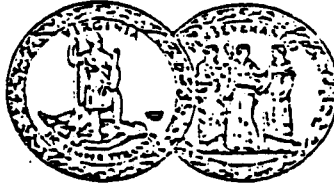


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

MISCONDUCT: 135.05.
Discharge or Leaving —
General.



DECISION OF COMMISSION

In the Matter of

Patricia A. Boyd, Claimant
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Mouldings, Inc.
Marion, Virginia

Date of Appeal
To Commission: July 30, 1984
Date of Review: September 6, 1984
Place: RICHMOND, VIRGINIA
Decision No.: 23871-C
Date of Decision: September 6, 1984
Date of Mailing: September 13, 1984
Final Date to File Appeal
with Circuit Court: October 3, 1984

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This is a matter before the Commission on appeal by the employer from the decision of the Appeals Examiner (No. UI-84-5159), mailed July 13, 1984.

ISSUE

Did the claimant leave work voluntarily without good cause as provided in Section 60.1-58 (a) of the Code of Virginia (1950), as amended?

Was the claimant discharged from employment due to misconduct in connection with work as provided in Section 60.1-58 (b) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The employer filed a timely appeal from the decision of the Appeals Examiner (No. UI-84-5159), which affirmed a determination of the Deputy holding the claimant, effective May 20, 1984, not to be disqualified with respect to her separation from the employer's services.

The claimant was last employed as a drafter by Mouldings, Inc., of Marion, Virginia, from July 10, 1980, through May 22, 1984.

In June of 1982, the claimant had quit her job because she had not received a raise in pay. The employer had persuaded her to stay on, and she did get a raise thereafter. On March 22, 1984, the claimant asked for another raise, but was told that she could not get it. Since she was behind in her work at the time, however, a management trainee, who had a college degree in drafting, was put in her department to help her out temporarily. He was transferred out of her department on May 22, 1984.

On May 21, 1984, the claimant informed her supervisor that she was resigning her job effective June 1, 1984. She gave no reason for her action at that time, but expected her employer to ask why she was leaving.

The following day, the claimant informed the personnel manager that she had resigned her job because she discovered that the individual who had been assisting her in her department was actually making more money than she was. She felt that this was unfair and discriminatory and mentioned the possibility of seeking legal assistance in the matter. Shortly thereafter she was informed that her resignation was being accepted immediately, because her attitude was detrimental to employee morale. She was paid only up to the time she actually left.

The employer representative at the hearing defended his action in letting the claimant go without notice by citing a company rule which provided that advance written notice in instances of voluntary resignation were required and that the employer reserved the right to cut short the notice or eliminate it altogether. The employer had never received written notice of her intentions to voluntarily resign her job.

OPINION

Section 60.1-58 (a) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that a claimant left work voluntarily without good cause.

Section 60.1-58 (b) 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 matter of Sid F. Kerns v. Atlantic American, Inc., Commission Decision 5450-C, dated September 20, 1971, the Commission held:

"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."

In the case of Suzanne C. Goedel v. Virginia Business Institute, Commission Decision 6640-C, dated March 24, 1975, the claimant had tendered a letter of resignation giving thirty days notice. The employer had advised the claimant that she would be welcome to stay if she wanted to, but if she did not plan on staying she had to leave immediately. In that case, the Commission held:

"This notice of resignation was courtesy to the employer which would give the employer ample opportunity to look around for a replacement for the claimant. By the same token, it will allow the claimant to search for other work prior to the actual termination of her employment. Had her employment continued until (the notice date) and then terminated without the claimant having obtained other employment, then the issue of voluntary quit would have arisen. However, the employer terminated the claimant (at an earlier date) and therefore at most there was only speculation as to the issue of voluntary quit."

In the present case, it is apparent that had the claimant been allowed to work out her notice, or had she been paid wages in lieu of notice, then the employer would have discharged all obligations to her and her separation would have been a voluntary one. By accepting her resignation immediately, the employer was, in effect, severing the employer-employee relationship, and the claimant's separation must be considered as a discharge. (Underscoring supplied)

This case is particularly distinguishable from the case of Stephen Molettiere v. W. G. Cosby Transfer & Storage, Commission Decision UCFE-489, dated September 17, 1979, where it was held that an individual who gives a notice to resign without giving a specific date runs the risk of having the employer accept the notice of resignation while imposing a reasonable notice period on the claimant.

In the case at hand, the employer made no effort to pay the claimant for her notice period or bargain with her to impose a lesser notice period which might have been acceptable to her. Therefore, the employer's intervening action in terminating her services prior to the notice period did amount to an involuntary separation on her part, which must be considered under the provisions of Section 60.1-58 (b) of the Virginia Unemployment Compensation Act. (Underscoring supplied)

In the case of Branch v. Virginia Employment Commission and Virginia Chemical Company, 219 Va. 609, 249 S.E. 2d 180 (1978), the Virginia Supreme Court defined misconduct:

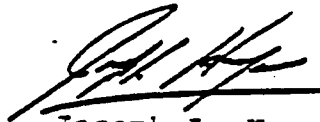
"In our view, an employee is guilty of 'misconduct connected with his work' when he deliberately violates a company rule reasonably designed to protect the legitimate business interests of the employer or when his acts or omissions are of such a nature or so recurrent as to manifest a willful disregard 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 claimant's continuous dissatisfaction with her wages, and her failure to submit a written resignation under the facts of this case cannot be considered acts of misconduct. Obviously all workers have a right to express their opinions regarding their wages and the fact that the opinion was negative would not, in and of itself, be misconduct. The claimant's failure to perform the pro forma task of submitting her resignation in writing has not been shown to be a deliberate violation of a company rule. Had this claimant been allowed to work out her notice and during this period exhibited an attitude which could have been shown to have been detrimental to the morale of the company's employees and her termination resulted therefrom, the Commission would agree that such actions would justify a finding of misconduct. Unfortunately, from the employer's perspective, this scenario did not occur. For the reasons set forth above, the Commission must conclude that ~~this claimant's~~ separation occurred for reasons which would not be disqualifying under the Act.

DECISION

The decision of the Appeals Examiner is hereby affirmed.

It is held that the claimant is eligible to receive benefits without disqualification.



Joseph L. Hayes
Special Assistant
Commission Appeals