



DECISION OF COMMISSION

In the Matter of

Steven R. Craig, Sr., Claimant  
████████████████████

Colley Avenue Office Supplies  
Norfolk, Virginia

Date of Appeal

To Commission: June 29, 1984

Date of Review: July 27, 1984

Place: RICHMOND, VIRGINIA

Decision No.: 23759-C

Date of Decision: July 27, 1984

Date of Mailing: August 13, 1984

Final Date to File Appeal

with Circuit Court: September 3, 1984

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This matter comes before the Commission on appeal by the employer from the decision of the Appeals Examiner (UI-84-4229), mailed June 13, 1984.

ISSUE

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

FINDINGS OF FACT

The employer appealed from a decision of the Appeals Examiner which held the claimant qualified for benefits effective April 8, 1984.

Colley Avenue Office Supplies was the claimant's last employer where he had worked as a commission sales representative from October 24, 1983 through March 26, 1984.

The claimant did not meet the volume of sales which the employer expected. During the last three months of his employment, there was some increase in the sales volume, but for the last month, his sales were approximately one half of the minimum amount that the employer expected of his salesmen. There had been some discussion between the claimant and his supervisor about ways to improve sales and the claimant himself had taken some actions which he felt would increase his production. When his sales continued at a low rate, however, he was told by his supervisor on March 26, 1984 that he was being terminated due to his low rate of sales.

### 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 Virginia Supreme Court has ruled that "misconduct connected with his work" includes acts or omissions which are of such a nature or so recurrent as to manifest a willful disregard of the employer's interests and the duties and obligations the worker owes his employer. [See, Vernon Branch, Jr. v. Virginia Employment Commission and Virginia Chemical Company, 219 Va. 609, 249 S.E.2d 180 (1978)]

The employer stated in his letter of appeal that:

"If Mr. Craig had kept company records properly, turned in his daily call reports, sold his assigned sales quota, he would not have been terminated. According to the Small Business Administration and the National Federation of Independent Business, when a person does not perform his or her assigned duties, it is grounds for termination.

The non-performance of assigned duties constitutes misconduct on Mr. Craig's part and therefor disqualifies him."

A careful review of the record of the Appeals Examiner's hearing shows that the employer representative who attended the hearing did not make any comments about keeping company records properly, or the timely submission of reports. He testified that the main reason for the claimant's termination was his lack of production. It is clear from the testimony that the claimant would not have been terminated if he had sold his assigned sales quota. The issue before the

Commission is not whether the employer had grounds for terminating the claimant's services but rather whether or not the claimant's actions which caused the termination constituted misconduct in connection with his work. Non-performance of assigned duties may or may not constitute misconduct depending upon the reason for the non-performance. The Virginia Supreme Court, in the Branch case, made it clear that the actions of a worker which caused his discharge must have been of such a nature as to show a willful disregard of the employer's interests and the duties and obligations he owed the employer. In the instant case, it has not been shown that the claimant initiated or failed to initiate any action with the willful intention of preventing an increase in his sales production. In fact, it would not be reasonable to even suspect that he willfully disregarded the employer's interests since to have done so would have been against his own interests because the more sales he made, the more money he earned. This claimant's low production may have resulted from his inefficiency or inability to perform the particular type of work to which he was assigned, but it has not been shown that this resulted from any deliberate intention on his part. It is concluded that the claimant 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 decision of the Appeals Examiner holding the claimant qualified for benefits effective April 8, 1984 is hereby affirmed.

  
Gene Pitts  
Special Examiner