COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

MISCONDUCT: 300.1.
Manner of Performing
Work -- Accident.

DECISION OF COMMISSION

In the Matter of

Louis H. Chappelle, Claimant

Groome Transportation, Inc.
Richmond, Virginia

Date of Appeal
To Commission: June 27, 1984

Date of Hearing: August 21, 1984

Place: RICHMOND, VIRGINIA

Decision No.: 23868-C

Date of Decision: August 21, 1984

Date of Mailing: August 31, 1984

Final Date to File Appeal
with Circuit Court: September 20, 1984

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This is a matter before the Commission on remand by the Circuit Court for the City of Richmond.

APPEARANCES

Claimant, Attorney for the Claimant, Employer Representative, Attorney for the Employer

ISSUE

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

FINDINGS OF FACT

This case comes before the Commission because of an order of the Circuit Court for the City of Richmond remanding the case to the Commission for further findings and a redetermination.

the vehicle in, it was inspected, and it was determined that the brakes on the trailer were in no way defective. The employer concluded that the claimant had jack-knifed because he was following too close at too high a rate of speed, thus having to apply his brakes too rapidly and losing control of the vehicle. This accident resulted in approximately $200 damage to the trailer where it ran into the tractor.

The employer terminated the claimant for continued negligence in the operation of its vehicles following the September 21, 1983 accident. The employer takes the position that the claimant's three chargeable accidents within a six-month period were in violation of its company policy.

Counsel for the claimant argues that the company policy providing for a "chargeable" accident is ambiguous in that it does not specify whether the accident is chargeable by the police or by the employer. The claimant cites Robert J. Coleman v. Commonwealth of Pennsylvania, Unemployment Compensation Board of Review, 407 A. 2d 130 (1979); Fred DuPerry v. Administrator, Unemployment Compensation Act, et al, 206 A. 2d 476 (1964); and William Park v. Commonwealth of Pennsylvania, Unemployment Compensation Board of Review, 393 A. 2d 62 (1978), for the proposition that vehicle accidents do not constitute "willful misconduct" within the meaning of the statute.

OPINION

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 his work.

The case of Branch v. Virginia Employment Commission and Virginia Chemical Company, 219 Va. 609, 249 S.E. 2d 180 (1978), held that when the omissions of an employee are of such a nature or are so recurrent as to manifest a willful disregard of his duties and obligations he owes his employer, the employee is deemed to be guilty of "misconduct connected with his work".

While the Branch case is not a vehicle accident case, the Court did define misconduct in such a way that repeated negligence does come within the definition of misconduct connected with work in Virginia.

In addition to the above, the Commission has frequently quoted from 48 Am. Jur. Social Security, Unemployment Insurance, and Retirement Funds, Section 38 (1943). In that section, it is stated:

> "Misconduct within the meaning of an unemployment compensation act excluding from its benefits an employee discharged for misconduct must be an act of wanton or willful disregard of the employer's interests, a deliberate violation of the employer's rules, a disregard of standards of

> behavior which the employer has the right to expect from his employee, or negligence in such degree or recurrence as to manifest culpability, wrongful intent, or evil design, or show an intentional substantial disregard of the employer's interests or of the employee's duties and obligations to the employer . . . ."

In view of the above, it can be seen that a finding of misconduct is appropriate where the Commission finds as fact a series of negligent acts which reveal a disregard for the employer's best interests; it is not necessary to show a willful violation of a company rule to come within the statute.

The claimant cites the Coleman case, supra, where the claimant has been involved in two accidents, the first of which involved an insignificant monetary loss, and the second accident involved a wet road and faulty brakes as a matter of fact. That case is clearly distinguishable on its facts from the case presently before the Commission. In none of these accidents was there a wet road, and the Commission is also of the opinion that the evidence does not support a finding that there were faulty brakes. Also, there was substantial monetary damage sustained in each of the three accidents in this case. The Pennsylvania Court, in the Coleman case, citing its decision in Coulter v. Unemployment Compensation Board of Review, 16 Pa. Cnwlth. 462, 466, 332 A. 2d 876, 879 (1975), said the following:

> "A single dereliction or a minor and casual act of negligence or carelessness does not constitute willful misconduct. Rather, it is a series of accidents, attributable to negligence, occurring periodically and with consistent regularity, which produce substantial financial loss to the employer which will support the conclusion that an employee is guilty of willful misconduct." (Emphasis supplied)

The guidelines set out in the Coulter case apply to the case presently before the Commission. The claimant in this case was involved in a series of accidents, three accidents within a four-month period, all of which were attributable to the negligence of the claimant. In the first accident, the claimant's vehicle struck the passenger car from the rear; in the second, the claimant collided with a parked vehicle; and in the third, the claimant lost control of his vehicle when he jack-knifed on a dry road without any proof of defective equipment. In reviewing the facts of the case, the Commission is particularly mindful of the high degree of care owed by the driver of a common carrier to his employer, as well as to the general public. Where the potential for harm is so great, as that involved in the final accident that the claimant had, it is the opinion of the Commission that the driver owes a high degree of care in discharging his duties for the employer. The Commission also places particular importance on the frequency of the claimant's three accidents between June and September

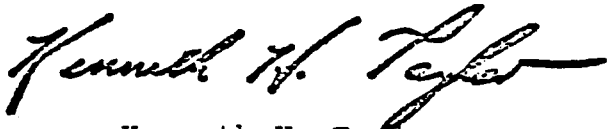
of 1983 in determining that his negligence was so recurrent as to manifest sufficient culpability to place him within the misconduct statute. (Underscoring supplied)

It is also the opinion of the Commission that the DuPerry case and the Park case do not apply to the case at hand as they are distinguishable on their facts. The DuPerry case involved a termination which was due strictly to the employer's concern that his insurance would be cancelled; this was not the case here. In the Park case, the claimant had been discharged for five accidents which were designated by the employer as "preventable". There was no evidence in the record of that case to support a finding that the claimant was negligent in any of those instances. That is also distinguishable from the present case.

In view of the foregoing, it is the opinion of the Commission that the claimant was properly subjected to the disqualifying provision of Section 60.1-58 (b) of the Code of Virginia.

DECISION

The decision of the Appeals Examiner is hereby affirmed.



Kenneth H. Taylor
Special Examiner