

UNEMPLOYMENT COMPENSATION COMMISSION OF VIRGINIA

DECISION OF APPEALS EXAMINER

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Decision No: S-5771-5682

MISCONDUCT - 300.15

Date: October 9, 1957

Manner of performing work:  
Damage to equipment or  
materials.

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POINT AT ISSUE:

Was the claimant discharged for misconduct in connection with his work?

FINDINGS OF FACT

The claimant appealed from a decision of the Deputy which disqualified him from August 23, 1957, through October 10, 1957, and reduced the total amount of potential benefits by seven times the weekly benefit amount for having been discharged for misconduct in connection with his work.

The claimant is a 61 year old worker who was last employed by the Allen-Morrison Sign Company, Lynchburg, Virginia, where he worked from July 27, 1948, until July 9, 1957. During the last four years of this employment he worked as an oven operator at the rate of \$1.48 per hour, and his hours of work were from 3:15 P. M. until 11:35 P. M., Monday through Friday. In the performance of his work the claimant was required to place small trucks containing signs, which had been prepared, on a chain, which, in turn, were fed into the oven. It was also his responsibility to see that the proper heat was maintained in the ovens, and to move the carts to certain places in the building when they emerged from the other end of the ovens. On at least two occasions prior to his discharge the claimant had been reprimanded by the employer for allowing the heat in the ovens to decrease or to go out. At approximately 7:00 P. M. on the last day of the claimant's employment, it was discovered that the heat in the oven which the claimant operated had gone off, and had been off for approximately three hours. The superintendent was called from his home and when he reached the plant, he and the chief operator talked with the claimant. The claimant contended that the pilot lights on the ovens were still burning, and for that reason he had not noticed that the heat had gone off.

As the result of this the signs were not properly baked and in handling them they became smeared and otherwise damaged. The claimant was then discharged from his employment. The only explanation offered by the claimant was the fact that he had a new helper on the job at the time, and he was so busy that he did not notice that the ovens were not properly heated.

The claimant originally filed a claim for benefits on July 11, 1957; however, he was declared ineligible for benefits by the Deputy and no appeal was noted from that decision. He re-opened the claim on August 16, 1957, and when he was interviewed by the Deputy on August 27, 1957, indicated that he had made an extensive search for employment without placing any undue restrictions upon his employability.

OPINION

Section 60-47 (b) of the Virginia Unemployment Compensation Act provides a disqualification and the potential benefits reduced accordingly, if it is found that an individual was discharged for misconduct in connection with his work.

The Commissioner for the Unemployment Compensation Commission in Decision No. 577-C, dated May 18, 1950, adopted the definition of misconduct as found in 43 American Jurisprudence, Page 541, which reads as follows:

"Misconduct within the meaning of an unemployment compensation act excluding from its benefits an employee discharged for misconduct must be an act of wanton or wilful disregard of the employer's interest, a deliberate violation of the employer's rules, a disregard of standards of behavior which the employer has the right to expect of his employee, or negligence in such a degree or recurrence as to manifest culpability, wrongful intent, or evil design, or show an intentional substantial disregard of the employer's interest or of the employee's duties and obligations to the employer. \*\*\*Neither is mere inefficiency, unsatisfactory conduct, errors in judgment, or the like to be deemed misconduct."

The evidence in the instant case shows that the claimant had worked on his last job for a period of approximately four years. He had been warned by the employer on two different occasions about being negligent in performance of his duties and allowing the heat in the oven which he tended to go off, and thus, damaging the materials which were being processed. In spite of these warnings the claimant on the last day that he worked, again allowed the ovens to go out and remained off for a period of approximately three hours, and this again resulted in damage to the materials that were being processed. Although he has offered several reasons for his actions, the Examiner does not feel that they are sufficient to relieve the claimant of his showing of gross negligence in the performance of his job. It certainly seems to the Examiner that the claimant should have been aware that the heat was off in the ovens merely by handling the material that was coming from the ovens periodically. Inasmuch as the same thing had happened on previous occasions for which the claimant had been warned, the Examiner can only conclude that his discharge was for reasons which would constitute misconduct and he is subject to the disqualifying provisions of the Act. (Underscoring supplied)

DECISION

The decision of the Deputy disqualifying the claimant from August 23, 1957, through October 10, 1957, and reducing his potential benefits by seven times the weekly benefit amount for having been discharged for misconduct in connection with his work, is hereby affirmed.