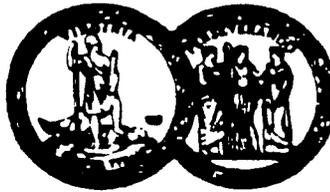


COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION



MISCONDUCT: 485.15

Violation of company rule-  
Assaulting fellow employee.

DECISION OF COMMISSION

In the Matter of

Napoleon Hargrove, Claimant  
[REDACTED]

AMF Incorporated  
Richmond, Virginia

Employer

Date of Appeal

To Commission: January 29, 1975

Date of Hearing: March 11, 1975

Decision No.: 6709-C

Date of Decision: April 15, 1975

Place: Richmond, Virginia

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This is a matter before the Commission on appeal by the employer from the decision of the Examiner (No. UI-75-49) dated January 16, 1975.

ISSUE

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

FINDINGS OF FACT AND OPINION

The claimant was last employed by AMF, Richmond, Virginia, for whom he worked as an apprentice machinist from March 26, 1972, through November 14, 1974. On his last day of work the claimant attempted to use a bushing which was being shared by he and another co-worker. The co-worker attempted to prevent the claimant from using this bushing. The claimant stated that he then attempted to avoid the other worker but finally the worker threw a cam at him, hitting him in the upper leg. The claimant believed that since this co-worker was standing by other cams that he would continue to throw them at him. The claimant then threw a brass hammer at the co-worker, striking him on the upper left arm.

An employer representative testified that he saw the co-worker throw the cam at the claimant and yelled at the two men to stop. However, the claimant picked up the brass hammer and threw it at the co-worker. The employer also

introduced a copy of the employee handbook in which it states that committing any act of violence, fighting, brawling or improper conduct was prohibited and may justify disciplinary action up to and including discharge. The employer also introduced an inter-office correspondence which was directed to all employees and posted on the employee's bulletin board which stated in effect that there had been a build up in horseplay and kidding of a very personal and insulting manner. The notice further stated that if the employees were having difficulty as a result of actions or statements made by fellow employees, they should direct the problem to their immediate superior for his attention, evaluation and action to be taken.

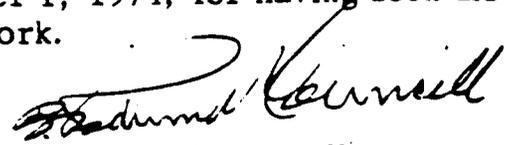
Section 60.1-58 (b) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that a claimant was discharged for misconduct in connection with his work. Misconduct has been defined as such conduct which evinces a willful or wanton disregard of an employer's interests as is found in deliberate violations of disregards of standards of behavior which the employer has a right to expect of his employees.

In the instant case, it appears that the claimant knew or should have known that the employer had rules against any forms of violence, fighting, brawling or improper conduct on the company premises, and that violations of company rules might lead to his discharge. Also, the claimant knew or should have known that the company had in the past had problems concerning horseplay and/or insulting actions and that such actions were not to be condoned. Also, the claimant should have known that a thrown hammer would be a potentially lethal missile if it were to strike anyone standing in the vicinity. Furthermore, at the time of the incident after his co-worker had thrown a cam at the claimant, one of their superiors was in the proximity and yelled for them to stop. Instead, the claimant picked up a brass hammer and threw it at his co-worker.

The actions of the claimant cannot be condoned, even though he has stated that his actions were in self-defense. The claimant could have attempted to report the actions of his co-worker to his superior before the cam was thrown. Additionally, it would appear that such retaliatory action was not necessitated on the part of the claimant, in view of the fact that a superior was in the immediate proximity and the fact that the claimant said that the co-worker did not throw the cam very hard. Since the claimant threw the brass hammer after being told to stop and the claimant was or should have been aware of the company rule against violence, it is the opinion of the Commission that the claimant was guilty of misconduct. Obviously, he violated standards of behavior which the employer has a right to expect of his employees.

DECISION

The decision of the Appeals Examiner is hereby reversed. It is held that the claimant is disqualified effective December 1, 1974, for having been discharged for misconduct connection with his work.



B. Redwood Council  
Assistant Commissioner