

UNEMPLOYMENT COMPENSATION COMMISSION OF VIRGINIA

DECISION OF COMMISSIONER

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Decision No: 3297-C

MISCONDUCT - 15.05

Date: October 15, 1958

Absence: General

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This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. IS-2277-2228) dated September 12, 1958.

ISSUE

Was the claimant discharged for misconduct in connection with his work?

OPINION AND DECISION

The Findings of Facts made by the Appeals Examiner are in accord with the record in this case and are hereby adopted for the purposes of this opinion and decision. The claimant submitted additional evidence to the Commission elaborating upon the essential facts previously submitted.

By his active and unrestrictive efforts to locate suitable employment the claimant has demonstrated his availability for work and hence the only other issue to be determined is whether he was separated from his last employer for misconduct in connection with his work. Misconduct as envisioned in Section 60-47 (b) is a serious charge and the burden of proving that charge rests upon the employer. The employer submitted no evidence to this Commission other than the following brief reply to a request for separation information.

"Mr. Heller was employed 3-11-49, promoted to store manager 6-11-49.

"Mr. Heller was dismissed from the A & P 6-21-58 for excessive loss of time from work, and not reporting same to his supervisor. This was the misunderstanding Mr. Heller refers to."

Excessive absence from work without good cause, or failure to report anticipated absences where the employer requires same, are offenses clearly within the meaning of the misconduct provision. The employer, however, may not simply assert that a claimant was "excessively absent" or "failed to report absence" and then rest his case successfully. There is more to carrying the burden of proof than merely making the charge. Were this not so an employer might only state that an employee was discharged for "misconduct" and the disqualification would be automatic. To carry the burden of proving his charge the employer must supply the facts - and not just his conclusions. By this we mean how many absences, over what period of time, the specific rules established by the employer of which the claimant was apprised, the warnings if any given to the claimant, and any other facts

or circumstances surrounding or leading up to the decision to separate. Only then will the claimant be in a position to defend his actions with such facts or circumstances as he may be able to prove as the reasons for his actions, and only then will this Commission be able to weigh all the facts and reach a just determination. (Underscoring supplied)

In the instant case the claimant answered the general charges made against him by denying that he was excessively absent, by testifying that the few times he was absent it was due to illness (a justifiable reason) with the exception of the final absence which was required by a traffic summons. He further explained that he had not notified his superior in advance of this absence because he had been advised that his supervisor was on vacation. Claimant further testified he notified his assistant manager that he would be absent and obtained assurance that his assistant would attend to the opening and general managing duties of the store on that particular day. There is no evidence in the record to refute these explanations and the Commission has no reason to doubt their validity.

For the reasons stated this Commission must conclude that the employer has failed to carry the burden of proving misconduct in this case and that portion of the Examiner's decision imposing the disqualification under Section 60-47 (b) is accordingly hereby reversed and set aside. That portion of the Examiner's decision declaring the claimant able and available for work within the meaning of Section 60-46 (c) was proper and the same is hereby sustained and affirmed.