COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

MISCONDUCT: 270
Intoxication and use of intoxicants

DECISION OF COMMISSION

In the Matter of

Rufus O. Cox, Claimant
[redacted]

Dunham & Bush, Inc.
Harrisonburg, Virginia

Employer

Date of Appeal To Commission: June 17, 1975

Date of Hearing: August 25, 1975

Decision No.: 7248-C

Date of Decision: December 5, 1975

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-75-3054), dated May 14, 1975.

ISSUES

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?

Has the claimant been able and available for work within the meaning of § 60.1-52 (g) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT AND OPINION

The claimant was employed from April 5, 1972, through October 1, 1974, as an assembler at the abovementioned employer's place of business in Harrisonburg, Virginia. The claimant presented medical evidence that he had suffered from chronic depressive reaction and chronic alcoholism for some time. The claimant's problem with alcoholism resulted in absences from work. The claimant had been absent for three consecutive days and was about to be discharged from employment when he had a meeting with his employer at which an agreement was reached which would allow the claimant to return to work. This agreement, according to information submitted by the employer's representative, stated that the claimant would be allowed to return to work but he would have to join Alcoholics Anonymous and

the Halfway House. He had to report to work every day unless sick and then he must later bring a doctor's excuse. If the claimant left Acoholics Anonymous or the Halfway House at any time, his employment would be automatically terminated. Furthermore, if he had a recurrence of an attack of alcoholism either at the plant or outside of the plant, he would be automatically terminated. The claimant was absent from work on October 7, 8 and 9, 1974, due to the fact that he had been drinking. The employer contacted a physician who stated that the claimant had been drinking, was very nervous and was under medication. The claimant was, therefore, discharged from employment due to his illness, as stated in the employer's letter to the claimant terminating him dated October 9, 1974.

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 connected with his work.

Misconduct has been consistently defined by the Commission as a willful or wanton disregard of an employer's interest or violations of reasonable rules of the employer or standards of behavior which an employer has a right to expect of his employees.

The sine qua non of misconduct is a willful or malevolent intent. In the present case there is no dispute that the claimant has suffered from alcoholism. Alcoholism has been defined as a type of sickness by many sources. In Easter v. District of Columbia, 361 F. 2d 50 (D.C. Cir., 1966), it was held that a chronic alcoholic has no mens rae necessary for criminal responsibility for being drunk. Furthermore, in Robinson v. California, 370 U.S. 660 (1962), the Supreme Court held in effect that it was no criminal offense to be suffering from a disease and, therefore, overturned a conviction under a law which made it a crime to be addicted to narcotics.

We feel that a like reasoning as that used in the above two cases is applicable in the present circumstance. In the instant case the claimant was compelled, if he wished to retain his job, to enter an agreement which in effect stated that if he had recurrences of alcoholism he would be terminated from work. Since alcoholism is a disease or sickness, the agreement entered by the claimant would be analogous to an agreement permitting the employer to terminate the claimant because of the recurrence of a sickness or disease. Because the claimant has been diagnosed as a chronic alcoholic he cannot have the requisite willful intent or mens rae to be held responsible for violating this agreement by becoming intoxicated. In view of the fact that he was a chronic alcoholic it is the opinion of the Commission that the subsequent recurrence of alcoholism was a matter beyond the claimant's control and, therefore, such recurrence could not be tantamount to misconduct in the eyes of unemployment insurance law.

Based on the foregoing, the Commission is of the opinion that there has been no willful disregard of the employer's interest by the claimant such as to constitute misconduct, but rather simply a recurrence of an unfortunate disease from which the claimant suffered. Accordingly, no disqualification will lie. The fact that the claimant did suffer from such a disease might affect his being able and available for work and, therefore, have a bearing on his eligibility; however, there is insufficient evidence before the Commission upon which to make a decision on that issue.

DECISION

The decision of the Appeals Examiner is hereby reversed. The deputy is directed to carefully examine the claimant's eligibility during the weeks benefits are claimed.

B. Redwood Councill
Assistant Commissioner