

UNEMPLOYMENT COMPENSATION COMMISSION OF VIRGINIA

DECISION OF APPEALS EXAMINER

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Decision No: S-5289-5184

MISCONDUCT - 485.3

Date: June 13, 1957

Violation of company rule:
Dishonesty

POINT AT ISSUE

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

FINDINGS OF FACT

The claimant appealed from a decision of the Deputy which disqualified her from May, 1957, through June 26, 1957, and reduced the total amount of potential benefits by seven times the weekly benefit amount for having been discharged for misconduct in connection with her work. The claimant was last employed by Dan River Mills, Incorporated, Danville, Virginia, where she worked from March 13, 1922, to April 17, 1957. She was employed as a spool attender in the No. 8A Dress Room on the first shift and was paid at an average rate of \$1.432 per hour.

The claimant and other employees performing the same kind of work are paid according to the number of knots that are tied automatically by the machine which they operate. This counting is done by an automatic counting device attached to the machine. The employer has in effect a rule prohibiting tampering with the counting devices and which provides anyone caught doing so would be discharged. The claimant on her last day of employment was observed by her overseer in the act of pulling the wire on the machine which automatically increased the number of knots counted, which in turn would have affected the claimant's rate of pay.

At the hearing on her appeal the claimant admitted having done this, but stated that she was doing it at the time primarily to correct an error on the part of the machine so that she would receive credit for knots actually tied. She also indicated that it was a general practice for spooler attendants to do this. After filing her claim for benefits on May 2, 1957, the claimant sought employment at a number of different establishments and places no undue restrictions upon her employability.

OPINION

Section 60-47(b) of the Virginia Unemployment Compensation Act provides a disqualification ranging from a minimum period of seven weeks to a maximum of eleven weeks and the total amount of potential benefits reduced accordingly, if it is found that an individual was discharged for misconduct in connection with her work.

The term, "Misconduct," is not defined by law. The Commissioner for the Unemployment Compensation Commission of Virginia has accepted the definition of 48 American Jurisprudence, page 541, which reads as follows:

"Misconduct within the meaning of the unemployment compensation act excluding from its benefits an employee discharged for misconduct must be an act of wanton or wilful disregard of the employer's interest, a deliberate violation of the employer's rules, a disregard of standards of behavior which the employer

has the right to expect of his employee, or negligence in such degree or recurrence as to manifest culpability, wrongful intent, or evil design, or show an intentional substantial disregard of the employer's interest or of the employee's duties and obligations to the employer. **** Neither is mere inefficiency, unsatisfactory conduct, errors in judgment, or the like to be deemed misconduct."

In the instant case the employer had a well-established rule forbidding the tampering with automatic counting devices which were used in determining the amount of pay to which an employee would be entitled. There is no question but that the employer had every right to establish such a rule and it is incumbent upon the employee to not only familiarize herself with such rules, but to observe them in every instance. There is no question in the instant case but that the claimant did tamper with the counting device. The Examiner does not feel that the claimant's reasons for doing so were sufficient to relieve her of the disqualifying provision of the Act. Her actions were either right or wrong and the fact that other employees did the same thing does not make the offense any less reprehensible. Since the claimant was clearly performing an act which was in deliberate violation of the employer's rule, and also, the standard of behavior which the employer has a right to expect of his employees, the Examiner is of the opinion that the claimant is subject to the disqualifying provision of the Act.
(Underscoring supplied)

DECISION

The decision of the Deputy disqualifying the claimant from May 9, 1957, through June 26, 1957, and reducing her potential benefits by seven times the weekly benefit amount for having been discharged for misconduct in connection with her work, is hereby affirmed.