



DECISION OF COMMISSION

In the Matter of:

Michael Blevins
[REDACTED]

Musser Lumber Company
Atkins, Virginia

Date of Appeal
to Commission: April 23, 1985

Date of Hearing: July 5, 1985

Place: RICHMOND, VIRGINIA

Decision No.: 25091-C

Date of Mailing: July 5, 1985

Final Date to File Appeal
with Circuit Court: July 25, 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-85-2118), mailed April 4, 1985.

APPEARANCES

Attorney for Claimant

ISSUE

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

FINDINGS OF FACT

The claimant appealed from the Appeals Examiner's decision which disqualified him for benefits effective February 17, 1985, for having left work voluntarily without good cause.

Musser Lumber Company was the claimant's last employer where he had worked as a debarker operator from June 4, 1984, through February 16, 1985.

A valve had broken on the debarking machine, and on February 16, 1985, the claimant was making attempts to repair the valve. In so doing, he went to the tool shed for a replacement valve. In the meantime, the claimant's supervisor notified the company president that the machine was damaged. The supervisor and the president then went to the tool shed where the claimant and a co-worker were present.

The president has testified that when he arrived at the tool shed he addressed both employees by saying, "It looks like you boys would have sense enough not to turn up the pressure and blow the damn valve." The supervisor recalls that the president's remark was compatible with the above statement.

The claimant testified that when the president came in the tool shed he said, "You God damn boys, I can't keep this stuff a'running with you all sabotaging it. You set the pressure so high that it blew the back of it out. You're f-----g stupid for cutting the pressure so high." The co-worker's testimony concerning the incident is as follows, "Well, as he came through the door, he sa 'You G-d boys,' and he said, 'God damn,' 'has turned the pressure up on this valve and blowed it up.' . . . 'Which one of you f-----g idiots turned the pressure up on this valve?'"

Because of the incident, the co-worker became upset and entered into a heated conversation with the president. The claimant collected his personal tools and left his employment. The co-worker also resigned from his employment, but did agree to serve out a one-week notice.

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.

Although there is conflict in the testimony in this case, that given by the claimant and his witness appeared to be the more logical and, therefore, the more credible. It does not appear conceivable that two employees would voluntarily leave otherwise suitable work solely on the basis of the mild rebuke implicit in the employer's version of the comments that caused the claimant's leaving.

While it is recognized that workers should anticipate and accept the use of profane language which might be usual and customary at a particular place of business, language of this nature directed at the individual by one in authority over him can give good cause for quitting. (Underscoring supplied)

In another case with similar circumstances, it was stated that:

"In every employer-employee (sic) relationship, each individual has the right to expect to be treated fairly, and to be spoken to in a normal and customary manner. When either party departs from this practice and uses either abusive, or profane language, he creates a condition which would cause continued association to become extremely unpleasant. From the testimony of the claimant, under oath, it appears that he voluntarily quit his job when he was talked to in an extremely abusive and profane manner by his employer. In view of these facts, it is the opinion of the Examiner that the claimant has demonstrated good cause for leaving his job, and he would not be subject to the disqualifying provisions of the Act." (Underscoring supplied) [See Nathan Cox v. White Park Coal Company, Appeals Examiner's Decision No. S-10272-10029 (February 3, 1961); affirmed by Commission Decision No. 3659-C (March 6, 1961)].

It is concluded that, regardless of the reason which brought it about, the language directed at this claimant was so abusive that he had good cause in voluntarily leaving his employment.

DECISION

The Decision of Appeals Examiner is hereby reversed. It is held that the claimant is qualified for benefits effective February 17, 1985, based on the reasons for his separation from work.


Ogene Pitts
Special Examiner

NOTE: Affirmed Circuit Court County of Smyth, November 8, 1985