COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

MISCONDUCT: 15.2
Absence: Reasons

DECISION OF COMMISSION

In the Matter of

Elizabeth J. Hancock, Claimant
[redacted]

Mr. Casuals, Inc., # 1
Elk Creek, Virginia

Employer

Date of Appeal
To Commission: June 5, 1974

Date of Hearing: June 28, 1974

Decision No.: 6355-C

Date of Decision: July 3, 1974

Place: Richmond, Virginia

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This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UI-74-889) dated May 24, 1974.

ISSUE

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

FINDINGS OF FACT AND OPINION

The findings of fact of the Appeals Examiner are adopted by the Commission. Additionally, it is found that the employer has stated that days which the claimant was laid off due to lack of work were included in the total number of days of absences given to the Examiner. This amounted to approximately ten days in 1972. No evidence was given as to the number of days in 1973. Furthermore, the employer stated that there was no company rule which required the employee to notify the employer during their first day of absence. This claimant, however, would notify the employer or send word that she was sick when she was absent. Most of the times when she would return to work she would bring a doctor's statement.

Section 60.1-58 (b) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that an individual was discharged for misconduct in connection with work. The Commission has consistently held that chronic

unexcused absenteeism from work constitutes misconduct in connection with employment.

The evidence in the record indicates that the claimant had a history of absenteeism. However, several of the days on which the employer had listed the claimant as being absent the claimant was not actually absent, but rather laid off for lack of work. Additionally, on other days the claimant was absent because of sickness or injury received in an automobile accident. By the employer's own testimony, the employer had no rule which would require notification from an employee during the first day of sickness. Also, by the employer's own testimony, the claimant would always either notify the employer or send word that she was sick, and most of the times would bring a doctor's statement upon her return to work. Therefore, in the opinion of the Commission, the employer has failed to show an unexcused absenteeism. The claimant did bring doctor's statements and the employer did accept these as excuses.

At most, all that is shown by the evidence is chronic absenteeism; however, it is absenteeism due to sickness, or injury rather than unexcused absenteeism. Mere absenteeism, attributable to illness or injury, when the employer has been notified of the illness or injury, will not amount to misconduct. The sine qua non of wanton disregard of the employer's interest or malevolent intent is absent in such cases. Accordingly, there is no misconduct in this case, as the claimant absences were due to illness or injury and were reported to the employer.

DECISION

The decision of the Appeals Examiner disqualifying the claimant effective March 3, 1974, for having been discharged for misconduct in connection with her work is hereby reversed. The deputy is directed to determine the claimant's eligibility for the weeks benefits are claimed.

B. Redwood Councill
Assistant Commissioner