



DECISION OF COMMISSION

In the Matter of

Priscilla E. Brady
[REDACTED]

U. S. Military District of
Washington
Washington, D. C. 20324

Employer

Date of Appeal

To Commission: May 10, 1979

Date of Review: July 13, 1979

Decision No.: UCFE-479

Date of Decision: August 1, 1979

Place: Richmond, Virginia

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This is a matter before the Commission on appeal by the claimant from the Decision of Appeals Examiner (No. UCFE-79-82), dated May 3, 1979.

ISSUE

Was the claimant discharged due to misconduct in connection with her work as provided in Section 60.1-58 (b) of the Code of Virginia (1950), as amended?

Did the claimant leave her last employment voluntarily without good cause as provided in Section 60.1-58 (a) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT AND OPINION

United States Army Foreign Science and Technology Center was the claimant's last employer for whom she worked from July 27, 1970, through March 9, 1979. She was employed as an editorial assistant and at the time of her separation was earning an annual salary of approximately \$13,662.00. She had a top secret clearance classification which was a requirement of her job. The claimant was convicted of a felony and as a result lost her security clearance. She was then given the option by her employer of resigning or facing termination. The claimant submitted her resignation indicating that she was leaving due to personal reasons.

Section 60.1-58 (a) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that a claimant has left work voluntarily without good cause.

In numerous decisions, the Commission has held that when a claimant has been given a choice of resigning or being fired, and chooses to resign, it cannot be said that the claimant has left work voluntarily. (See Patricia Jackson vs Civilian Payroll Department, Commission Decision No. UCFE-218, dated July 23, 1974, Norman R. Hirsch vs Comptroller Department, Commission Decision No. UCFE-174, dated January 10, 1973, Barbara Ackerman vs American Red Cross, Commission Decision No. 5709-C, dated June 29, 1972)

Inasmuch as this claimant submitted her resignation in lieu of a termination, her leaving could hardly be deemed voluntary. Accordingly, the disqualification provided in Section 60.1-58 (a) of the Code does not apply.

Section 60.1-58 (b) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that a claimant has been discharged for misconduct connected with her work.

Although the issues presented in this case are not new to the Commission, this case presents an opportunity to consider again the meaning of the phrase "connected with her work."

The plain meaning of connected as defined in Webster's New Collegiate Dictionary (1977) is "2. having the parts or elements logically linked together, 4. having a social, professional or commercial relationship." The legal meaning as defined in Black's Law Dictionary, 4th Ed. Rev. (1978), ". . . united by junction, by an intervening substance or medium, by dependence or relation, or by order in a series."

It follows logically then that these cases should turn on the character of the linking relationship or intervening substance. The question then arises as to whether the character of the connection should be only casual or must there be a substantive relationship?

Consider the claimant, who on his day off, is arrested and subsequently convicted for public drunkenness. Would it matter whether or not he was engaged in public relations work or the work of an unskilled laborer?

We think it does. The incident may have only a casual relationship to his continued satisfactory job performance as an unskilled laborer; however, it could have a very detrimental effect upon the employer of a public relations official. The nexus must, therefore, exceed one of a casual nature and must have a substantial negative effect upon the employer.

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.
(underscoring supplied)

In a similar case, the Virginia Supreme Court had this to say in part:

"Ordinarily, the way an employee manages his debts is a personal and private matter unconnected with his work. It is a different matter, however, when he mismanages his debts in a manner which impairs the status or function of the employer-employee relationship to the employer's detriment." Vernon Branch, Jr. vs Virginia Employment Commission and Virginia Chemical Company, Record No. 770306, November 22, 1978

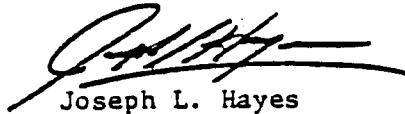
When an individual knowingly commits an act of misconduct that has a substantive detrimental effect on his employer and as a result loses his job, such an individual will not be able to rely on the benefits of unemployment insurance. (underscoring supplied)

The Commission expressly overrules the opinions enunciated in Owen W. Williams vs Consolidated Oil Company, Commission Decision No. 7123-C, dated October 16, 1975, and James Nevin Smith vs Midas Muffler Company, Commission Decision No. 7267-C, dated December 10, 1975.

The facts in the case before the Commission are unequivocal that this claimant committed an act of misconduct. The claimant knew or should have known that her security clearance would be revoked and she would lose her job. Since this loss of security clearance was a substantial detriment to her employer, the Commission is of the opinion that this claimant's act of misconduct was connected with her work and she should be subjected to the disqualification provided in Section 60.1-58 (b) of the Code of Virginia.

DECISION

The Decision of the Appeals Examiner is hereby affirmed.


Joseph L. Hayes
Special Examiner