



VIRGINIA EMPLOYMENT COMMISSION

DECISION OF APPEALS EXAMINER

Employee.
NOTICE: This decision becomes final unless appealed in writing by any party named setting forth the grounds upon which the appeal is sought either at the office where the claim was filed or by mail to the Appeals Section, Virginia Employment Commission, P. O. Box 1358 Richmond, Virginia 23211, not later than midnight of

December 29, 1981

In the matter of:

Claimant

Lurty S. Ettinger
1021 East Main Street
Waynesboro, VA 22980

Employer

Jackson-Meadows Contracting Company
489 N. Charlotte Avenue
Waynesboro, VA 22980

Appellant: Employer Claimant

Claimant's S.S.
No. : [REDACTED]

Decision No. : UI-81-11960

Date Deputy's
Determination: November 5, 1981

Date Referred
or Appealed: November 13, 1981

Date of Hearing: December 3, 1981

Place of Hearing: Waynesboro, VA

Date of Decision: December 3, 1981

Date of Mailing: December 8, 1981

APPEARANCES: Claimant; Attorney for the Claimant; Two Employer Representatives.

STATUTORY PROVISIONS & POINTS AT ISSUE: 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 from employment due to misconduct connected with work?

FINDINGS OF FACT: The employer filed a timely appeal from a determination of the Deputy which, effective October 18, 1981, declared the claimant not subject to disqualification with respect to his separation from the employer's services.

The claimant was last employed as a painter for the Jackson-Meadows Contracting Company of Waynesboro, Virginia from August, 1980, through October 21, 1981.

On the claimant's last day of work, he was called into a meeting at the employer's shop where a number of rules and regulations were being discussed. One of the topics of discussion were the rules which had been laid down by the Wintergreen Resort where the employer did a great deal of work. That resort community was requiring all contractors and sub-contractors to have each employee authorized to enter the premises to be registered and have a pass. One of the partners informed all the employees that only the company vehicles would be authorized to use the employer's name to get into the Wintergreen Resort. The claimant, who had previously obtained a pass in the name of the employer for his own personal vehicle got upset over this. When he brought up the fact that he already had the pass, the partner informed him that it was no good since he had not authorized it. An argument ensued and the partner finally told

the claimant that if he could not abide by the rules, that he might as well hit the road. The claimant stated that he would do just that and had the other partner drive him home.

At the time he filed his claim, the claimant gave "disagreed" as the reason for his separation. Through his attorney, he argued that he had actually been discharged from his job.

OPINION: 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.

Section 60.1-58 (b) of the Act provides a disqualification if it is found that a claimant was discharged from employment due to misconduct connected with work.

The key for deciding whether or not a particular separation is a voluntary quit or a discharge lies with a determination of which was the moving party and whether or not a particular statement could reasonably be interpreted as a discharge.

In the present case, the Appeals Examiner does not feel that the claimant was discharged from his job inasmuch as he was given a choice of either abiding by the rules or, if not, then hitting the road. All he had to do to retain his job was simply to tell the partner that he would abide by the rules in the future and would not use the pass which he had improperly obtained in the name of his employer. It is apparent that the rules which the employer was talking about were reasonable rules designed to protect the legitimate business interests of the employer and which the employer had no choice about accepting since they were being imposed by the community for which the employer did work. The claimant's choice of not abiding by those rules and abandoning his job was clearly made voluntarily and without good cause so as to properly subject him to a disqualification under the provisions of Section 60.1-58 (a) of the Code of Virginia. (Underscoring supplied)

DECISION: The determination of the Deputy which declared the claimant not subject to disqualification with respect to his separation from the employer's services is hereby reversed.

The claimant is disqualified effective October 13, 1981, for any week or weeks benefits are claimed until he has performed services for an employer during thirty days, whether or not such days are consecutive because he left work voluntarily without good cause.

The Deputy is instructed to calculate what benefits may have been paid to the claimant after this date so as to determine the extent of the overpayment he may be liable to refund to this Commission as a result of this decision.

Charles A. Young, III
Charles A. Young, III
Appeals Examiner

NOTE: Affirmed by Commission Decision 17834-C (April 5, 1982) and Affirmed by Circuit Court of the City of Waynesboro, Chancery Order--Book 9 (November 15, 1982).