VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

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Decision No.: 5652-C

Date: May 10, 1972

MISCONDUCT: 485.7
Violation of company rule - personal comfort and convience

This is a matter before the Commission on appeal by the employer from the decision of the Examiner (No. UI-72-574) dated April 3, 1972.

ISSUES

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

Was the claimant available for work for the week or weeks for which she claims benefits within the meaning of § 60.1-52 (g), Code of Virginia, (1950), as amended?

FINDINGS OF FACT

The claimant was last employed by Continental Manufacturing Company Newport News, Virginia, for whom she worked as an assembler from June 30, 1969, through February 14, 1972. The claimant's immediate supervisor indicated that because many employees had been proceeding to the bathroom between 5:00 P. M. and 5:30 P. M. when the work day ended to clean up before going home, a rule was issued that no employees would be allowed to go to the bathroom between 5:00 P. M. and 5:28 P.M. The claimant's immediate supervisor indicated that the claimant was among a small group of people whom she told of the rule on Thursday, February 10, 1972. The claimant admitted being present in this group and receiving the information that the rule had been laid down. It was not indicated to the employees that violation of this rule would result in the loss of their job.

At approximately 5:10 P. M. on February 14, 1972, the claimant was performing a painting operation. She was observed by a fellow employee approximately eight to ten feet away to raise her hand to her eye. According to the witness, the claimant turned, indicated to her that she had gotten paint in her eye, and was going to the bathroom to wash it out. The claimant returned from the bathroom in approximately two to three minutes and continued working until the 5:28 P. M. bell rang.

After proceeding through the clock-out station, the claimant was motioned aside by her immediate supervisor and promptly told she was fired. The claimant responded "for using the bathroom?" The claimant indicated that her supervisor's response was "for not following instructions," while the supervisor indicated that her response was "for not complying with company rules." The claimant at that time did not tell her supervisor that she went to the bathroom to wash the paint from her eyes. She indicated at the Commission hearing the reason why she did not mention it at that time was because she felt that it would in no way alter the decision of the supervisor to fire her, since according to the claimant, she had been treated unfairly by the supervisor on previous occasions.

The evidence before this Commission is that the bathroom was the only place to which the claimant could have gone in the immediate area to find water for washing out her eye.

During the period for which the claimant claims benefits, she has reported to several employers in an effort to find employment and has recently secured a job.

OPINION

Section 60.1-58 (b) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that an individual is discharged for misconduct in connection with his work. This Commission has held on occasions too numerous to count that the term "misconduct" is limited to conduct which evinces a wilfull or wanton disregard of an employer's interests, such as is found in a deliberate violation or disregard of standards of behavior, which the employer has a right to expect of his employee. It is a serious charge, and therefore, must be clearly shown. The risk of nonpersuasion is on the employer in this regard.

This Commission has long recognized that the employer has the right to establish REASONABLE rules and regulations which they feel necessary in conducting the business. The rules thus established may be of two types: rules of selection of workers, and rules regulating the conduct of workers. The rule in the instant case falls into the latter category in that it governs the day-to-day conduct of the worker in relation to his job. Factors to be considered in determining whether violation of such rules constitute misconduct are: the nature of the rule, the potential serious consequences of the rule, the frequency of the violation, and the general adherance to the rule. The violation of a safety or a sanitary rule is obviously serious and a single violation may well warrant a discharge. On the other hand, a single violation of an administrative rule such as that concerning the reporting of absences and layoffs would generally not be considered misconduct. (Underscoring supplied)

It is obvious that the nature of the rule at hand is one to prevent employees from cleaning up on company time. It is doubtful that the consequences of a breach of this rule are serious, but to the contrary, a more serious consequence may result to an employee who complies therewith, who has a legitimate need to visit the bathroom between the hours of 5:00 P. M. and 5:30 P.M.

Any such rule of conduct promulgated by an employer, when the violation of the same is charged to be misconduct, must be viewed in the light of reasonableness. This Commission has previously held that the violation of a rule which is fair and reasonable and within the capacity of an employee to perform may be misconduct. However, the rule before this Commission is an unqualified prohibition against employees visiting the bathroom, regardless of the reason, between the hours of 5:00 P. M. and 5:28 P. M.

In conclusion, the Commission finds that because the rule was an unreasonable one, and because violation of this rule by the claimant would unlikely result in any serious harm or injury to either the claimant or the employer, and because the employer has failed to show any wilfull or wanton disregard of their interest on the part of the employee, that no misconduct existed on the part of the claimant in the separation from her employment. (Underscoring supplied)

DECISION

The decision of the Appeals Examiner is hereby affirmed.