



MISCONDUCT: 85
Connection with work

DECISION OF COMMISSION

In the Matter of

Steven T. Self, Claimant
[REDACTED]

ABEX Corporation
 Winchester, Virginia

Employer

Date of Appeal

To Commission: April 29, 1976

Date of Hearing: August 10, 1976

Decision No.: 8283-G

Date of Decision: August 11, 1976

Place: Richmond, Virginia

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This is a matter before the Commission on appeal by the employer from the decision of the Appeals Examiner (No. UI-76-2111), dated April 16, 1976.

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's last employer, ABEX Corporation, appealed from the decision of the Appeals Examiner in which it was held the claimant was not subject to a disqualification in connection with his separation from his employment.

On November 21, 1975, the claimant was temporarily laid off from work, but there had not been established a definite date he would return to work. Since he was not permanently separated from his employment, his seniority would continue as well as a portion of his vacation benefits.

On December 2, 1975, while in layoff status, the claimant entered the plant and engaged in a conversation with an employee. When he was observed by a supervisor, he was directed to leave the plant. A short time later, it was ascertained he had not left and when told to leave he said, "I'm not going." According to the employer representative the claimant appeared to be under

the influence of intoxicants, and took swings at both supervisors and he pushed and kicked one of them. He was then forcibly taken from the plant and escorted to his automobile. As he drove off, he pointed his car towards the supervisors but came to a sudden stop within a few feet of them before leaving the premises. The claimant was discharged the next day on a permanent basis with no rights of recall. If this incident had not occurred or had he heeded the supervisor's first request to leave the plant, he would have been recalled to work on January 5 1976.

Section 60.1-58 (b) of the Code of Virginia provides a disqualification if an individual is discharged for misconduct in connection with his work.

Although this claimant was not in an active employee status, he was on the company premises, thereby subjecting himself to the employer's disciplines. Therefore, the supervisor had the right to order the claimant to leave the plant, and his refusal to do so was an act of insubordination. The ensuing struggle that took place, pushing and kicking a supervisor, his disorderly conduct in the plant, and threatening harm to his supervisors by the use of his automobile reflects an outrageous and willful disregard of a standard of behavior that the employer had the right to expect of the claimant.

Although the claimant was in an inactive status at the time of the incident, he was being carried on the employer's rolls as an employee. He had an attachment with the employer because of seniority privileges and other fringe benefits thereby continuing an employer-employee relationship. His actions on the company premises would clearly show conduct which management could not tolerate.

The Commission in Decision No. 831-C had this to say:

"The offenses and acts committed by the claimant were unquestionably the sole proximate cause of his unemployment. His reprehensible conduct, though technically committed 'off the job,' is so interwoven and inextricably a part of his employment as to permit of no other conclusion than misconduct connected with his work."

The Commission is of the opinion that the claimant's conduct in this case is so interwoven with his job, that there can be no other conclusion than he was discharged from his employment for misconduct in connection with his work. Inasmuch as the disqualifying act occurred on December 2, 1975, the disqualification would be effective with the beginning of the calendar week which would be November 30, 1975.

DECISION

The decision of the Appeals Examiner is hereby reversed.

The claimant is disqualified effective November 30, 1975, for having been discharged for misconduct in connection with his work, and remains in effect for any weeks benefits are claimed until he has performed services for an employer for thirty days, whether or not such days are consecutive.



Edward L. Callery
Assistant Director of Appeals