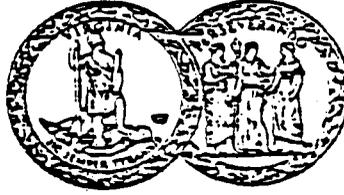


COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION

PROCEDURE: 60.2  
Conduct of Hearing --  
Notice of Hearing.



DECISION OF COMMISSION

In the Matter of:

Janis M. Hupp  
[REDACTED]

Worth Higgins & Associates, Inc.  
Richmond, Virginia

Date of Appeal  
to Commission: April 8, 1985  
Date of Hearing: June 26, 1985  
Place: RICHMOND, VIRGINIA  
Decision No.: 25019-C  
Date of Mailing: August 7, 1985  
Final Date to File Appeal  
with Circuit Court: August 27, 1985

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This is a matter before the Commission on appeal by the claimant from the Decision of Appeals Examiner (No. UI-85-1644), mailed March 28, 1985.

APPEARANCES

Claimant, Attorney for Claimant, Employer Representative

ISSUE

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

FINDINGS OF FACT

The claimant appealed from a decision which held that she was disqualified for benefits effective January 6, 1985 because she was discharged for misconduct connected with her employment.

The claimant was last employed as an assistant production clerk by Worth Higgins & Associates, Incorporated of Richmond, Virginia from September 4, 1984 through January 4, 1985.

At the time she was hired, the claimant was required to serve a ninety day probationary period, which was scheduled to end on December 4, 1984. Although her supervisor acknowledged that she was trying to do her work, her performance was less than satisfactory. In late October or early November, 1984, the employer hired a new plant manager who extended her probation for thirty days and attempted to teach the claimant basic information about printing with the aid of an industry primer. The manager assigned the claimant certain readings from the book and instructed her to report to him when she had finished. The claimant never completed any of the readings because she found the book boring.

While, on occasion, the plant manager was unable to respond to the claimant's questions immediately because of other problems in the facility, he was willing to see that she received the training she needed in order to do her job. He held three or four formal meetings with her to discuss the problems with her work in addition to several informal conversations. By January, 1985, he determined that she would not improve her performance to a satisfactory level, and for that reason, terminated her employment.

#### OPINION

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

In interpreting the aforementioned statute, 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." [Vernon Branch, Jr. v. Virginia Employment Commission and Virginia Chemical Company, 219 Va. 609, 249 S.E.2d 180 (1978)]

In her appeal, the claimant, by counsel, argues that she had not been given effective notice of the subject matter and consequences of the appeals hearing held on March 12, 1985, and as a result, she had not realized the significance of the proceedings. Further, she argued that the record, as it stands, did not support a finding of misconduct. The Commission cannot agree with either contention for the reasons to follow.

In addition to a statement of the time, date and location of the appeals hearing, the Notice of Hearing mailed to the claimant on February 27, 1985 provided in part as follows:

"The statutory provisions(s) and issue(s) is (are): Code of Virginia - Section 60.1-58 (a) Did the claimant leave work voluntarily without good cause? Section 60.1-58 (b) Was the claimant discharged for misconduct connected with work?

IMPORTANT INFORMATION AND INSTRUCTIONS

REASON FOR HEARING: An appeal has been filed from a determination of the Claims Deputy concerning the claimant's claim for unemployment compensation benefits. In hearing the appeal the Examiner will not only consider the grounds upon which this appeal was filed, but may also consider any other issues which may be developed at the hearing even if they have not been set forth in this notice. The Examiner will endeavor to bring out all pertinent facts regarding eligibility or possible disqualifications so as to make a fair and impartial determination with respect to any issue(s) involved in the claim.

ATTENTION: THIS MAY BE YOUR ONLY OPPORTUNITY TO PRESENT EVIDENCE AND TESTIMONY IN THIS MATTER."

Moreover, the record indicates that on February 26, 1985, a Notice of Intrastate Appeal was mailed to the claimant which indicated that an appeal had been filed from the Deputy's determination which declared her eligible for benefits by her last thirty day employing unit. This document included information concerning the responsibilities of the Hearing Officer and procedure to be followed if either party wished to engage an attorney, present a witness, or request a postponement.

It is axiomatic that one of the purposes for providing such information to the parties is to alert them that the initial determination concerning the claimant's separation for unemployment

has been challenged and is subject to modification. These points are set forth in the Notice of Appeal as well as the Notice of Hearing in plain, unambiguous language. Having received the notices, the claimant bore some responsibility to determine what effect, if any, the appeals hearing might have on her claim, and to take further steps to protect her interests. There is no evidence that she made any attempts to contact the Commission to obtain answers or clarification to any questions which the notices may have raised in her mind. If, in this instance, the claimant did not attach any significance to the information, it was not because of a lack of reasonable efforts on the part of the Commission to notify her of the appeal, the appeals proceedings, and their consequences. Given the circumstances, the claimant must accept the ramifications which followed her failure to participate in the hearing. (Underscoring supplied)

The Commission has repeatedly held that mere inefficiency or unsatisfactory performance cannot be equated to a willful or deliberate disregard for the employer's interests. (See, Grace I. Epperson v. Norfolk-Baltimore & Carolina Lines, Inc., Commission Decision No. 577-C, dated May 18, 1950) However, evidence of a claimant's unsatisfactory performance when combined with his failure to follow reasonable instructions from his supervisor may establish misconduct in connection with employment. (See, Samuel Williams, Jr. v. Pinkertons, Incorporated, Commission Decision No. 6074-C, dated September 4, 1973)

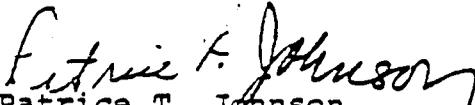
Here, the evidence shows that the claimant failed to follow her supervisor's instructions regarding the use of the training literature. She had been put on notice that her performance was unsatisfactory, and that her manager considered the reading assignments to be important to her development of job knowledge and skills. By ignoring this portion of the training, the claimant manifested an attitude which was tantamount to a willful disregard of the duties and obligations she owed to her employer. (Underscoring supplied)

In the absence of evidence sufficient to mitigate her omission in this respect, it is concluded that her separation was for misconduct, and she was properly subjected to the disqualifying provisions of the aforementioned section of the Code.

#### DECISION

The Decision of Appeals Examiner is hereby affirmed. It is held the claimant remains disqualified for benefits effective January 6, 1985 because she was discharged for misconduct in connection with her employment. The disqualification is for any week or weeks benefits are claimed until such time as the claimant

has performed services for an employer for thirty days, whether or not such days are consecutive, and subsequently becomes totally or partially separated from such employment.

  
Patrice T. Johnson  
Special Examiner