

The claimant filed her claim for benefits on January 30, 1972, and continued her claim series through the week ending March 11, 1972. Throughout this period several prospective employers were contacted in an effort to find work. As a result of these efforts, claimant secured employment on March 13, 1972.

OPINION

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

This Commission is of the opinion that the factual situation is such as to create the issue of whether or not the claimant was "discharged" within the meaning of the term as interpreted by this Commission on previous occasions.

This Commission stated in Sid F. Kerns v. Atlantic American, Inc., Decision No. 5450-C (September 20, 1971): "It is established that the burden is upon the employer to produce evidence which establishes a prima facie case that the claimant left his employment voluntarily. The employer assumes the risk of non-persuasion in showing a voluntary leaving."

The evidence clearly shows that this separation of the claimant was initiated by the employer.

This Commission stated in Joyce H. Smith v. Meloy Laboratories, Inc., Decision No. 5512-C (November 22, 1971), as follows: ". . . the Commission holds that the legal inference of voluntary quit or discharge must be drawn from the facts of each case, and the words 'discharged' or 'fired' need not be expressly used by the employer, but may be inferred from such language as . . . 'it will be best if you resign.'

This Commission is of the opinion that based upon the aforesaid, the claimant's leaving was a result of a discharge and not a voluntary leaving.

This Commission is also of the opinion that because mere inefficiency, unsatisfactory conduct, or failure in good performance, as a result of inability or incapacity, does not constitute misconduct; that no disqualification should be imposed upon the claimant for having been discharged. The evidence falls far short of indicating any misconduct on the part of this claimant.

Section 60.1-52 (g) of the Virginia Unemployment Compensation Act provides in part that a claimant, in order to be eligible for benefits, must be

available for work. This Commission is of the opinion that the claimant has been doing those things required of an unemployed person to secure employment, which is supported by her securing employment on March 13, 1972.

DECISION

The decision of the Appeals Examiner is hereby reversed. It is held that no disqualification should be imposed upon the claimant for having been discharged for misconduct in connection with her work. It is also held that the claimant was meeting the eligibility requirements of the Act from January 30, 1972, through March 11, 1972, the claim weeks before the Commission.



B. Redwood Council
Assistant Commissioner