



VIRGINIA EMPLOYMENT COMMISSION

DECISION OF APPEALS EXAMINER

Misconduct: 255.15
Insubordination - Dispute
with superior

In the matter of:

Claimant

Kenneth L. Charity
733 Old Point Avenue, Lot 14
Hampton, VA 23663

Employer

Newport News Shipbuilding &
Dry Dock Company
4101 Washington Avenue
Newport News, Va 23607

Appellant:	<input type="checkbox"/> Employer	<input checked="" type="checkbox"/> Claimant
Claimant's S.S. No.:	[REDACTED]	
Decision No.:	UI-78-8247	
Date Deputy's Determination:	November 27 1978	
Date Referred or Appealed:	December 8, 1978	
Date of Hearing:	February 13, 1979	
Place of Hearing:	Hampton, VA	
Date of Decision:	February 14, 1979	
Date of Mailing:	February 21, 1979	

APPEARANCES: Claimant; Attorney for claimant; Three employer representatives

STATUTORY PROVISIONS & POINTS AT ISSUE: Code of Virginia, Section 60.1-58(b) Was the claimant discharged for misconduct connected with work?

FINDINGS OF FACT: The claimant appealed a determination of the Deputy which disqualified him for benefits effective November 5, 1978, for having been discharged for misconduct connected with his work.

Newport News Shipbuilding & Dry Dock Company, Newport News, Virginia, was the claimant's last employer for whom he worked on the last occasion from September 16, 1975, through November 3, 1978. At the time of the claimant's separation, he was employed as a handyman in the shipfitters department and was being paid \$5.67 an hour.

On or about November 1, 1978, the claimant was finishing up his work day. The claimant was singing on the job and did not have on his safety glasses. A supervisor, who was not the claimant's immediate supervisor, who was working in the same area called to him as a result of the claimant's singing. The supervisor indicated that the claimant's singing was being disruptive as he was giving orders to individuals assigned to his work group. The claimant was some 25 to 30 feet away from the supervisor. The claimant did not pay any attention to the supervisor with the exception of raising his arms in a gesture of not understanding. The supervisor noted that the claimant did not have on his safety glasses. The supervisor talked to the claimant's immediate supervisor about this and wrote up a verbal warning to be given the claimant. On the following day, November 2, 1978, the claimant's immediate supervisor gave the warning to the claimant. After receiving this warning, the claimant went to the supervisor who had

written up the warning and confronted him. During a portion of the conversation the claimant had with the supervisor, the claimant indicated it was a good thing they were not outside the gate as he would bust him in the nose. Later on the same day, the claimant was called to the office to discuss the incidents of the previous day. During this meeting the supervisor brought up the statement the claimant had made to him about busting him in the nose. The claimant, upon being questioned, also told the supervisor of employee relations that it was a good thing he was not outside the gate as he felt like busting him in the nose also. At this point, the claimant was advised to go to the personnel department as he was being terminated.

The employer has rules and regulations which are distributed to employees and posted on bulletin boards throughout the plant. Rule number 11 states that an employee may be discharged from his work for threatening, intimidating, or coercing another employee by word or act.

The claimant was terminated for violation of this rule.

OPINION: 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.

The Commission has consistently held that misconduct exists where there is a willful or wanton act or disregard of the employer's interest, or a violation of reasonable rules and regulations established by the employer, or there is an intentional, substantial disregard of the employer's interest or the employee's duties and obligations to the employer.

In the present case, the claimant brought threats to two supervisors. While the claimant may not have actually carried through on these threats, his stating that he felt like busting them in the nose is not the behavior that is expected of an employee and certainly a willful act of misconduct. (underscoring supplied)

In view of the above, it is concluded by the Appeals Examiner that the claimant's dismissal must be deemed to have been due to misconduct in connection with his work.

DECISION: The determination of the Deputy is hereby affirmed. It is held the claimant is disqualified for benefits effective November 5, 1978, and for any week benefits are claimed until he has performed services for an employer during thirty days, whether or not such days are consecutive, as he was discharged for misconduct in connection with his work.

J. L. Bowles
T. L. Bowles
Appeals Examiner

Affirmed by Commission Decision 12061, dated May 14, 1979 and by the Circuit Court of the City of Newport News on May 5, 1980.