

COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION

MISCONDUCT: 300.05  
Manner of Performing  
Work -- General.



DECISION OF COMMISSION

In the Matter of:

Lester Grady Miller, Claimant  
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J. Henry Holland Corporation  
Norfolk, Virginia

Date of Appeal  
to Commission: December 8, 1975

Date of Hearing: February 5, 1976

Place: RICHMOND, VIRGINIA

Decision No.: 7470-C

Date of Mailing: February 9, 1976

Final Date to File Appeal  
with Circuit Court: February 29, 1976

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This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UI-75-7093) dated November 23, 1975.

ISSUE

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

FINDINGS OF FACT AND OPINION

J. Henry Holland Corporation was the claimant's last employer for whom he worked from approximately December 6, 1968, through May 30, 1975.

Separation information furnished to the Commission by the employer stated as follows:

"Mr. Miller was discharged because his work was not satisfactory. We had numerous complaints from customers and our salesmen. He has been replaced by Mr. Ed Mason."

When employed in December, 1968, the claimant was placed in the receiving department to learn the business. The claimant's job performance was good and he was subsequently promoted to store manager.

According to the employer, the claimant accepted the challenge of the new position and did an excellent job but later "seemed to lose interest." The employer stated that complaints were received from customers who weren't being waited on and that deliveries were not being made or the telephone answered. The employer felt that the claimant was not performing satisfactorily as store manager and transferred him to an office position on the flotation desk where he would not have supervisory responsibilities. Once again, the employer felt that the claimant performed well for a period of time but then began to lose interest. The employer felt that the claimant was making excessive pricing errors and decided to hire a replacement. At the hearing conducted by the Appeals Examiner, the vice president who terminated the claimant testified in part as follows:

"Miller came to work regular, sober, he's a nice person . . . Our problem . . . was he wasn't doing a satisfactory job as we felt it should be done and I discussed it with him and I just couldn't seem to motivate him to the point where he was really interested in making a profit for the company and that's what we're in business for. I think he is very capable of doing the job, if I could have found the right way to motivate him. I did call Les at home to tell him we didn't need him anymore. I did that because he's been down there quite awhile and I considered him my friend, and I didn't want to embarrass him before the office. He says I told him work was slack and we didn't need him anymore. I don't remember exactly what I said. I was trying to make it as easy for him as I could. Maybe I did say that." (Transcript, p. 5)

The claimant testified before the Appeals Examiner and the Commission that he had attempted to perform the work to the best of his ability. He also stated that he had received several salary increases during the period of his employment and had never been warned that he would be discharged. According to the claimant, the vice president called him at his home while he was on vacation to notify him that the employer would have to let him go since work was slack due to business conditions. When discharged, nothing was said to him concerning the performance of his job.

Section 60.1-58(b) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that an individual was discharged for misconduct in connection with his work.. The Commission in its decisions has limited the definition of misconduct to such conduct which displays a willful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has a right to expect of his employee or in carelessness or negligence of such degree or recurrence as to manifest culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer. On the other hand, mere inefficiency, incapability, mistake or misjudgment has never been tantamount to misconduct. The Commission has also consistently held that the burden is upon the employer to prove misconduct.

In the present case, the claimant was discharged because the employer felt the claimant had not performed his work satisfactorily. The claimant testified that he had performed the work to the best of his ability.

26 ALR 3d, at page 1348, states as follows

"Substantively, it is to be emphasized that acts of work-connected negligence or inefficiency may justify an employer in discharging an employee but not be of such a degree or recurrence to preclude the discharged employee of unemployment compensation."

After a complete review of the entire record, it is the opinion of the Commission that the employer has failed to establish any intentional or deliberate act or course of conduct on the part of the claimant which constitutes misconduct under the Act. As noted above, unsatisfactory performance, inefficiency or misjudgment does not constitute misconduct.

#### DECISION

The decision of the Appeals Examiner is reversed. The Deputy is directed to determine the claimant's eligibility for benefits for the weeks claimed.



B. Redwood Councill  
Director of Appeals