VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

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Decision No.: 6267-C

Date: April 29, 1974

MISCONDUCT: 135.3
Discharge or leaving -
Involuntary separation

This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UI-74-517), dated March 13, 1974.

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?

FINDINGS OF FACT AND OPINION

Contractors Transport Corporation, Alexandria, Virginia, was the claimant's last employer for whom he worked as a rigger's helper from October 10, 1973, through December 18, 1973.

The claimant performed as a rigger's helper. When the weather was bad there was no rigging work performed. The claimant then would be assigned to perform other work. Several times he requested that he be permitted to leave work early because he did not feel he was performing substantial work. The employer always agreed to his request and gave him permission to leave early. On one occasion when it snowed he called his employer to inquire if it was necessary for him to come to work but his employer informed him that there would not be anything to do unless he wanted to shovel snow. He then requested that he be out for a few days. Upon returning to his employer, the claimant found that he had been discharged.

The employer representative indicated that during the claimant's employment a forty-hour work week was available for the claimant regardless of the weather. However, the claimant failed to complete a forty-hour work week and, therefore, was terminated. The employer's representative also stated that the claimant had indicated that he was going to leave his employment, and, therefore, the claimant was terminated by the employer.

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. This Commission has long held that misconduct was such conduct which evinces a willful and wanton disregard of the employer's interest by the claimant.

There is nothing in the record to indicate such a willful and wanton disregard of the employer's interest by this claimant. According to information furnished by the claimant, he requested permission to leave work early when he felt that he was not performing substantial work. The employer readily agreed to such a request. Had the employer objected to the claimant's failure to work a forty-hour week, he could easily have failed to grant the claimant's request for permission to leave work early. However, the employer did grant such request and cannot now complain of the claimant's failure to work a forty-hour week. The Commission finds no misconduct on the part of the claimant in failing to work a forty-hour work week.

The employer representatives stated that the claimant was terminated after he had given notice of his intentions to leave work. Even had such notice been given by the claimant to the employer, it would not have amounted to misconduct. It is not clear, due to the absence of surrounding facts, but such notice quite possibly may not even have amounted to a voluntary quit. See Thomas L. Cotter v. Stageway Restaurant, Inc., Commission Decision No. 5837-C (January 2, 1973); Theresa Jean Sager v. Bethel Manor Dairy Queen, Commission Decision No. 5858-C (January 23, 1973), aff'd. Circuit Court of York County. Therefore, the claimant's discharge because he had given notice that he would be leaving his employment is not tantamount to misconduct. (underscoring supplied)

DECISION

The decision of the Appeals Examiner, disqualifying the claimant effective December 23, 1973, for having been discharged for misconduct in connection with work is hereby reversed. The deputy is directed to determine the claimant's eligibility for the weeks claimed subsequent to filing his claim.