COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

MISCONDUCT: 485.6. Money Matters, Regulation Governing.

DECISION OF COMMISSION

In the Matter of

Leo V. Huffman, Jr.

[redacted]

Blue Bird East
Buena Vista, Virginia

Date of Appeal To Commission: May 22, 1984

Date of Review: October 6, 1984
October 11, 1984

Place: RICHMOND, VIRGINIA

Decision No.: 23534-C

Date of Decision: October 11, 1984

Date of Mailing: October 17, 1984

Final Date to File Appeal with Circuit Court: November 6, 1984

---oOo---

This is a matter before the Commission on appeal by the claimant from the decision of the Appeals Examiner (No. UI-84-3686), mailed May 11, 1984.

ISSUE

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

FINDINGS OF FACT

On May 22, 1984, the claimant, through his attorney, initiated a timely appeal from a decision of the Appeals Examiner which disqualified him from receiving unemployment insurance benefits based upon the circumstances surrounding his separation from work.

Prior to filing his claim for benefits, the claimant was last employed by Blue Bird East of Buena Vista, Virginia. The claimant worked for this company from August 19, 1973 through March 8, 1984. The claimant last worked as an assembler and was paid $8.85 an hour.

During the course of his employment, the claimant's wages were garnished on fourteen (14) separate occasions. Six of these garnishments occurred during the calendar year 1983.

On or about September 14, 1983, the company's general manager spoke with the claimant concerning the situation regarding these garnishments. The claimant was advised that he would need to make arrangements to pay his bills so that the garnishments would not occur. In November 1983, the company vice-president and the general manager conferred with the claimant concerning the garnishments he had received. After discussing the situation with the claimant, they advised him that the number of garnishments had reached a point that the company could no longer tolerate and if any further garnishments were received, he would be discharged. A few days after this counseling session, the employer received another garnishment summons. When the claimant was advised of this, he prepared to leave work thinking he would be discharged; however, it was apparent to the employer that this particular garnishment was being processed prior to the claimant's last warning. Therefore, they felt it would be unfair to hold that garnishment against him and the claimant was advised he could continue to work.

On February 29, 1984, a garnishment summons was issued against the claimant, naming the employer as the garnishee. The judgment creditor was Jefferson Surgical Clinic. The garnishment summons was delivered to the Sheriff on March 2, 1984 and subsequently served on the employer. Upon receiving this garnishment, the claimant was discharged by the general manager on March 8, 1984.

The employer has a policy concerning garnishments. Under the terms of that policy, an employee is permitted to receive two garnishments a year. The garnishment summons which was served on the employer in March 1984 was the first garnishment during that year; however, the claimant was discharged due to the excessive number of garnishments throughout his employment and not for violating this specific policy.

After the company's final warning in November 1983, the claimant did not take any steps to prevent the issuance of another garnishment. When the claimant received his copy of the March 1984 garnishment summons, he and his wife attempted to pay it off before the employer was served with his copy. However, the first money order was for an incorrect amount and was temporarily lost by the Postal Service. A second money order listed an incorrect payee and was returned. Both money orders were eventually returned to the claimant.

OPINION

Section 60.1-58(b) of the Code of Virginia provides a disqualification if the Commission finds that a claimant was discharged for misconduct connected with his work.

This particular language was first interpreted by the Virginia Supreme Court in the case of Vernon Branch, Jr. v. Virginia Employment Commission and Virginia Chemical Company, 219 Va. 609, 249 S.E.2d 180 (1978). In that case, the court held:

> "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."

The Branch case sets out a three-pronged test for determining whether or not an employee is guilty of work-related misconduct. An employer can sustain the allegation of misconduct connected with work if it can be proven that the claimant (1) deliberately violated a company rule reasonably designed to protect the legitimate business interests of the employer, or (2) engaged in acts or omissions which are of such a nature as to manifest a willful disregard of the duties and obligations owed the employer, or (3) when the claimant's acts or omissions are so recurrent as to manifest a willful disregard of the employer's interests and the duties and obligations owed to the employer. Regardless of which prong of the Branch test an employer may rely upon, the Commission must always consider whether or not there are any mitigating circumstances.

In the present case, the claimant was discharged by the employer because of his excessive garnishments. It is important to note that the claimant was not discharged for violating the employer's policy concerning garnishments. The record establishes that the claimant had a total of fourteen (14) garnishments during his employment with this company. Six of those garnishments occurred during 1983 and the final garnishment occurred in March 1984. This last garnishment occurred after the claimant had been warned by the employer that any further garnishments would result in his discharge. (Underscoring supplied)

When the Supreme Court decided the Branch case, they were confronted with an employee who had been discharged under a company rule for garnishments. In that case, the court stated:

> "Ordinarily, the way an employee manages his debts is a personal and private matter unconnected with his work. It is a different matter, however, when he mismanages his debts in a manner which impairs the status or function of the employer-employee relationship to the employer's detriment. When an employee forces his

creditors to garnish his earnings, he exposes his employer to continuing service of judicial process, complicates his administrative burden, and increases the cost of conducting his business. Moreover, when the employer withholds a portion of a paycheck, the depressing effect on employee morale tends to erode the quality of the work product." 219 Va. 609, 612. (Underscoring supplied)

