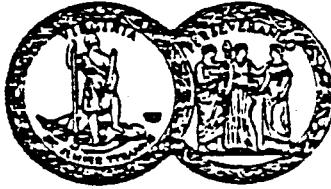


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

MISCONDUCT: 85.
Connection with Work.



DECISION OF COMMISSION

In the Matter of

Glenn B. Goad, Claimant
████████████████████

Rental Uniform Service of
Bedford, Incorporated
Bedford, Virginia

Date of Appeal

To Commission: August 4, 1982

Date of Review: August 28, 1982
August 31, 1982

Decision No.: 19292-C

Date of Decision: September 7, 1982

Place: Richmond, Virginia

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This matter comes before the Commission on appeal by the employer from the decision of the Appeals Examiner (UI-82-7543), dated July 23, 1982.

ISSUE

Was the claimant discharged for misconduct connected with his work as provided in Section 60.1-58 (b) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On August 4, 1982, the employer initiated a timely appeal from a decision of the Appeals Examiner which held that the claimant was not subject to a disqualification from receiving unemployment insurance benefits based upon the circumstances surrounding his work.

The claimant, immediately prior to filing his claim for benefits, was last employed by Rental Uniform Service of Bedford, Inc. as a route service representative. He was employed in this capacity from September of 1981 until May 7, 1982. In his capacity as a route service representative, the claimant was required, in the course of performing his duties, to operate a motor vehicle. At the time of the claimant's separation from work he was paid \$170.00 weekly or eight and a half per cent of his route bill, which ever was greater.

In November of 1981, the claimant was charged with driving under the influence of intoxicants. The claimant was tried and convicted of this charge on May 5, 1982 and as a result, the Court revoked the claimant's driver's license. As a result of the claimant's license being revoked, the employer no longer had work for him as a route service representative and a replacement was hired.

Prior to his employment with this company, the claimant had been convicted of reckless driving. The charge of driving under the influence of intoxicants did not occur either on company property or while the claimant was working. At the time of the offense the claimant was operating his own motor vehicle.

OPINION

Section 60.1-58 (b) of the Code of Virginia provides a disqualification if the Commission finds that a claimant was discharged for misconduct connected with his work.

This particular language was first interpreted by the Virginia Supreme Court in the case of Vernon Branch, Jr. v. Virginia Employment Commission and Virginia Chemical Company, 219 Va. 609, 249 S.E.2d 180 (1978). In that case, the Court held:

"In our view, an employee is guilty of 'misconduct connected with his work' when he deliberately violates a company rule reasonably designed to protect the legitimate business interests of his employer, or when his acts or omissions are of such a nature or so recurrent as to manifest a willful disregard of those interests and the duties and obligations he owes his employer. . . . Absent circumstances in mitigation of such conduct, the claimant is 'disqualified for benefits', and the burden of proving mitigating circumstances rests upon the employee."

The employer's argument notwithstanding the claimant's separation from work came as a result of an act of misconduct. Accordingly, the key question which the Commission must determine is whether or not that conduct was "connected with his work" in order to bring it within the scope of the disqualifying provisions of Section 60.1-58 (b) of the Act.

In addressing this particular issue, the Appeals Examiner ruled that the claimant's conviction which brought about the revocation of his driver's license was not work related misconduct since the act did not occur within the scope of his employment. In support of that proposition, he cited the case of James Nevin Smith v. Midas Muffler Shop, Commission Decision No. 7267-C, December 10, 1975.

This issue was squarely addressed by the Commission in the case of Priscilla E. Brady v. U.S. Military District of Washington, UCFE-479, August 1, 1979. In that case, the Commission, in expressly overruling the previous Commission decisions of Owen W. Williams v. Consolidated Oil Company, Commission Decision No. 7123-C, October 16, 1975, and James Nevin Smith v. Midas Muffler Shop, Commission Decision No. 7267-C, December 10, 1975, set forth the following criteria to be considered in cases of this type:

"We also feel that it is not necessary for the act to have occurred within the scope of employment. This is just too stringent a standard. A worker has a duty to conduct himself and his affairs in a manner not detrimental to his employment. . . . When an individual knowingly commits an act of misconduct that has a substantive detrimental effect on his employer and as a result loses his job, such an individual will not be able to rely on the benefits of unemployment insurance."

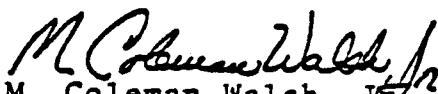
Since the Commission's decision in Brady, the Commission has consistently held that the disqualification for work-related misconduct can be imposed when an individual is discharged for an act of misconduct which has a substantive detrimental effect on the employer or where some reasonable nexus exists between the act of misconduct and the claimant's job, even where the act of misconduct did not occur within the scope of employment. (See, Fred R. Ashe v. Virginia Electric and Power Company, 16700-C, June 26, 1982)

In the present case, the claimant was discharged by the employer after his license to operate a motor vehicle in the Commonwealth of Virginia was revoked due to the claimant's conviction for driving under the influence of intoxicants. Even though the act of misconduct did not occur within the scope of the claimant's employment, it was inextricably interwoven with his job since his job duties involved traveling a route and operating a motor vehicle. Accordingly, the Commission is of the opinion that the claimant's conviction for driving while under the influence of intoxicants constitutes an act of work-related misconduct for which the disqualification provided in Section 60.1-58 (b) of the Act should be imposed. (Underscoring supplied)

DECISION

The decision of the Appeals Examiner is hereby reversed. It is held the claimant is disqualified from receiving unemployment insurance benefits effective May 30, 1982 for any week benefits have been claimed until he has performed services for an employer during thirty days, whether or not such days are consecutive, for having been discharged for misconduct connected with his work.

Upon this decision becoming final, the local office Deputy is instructed to carefully examine the claimant's claim for benefits and determine whether or not he has been overpaid any sum as benefits to which he was not entitled and is liable to repay the Commission.


M. Coleman Walsh, Jr.
Special Examiner