



DECISION OF COMMISSION

In the Matter of:

Brenda K. Kirkland  
████████████████████

GNB Incorporated  
Lynchburg, VA 24506

Date of Appeal  
to Commission: November 19, 1985

Date of Review: December 24, 1985

Place: RICHMOND, VIRGINIA

Decision No.: 26138-C

Date of Mailing: December 31, 1985

Final Date to File Appeal  
with Circuit Court: January 20, 1986

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This is a matter before the Commission on appeal from the Decision of Appeals Examiner (UI-85-8347), mailed November 15, 1985.

ISSUE

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

FINDINGS OF FACT

The claimant appealed from the Appeals Examiner's decision which disqualified her for benefits, effective October 6, 1985, for having been discharged for misconduct in connection with her work.

GNB Incorporated was the claimant's last employer where she had worked as an assembly line operator from March 4, 1969, through June 11, 1985.

The claimant had been discharged in November, 1984, because she had been insubordinate towards her supervisor while on the job in an

intoxicated condition. Based on conferences with the claimant and her local union representative, the employer agreed to reinstate the claimant provided she sign and abide by the terms of a written agreement. This agreement, signed by the claimant, is dated December 18, 1984, and contains the following conditions and understanding:

- (1) Reinstatement to full seniority rights and assignment to her former job, if possible.
- (2) Medical insurance benefits are to be made retroactive to the date of admission, Pathways, at Virginia Baptist Hospital on November 19, 1984.
- (3) Eligibility for weekly ideminity benefits are void due to your termination on October 29, 1984.
- (4) The Pathways aftercare contract is to be made a part of the employee's record. Any violation of that contract, insubordination, or other job performance problems related to alcohol and cross-addictive drugs while at GNB Batteries will subject the employee to termination of her employment.
- (5) Upon reinstatement, Mrs. Kirkland will be on probation at GNB Batteries for a period of one (1) year and the original termination offense remains a part of her employee record.

The employer received a letter from Pathways at Virginia Baptist Hospital which was dated June 7, 1985, and reads, in part, as follows:

As of this date, Pathways is terminating Brenda K. Kirkland from Aftercare.

Brenda has not attended the agreed upon AA meetings, nor has she maintained contact with her AA sponsor. The Pathways staff has spent a great deal of time and energy in attempting to gain Brenda's cooperation with no results.

The employer discharged the claimant for violating item (4) of the reinstatement agreement.

#### OPINION

Section 60.1-58(b) of the Virginia Unemployment Compensation Act provides a disqualification if it is found a claimant was discharged for misconduct connected with work.

The term "misconduct connected with work" includes an employee's acts or omissions which are of such a nature or so recurrent as to manifest a willful disregard of the employer's interest and the duties and obligations she owes her employer. [See Vernon Branch, Jr. v. Virginia Employment Commission and Virginia Chemical Company, 219 Va. 609, 249 S.E. 2d 180 (1978)]

The claimant in this case argued at the Appeals Examiner's hearing that she was justified in violating the agreement because the staff at Pathways Aftercare was too strict. She also argued that she could not contact her counselor by telephone every time she tried because the counselor was not at home when she called. These arguments are not persuasive. If the claimant had truly wanted to solve her alcoholic problem, she would have maintained contact with the counselor overcoming any difficulty encountered in trying to do so. She also could have cooperated with Pathways staff regardless of the imposition she felt, especially since she knew that reinstatement to her job depended on it.

The claimant bases her appeal from the Appeals Examiner's decision on the argument that the employer was unfair in originally discharging her for insubordination. She argues she could not have been intentionally insubordinate because she was too intoxicated to know what she was doing after having reported for work under the influence of alcohol as well as consuming two double bourbons on the rocks at lunch and vodka at both morning and afternoon breaks.

Rather than being unfair to the claimant, it appears that the employer was unusually benevolent in agreeing to allow the claimant to continue her employment if she would take reasonable steps to cure her alcoholic problem. The claimant also argued, in her appeal letter, that her original discharge was wrong because the employer should have recognized her intoxicated condition and taken other steps to help her because, when intoxicated, alcoholics are not responsible for their actions, are unmanageable, and are very sick people. It is true the Commission has held that alcoholism is an illness and that absenteeism due to this or any other illness does not constitute misconduct connected with work. The Commission went further, in Rufus O. Cox v. Durham and Bush, Incorporated, Commission Decision 7248-C, December 12, 1975. In that case, the claimant, to keep his job, signed an agreement to join Alcoholics Anonymous and the Halfway House and also agreed if he had "a reoccurrence of an attack of alcoholism" either on or off the job, his termination would be automatic. When the employer later found he had been drinking, he was discharged. In that case, no disqualification was imposed based on the following reasoning: "Because the claimant had been diagnosed as a chronic alcoholic he cannot have the requisite willful intent or mens rae (sic) to be held responsible for violating this agreement by becoming intoxicated."

The Cox case, however, is distinguished from the instant case in that the claimant here did not violate the agreement with her employer by becoming intoxicated but, rather, she did so willfully because she did not want to live up to the terms imposed by the agreement. Her willful violation of the agreement was a deliberate disregard of the employer's interest and also of the duties and obligations she owed the employer. It is concluded that the claimant was terminated for reasons which constitute a discharge for misconduct connected with work as that term is used in the Act. (Underscoring supplied)

#### DECISION

The decision of the Appeals Examiner disqualifying the claimant for benefits, effective October 6, 1985, for having been discharged for misconduct in connection with her work is hereby affirmed and remains in effect until she has performed services for an employer during thirty days, whether or not such days are consecutive, and subsequently becomes totally or partially separated from such employment.

  
Gene Pitts  
Special Examiner