In reviewing the evidence in this case, the Commission is persuaded that the employer has sustained his burden of proof in establishing that the claimant engaged in a recurring pattern of conduct which manifested a willful disregard of the employer's interests and the duties and obligations owed to the employer. The claimant's discharge was brought about by the excessive number of garnishments that he received and which the employer was required to administratively handle. Accordingly, the Commission is of the opinion that the employer has made a prima facie case of work-related misconduct and the sole issue remaining before the Commission is whether there exists some mitigating circumstances which should bar imposing the disqualification provided in Section 60.1-58(b) of the Code of Virginia. (Underscoring supplied)

In the brief submitted to the Commission, the claimant's attorney sets out four (4) specific assignments of error. Briefly stated, these alleged that (1) the employer failed to prove that his rule was violated by the claimant; (2) the claimant's discharge violated Section 34-29(f) of the Code of Virginia and 15 U.S.C. Section 1675(a), which prohibit the discharge of an employee for a garnishment of any one indebtedness; (3) the Appeals Examiner was incorrect in finding that the claimant did not take steps to prevent future garnishments; (4) the resolution of this case is governed by the Commission's findings in the case of Daniel C. Taliaferro v. The Smithfield Packing Company, Inc., Commission Decision No. 4310-C, dated May 28, 1965.

The claimant's first assignment of error is irrelevant simply because he was not fired for violating any company rule. The claimant was discharged for excessive garnishments after he was advised in November 1983 that any future garnishments would result in his discharge. Therefore, since the claimant was discharged for his recurring garnishments, the Commission need not engage in an analysis of whether or not a specific company rule was violated.

In reviewing the second assignment of error made by the claimant, the Commission is of the opinion that it is without merit. The claimant argues that his discharge for a second garnishment of a particular debt was violative of both state and federal law. However, even if the March 1984 garnishment was a subsequent garnishment of a former debt, the claimant was discharged because of excessive garnishments -- a total of fourteen (14) during his employment and seven (7) during 1983 and 1984. The claimant has not offered any evidence to show that all of these garnishments came

about from a single indebtedness. However, even if such could be shown, the Virginia Employment Commission is not the proper forum for adjudicating whether or not a violation of Section 34-29(f) of the Code of Virginia or 15 U.S.C. Section 1675(a) has occurred.

The third assignment of error takes issue with the Appeals Examiner's finding that the claimant did not take steps to prevent a future garnishment following the company's warnings. However, that finding by the Examiner was essentially correct. The record is void of any evidence as to efforts the claimant took to prevent any garnishments occurring until after he had received a copy of the March 1984 summons. The claimant knew better than anyone else who had obtained judgment against him for past debts. The claimant could have consulted his own records, including copies of debt warrants and garnishment summons and he could have directly contacted his judgment creditors to determine whether or not those judgments had been satisfied or if there were any outstanding balances.

Finally, the claimant has argued that there were mitigating circumstances involved and that no disqualification should be imposed for that reason. In support of this position, the claimant has cited the case of Daniel C. Taliaferro v. The Smithfield Packing Company, Inc., Decision No. 4310-C, dated May 28, 1965. In that case, the employer was served with a garnishment summons against the claimant on December 17, 1964. Pursuant to a company rule, the claimant was instructed that he had two working days from 12:00 noon December 17, 1964 in which to make arrangements to have the summons released. The claimant immediately undertook to have the garnishment released. The judgment upon which the garnishment was based had been obtained by a bank from which the claimant had borrowed money to purchase an automobile. However, the claimant had subsequently borrowed money from a loan company for the purpose of consolidating his debts. The loan company failed to send the loan pay-off check to the bank and instead sent it to the automobile dealership where the car was purchased. The check was never forwarded to the bank and when the note was not paid, the bank obtained a judgment and the garnishment summons was issued. Due to no fault of the claimant, the company was not notified until after the two-day period had expired that the matter had been resolved and the garnishment summons released.

The case cited by the claimant is clearly distinguishable from the present case. In Taliaferro, the claimant was discharged pursuant to a specific company rule and not due to any recurring violations. In fact, there is no finding at all in Taliaferro regarding whether this garnishment summons was the first or one of several issued against the claimant. Furthermore, both the judgment and the garnishment resulted from the loan company's failure to properly remit the pay-off check to the bank in order for the bank's loan to be paid in full and their lien released. By contrast, the

claimant here incurred fourteen (14) separate garnishments and the final garnishment was, in fact, based upon a judgment which had only been partially satisfied. Therefore, after reviewing all of the evidence and testimony in the record, together with the brief submitted by the claimant's attorney, the Commission is of the opinion that the claimant was discharged by the employer for misconduct connected with his work. Furthermore, the Commission is also of the opinion that the claimant has not carried his burden of proof in establishing such mitigating circumstances as should preclude the imposition of a disqualification for work-related misconduct. Therefore, the disqualification provided in Section 60.1-58(b) of the Code of Virginia should be imposed.

DECISION

The decision of the Appeals Examiner which disqualified the claimant from receiving unemployment insurance benefits, effective March 11, 1984, is hereby affirmed and shall remain in effect for any week benefits are claimed until the claimant has performed services for an employer during thirty days, whether or not such days are consecutive.

M. Coleman Walsh, Jr.
Special Examiner