

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF APPEALS EXAMINER

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Decision No. : UI-74-270

MISCONDUCT: 15.05
~~Absence - General~~

Date: February 26, 1974

ISSUES

Was the claimant discharged for misconduct in connection with her work? Did the claimant voluntarily leave her last employment without good cause?

FINDINGS OF FACT

The employer appealed from a determination of the Deputy, which held the claimant not subject to a disqualification effective October 14, 1973, as a result of the separation from her last employment.

Virginia Association of Workers for the Blind, Inc., Richmond, Virginia, was the claimant's last employer for whom she had worked as a caretaker at the employer's vacation cottage for the blind at Burkeville, Virginia. The claimant was employed from April 9, 1972, through October 19, 1973, during which period she was paid \$20.00 per week.

The claimant lives approximately two blocks from the employer's facility and had not duties during the fall, winter and spring months. During the months of July and August, the employer's facility was open for guests. The claimant's duties during these months included welcoming guests, assigning them to rooms, collect fees, make reports to the employer, and supervisor other employees such as the lifeguard and cook.

During July and August of 1973, employer representatives had visited the facility on several occasions and many of these times the claimant was not present. Although she did not have any specific hours of work, the employer did believe that the claimant should have been present during these times if she were to properly carry out her duties. The employer did know that the claimant's husband was seriously ill and in a hospital. For this and other reasons, the employer did not take any specific action to inform the claimant that her absences were unsatisfactory to the employer and could not be condoned.

During some of her absences, the claimant had asked the cook to look after the operation, receive guests and assign them to rooms. During other times, the cook had performed this work without having been instructed by the claimant to do so. The employer's facility remained open through the Labor Day weekend and then was closed for the season on September 3, 1973.

Because of the claimant's absences and her complaints to the employer and others when she was present that she did not know what she was going to do because of her husband's illness, a granddaughter's accident and other personal problems, the employer felt she was not interested in the employment and that she, in effect had voluntarily left it. On October 5, 1973, the employer wrote a letter to the claimant advising her that her services were no longer needed. The employer did not explain in the letter or verbally to the claimant why her employment was being terminated. The claimant was paid her weekly wage through October 19, 1973. As of the date of the hearing, an adequate replacement had not been obtained by the employer for the claimant's position.

The claimant testified that she was surprised by the employer's letter inasmuch as she had not been warned by the employer that her work was not satisfactory or that her absences were not acceptable. The claimant also stated that she was interested in the employment and had expected to continue with it.

OPINION

It is the opinion of the Appeals Examiner that inasmuch as it was the employer who severed the employer-employee relationship the claimant's separation from work should be considered under the provisions of Section 60.1-58(b) rather than Section 60.1-58(a) of the Code of Virginia.

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

Since the disqualification for misconduct is a serious one, it should not be applied unless the claimant was clearly discharged for a deliberate or intended act which she knew or should have known was contrary to the interests of her employer. It has been repeatedly held in past decisions that mere inefficiency, unsatisfactory performance, or errors in judgement are not sufficient to warrant the disqualification for misconduct.

Although the claimant in this case had been absent on repeated occasions when the employer expected her to be present, she was never warned by the employer that her absences were improper and not acceptable. Throughout the two months that the employer's facility was open, the claimant's absences had been condoned by the employer. Since no exception was taken to the claimant's performance

during this period, she had reason to believe that what she was doing was acceptable. There is no question that the claimant showed poor judgement in being away from the facility so often, but the employer did not take any action or discharge her at the time. In view of this and since it was a full month after the employer's facility was closed that the claimant was discharged, it is concluded that she was terminated for reasons which do not constitute a discharge for misconduct connected with work as that term is used in the Act. (underscoring supplied)

DECISION

The determination of the Deputy is hereby affirmed. It is held that no disqualification should be imposed in connection with the claimant's separation from her last employment.

NOTE: The decision was affirmed by the Commission in Decision No. 6279-C dated May 13, 1974.