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Press Release

Employment Commission Upholds Lifeline's CFO Termination

Dec, 01,2006

After being terminated for cause in April this year, the CFO lost her Hearing Examiner's Decision Appeal to the full Commission after careful consideration and review of the evidence. Five of her colleagues spoke against the CFO at the Radford VEC office.

The five represented different sections under the CFO and provided reports and statements in support of the firing. All of this was laid squarely at the feet of the CFO and her job description. During the hearing officer's decision, he went as far as to use the words 'evidence is of such magnitude' in his findings. The former CFO went as far as to argue with him over her responsibilities and role as CFO. The decision cites basic responsibilities as not being done, like paying vendors, providing timely banking reports, deactivating accounts receivables, and being responsive to the staff.

The Commission rebuffed her argument that she was "just a cashier" and that her errors were "making change," only laying more unflattering revelations in the Hearing Officer's Decision. This brings some closure to the CFO; now it is time to continue to assess the damage caused. Many questions remain unanswered about the motives and why someone would try to destroy a perfectly good business of 20 years.

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

DECISION OF APPEALS EXAMINER



Date Referred
or Appealed : 05/11/06

Date Deputy's
Determination: 05/09/06

Local Office : Wytheville

Claimant's SSN : ~~015-17-5513~~

Date of Hearing: 07/25/2006

Decision No. : UI-0606966

Decision Mailed: 08/07/2006

LIFELINE AMBULANCE SERVIC INC
310 BELL ROAD
CHRISTIANSBURG VA 24073

CLAIMANT:
KAREN L JONES
PO BOX 413
CHRISTIANSBURG VA 24068

LIABLE EMPLOYER:
LIFELINE AMBULANCE SERVIC INC
310 BELL ROAD
CHRISTIANSBURG VA 24073

IN THE MATTER OF: LIFELINE AMBULANCE SERVIC INC
VS
KAREN L JONES

NOTICE: THIS DECISION BECOMES FINAL 30 DAYS AFTER MAILING UNLESS AN APPEAL IS FILED. THE APPEAL MUST BE IN WRITING AND SHOULD STATE THE REASON FOR THE APPEAL. THE APPEAL SHALL BE FILED (1) IN PERSON AT THE LOCAL OFFICE WHERE THE CLAIM WAS FILED, OR AT ANY OTHER V.E.C. OFFICE, (2) BY MAIL TO THE V.E.C., COMMISSION APPEALS - ROOM 126, P.O. BOX 1358, RICHMOND, VA 23218-1358, OR (3) BY FACSIMILE TRANSMISSION TO COMMISSION APPEALS AT (804) 786-9034, NOT LATER THAN MIDNIGHT OF SEPTEMBER 06, 2006.

APPEARANCES: (Telephonic Hearing) Claimant; Employer Representative;
Witness for Employer; Attorney for Employer
Witness for Employer (4)

STATUTORY PROVISION(S) AND POINT(S) AT ISSUE: Code of Virginia, Section 60.2-618(2) - Was the claimant discharged for misconduct connected with work?

FINDINGS OF FACT: The employer has filed a timely appeal of a determination by Deputy date May 9, 2006. This determination found that the claimant was qualified for benefits effective April 16, 2006.

At the time the claimant filed for benefits, her most recent 30-day employer had been Lifeline Ambulance Service, Inc., where she had worked from July 1, 1987 until April 17, 2006.

In September 2005, the employer representative, along with other employees provided professional ambulance services to those individuals impacted by Hurricane Katrina. The employer representative was gone from the office for a period of time to facilitate this assistance. The employer representative became aware of the claimant's reduced attendance at work, the failure of the

business to meet financial obligations with its primary lender, failure of the business to fulfill its responsibilities for payment of such things as utilities, equipment repair, suppliers, third party interns providers for employees, and failure of the business to complete things such as corporate filings. The receivables of the business had been increasing in age. The business was experiencing cash flow difficulties as a result of the increased aging of accounts receivable.

The claimant held the title of chief financial officer but considered herself more of a chief operating officer.

There had been no apparent business concerns prior to September 2005. In April 2005, the claimant had deactivated a computer account identified as prewarrant receivables.

In a letter dated October 27, 2005, the employer's primary financial source notified the employer that they had not received scheduled payments on debt beginning September 1, 2005, and extending through October 10, 2005. In this letter the lender requested that the employer provide historic quarterly financial statements from 2005 as well as payments past due and for the employer to provide a business plan and aging of accounts receivable. The claimant was responsible for generating quarterly financial statements for presentation to the employer representative as well as the lender. The requested financial statements were provided in January 2006. The lender was not provided the requested business plan. The employer's failure to meet scheduled payments to the lender resulted in a cessation of the lenders line of credit for operations. This resulted in the employer issuing checks with insufficient funds.

