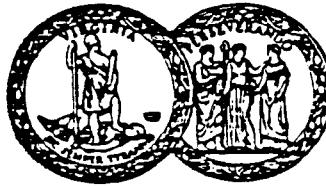


COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION

Misconduct: 390.2  
Relations with fellow  
employees - altercation  
or assault



DECISION OF COMMISSION

In the Matter of

Edmund S. Bowman, Claimant  
[REDACTED]

Budd Trailer Division  
Martinsville, VA 24112

Date of Appeal

To Commission: December 11, 1979

Date of Hearing: April 14, 1980

Decision No.: 13232-C

Date of Decision: April 17, 1980

Place: Richmond, Virginia

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This matter comes before the Commission on appeal by the claimant from the decision of the Appeals Examiner (UI-79-8377), dated November 27, 1979.

ISSUE

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

FINDINGS OF FACT

The Trailer Division of the Budd Company, in Martinsville, Virginia, was the claimant's last employer where he had worked from April 10, 1978 through October 15, 1979 as a shipping and receiving clerk.

On the claimant's last day of work, he and a fellow employee got into an argument on the loading dock. The claimant asked his foreman to separate he and the other employee so that no trouble would ensue. The claimant's uncontradicted testimony before the Appeals Examiner and before the Commission was that when he turned to address the foreman the other employee punched him in the head. He further testified that when he turned to face the other employee he was punched in the face. The claimant testified that he then attempted to restrain his fellow employee until the foreman could break up the fight. Both the claimant and the other employee were suspended immediately because of the employer's policy which requires immediate suspension and investigation when any employee is fighting on the job, regardless of who was the aggressor.

The claimant had an arbitration hearing on December 3, 1979 which resulted in the employer's decision to reinstate him without back pay but without loss of seniority. The claimant was immediately placed on lay off status as of December 10, 1979 when he was reinstated.

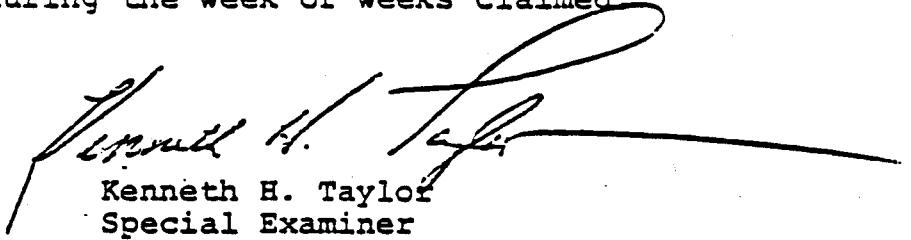
OPINION

Section 60.1-58 (b) of the Code of Virginia provides a disqualification if it is found that an individual was discharged for misconduct in connection with his work. The Commission has often held that the general rule in similar cases is that fighting on the job is a willful and wanton disregard of standards of behavior. an employer has the right to expect of his employees and, as such, constitutes misconduct. This general rule is not without exception, however, as in the present case, where the claimant has shown by clear and convincing evidence that he was not the aggressor and that he was using reasonable force to protect himself. The Commission notes that there is no evidence in the record to contradict the sworn testimony of the claimant that he merely used reasonable force to defend himself from the unprovoked assault by his co-worker. Under the circumstances of this case, the claimant's actions he took to defend himself were not a willful disregard of the interests of his employer so as to constitute misconduct connected with his work. (underscoring supplied)

DECISION

The decision of the Appeals Examiner which disqualified the claimant for benefits effective October 14, 1979 for having been discharged for misconduct in connection with his work is hereby reversed.

The Claims Deputy is directed to determine the claimant's eligibility for benefits during the week or weeks claimed.

  
Kenneth H. Taylor  
Special Examiner