

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

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Decision No.: 4728-C

MISCONDUCT: 310.1

Date: May 9, 1968

Neglect of duty -  
Duties not discharged

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This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. S-20258-20143) dated March 29, 1968.

ISSUE

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

OPINION AND DECISION

The Commission, after carefully reviewing the transcript of testimony at the Examiner's hearing and the decision of the Examiner, concurs with that decision. However, we cannot concur with the Examiner's reasoning.

The Examiner is correct that in misconduct cases failure of grievances to be filed by the claimant's union should be considered; however, such failure cannot be used as the sole basis for a decision. It must be considered in the light of all the circumstances.

The circumstances in the present case show that on Wednesday, November 29, 1967, the claimant refused to continue making his deliveries because of blurred vision in his eye. This certainly is an inference of regard for the employer's interest and not a wanton or willful disregard as the term misconduct is construed in the Act.

The second set of circumstances shows that the claimant negligently allowed the front end of a trailer to drop to the ground, causing some structural damage. This Commission has previously held that there is a point beyond which inefficiency and negligence cannot be excused. Repeated acts of negligence or inefficiency do amount to misconduct.

The Commission has also previously held that one act of negligence may, in specific cases, constitute misconduct. We are of the opinion that the act of the claimant, an experienced truck driver, is such a specific case. Uncoupling a trailer prior to putting the front wheels down was contrary to standard procedure. The failure of the claimant to follow such procedure constitutes a willful disregard of the employer's interest.  
(Underscoring Supplied.)

Accordingly, for the aforementioned reasons, the decision of the Examiner is hereby affirmed.