

COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION

MISCONDUCT: 390.02  
Relations with Fellow  
Employees — Altercation  
or Assault



DECISION OF COMMISSION

In the Matter of

Richard L. Bryant, Claimant  
[REDACTED]

United Parcel Service  
Richmond, VA 23230

Date of Appeal

To Commission: June 11, 1982

Date of Hearing: September 24, 1982

Decision No.: 18879-C

Date of Decision: October 13, 1982

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-82-5334), mailed May 26, 1982.

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

On June 11, 1982, the claimant initiated a timely appeal from a decision of the Appeals Examiner which disqualified him from receiving unemployment insurance benefits effective April 25, 1982, based upon the circumstances surrounding his separation from work.

Prior to filing his claim for benefits the claimant was last employed by United Parcel Service of Richmond, Virginia. He worked for this company from June 23, 1979 through April 2, 1982. His last position with the company was as a feeder driver and he was paid \$12.84 an hour.

On April 2, 1982, the claimant reported for work as scheduled. After parking his vehicle he entered the employer's property and prior to entering the building he was accosted by another employee. This other employee approached the claimant and initiated an altercation with him by striking him with his fist. Prior to this blow being struck the claimant had attempted to avoid the confrontation by attempting to end the conversation and moving towards the building where he was to report. Immediately after the claimant was assaulted he defended himself by

striking his assailant with a flashlight that he happened to be carrying on his way to the job. The claimant's assailant at that point drew a knife on him and attempted to pursue the assault further. The claimant fled the parking lot and entered the building and reported to the dispatcher's office. The assailant followed him inside the office and assaulted him again and tried to choke the claimant. At that point a supervisor observed the altercation in progress and proceeded to break it up. Both employees were suspended and following an investigation both were terminated for fighting on company premises in violation of company rules and policies.

At no time did the claimant provoke the assault and battery which occurred. On a previous occasion while the claimant was in public this same individual had approached him and committed an assault and battery against him.

OPINION

Section 60.1-58 (b) of the Code of Virginia provides a disqualification if the Commission finds that a claimant was discharged for misconduct connected with his work.

This particular language was first interpreted by the Virginia Supreme Court in the case of Vernon Branch, Jr. v. Virginia Employment Commission and Virginia Chemical Company, 219 Va. 609, 248 S.E.2d 180 (1978). In that case the Court held:

"In our view, an employee is guilty of 'misconduct connected with his work' when he deliberately violates a company rule reasonably designed to protect the legitimate business interests of his employer or when his acts or omissions are of such a nature or so recurrent as to manifest a willful disregard of those interests or the duties and obligations he owes his employer. . . . Absent circumstances in mitigation of such conduct, the employee is 'disqualified for benefits' and the burden of proving mitigating circumstances rests upon the employee."

The disqualification for misconduct is a serious matter and warrants careful consideration. The burden of proof in such cases is upon the employer to present sufficient evidence to establish that the acts or omissions of which they complain did occur and were of such a nature as would constitute work related misconduct.

In the present case the claimant was discharged by the employer for his involvement in a physical altercation with another employee. In applying the disqualifying provisions of Section 60.1-58 (b) to discharge situations the Commission has often held that fighting on the job constitutes a willful and deliberate disregard of the standards of behavior which any employer has a right to expect of his employees and as such constitutes work related misconduct. However, this general rule is not without exception. In the case of Edmund S. Bowman v. Budd Trailer Division, Decision No. 13232-C, April 17, 1980, the Commission held:

"The Commission has often held that the general rule in similar cases is that fighting on the job is a willful and a 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."

In the Bowman case, the claimant's undisputed testimony established that he was assaulted by another employee without provocation and he attempted to restrain his assailant until the foreman could intervene and break up the fight. There is a notable factual distinction between the Bowman and the instant case in that the claimant here, in responding to the assault and battery, struck his assailant with a flashlight he happened to be carrying with him to work. Despite this factual distinction the Commission is of the opinion that the claimant was acting in justifiable self-defense.

In addressing the question of self-defense the Virginia Supreme Court in the case of Jackson v. Commonwealth, 96 Va. 107, 30 S.E. 452 (1898), provided the following discussion of self-defense which is still applicable today. In that case the Court held:

"A person assaulted while in the discharge of a lawful act, and reasonably apprehending that his assailant will do him bodily harm, has the right to repel the assault by all the force he deems necessary and is not compelled to retreat from his assailant, but may, in turn, become the assailant, inflicting bodily wounds until his person is out of danger." (See also, 2A Michie's Jurisprudence, "Assault and Battery", Section 7, p. 166.)

In the present case the undisputed testimony of the claimant establishes that he was assaulted without provocation and struck by his assailant while he was attempting to report for work. The testimony in the record indicates that the claimant took no affirmative action to encourage the confrontation until he was actually struck by his assailant. At that time, knowing that this same individual had previously assaulted him, the claimant stood his ground and applied reasonable force to repel the attack. Furthermore, when the assailant drew a knife upon the claimant he then retreated into the dispatcher's office where he was pursued and the assault continued until it was broken up by a foreman. Under these circumstances the Commission is of the opinion that the claimant was legally entitled to use the force that he did to protect himself and to attempt to repel his assailant. The claimant's actions were lawful and constituted justifiable self-defense. Accordingly, his actions did not constitute a deliberate or willful disregard of his employer's interests and no disqualification may be imposed based upon the allegation of work related misconduct.

#### DECISION

The decision of the Appeals Examiner is hereby reversed. It is held that no disqualification may be imposed based upon the claimant's separation from work with his last thirty day employer.

The Deputy is instructed to examine the claimant's claim for benefits and determine whether or not he has complied with the eligibility requirements of the Act for each week benefits have been claimed.



M. Coleman Walsh, Jr.  
Special Examiner