

COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION

PROCEDURE: 20.1  
Requests to Reopen  
a Hearing --  
Good Cause



DECISION OF COMMISSION

In the Matter of:

Carl A. Engh  
[REDACTED]

United States Instrument Rentals  
Gaithersburg, Maryland  
(Last 30-Day Employing Unit)

Exxon Shipping Company  
Houston, Texas  
(Subsequent Employing Unit)

Date of Appeal  
to Commission: May 28, 1985

Date of Review: July 10, 1985

Place: RICHMOND, VIRGINIA

Decision No.: 25239-C

Date of Mailing: July 12, 1985

Final Date to File Appeal  
with Circuit Court: August 1, 1985

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This matter comes before the Commission as a result of the claimant's appeal from the Decision of Appeals Examiner (No. UI-85-3516), mailed May 24, 1985.

ISSUES

Has the claimant shown good cause to reopen the appeals hearing as provided in Regulation XI A.5 of the Rules and Regulations Affecting Unemployment Compensation?

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

FINDINGS OF FACT

The claimant appealed from the decision which held he was disqualified for benefits effective January 6, 1985, because he was discharged from his most recent employing unit for misconduct in connection with his work.

The claimant was employed as a radio officer by Exxon Shipping Company of Houston, Texas, from December 30, 1984, through January 3, 1985. Although he had worked and been terminated from Exxon in 1978, on his written application dated December 12, 1984, he indicated that he had no prior employment with the company. The discrepancy was discovered by Exxon personnel, the claimant admitted that he had intentionally given the false answer, and as a result, his employment was terminated on January 4, 1985, for giving false information.

The original appeals hearing in this matter, held on March 12, 1985, was reopened as a result of the claimant's letter dated March 22, 1985, which stated the following:

"I received the enclosed information well after the date of the scheduled hearing- was therefore not aware of the date involved in this matter.

For your reference I have enclosed copies of the envelope containing the materials your office sent to me. Apparently the envelope was incorrectly routed by the post office via Greensboro, N.C. according to the postmarks. I presume this caused considerable delay in the delivery to my address of this information.

In view of the above I am kindly requesting you to schedule another hearing and provide me with as much notice as possible. Thanking you, I remain, . . ."

Neither the claimant nor the employers appeared at the subsequent hearing held on May 14, 1985. The Appeals Examiner's decision which disqualified the claimant was mailed on May 24, 1985. By letter dated May 29, 1985, the claimant states as follows:

"I have been out of the area engaged in my usual occupation of shipboard radio electronics officer. Therefore, I have not been able to attend any hearings.

Please schedule another hearing as soon as possible while I am home. Thanking you, I remain, . . ."

#### OPINION

Regulation XI A.5 of the Rules and Regulations Affecting Unemployment Compensation provides, in pertinent part, that for good

cause shown a party who was unable to attend an appeals hearing may have it reopened. In order to show good cause to reopen a hearing, the party making such a request must show that he was prevented or prohibited from participating in the hearing by some cause which was beyond his control and that, in the face of such a problem, he acted in a reasonably prudent manner to preserve his right to participate in future proceedings. [See Delethia Ray v. The Dry Cleaning Plant, Inc., Commission Decision No. 24697-C (March 11, 1985)].

Other than to request that he be given "as much notice as possible" in his March 22, 1985, letter, the claimant gave no indication that his employment schedule might interfere with his ability to participate in another proceeding. In view of his failure to make the Commission fully aware of his circumstances, it cannot be said that he acted as a reasonably prudent person to protect his right to pursue further appeals. Moreover, his May 29, 1985, letter included no information as to when he received the notice for the May 14, 1985, hearing or when he would be available for another one. In the absence of such information, there can be no finding of good cause to reopen the hearing.

Section 60.1-58 (b) of the Virginia Unemployment Compensation Act provides for a disqualification if it is found that an individual was discharged for misconduct in connection with employment.

In interpreting the aforementioned statute, in Branch v. Virginia Employment Commission and Virginia Chemical Company, 219 Va. 609, 249 S.E. 2d 180 (1978), the Supreme Court of Virginia has stated the following:

"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 employee is 'disqualified for benefits', and the burden of proving mitigating circumstances rests upon the employee."

Here, the evidence indicates that the claimant falsified his job application. Thus, misconduct has been established. In the

absence of sufficient evidence of circumstances which justify or otherwise explain his behavior in this respect, it is concluded that he was properly subject to the disqualifying provisions of the aforementioned section of the Code.

DECISION

It is held the claimant has not shown good cause to reopen the appeals hearing.

Further, the Decision of Appeals Examiner is hereby affirmed. It is held the claimant remains disqualified for benefits effective January 6, 1985, because he was discharged for misconduct connected with his employment. Such disqualification is in effect until such time as the claimant performs services for an employer for thirty days, whether or not such days are consecutive, and subsequently becomes totally or partially unemployed.

  
Patrice T. Johnson  
Special Examiner

NOTICE TO CLAIMANTS

IF THE DECISION STATES THAT YOU ARE DISQUALIFIED, YOU WILL BE REQUIRED TO REPAY ALL BENEFITS YOU MAY HAVE RECEIVED AFTER THAT DATE. IF THE DECISION STATES THAT YOU ARE INELIGIBLE FOR A CERTAIN PERIOD, YOU WILL BE REQUIRED TO REPAY THOSE BENEFITS YOU HAVE RECEIVED WHICH WERE PAID FOR THE WEEK OR WEEKS YOU HAVE BEEN HELD INELIGIBLE. IF YOU WISH TO DISPUTE YOUR OBLIGATION TO REPAY THESE BENEFITS TO THE COMMISSION, YOU MUST FILE A TIMELY APPEAL.