



VIRGINIA EMPLOYMENT COMMISSION
DECISION OF APPEALS EXAMINER

MISCONDUCT: 485.2
 Violation of company rule-
 Clothes.

In the matter of:

Claimant

Katherine Tyree
 2601 Jefferson Davis Highway, Lot #6
 Richmond, VA 23234

Employer

White Tower Management Corporation
 1119 North Boulevard
 Richmond, VA

Appellant:	<input type="checkbox"/> Employer	<input checked="" type="checkbox"/> Claimant
Claimant's S.S. No.:	[REDACTED]	
Decision No.:	UI-75-2451	
Date Deputy's Determination:	January 29, 1975	
Date Referred or Appealed:	February 4, 1975	
Date of Hearing:	March 21, 1975	
Place of Hearing:	Richmond, Virginia	
Date of Decision:	March 21, 1975	
Date of Mailing:	March 21, 1975	

APPEARANCES: Claimant; Two Employer Representatives

STATUTORY PROVISIONS & POINTS AT ISSUE: Code of Virginia § 60.1-58 (b) Was the claimant discharged for misconduct in connection with her work? § 60.1-52 (g) Has the claimant been available for work during the week or weeks for which she claims benefits?

FINDINGS OF FACT: The claimant appealed from a determination of the Deputy, which disqualified her for benefits effective December 1, 1974, for having been discharged for misconduct in connection with her work.

White Tower Management Corporation, Richmond, Virginia, was the claimant's last employer for whom she had worked as a counter girl from August 28, 1972, through November 22, 1974.

The claimant had been selling Avon Products and she had brought the catalog into the place of business to allow co-workers to make purchases. She had also made some sales for which collection was made on pay day at the place of business. Such action is not in accord with the employer's policy. The employer representative testified that the claimant had been told that she was not to do this.

The claimant also had been under the care of a doctor due to a disease of the feet. The doctor had recommended that she not wear nylon hose because of her condition. She had discussed this matter with her employer and the employer permitted her to wear short cotton socks as a temporary measure. The employer representative testified that the claimant had been told that this would only be temporary and that she must eventually wear the long hose as required by the employer's policy. The claimant had continued to wear the short socks from sometime in the summer of 1974 until the date of her discharge. On her last day of work, she was discharged and told that it was necessary to do so because others had complained that she was not complying with the hose policy as all other employees were required to do.

The claimant initiated a claim for benefits effective December 1, 1974. The Local

Office records showing the weeks that the claimant had filed for unemployment compensation were not available and her activities in seeking work during these weeks could not be discussed in complete detail with her at the hearing.

OPINION: § 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 her work.

There is some conflict in the testimony in this case. It is noted that under similar circumstances the Commission in the past resolved the matter in the claimant's favor.

The disqualification for misconduct 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. It has been repeatedly held that mere inefficiency, unsatisfactory performance or errors in judgement are not sufficient to warrant the disqualification for misconduct.

Although the claimant in this case knew of the employer's policy concerning the necessity for employees to wear hose rather than socks, she had, on her doctor's recommendation and with her supervisor's permission, not complied with the policy for an extended period. Although she may have been able to use better judgement by obtaining cotton hose or some in some other manner complied with the employer's policy, it does not appear that the claimant deliberately or intentionally violated the policy with any intent of harming the employer's business.

The claimant's action in selling Avon Products at the employer's place of business clearly was against the employer's interests, but it appears from the testimony that this action had been condoned by the claimant's supervisor over an extended period. Under these circumstances, it would appear that the claimant's action concerning the Avon Products could best be charged to errors in judgement rather than a deliberate act with the intent of harming the employer's business. It is concluded that the claimant was terminated for reasons which would not constitute a discharge for misconduct connected with work as that term is used in the Act.

Inasmuch as the claims filed by the claimant during the weeks she had claimed benefits were not available for detailed discussion, no ruling will be made as to whether or not she was meeting the availability for work requirements of § 60.1-52 (g) of the Code of Virginia during those weeks.

DECISION: The determination of the Deputy, disqualifying the claimant for benefits for having been discharged for misconduct in connection with her work, is hereby reversed.

The Deputy is instructed to determine whether or not the claimant was meeting the eligibility requirements of the Act during the weeks she has claimed unemployment compensation.


Ogden Pitts, Appeals Examiner

NOTE: This decision was affirmed by the Commission in Decision No. 6762-C dated May 1, 1975.

OP:reh