

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

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Decision No.: 4750-C

MISCONDUCT: 485.6

Date: June 13, 1968

Violation of company rule -
Money matters, regulation
governing

This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. S-20499-20320) dated May 3, 1968.

ISSUE

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

FINDINGS OF FACT

The claimant appealed the determination of the Appeals Examiner which disqualified her effective February 19, 1968, for having been discharged for misconduct in connection with her work.

The claimant was last employed by Wornoms Drug Store, Hampton, Virginia, from October 1967, through February 6, 1968. At lunch time that day the claimant left the premises briefly to borrow \$10.00 from a friend. Upon returning she inadvertently failed to put the \$10.00 bill in her purse. When she entered the store to return to work she was asked by the manager to immediately resume work at the cash register at the cosmetics counter and she simply placed the \$10.00 bill in her blouse. Sometime later in the afternoon while writing a purchase order, the bill fell from her blouse on to the floor. When she finished writing up that purchase, she simply picked up the bill and replaced it in her blouse. She was then called into the manager's office and advised that company policy prohibited employees having personal funds on them while on duty. Her employment was thereupon terminated for breach of company policy. Prior to her last day of employment, claimant's work had been performed in a satisfactory manner and there was no evidence that the \$10.00 bill did not belong to her.

A witness for the claimant testified that she had been employed for six or seven months by this employer as a cashier at the cosmetics counter. She had never heard of any company policy prohibiting employees from having their own money on them while on duty and, in fact, as a result of the theft of her purse, for some time kept her lunch money in her shoe with the employer's express knowledge and consent. According to both the claimant and the witness there were no written rules concerning this question posted anywhere on the premises. The claimant also denies having ever been told by the employer, or heard discussed by other employees, any company policy on this point.

OPINION AND DECISION

Section 60-47(a) of the Code of Virginia provides a disqualification if it is found that an individual was discharged for misconduct in connection with work.

The burden of proving misconduct lies with the employer. For an employee to be guilty of misconduct in connection with her work because of the violation of a company policy, the company policy must be sufficiently, clearly defined that the employee either knew or should have known of the policy. The evidence before the Commission does not show that there was such a clearly defined company policy. The Commission, therefore, is of the opinion that the employer has not carried the burden of proving the breach of a company rule. There is insufficient evidence before the Commission to hold that the claimant's conduct showed such a wanton disregard for the employer's rights as to constitute misconduct. (Under-scoring Supplied.)

The decision of the Appeals Examiner disqualifying the claimant, effective February 19, 1968, for having been discharged for misconduct in connection with her work, is hereby reversed.