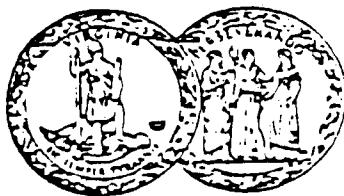


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Abigail D. Butts
[REDACTED]

Jones, Blechman, Woltz &
Kelly, P.C.
Newport News, Virginia

Date of Appeal
to Commission: September 1, 1992

Date of Review: October 14, 1992

Place: RICHMOND, VIRGINIA

Decision No.: 39702-C

Date of Mailing: October 15, 1992

Final Date to File Appeal
with Circuit Court: November 4, 1992

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This case came before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-9210717), mailed August 28, 1992.

ISSUE

Was the claimant discharged for misconduct connected with her work as provided in Section 60.2-618(2) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On September 1, 1992, the claimant filed a timely appeal from the Appeals Examiner's decision which disqualified her from receiving benefits, effective March 15, 1992. The basis for that disqualification was the Appeals Examiner's finding that the claimant had been discharged for misconduct connected with her work.

Prior to filing her claim for benefits, the claimant last worked for the law firm of Jones, Blechman, Woltz & Kelly, P.C. She was employed as a mail clerk from June 8, 1991 until October 7, 1991. The claimant was a full-time employee and was paid a salary of \$240 per week.

As the mail clerk, the claimant was in charge of the mailroom. She usually made several trips daily to the post office to mail correspondence and packages for the employer. The employer has a postage meter machine on its premises that is used to provide postage for the business correspondence. This machine is not intended for the private use of the firm's employees. The employees may, however, use the postage meter machine for personal mail provided that the employer is reimbursed the cost of the postage. In this event, the claimant would collect the money from the employee and turn it in to the receptionist. The law firm's receptionist also kept a supply of postage stamps that employees could purchase for their personal use. Employees could purchase stamps from the receptionist, place them on their personal correspondence, and give them to the claimant for mailing.

When the claimant was hired, she was instructed on how to use the postage meter machine. She was not initially told about the firm's policy regarding reimbursement for the personal use of postage; however, the personnel director subsequently informed her of that particular policy. In addition to handling the mail, the claimant would also make the bank deposits on behalf of the firm.

Prior to the claimant's separation from work, the employer's office manager began to develop some concerns regarding her veracity. These concerns arose when companies contacted the employer to verify employment information that the claimant had provided in an attempt to obtain credit. On one occasion, the claimant had informed a company that she had worked for the employer for two years. On another occasion, she informed a company that she had worked at the firm for one and a half years. The claimant later admitted to providing this erroneous information. She did so because of marital problems and her need to establish credit independent from her husband.

On September 23, 1992, a secretary in the law firm brought a personal package to the claimant for mailing. The claimant weighed the package and told the employee that it would cost \$3 for the postage. The employee gave the claimant \$3 cash and left the package with her. The claimant placed postage from the company's postage meter machine on this package; however, she placed \$4 of postage on it. The claimant routinely added postage to packages and some of the other mail because her computations and that of post office did not always agree. Although the claimant asserted that she left the \$3 given her by the secretary on the desk of the receptionist, the receptionist never received that money. The claimant subsequently mailed that package along with other company mail later that day.

Before the claimant took the mail to the post office, the secretary who had given her the package noticed that a company postage meter label had been affixed to it. The firm's receptionist also noticed that this package had a company postage meter label. She reported this to her superior because she had not received any money to cover the postage.

On September 24, 1991, the office manager and the personnel director met with the claimant to discuss the situation regarding the secretary's package. During that meeting, the claimant stated that she had mailed the package from the post office and had paid the \$3 for postage at that time. When asked about the firm's postage meter label that had been observed on the package, the claimant stated that she had removed it from the package and thrown it away. The claimant was asked to obtain a cash receipt from the post office showing that she had paid the \$3 to the post master. The claimant was later able to provide such a receipt.

The office manager still had some concern over the situation. He requested the secretary, who had given the package to the claimant, to contact the addressee and request that she return the postage label from the package. On or about October 7, 1991, the employer received the postage label from that package. The postage label was in the amount of \$4 and the employer verified that the identifying number on the label was identical to that on its postage meter machine. On October 7, 1991, the claimant was confronted about this situation and offered no explanation. The claimant was discharged that day for dishonesty.

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 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 employee 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 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).

Regardless of any written rules or policies, every employee owes two fundamental duties to his or her employer. First, the employee owes the employer the duty of loyalty. This requires the employee to deal with the employer in good faith in all matters that are related to the employment relationship. A material breach of this duty constitutes misconduct if it is prejudicial to the employer's interest. Hudnall v. Jet Services, Inc., Decision UI-73-43 (February 28, 1973), aff'd, Commission Decision 5920-C (March 27, 1973); Colton v. Greyhound Airport Service, Decision UI-74-603 (April 1, 1974), aff'd, Commission Decision 6282-C (May 14, 1974).

