



DECISION OF COMMISSION

In the Matter of

William Henry Branch, Sr.  
Claimant

[REDACTED]  
Brown & Williamson Tobacco  
Corporation  
Petersburg, Virginia

Employer

Date of Appeal  
To Commission: May 23, 1975

Date of Hearing: June 24, 1975

Decision No.: 6971-C

Date of Decision: July 29, 1975

Place: Richmond, Virginia

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This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UI-75-3477), dated May 9, 1975.

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?

Did the claimant leave work voluntarily without good cause within the meaning of § 60.1-58 (a) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT AND OPINION

Brown and Williamson Tobacco Corporation, Petersburg, Virginia, was the claimant's last employer for whom he had worked as a filter tip machine operator from August 21, 1967, through February 20, 1974.

After his last day of work the claimant was arrested on a charge of felonious abduction. He was subsequently tried in Chesterfield Circuit Court and found guilty. He was sentenced to confinement for a period of five years. He later appealed the conviction and was released on bond. After his release he contacted his employer about returning to work. The employer would not allow him to do so because of a policy which precludes a worker returning after a period of absence due to conviction of a crime.

Section 60.1-58 (b) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that a claimant was discharged for misconduct in connection with his work. In the present case the claimant was convicted of felonious abduction. Although this is misconduct, it has no connection whatsoever with the claimant's work. Since the General Assembly has included the phrase "connection with work" in the disqualification for misconduct provision, we must give those words their proper effect. Absent any showing of a nexus with his work, the claimant's discharge for misconduct will not disqualify him from receipt of benefits.

It is obvious that the legislature did not intend to disqualify an individual from receipt of benefits for incarceration or conviction of a crime where there was no connection with work. The legislature did feel, however, that it would be inequitable to charge an employer's experience rating account, where the claimant had received benefits based on a "separation from work of such employer . . . as a result of a violation of the law by such individual, which violation led to the confinement in any jail or prison." For this reason the relief from any wage charge provided in § 60.1-80 (c) was enacted. See Milton D. Pettiford v. Safeguard Automotive Corporation, Commission Decision No. 6826-C (May 29, 1975); Frank D. Clauden v. Davstrom Furniture, Inc., Commission Decision No. 6658-C (March 27, 1975).

Section 60.1-58 (a) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that a claimant left work voluntarily without good cause. In the present case the claimant was convicted and confined to jail. Therefore, he was unable to report to work. He duly notified his employer and requested a leave of absence. Understandably, however, his employer could not keep his job open and terminated his employment. Upon his release from jail the claimant contacted his former employer in an attempt to get his job back, but was informed he could not have it back.

It is apparent that the claimant did not voluntarily leave his work. Only through the legal fiction of constructive voluntary leaving can it be said that the claimant in the present case left his work voluntarily. That fiction states that where one commits an act voluntarily which ultimately leads to incarceration, then it is tantamount to voluntarily leaving his employment. In the opinion of the Commission that legal fiction is not a plausible interpretation of the legislative intent in enacting § 60.1-58 (a) of the Virginia Unemployment Compensation Act. Rather, the legislative intent as reflected in the Virginia Unemployment Compensation Act by § 60.1-80 (c) would indicate that incarceration or conviction of a crime would not disqualify a claimant for receipt of benefits. See Milton D. Pettiford v. Safeguard Automotive Corporation, supra.

In the opinion of the Commission, the claimant did not leave work voluntarily without good cause and therefore, no disqualification should be imposed under § 60.1-58 (a). The employer terminated the employment of the claimant pursuant to its stated policy. This is not to say, however, that the claimant was discharged

for misconduct in connection with his work. Although the claimant was discharged and such discharge was brought about by his misconduct, the misconduct was not connected with the claimant's work. Accordingly, no disqualification should be imposed under § 60.1-58 (b) of the Virginia Unemployment Compensation Act.

Since the record reflects that the claimant's separation from work arose as a result of a violation of the law and that violation led to confinement in jail, then pursuant to provisions of § 60.1-80 (c) of the Act, no benefit wage charge shall be placed against his employer.

DECISION

The decision of the Appeals Examiner is hereby reversed. It is held that the claimant is not disqualified for receipt of benefits. The deputy is directed to carefully determine the claimant's eligibility for benefits.

Pursuant to the provisions of § 60.1-80 (c) of the Act, no benefit wage charge shall be placed against his employer.

  
B. Redwood Councill  
Assistant Commissioner