COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

Misconduct
85—Connection with Wor

DECISION OF COMMISSION

In the Matter of

Eugene H. Malone, Claimant
[redacted]

Thalhimer's Brothers
Richmond, VA 23261

Date of Appeal
To Commission: June 30, 1981

Date of Review: January 4, 1982

Decision No.: 16605-C

Date of Decision: January 11, 1982

Place: Richmond, Virginia

—oOo—

This matter comes before the Commission on appeal by the employer from the decision of the Appeals Examiner (UI-81-6040), mailed June 17, 1981.

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

Thalhimer Brothers, Incorporated was the claimant's last employer where he had worked as a truck driver from March 2, 1976 until April 24, 1981. At the time of his separation the claimant was being paid $7.70 an hour.

During the course of his employment with Thalhimer's, the claimant has had a poor driving record consisting of numerous speeding convictions, some on the job and some committed off the job in his privately-owned vehicle. On two occasions in 1980, the claimant was convicted of speeding in a company truck, but the charge was reduced to driving with improper equipment which was a defective speedometer.

On October 1, 1980, the claimant was suspended from driving and assigned dock work. He was sent to Defensive Driving School and placed on probation for six months. His probation stated that any chargeable violations within a six month period would result in immediate termination.

On March 19, 1981, the claimant was convicted of speeding in his privately-owned vehicle in an incident when he was not on the job. On March 28, 1981, the claimant was cited by Richmond Police for driving 44 miles per hour in a 25 mile per hour zone in his privately-owned vehicle. The employer's Safe Driving Committee met on April 3, 1981, and recommended that the claimant be given one more chance prior to termination. This Committee is composed of other drivers and it's recommendation is not binding on management. The management of Thalhimer's reviewed the claimant's file and made the decision that based on his poor driving record and his two speeding tickets in March of 1981 within the six month probationary period he should be terminated for his propensity to speed. The witness for the employer testified before the Appeals Examiner that the claimant had been given a substandard performance rating due to "driving habits and handling of equipment." No specific details were given at the hearing as to the manner in which the claimant's driving was inferior or his handling of equipment was inadequate.

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 Commission has held in numerous decisions that misconduct is a willful or wanton disregard of the interests of one's employer, or of duties and obligations an individual owes to his employer. In Vernon Branch, Jr. v. Virginia Employment Commission and Virginia Chemical Company, 219 Va. 609, 249 S.E.2d 180 (1978), the Supreme Court stated:

> "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 and mitigation of such conduct, the employee is 'disqualified for benefits', and the burden of proving mitigating circumstances rests upon the employee."

Since the claimant in this case was put on probation and ultimately terminated for incidents which did not occur on the job, the issue presented is whether or not the claimant's misconduct was connected with his work, within the meaning of Section 60.1-58 (b) of the Code, so as to disqualify him from receipt of unemployment benefits. For the following reasons the Commission is of the opinion that the acts of misconduct were not sufficiently connected with his work to constitute disqualifying misconduct.

In Priscilla E. Brady v. U.S. Military District of Washington, D.C., Commission Decision No. UCFE-479 (August 1, 1979), the Commission held that the claimant's conviction of a felony totally unrelated to her work was misconduct connected with her employment since it resulted in the loss of her security clearance which was necessary for her to continue in her employment. The Commission stated:

"When an individual knowingly commits an act of misconduct that has a substantive detrimental effect on his employer and as a result loses his job, such an individual will not be able to rely on the benefits of unemployment insurance."

In the Brady case the Commission expressly overruled prior decisions which held that when the act of misconduct did not occur within the scope of the employment the claimant could not be disqualified from receiving unemployment benefits.

In the case presently under consideration, there has been no showing whatsoever that the speeding tickets the claimant received for driving in his privately-owned vehicle resulted in a substantive detrimental effect on his employer. The Commission notes that this case is distinguishable from the Brady case in that the claimant in this case had not lost his license to drive nor had his insurance been terminated.

In view of the foregoing, it is the opinion of the Commission that the claimant was discharged for acts of misconduct not connected with his work so as to disqualify him from unemployment benefits. In reaching this conclusion the Commission takes no issue with the employer's right to terminate an employee which they consider unqualified for his position; this would not, however, result in a disqualification from benefits under the statute.

DECISION

The decision of the Appeals Examiner is hereby affirmed.

Kenneth H. Taylor
Special Examiner