

DECISION OF COMMISSION

In the Matter of:

Robert Upton  
[REDACTED]

Southeastern Roofing & Siding  
Virginia Beach, Virginia

Date of Appeal

to Commission: February 20, 1987

Date of Review: March 21, 1987

Place: RICHMOND, VIRGINIA

Decision No.: 28298-C

Date of Mailing: March 31, 1987

Final Date to File Appeal

with Circuit Court: April 20, 1987

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This is a matter before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-87-41), mailed February 13, 1987.

ISSUE

Was the claimant discharged for misconduct connected with his work as provided in Section 60.2-618.2 [formerly 60.1-58 (b)] of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The Findings of Fact of the Appeals Examiner are hereby adopted by the Commission. The Findings of Fact of the Appeals Examiner are as follows:

The claimant filed a timely appeal from a Deputy's determination which disqualified him from the receipt of benefits effective November 16, 1986, for reasons of separation from his employment.

Southeastern Roofing/Siding, was the claimant's last employer where he worked as the general manager and vice president from March 1, 1986, through October 10, 1986.

The limited evidence before the Examiner shows that the claimant signed a document, dated June 17, 1986, which stated that he agreed with the policy of the employer that the president and the general manager would sign each company check. The claimant's employment agreement with the employer provided that he would receive periodic bonuses. In a memorandum to the claimant dated September 12, 1986, the employer notified him that he was not to take any more bonus payments until further notice. On September 15, 1986, the claimant issued a check over his own signature for a bonus in the amount of \$1,000. He issued another \$1,000 bonus for himself over his signature on September 18, 1986. A third bonus check was issued in the amount of \$5,000 on September 22, 1986, again over the claimant's signature to himself.

The employer discharged the claimant on October 10, 1986, for writing unauthorized checks.

The claimant and the employer were both duly notified of the hearing scheduled on this appeal, however, the employer contacted the Commission stating that the parties had reached an agreement that neither would participate in the hearing.

By letter dated February 20, 1987, the claimant's attorney filed an appeal from the Appeals Examiner's decision. In the letter of appeal, the following information was provided.

"The reason for this appeal is that the parties had previously entered into an agreement that Southeastern Roofing & Siding would not disagree and would withdraw their objections to Robert E. Upton receiving any unemployment compensation to which he may be entitled. It would appear that this fact was not made known to the appeals examiner through an oversight."

#### 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 his work.

This particular language was first interpreted by the Virginia Supreme Court in the case of Branch v. V.E.C., et al, 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."

In this case, the claimant was discharged by the employer for writing himself three bonus checks, totalling \$7,000.00, after being specifically instructed to refrain from this practice. Furthermore, the claimant's conduct in this regard violated another company policy, which required both the president and the general manager to sign any check issued by the company. Under these circumstances, the Commission is of the opinion that the claimant's actions not only constitute a deliberate violation of a reasonable company rule, but manifest a willful disregard of the duties and obligations he owed to his employer.

In documentation submitted to the Commission, the claimant argued that the employer's directive that he not issue further bonus checks was contrary to his employment contract. The claimant contended that his rights under the employment contract could not be superseded by the unilateral directive of the company president; however, this does not constitute a mitigating circumstance within the meaning of the Branch case. First, by failing to appear at the Appeals Examiner's hearing, the claimant did not present any evidence to establish the actual terms of his employment contract. Based upon the limited information before the Commission, the Commission cannot conclude that the employer's directive regarding the issuance of bonus checks violated the claimant's employment contract. Regardless of whether that directive did violate the contract, by issuing the checks, the claimant violated another company policy. Those checks for \$7,000.00 of bonuses were issued over the claimant's sole signature. The claimant was aware of the company policy requiring that both he and the president sign all checks. Accordingly, the Commission must conclude that the claimant has not proven any mitigating circumstances for his conduct regarding the unauthorized issuance of bonus checks.

The final argument the Commission must address is the one raised in the letter of appeal. In the claimant's appeal letter, it is suggested that the claimant should be awarded benefits because of an agreement with the employer that the company would withdraw its

objections to the claimant's receiving benefits. However, such an agreement is not binding on the Commission.

Pursuant to the provisions of Section 60.2-111 of the Code of Virginia, the Commission has been vested with the statutory authority to administer the provisions of Virginia Unemployment Compensation Act. Section 60.2-111 A of the Code of Virginia provides in pertinent part that:

"It shall be the duty of the Commission to administer this title. It shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action, including the appointment of advisory groups, as it deems necessary or suitable to that end."

(Emphasis added)

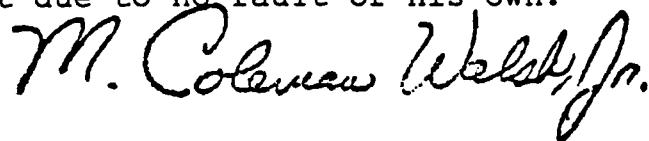
The Commission, as a trustee of the Unemployment Insurance Trust Fund, has a fiduciary obligation not only to the particular claimant and employer involved in any controversy over benefits, but to all Virginia employers and their employees. The Commission, in adjudicating contested claims for benefits, is responsible for insuring that only those claimants who meet the requirements of the law are paid benefits. An improper award of benefits could adversely affect all Virginia employers indirectly through the pool cost and fund-building factors provided under the law. Likewise, an improper award of benefits is detrimental to Virginia employees since it depletes the trust fund upon which claimants, who are unemployed due to no fault of their own, rely for receiving benefits. Because of the fiduciary responsibilities, the Commission cannot delegate its adjudicatory functions to the parties in any particular contested case. That is what would occur here if the Commission adopted the claimant's argument. The mere fact that the employer may have agreed to withdraw its objections does not limit the Commission's statutory mandate to administer the provisions of the law and to pay only those claims which are proper. See, Ralph H. Munsey v. Kersey Manufacturing Company, Decision No. 9022-C (March 15, 1977).  
(Underscoring supplied)

Therefore, for the reasons cited herein, the Commission must conclude that the claimant was discharged for misconduct connected with his work. Further, in the absence of any proof of mitigating circumstances, the disqualification provided in Section 60.2-618.2 of the Code of Virginia must be imposed.

#### DECISION

The Decision of Appeals Examiner is hereby affirmed. It is held that the claimant is disqualified from receiving benefits, effective November 16, 1986, for having been discharged for misconduct

connected with his work. This disqualification shall remain in effect for any week benefits are claimed until the claimant has performed services for an employer during thirty days, whether or not such days are consecutive, and he becomes totally or partially separated from such employment due to no fault of his own.

A handwritten signature in cursive script that reads "M. Coleman Walsh, Jr." The signature is written in black ink and is positioned above the typed name.

M. Coleman Walsh, Jr.  
Special Examiner