

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

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Decision No. : 6119-C

Date: November 7, 1973

ABLE AND AVAILABLE: 250  
Incarceration or other  
legal detention

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This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UI-73-1783) dated October 10, 1973.

ISSUES

Was the claimant discharged for misconduct in connection with his work within the meaning of § 60.1-58 (b) of the Code of Virginia (1950), as amended?

Has the claimant been available for work during the week or weeks for which he claims benefits within the meaning of § 60.1-52 (g) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The claimant appealed from a determination of the Deputy which disqualified him effective August 26, 1973, for having been discharged for misconduct in connection with work.

Huff-Cook, Bristol, Virginia, was the claimant's last employer, where he worked as a general office clerk from March 10, 1972, through August 17, 1973. At the time of filing his claim for benefits, effective August 26, 1973, the claimant gave as the reason for separation that he had been discharged.

At the hearing on his appeal, he testified that his last day of work was Friday, August 17, 1973. He was off from work on Monday, August 20th, since he had to appear in court and answer a warrant which had been obtained by his wife charging him with assault and

also regarding child custody. As a result of this the claimant was fined \$100.00, which has been appealed. On Tuesday, August 21st, he did not report in to work as he was on vacation. He was scheduled to return to work on Wednesday, August 22nd; however, he was arrested that morning by the authorities and charged with attempt to commit murder. As a result, he was taken to jail, where he remained until the following day, Thursday, August 23rd, at which time a representative of his employer appeared at the jail with money secured from the claimant's account at the bank to pay his bond. After he was released under bond, he was asked by the employer to resign from his position, which he refused to do. He was then informed that he would be suspended until such time as he might be exonerated of the charges placed against him. At that time he could then return to work.

A hearing was held September 5, 1973, at which time the claimant was bound over to the Grand Jury.

After filing his claim effective August 26, 1973, the claimant filed continued claims for the weeks ending September 1st, and September 8th. During this two week period, his efforts to find work had been to apply to one employer.

#### OPINION AND DECISION

From a review of the claimant's testimony before the Appeals Examiner, the Commission is uncertain whether the claimant was discharged by the employer or suspended until the criminal charges against the claimant were determined. However, the effect on the claimant is certain. Whether discharged or suspended, the claimant was no longer earning a salary and in effect was unemployed. The Commission will thus determine the misconduct issue raised by this appeal.

Section 60.1-58 (b) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that a claimant was discharged for misconduct connected with his work.

In the present case there is no evidence before the Commission which would indicate that the offenses with which the claimant is charged were in any way connected with the claimant's work. The Commission also notes that the claimant has not been convicted but is only charged with several criminal offenses. Under our system of law any person is presumed innocent until proven guilty. It is therefore concluded that misconduct has not been shown within the meaning of the Virginia Unemployment Compensation Act.

Section 60.1-52 (g) of the Act provides, in part, that in order to be eligible for benefits a claimant must be "available for work."

The fact that a claimant has been released on bond pending the disposition of criminal charges may in no way be considered as adversely affecting his availability for work, attachment to the labor market, or eligibility for unemployment benefits. Although some employers may be unwilling to hire a person charged with a crime, any person charged with a crime is nevertheless presumed innocent until proven guilty. Such a claimant, who faces the burdens of loss of income and legal expenses, does not face the added burden of ineligibility for unemployment benefits merely because he is charged with a criminal offense, if he otherwise meets the eligibility requirements of the Act. (Underscoring supplied)

However, since the record establishes that the claimant applied to one employer during the two week period for which benefits have been claimed, the Commission holds that the claimant has not met the availability requirements of the Act from August 26, 1973, through September 8, 1973.