

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF APPEALS EXAMINER

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Decision No.: UI-73-3047

Date: November 19, 1973

MISCONDUCT: 485.65
Violation of company rule -
motor vehicle

ISSUE

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

FINDINGS OF FACT

The employer appealed from a determination of the Deputy which held the claimant not subject to a disqualification effective September 23, 1973.

Commonwealth Christian School, Fairfax, Virginia, was the claimant's last employer for whom she worked as a school bus driver from August 27, 1972, through August 18, 1973.

The claimant was discharged from her job because she had been involved in four traffic accidents while driving the school bus and the employer's insurance company would not renew the school insurance. The claimant's last accident was in May and she continued working until August before she was discharged. The four traffic accidents were not chargeable by the police. The claimant had not been warned or told her job was in jeopardy due to the accidents. She indicated that she performed the job to the best of her ability.

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 in connection with work.

It is certainly understandable that the employer would discharge the claimant based on the number of accidents she had been involved in and especially since the insurance company would not renew the insurance policy. The discharge for misconduct; however, is a serious one and should not be applied unless the claimant was clearly discharged for a deliberate or intended act which she knew or should have known was contrary to the interests of her employer. The burden of proof in such cases rests upon the party alleging the misconduct. This Commission has repeatedly held that mere error in judgment or unsatisfactory performance is not sufficient to warrant the disqualification for misconduct. (Underscoring supplied)

The claimant, in this instance, was allowed to continue driving the school bus several months after her fourth accident. She had not been warned or told her job was in jeopardy due to the traffic accidents. The four traffic accidents were not chargeable by the police. She has indicated that she performed the job to the best of her ability. Although the claimant's performance may have been unsatisfactory, there does not appear to be any wilful disregard of the employer's interests. It is concluded, therefore, that the claimant was discharged but not for reasons which constitute misconduct in connection with work within the meaning of that term as used in the Act.

DECISION

The determination of the Deputy is hereby affirmed. It is held that no disqualification should be imposed in connection with the claimant's separation from her last employment.

NOTE: The decision was affirmed by the Commission in Decision No. 6151-C dated December 18, 1973.