



DECISION OF COMMISSION

In the Matter of

Jesse E. Anderson  
[REDACTED]

Glass Marine, Incorporated  
Hayes, Virginia 23072

Date of Appeal  
To Commission: December 5, 1979

Date of Hearing: April 3, 1980

Decision No.: 13211-C

Date of Decision: April 8, 1980

Place: Richmond, Virginia

This is a matter before the Commission on appeal by the employer from the Decision of the Appeals Examiner (No. UI-79-8402), dated November 21, 1979.

ISSUE

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

FINDINGS OF FACT AND OPINION

The employer appealed from a Decision of the Appeals Examiner which held the claimant not subject to a disqualification effective September 30, 1979, as a result of his separation from his last employment.

Glass Marine Incorporated was the claimant's last employer where he had worked as a fiber glass gun operator and laminator from June, 1979, through September 28, 1979. On October 2, 1979, the claimant reported for work and began cleaning some tools. His supervisor asked the claimant to come up into the boat so that he could be instructed what to do. The claimant indicated that he would be up later but the supervisor insisted and the claimant continued to decline to follow the instructions. On the third request, the supervisor used a derogatory work in insisting that the claimant come into the boat with him or suffer a termination. The claimant still refused and he was discharged by the supervisor which resulted in abusive remarks between the two individuals.

The president and general manager of the company then talked to the claimant telling him he was expected to obey his supervisors. When he continued to refuse to do so, the president confirmed the discharge and the claimant's employment ended.

The claimant argues that he was justified in refusing the supervisor's instructions because of the derogatory word used by him when he was told to come into the boat. The employer argues that the language used is normal in the facility and that the claimant himself has been heard on repeated occasions to use the word.

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 his work.

It has been repeatedly held that deliberate action which the claimant knew or should have known was contrary to his employer's interest constitutes misconduct connected with work. This claimant certainly should have known that his refusal to perform assigned duties would result in termination since the employer certainly had the right to expect him to carry out his work assignments which were in the employer's interest. The supervisor's use of the profane expletive in instructing the claimant certainly did not justify the claimant's refusal to abide by instructions. His objection to the language used even if customary around the employer's work site is understandable, but; the claimant's refusal to perform the employer's work was not a justifiable remedy. (underscoring supplied)

It is concluded the claimant was terminated for reasons which constitute a discharge for misconduct in connection with his work as that term is used in the Act.

#### DECISION

The Decision of the Appeal Examiner holding that no disqualification be imposed in connection with the claimant's separation from his last employment is hereby reversed.

It is held that the claimant is disqualified for benefits effective September 30, 1979, for any week benefits are claimed until he has performed services for an employer during thirty days, whether or not such days are consecutive because he was discharged for misconduct in connection with his work.

  
Lane Pitts  
Special Examiner