COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

Misconduct
15.1--Notice

DECISION OF COMMISSION

In the Matter of

Solange Rebibo, Claimant
[redacted]

Saidman Imperial Cleaners
Fairfax, VA 22031

Date of Appeal
To Commission: March 9, 1981

Date of Hearing: December 29, 1981

Decision No.: 15737-C

Date of Decision: January 12, 1982

Place: Richmond, Virginia

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This matter comes before the Commission on appeal by the claimant from the decision of the Appeals Examiner (UI-80-10623), mailed March 4, 1981.

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?

Was the claimant discharged for misconduct in connection with her work as provided in Section 60.1-58 (b) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

Saidman Imperial Cleaners was the claimant's last employer where she had worked from February 5, 1974 through July 26, 1980, as a seamstress. She was being paid $4.50 per hour at the time of her separation. On or about July 26, 1980, the claimant received a call from her daughter-in-law in Paris informing her that the claimant's son was very sick and that he had to undergo surgery very soon. The claimant testified that her son was being hospitalized in Paris approximately fifty miles from where he, his wife and three children reside. The claimant wanted to be near her son for the operation and she also wanted to assist her daughter-in-law in caring for their three children.

The claimant called the President of the Corporation and told him as follows:

> "Mr. Saidman, I had a call. My son is really sick and I'm going to France. He told me, 'I understand. So long. How long you stay?' I said, 'I don't know, I don't know Mr. Saidman. Until my son is ok, I come back.' That's all. And I leave one day after." (Transcript, p. 5).

The claimant did not tell the employer how long she would be gone, but was of the opinion that she had permission to make the trip.

The claimant left for Paris the next day. The employer left the claimant on the payroll for four weeks and after that time he hired a replacement for her. The President of the Corporation testified at the Appeals Examiner's hearing that during the four week period following July 26, 1980: "No one attempted to contact us and let us know the status of Mrs. Rebibo's visit to Paris and when we could expect her back." (Transcript, p. 19). The employer testified that they needed an individual to perform the claimant's duties and replaced her four weeks after she had left.

The claimant returned to the United States and called the employer on or about September 18, 1980, three weeks after she had been replaced. She was told at that time that she had been replaced when the company had not heard from her.

The claimant argued at the Commission hearing that the employer knew where she was, had approved her leave, and that she had told her husband to contact the employer for her. There is no testimony or evidence in the record of the Appeals Examiner's hearing that the claimant or anyone in her family attempted to contact the employer during the four weeks following her leaving for Paris.

OPINION

Section 60.1-58 (a) of the Code of Virginia provides a disqualification if it is found that an individual has left work voluntarily without good cause.

The claimant did not express a desire to relinquish her job, but merely to take time off from work to be with her son. Since she had made personal contact with the employer prior to her trip to France, it cannot be maintained that the claimant had abandoned her job. It is the opinion of the Commission that the claimant was, in effect, terminated from her employment when she was replaced some four weeks after she left. Therefore, the case should be considered under the provisions of Section 60.1-58 (b) of the Code of Virginia.

Section 60.1-58 (b) of the Code of Virginia provides a disqualification if it is found that an individual was discharged for misconduct in connection with her work.

Misconduct is not defined in the Statute, but it has been defined in one Virginia Supreme Court case as well as numerous Commission decisions interpreting the Statute. In the case of Vernon J. Branch, Jr. v. Virginia Employment Commission and Virginia Chemical Company, 219 Va. 609, 249 S.E.2d 180 (1978), the Court st

"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." (emphasis supplied)

In numerous decisions, the Virginia Employment Commission has held that excessive absenteeism without adequate justification and due notification to the employer in all cases constitutes misconduct as it reveals a deliberate disregard of standards of behavior the employer has the right to expect of his employees.

In the present case, the claimant did inform her employer that she was going to France for an indefinite period of time. This did not, however, absolve the claimant of the responsibility to keep her employer posted as to her whereabouts and when she expected to return to work so that he could adequately staff his business. The only testimony in the record of this case is that the claimant made no effort for a period of four weeks after her leaving to contact the employer. to notify him as to when she would be returning. Regardless of assertions to the contrary made by the attorney for the claimant at the Commission's hearing, there is no such testimony or evidence in the record of the case. It is uncontradicted that the claimant did not successfully contact the employer during this period of time regardless of whether or not she attempted to do so personally or through other family members. The employer certainly had the right to have adequate notification from the claimant as to her whereabouts and when she expected to return to work. As it was, the employer terminated her four weeks after she left and did not hear from her for a period of three weeks thereafter. It is the opinion of the Commission that the claimant's failure to contact her employer for a period of four weeks was a deliberate disregard of standards of behavior of which the employer had the right to expect of her and did amount to misconduct in connection with her work.

DECISION

The decision of the Appeals Examiner which disqualified the claimant for benefits effective September 21, 1980, is hereby amended. It is held that the claimant is disqualified for benefits effective September 21, 1980, for any week or weeks benefits are claimed until she has performed services for an employer during thirty days whether or not such days are consecutive because she was discharged for misconduct in connection with her work.

Kenneth H. Taylor
Special Examiner