA
Decision No.: 36794-C
Date of Mailing: December 17, 1991
Final Date to File Appeal with Circuit Court: January 8, 1992

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This case is before the Commission on appeal by the employer from Appeals Examiner's Decision UI-9113226, mailed October 1, 1991.

APPEARANCES

Employer Representative

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 qualified for unemployment compensation, effective July 28, 1991, with respect to her separation from the employer's services.

Prior to filing her claim, the claimant last worked for the Newport News Shipbuilding and Dry Dock Company in Newport News,

Virginia, between April 12, 1983, and July 26, 1991. Her position was that of a janitor.

On July 24, 1991, the claimant reported to work at 7:00 a.m. and almost immediately went outside to take an extended cigarette break. Her foreman saw her outside talking and knew that she had been away from work for approximately 20 minutes. This was the third day in a row that she had done this; therefore, he told the claimant that she was paid to work and not smoke and that the company expected a day's work out of her. The claimant then returned to work.

Approximately two hours later, the foreman made rounds of the work area again. He saw the claimant approximately 20 feet away and she made a comment to the effect that "Somebody better stop getting on people before it gets too hot. You know somebody's liable to go off on them." He then asked her what the problem was and she stated that she was tired of the foreman's "getting on her" and that she did not think he had any right to tell her what to do so long as she had a broom in her hand. He informed her that she was incorrect in that regard. The claimant proceeded to tell him that a lot of people "would really get off on stuff like that" but she wasn't going to do it and she was not going to have someone come to his house and do something to him and his family or meet him on the street and do something to him there. The foreman asked her if she was threatening him and she stated that she was not; however, she twice repeated the statement she had previously made about not having someone to go to his house and confront him or his family or to confront him on the street. After thinking the matter over, the foreman felt intimidated by what the claimant had said to him, particularly since one shipyard employee had been killed by another during a lunch hour dispute that very year.

After the foreman reported the matter to higher management, the decision was made to terminate the claimant for violating Yard Rule # 11 which prohibits threatening, intimidating, or coercing another employee by word or act.

The claimant's version of the events as they occurred was almost identical to that of the foreman in his testimony at the Appeals Examiner's hearing. She admitted that she was angry at the time she had the conversation and wanted to bring to the foreman's attention that people could get hurt or killed over perceived mistreatment (transcript page 21). She went on to state:

I don't want to see nothing happen to (the foreman). If I was a violent person, I wanted to, uh, do anything, I probably done it that day, if I was such, so much a violent. I don't want nothing

happen to (the foreman). It's not worth it.
(Transcript page 26)

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.

Considering the disruption to the workplace as well as the risk of liability in the event of injuries caused by disputes occurring on the job, the Commission must conclude that the employer's Yard Rule # 11 was reasonably designed to protect a legitimate business interest. The next question to consider is whether the claimant deliberately or willfully violated this rule.

In holding that the claimant had not violated the rule, the Appeals Examiner focused only on the literal meaning of the language she used without considering either the context in which it was spoken or the manner in which it was perceived by the foreman.

The use of words to convey the opposite of their literal meaning is known as irony, a concept with English language roots extending back for centuries. In Shakespeare's Julius Caesar, when Mark Antony repeatedly called the assassins of Caesar "honorable men," it becomes apparent that he was attempting to emphasize the fact that he considered them to be dishonorable. In the case at hand, the Commission is convinced that the claimant was deliberately using irony in an attempt to intimidate her foreman. By repeatedly saying that she would not have someone go to his house to do something to him or his family or meet him on the street and do something to him personally, she was deliberately dredging up the idea that these sort of things can

happen in an attempt to have the foreman think twice before reprimanding her in the future. The Commission can certainly understand how he might associate these statements with the unfortunate incident involving the death of a worker at the shipyard the prior year so as to make her words deliberately intimidating. The Commission concludes that the employer has made out a prima facie case that the claimant's discharge was due to a deliberate and willful violation of Yard Rule # 11 so as to constitute misconduct. This shifts the burden to her to show mitigating circumstances if she is to avoid a disqualification under this section of the Code.

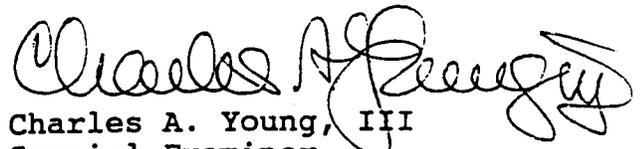
This is something which the claimant cannot do. The fact that she repeated her words twice after being asked if they were intended as a threat is enough to show that this was, in fact, the case. Her own statement as quoted in the findings of fact only reinforces the Commission's conviction that what the claimant did was not inadvertent. It is concluded that she has failed to establish mitigating circumstances for the conduct which brought about her termination; therefore, she should be disqualified for benefits under this section of the Code.

DECISION

The decision of the Appeals Examiner is hereby reversed.

The claimant is disqualified for unemployment compensation effective July 28, 1991, for any week or weeks benefits are claimed until she has performed services for an employer during 30 days, whether or not such days are consecutive, and she has subsequently become totally or partially separated from such employment, because she was discharged 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 the effective date of the disqualification, which she will be liable to repay the Commission as a result of this decision.


Charles A. Young, III
Special Examiner