COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

MISCONDUCT: 485.1. Violation of Company Rule -- Absence, Tardiness, or Temporary Cessation of Work.

DECISION OF COMMISSION

In the Matter of

Jerl V. Cantrell, Claimant

[redacted]

Koch Raven Coal Company
Oakwood, VA 24631

Date of Appeal To Commission: September 17, 1980

Date of Hearing: November 18, 1980

Decision No.: 14754-C

Date of Decision: December 9, 1980

Place: Richmond, Virginia

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This matter comes before the Commission on appeal by the employer from the decision of the Appeals Examiner (UI-80-6742), dated September 5, 1980.

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

Koch Raven Coal Company was the claimant's last employer where he had worked as a blaster from May of 1979 until January 16, 1980. He worked the 3:30 to 11:30 p.m. shift and was paid $9.50 an hour.

The claimant sustained a back injury on the job on September 13, 1979 and was out of work for an extended period of time because of the injury. On January 14, 1980, the claimant had an appointment with his doctor, a W. T. Henderson, who told the claimant at that time that he was able to return to work and "should be working as of that particular date." (Deposition of Dr. Henderson, page 4)

The claimant did not ask Dr. Henderson for a release slip so that he could return to work and he elected not to return to work immediately. Company policy provides that an employee must report to work during the next shift following the day when he is released as able to return to work by his physician.

The doctor mailed a letter to the company's workmen's compensation insurance carrier on January 14 notifying them that he had advised the claimant that he was able to return to work as of that date. A copy of this letter was also sent to the employer and when the claimant did not report to work within the next two days, the company mailed the letter of termination to the claimant on January 16, 1980.

After the claimant received the letter of termination from the company he returned to his doctor's office without an appointment so that he could obtain a return to work slip. The doctor gave the claimant such a slip stating that the claimant was able to return to work as of January 21, 1980. The doctor did not certify that the claimant had been unable to return to work prior to January 21, 1980.

OPINION

Section 60.1-58 (b) of the Code of Virginia provides a disqualification if it is found that an individual has been discharged for misconduct in connection with his work. Misconduct has been repeatedly described by the Commission as a deliberate violation of reasonable company rules or policies or acts or omissions which manifest a willful disregard of the interests of the employer and the duties and obligations the employee owes to the employer. Vernon J. Branch, Jr. v. Virginia Employment Commission and Virginia Chemical Company, 219 Va. 609, 249 S.E.2d 180 (1980).

The employer in this case has a policy which requires that its employees return to work as soon as possible after a medical release subsequent to a disability. The claimant was clearly aware of the policy as he did not contradict that he knew it was the policy at the hearing before the Appeals Examiner; he also knew that he was to have a release from the doctor before he could return to work. This fact is borne out by his belated attempt to obtain such a statement on Friday, January 18, 1980. Based on the deposition of the examining physician that he informed the claimant he should be working as of January 14, 1980, the claimant's failure to report to work until the following week was clearly in violation of the employer's policy. It is apparent that the claimant had no intention of returning to work immediately until he received the letter of termination from the company; it is interesting to note the claimant's action at that point was to make an unscheduled visit to his doctor in order to obtain a release from the physician to certify that he was able to return to work. The argument of the employer representative is correct that the release stating that the claimant was able to return to work as of January 21, 1980 did not mean that the claimant was unable to return to work prior to that time.

In view of the foregoing, it is the opinion of the Commission that the claimant's willful failure to report to work when he was released as able to do so by his physician was a violation of the employer's policy and did amount to misconduct in connection with his work as that term is used in the Act. (Underscoring supplied)

DECISION

The decision of the Appeals Examiner is hereby reversed. It is held that the claimant is disqualified effective June 22, 1980 for any week benefits are claimed until he has performed services for an employer during thirty days whether or not such days are consecutive because he was discharged for misconduct in connection with his work.

Kenneth H. Taylor
Special Examiner

NOTE: Affirmed by Circuit Court of the County of Buchanan, dated September 22, 1983.