Second, every employee owes the duty of honesty to the employer. The act of providing false or misleading information to an employer has been held to constitute misconduct in connection with work. Powell v. Sims Wholesale Company, Commission Decision 13448-C (June 10, 1980); Madison v. Newport News Shipbuilding & Dry Dock Company, Decision UI-78-7966 (December 26, 1978), aff'd, Commission Decision 12128-C (May 24, 1979), aff'd, Circuit Court of the City of Newport News (June 9, 1980).

As the mail clerk, the claimant had the responsibility to ensure that the firm's mail was properly and promptly delivered to the post office. In addition, the claimant was responsible for delivering the firm's bank deposits to the bank. Because of these duties, trustworthiness and integrity were essential elements of the claimant's job.

The evidence in the record establishes that the claimant did not comply with the firm's policy regarding how personal mail was to be handled. The claimant collected only \$3 from the secretary who requested that she mail her package on September 23, 1992. The claimant placed \$4 in postage on that package from the employer's postage meter machine. The receptionist never received the \$3 that was delivered to the claimant. Furthermore, the claimant made at least two false statements to her superiors when they investigated the situation. First, she claimed that she had paid the \$3 at the post office where a postage label was placed on the secretary's package. Second, she claimed that, after putting \$4 of postage on the package using the firm's postage meter machine, she tore the label off and threw it away. That statement is provably false since the employer was able to recover the postage label which reflected that it came from the firm's postage meter machine.

In light of the inconsistencies in the claimant's testimony and her admissions that she had provided false information regarding the length of time she worked with the firm in an attempt to obtain credit, the Commission cannot give significant weight to the claimant's testimony that she actually gave the \$3 from the secretary to the firm's receptionist. When that is coupled with the false statements that she made to her superiors when they investigated this incident, it is

manifestly apparent that the claimant violated the duty of honesty that she owed the firm. Consequently, the employer has established a prima facie case of misconduct. Therefore, in order to avoid the statutory disqualification, the claimant must prove mitigating circumstances.

The claimant asserted that the employer had set her up. She based that contention on extremely vague, ambiguous grounds. First, she claimed that the office manager was not as friendly towards her near the end of her employment as he had been when she was hired. Second, she asserted that she had overheard her name mentioned in several conversations between the office manager and other employees; however, she could not remember the specifics of any of those conversations. That is simply insufficient to show that her dismissal was contrived or pretextual.

The claimant also contended that the penalty that was being imposed on her was not in proportion to the relatively small amount of postage that was involved. Counsel for the employer acknowledged that the dollar value in question was extremely modest; however, he correctly pointed out that the real issue was not the amount of money but the claimant's honesty and integrity.

Finally, the claimant contended that some of the false statements that she made were the result of very difficult personal problems that she was experiencing. The claimant was confronted with being separated from her husband. The need to establish her credit independently from him prompted her to falsify various credit applications that the employer subsequently discovered. Also, the false statements that she made during the employer's investigation were evidently done in an attempt to preserve her job. Under the facts in this case, the Commission does not consider the false statements on the credit applications to be misconduct that was connected with the claimant's work. They were considered, however, in weighing the credibility and believability of the claimant's testimony.

The Commission understands the difficulty that single parents, particularly women, have in raising children by themselves and establishing credit independently from their former or estranged husbands. Those difficulties did not, however, justify or mitigate the claimant's dishonesty to her employer, particularly when some her duties required a high degree of trust and integrity.

Therefore, the Commission must conclude that the claimant was discharged for misconduct connected with her work for which no mitigating circumstances have been proven. As a result, she must be disqualified from receiving benefits.

DECISION

The Appeals Examiner's decision is hereby affirmed. The claimant is disqualified from receiving benefits, effective March 15, 1992, because she was discharged for misconduct connected with her work.

This disqualification shall remain in effect for any week benefits are claimed until the claimant performs services for an employer during 30 days, whether or not such days are consecutive, and she subsequently becomes totally or partially separated from such employment.

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

NOTICE TO CLAIMANT

IF THE DECISION STATES THAT YOU ARE DISQUALIFIED, YOU WILL BE REQUIRED TO REPAY ALL BENEFITS YOU MAY HAVE RECEIVED AFTER THE EFFECTIVE DATE OF THE DISQUALIFICATION. IF THE DECISION STATES THAT YOU ARE INELIGIBLE FOR A CERTAIN PERIOD, YOU WILL BE REQUIRED TO REPAY THOSE BENEFITS YOU HAVE RECEIVED WHICH WERE PAID FOR THE WEEK OR WEEKS YOU HAVE BEEN HELD INELIGIBLE. IF YOU THINK THE DISQUALIFICATION OR PERIOD OF INELIGIBILITY IS CONTRARY TO LAW, YOU SHOULD APPEAL THIS DECISION TO THE CIRCUIT COURT. (SEE NOTICE ATTACHED)