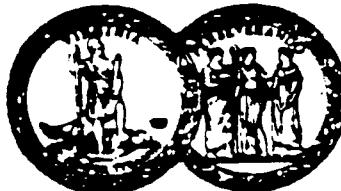


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



MISCONDUCT: 15.05
Absence - General

DECISION OF COMMISSION

In the Matter of

Betty D. Warrick, Claimant
████████████████████

Dynartic, Inc.
Virginia Beach, Virginia

Employer

Date of Appeal

To Commission: May 1, 1975

Date of Hearing: June 10, 1975

Decision No.: 6860-C

Date of Decision: June 12, 1975

Place: Richmond, Virginia

---o0o---

This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UI-75-2154), dated April 7, 1975.

ISSUE

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

FINDINGS OF FACT AND OPINION

Dynartic, Inc., Virginia Beach, Virginia was the claimant's last employer for whom she worked as an inspector from November 27, 1973, through November 14, 1975.

According to the employer, during the last six months the claimant worked she was scheduled to work 1,008 hours. She had, however, worked only 778 hours. Or, in other words, was absent approximately 23 percent of the time. The employer's representative's testimony was that he thought that the claimant's supervisor had warned her against continued absences. The employer's representative did, however, state that he thought that the claimant had an acceptable excuse in every instance of absence.

The claimant indicated that she was absent only in cases of illness or emergency. At the Commission hearing she did present a doctor's statement with a considerable number of visits due to illness. The claimant indicated that she had not been warned about her absences and indicated that if she had been so warned, she would have done everything in her power to correct any deficiencies.

Section 60.1-58 (b) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that a claimant was discharged due to misconduct in connection with her work. The Commission has consistently held that excessive unexcused absences amount to misconduct. The burden, however, is upon the employer to prove excessive unexcused absences.

In the present case the employer has alleged only that the claimant was absent approximately 23 percent of the time which she was scheduled to work. The mere assertion of excessive unexcused absence is not sufficient; the employer must substantiate his allegation by giving the dates and circumstances of such absences. The employer has failed to substantiate the allegation by stating specific dates of the claimant's absences. Furthermore, the employer has admitted that the claimant's absences in every case had acceptable excuses. In view of the fact that the employer has failed to give specific dates of the absences and in view of the fact that all absences appeared to be excused absences, it is the opinion of the Commission that no disqualification for misconduct should be imposed upon the claimant.

DECISION

The decision of the Appeals Examiner disqualifying the claimant effective December 1, 1974, for having been discharged for misconduct in connection with her work is hereby reversed. The deputy is directed to determine the claimant's eligibility for the weeks benefits are claimed.



B. Redwood Council
Assistant Commissioner