COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

In the Matter of:

Billy Lee
[redacted]

Gam Industries, Inc.
Petersburg, Virginia

Date of Appeal to Commission: June 18, 1993

Date of Review: July 23, 1993

Place: RICHMOND, VIRGINIA

Decision No.: 42703-C

Date of Mailing: July 30, 1993

Final Date to File Appeal with Circuit Court: August 19, 1993

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This case came before the Commission on appeal by the claimant from a Decision of Appeals Examiner (EUC-9309538), mailed June 17, 1993.

ISSUE

Was the claimant discharged for misconduct connected with work as provided in Section 60.2-618(2) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On June 18, 1993, the claimant filed a timely appeal from the Appeals Examiner's decision which disqualified him from receiving benefits, effective April 25, 1993. The basis for that disqualification was the Appeals Examiner's conclusion that the claimant had been discharged for misconduct connected with his work.

Prior to filing his claim for benefits, the claimant last worked as many as 30 days for Gam Industries, Inc., of Petersburg, Virginia. He had worked for this employer on several occasions since 1989. The most recent occasion was from March 1, 1993 through April 20, 1983. The claimant was a full-time machine operator, and was paid $4.50 an hour.

The employer has a policy which requires that all employees must request permission from their immediate supervisor if they intend to leave work prior to the conclusion of their shift. The claimant was aware of this policy. On several occasions he had complied with the policy when it had been necessary for him to leave work early. At the time of the claimant's separation, the company had a single shift that began at 8:00 a.m. and concluded at 4:30 p.m.

On April 20, 1993, the claimant became involved in an argument with a co-worker. During the course of that argument, the co-worker made some statements that were insulting and offensive to the claimant. The plant manager, who was the claimant's immediate supervisor, overheard the argument and instructed both employees to get back to work. Shortly thereafter, the claimant walked off the job without asking for or receiving permission to do so. The claimant left the job prior to the conclusion of his shift.

The claimant subsequently called the plant manager by telephone to discuss the situation with him. The claimant requested permission to return to work; however, he was informed that he had been discharged for walking off the job without permission.

OPINION

Section 60.2-618(2) of the Code of Virginia provides a disqualification if the Commission finds that a claimant was discharged for misconduct in connection with work.

This particular language was first interpreted by the Virginia Supreme Court in the case of Branch v. Virginia Employment Commission, 219 Va. 609, 249 S.E.2d 180 (1978). In that case, the Court held:

> 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.

The disqualification for misconduct is a serious matter which 778warrants careful consideration. The burden of proof is on the employer to prove by a preponderance of the evidence that the claimant was discharged for reasons which would constitute misconduct connected with his work. Dimes v. Merchants Delivery Moving and Storage, Inc., Commission Decision 24524-C (May 10, 1985); Brady v. Human Resource Institute of Norfolk, Inc., 231 Va. 28, 340 S.E.2d 797 (1986).

In this case, the employer has adopted a reasonable rule which requires employees to receive permission to leave work before the conclusion of their shift. On the last day that he worked, the claimant knowingly violated that rule. The Commission has held in past cases that walking off the job without permission constitutes misconduct in connection with work. Simonson v. Sligh Plumbing & Heating Co., Commission Decision 36655-C (November 27, 1991); Critton v. Sola Optical, USA, Commission Decision 37762-C (April 25, 1992).

The claimant's conduct in walking off the job without permission was a deliberate violation of a reasonable company rule and constituted misconduct in connection with his work. Furthermore, the claimant has failed to prove any mitigating circumstances for his actions. Neither his dissatisfaction with his co-worker's conduct nor any concern regarding the way the plant manager handled the situation justified or excused his decision to walk off the job without permission. Therefore, since no mitigating circumstances have been proven, the disqualification provided by the statute must be imposed.

DECISION

The Appeals Examiner's decision is hereby affirmed. The claimant is disqualified from receiving benefits, effective April 25, 1993, because he was discharged for misconduct connected with his work.

This disqualification shall remain in effect for any week benefits are claimed until the claimant performs services for an employer during 30 days, whether or not such days are consecutive, and he subsequently becomes totally or partially separated from such employment.

M. Coleman Walsh, Jr.
M. Coleman Walsh, Jr.
Special Examiner

NOTICE TO CLAIMANT

IF THE DECISION STATES THAT YOU ARE DISQUALIFIED, YOU WILL BE REQUIRED TO REPAY ALL BENEFITS YOU MAY HAVE RECEIVED AFTER THE EFFECTIVE DATE OF THE DISQUALIFICATION. IF THE DECISION STATES THAT YOU ARE INELIGIBLE FOR A CERTAIN PERIOD, YOU WILL BE REQUIRED TO REPAY THOSE BENEFITS YOU HAVE RECEIVED WHICH WERE PAID FOR THE WEEK OR WEEKS YOU HAVE BEEN HELD INELIGIBLE. IF YOU THINK THE DISQUALIFICATION OR PERIOD OF INELIGIBILITY IS CONTRARY TO LAW, YOU SHOULD APPEAL THIS DECISION TO THE CIRCUIT COURT. (SEE NOTICE ATTACHED)