



DECISION OF COMMISSION

In the Matter of

Lonnie D. Cooper  
[REDACTED]

Newport News Shipbuilding  
Newport News, VA 23607

Date of Appeal  
To Commission: September 9, 1982

Date of Hearing: October 29, 1982.

Decision No.: 19538-C

Date of Decision: November 5, 1982

Place: Richmond, Virginia

This is a matter before the Commission on appeal by the employer from the decision of the Appeals Examiner (No. UI-82-8751), mailed September 1, 1982.

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 September 9, 1982, the employer initiated a timely appeal from a decision of the Appeals Examiner which held that the claimant was not subject to a disqualification from receiving unemployment insurance benefits based upon the circumstances surrounding his separation from work.

Immediately before filing his claim for benefits, the claimant last worked for Newport News Shipbuilding & Dry Dock Company, from October 31, 1977, through June 30, 1982. The claimant was a welder assigned to the X-18 Welding Department and at the time of his separation from work was paid \$8.55 an hour.

The claimant and a co-worker had been joking and teasing one another for some time. However, the joking developed to a point where it offended the other employee and he advised the claimant to cease and desist from doing it any more. The claimant

and this other employee exchanged words with one another subsequent to this time when the employee told the claimant to stop bothering him.

On the last day of work, the claimant and the other employee, along with their co-workers, were leaving the shipyard at the end of their shift. The other employee met the claimant at his car and words were exchanged between them. The co-worker grabbed the claimant around the neck and began choking him. The claimant removed a knife from his pocket and thrust it between himself and the other employee to scare him off. The other employee released the claimant and quickly backed up. In the course of retreating, the employee stumbled and fell. At that point, the claimant advanced towards him, knife in hand, and according to his testimony, said:

"...Hey, it's not worth it. Leave me alone. You know, I said, I, right now, I can either take your life or leave it."

At this point, the claimant backed away and the other employee pulled out a knife and attempted to chase the claimant. Their fellow employees, observing what had occurred, intervened and prevented any further altercation between the two employees. After investigating the matter, the claimant and the other employee were both discharged for violating Yard Regulation 11, which prohibits the threatening, intimidating or coercing of another employee by word or act.

#### 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, 248 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 wilful disregard of those interests or 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."

In the present case, the claimant was discharged by the employer as a result of his involvement in a fight with another employee. While the Commission has consistently recognized that fighting on the job constitutes a wilful disregard of the standards of behavior which any employer has the right to expect of his employees, this general rule is not without exception.

In the case of Edmond S. Bowman v. Budd Trailer Division, Decision Number 13232-C, April 17, 1980, the Commission held that the claimant was not subject to a disqualification from receiving unemployment benefits where the evidence clearly established that he was not the aggressor in the altercation and had only used reasonable force to protect himself from injury. Also, in the case of Richard L. Bryant v. United Parcel Service, Decision Number 18879-C, October 13, 1982, the Commission held that the claimant was not disqualified from receiving unemployment insurance benefits where he neither provoked nor encouraged the confrontation that occurred, even though he struck his assailant with a flashlight in an effort to repel the attack. In that particular case, the Commission cited the case of Jackson v. Commonwealth, 96 Va. 107, 30 S.E. 452 (1898), which provided the following discussion of the doctrine of self-defense which is still applicable today:

"A person assaulted while in the discharge of a lawful act, and reasonably apprehending that his assailant will do him bodily harm, has the right to repel the assault by all the force he deems necessary and is not compelled to retreat from his assailant but may, in turn, become the assailant inflicting bodily wounds until his person is out of danger." (Emphasis added.) (See also 2A Michie's Jurisprudence, "Assault and Battery", Section 7, p. 166.)

In the present case, the evidence in the record clearly establishes that the claimant was initially assaulted by the other employee and in response to that assault, the claimant drew a knife from his pocket and thrust it between himself and the other employee. At that point, the other employee released his hold upon the claimant and retreated and then stumbled and fell. At that point, the claimant had used reasonable force to repel his assailant and had nothing further occurred, the Commission could have adopted the analysis propounded by the Appeals Examiner in his decision. However, the claimant then, despite the fact that he was no longer in danger, advanced towards his former assailant, stood over him with knife in hand, and made the statement quoted in the findings of fact. The claimant's action at this point clearly falls outside the scope of the doctrine of self-defense and constituted threatening, intimidating and coercive behavior. In this regard, the claimant's actions clearly violated

the employer's yard regulation and therefore, the Commission is of the opinion that the claimant was discharged for reasons which do constitute work-related misconduct.

DECISION

The decision of the Appeals Examiner is hereby reversed. It is held that the claimant is disqualified from receiving unemployment insurance benefits effective July 4, 1982, for any week benefits have been claimed until he has performed services for an employer during 30 days, whether or not such days are consecutive, for having been discharged for misconduct connected with his work.

Upon this decision becoming final, the Deputy is instructed to review the claimant's claim for benefits and determine whether or not he has been paid any sum as benefits to which he is not entitled and is liable to repay the Commission as a result of this decision.

*M Coleman Walsh, Jr.*  
M. COLEMAN WALSH, JR.  
SPECIAL EXAMINER