OPINION: Section 60.2-618(2) of the Code of Virginia provides a disqualification if it is found a claimant was discharged for misconduct connected with work.

In the case of Branch v. Virginia Employment Commission, 219 Va. 609, 249 S.E.2d 180 (1978), the Supreme Court of Virginia defined misconduct as follows:

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.

In the case of Collins v. City of Norfolk Treasurer's Office, Commission Decision 22536-C (March 8, 1984), aff'd by Circuit Court for the City of Norfolk, Chancery No. G-84-428 (August 17, 1984), it was held:

Since it involves the indefinite forfeiture of

unemployment insurance benefits by the claimant, the disqualification for misconduct is a serious matter which warrants careful consideration. In such cases, the burden of proof is upon the employer to produce sufficient evidence which would establish that the acts or omissions of which they complain did occur and were of such a nature as would constitute misconduct in connection with work.

In this case, the claimant argues that she considered herself to be the chief operating officer rather than the chief financial officer. The Examiner is of the opinion that regardless of the title of the claimant, the tasks which she was assigned were inherent in the position of either chief operating officer or chief financial officer. They necessitated that she maintain an awareness of and took care of financial problems of the business. This would include monitoring of collections to facilitate the cash flow of the business, while maintaining the business' fulfillment of obligations to its employees, lender, and third parties. It is also the opinion of the Examiner that, contrary to the claimant's arguments of lack of responsibilities or knowledge, she was responsible for initiating the fulfillment of requests for financial statements and a business plan by her employer's lending institution. The failure of the claimant to exercise these responsibilities was impacted by her lack of attendance to her duties. While the claimant argues that her hours were flexible due to the private marital relationship with the employer representative, the Examiner is not convinced that this outside relationship negates the claimant's responsibilities to her position. If the claimant was unable to fulfill her responsibilities to the business she had an obligation to inform the employer representative of her inability to meet her obligations so decisions could be made to the benefit of the business.

The evidence presented by the employer is of such magnitude and nature as to lead the Examiner to the conclusion that the claimant's lack of attention to her responsibilities as CFO/COO were not in the best interest of the business. They were a deliberate and willful disregard of her interests and duties to her employer, and therefore, by definition fulfill the meaning of misconduct as established in the Branch case cited above.

DECISION: The determination of the Deputy is hereby reversed.

The claimant is disqualified for benefits, effective April 16, 2006, because she was discharged for misconduct connected with work. This disqualification shall remain in effect until the claimant has performed work for an employer for at least 30 days, or for 240 hours (if applicable) and subsequently becomes totally or partially separated from such employment.

The Deputy is instructed to calculate what benefits may have been paid to the claimant after the effective date of disqualification or between the dates of ineligibility, which will become an overpayment which she will be liable to repay this Commission.

F. R. Young
Appeals Examiner

FRY/cdc



COMMONWEALTH of VIRGINIA

Virginia Employment Commission

Dolores A. Esser
Commissioner

703 East Main Street

Post Office Box 1358
Richmond, Virginia 23218-1358

November 27, 2006

CLAIMANT

Karen L. Jones
P O Box 413
Christiansburg VA 24068

EMPLOYER

Lifeline Ambulance Service, Inc.
310 Bell Road
Christiansburg VA 24073

Re: Karen L. Jones
S. S. No. **225-17-5919**
v.
Lifeline Ambulance Service, Inc.

Commission Decision No. UI-079317-C

Enclosed is a copy of the Commission Decision in this case. In the event you are the adversely affected party and desire to appeal further, please carefully read the **NOTICE** on the reverse of this letter which explains the procedure for appealing to Court.

Sincerely,

Norma C. Turner
Clerk of the Commission
Administrative Law Division

EGE/ccb

Enclosure

c: VEC – Radford Field Office

NOTICE TO CLAIMANT AND EMPLOYER

Section 60.2-622 of the Code of Virginia (1950), as amended, provides in pertinent part that any decision of the Commission shall become final ten days after the date the decision is mailed. Any further appeal must be made direct to the CIRCUIT COURT of the city or county where the claimant last worked in Virginia. The final date for filing an appeal to court is shown on the first page of your decision. The appeal period is set by statute. **THERE ARE NO STATUTORY PROVISIONS ALLOWING FOR AN EXTENSION OF THE MANDATORY FILING PERIOD FOR APPEAL TO COURT.**

In the event you wish to appeal this decision, you may do so by filing a "Petition for Judicial Review" pursuant to Section 60.2-625 of the Code of Virginia. Neither the VEC nor the Court can help you prepare this document. You may file your Petition anytime after receiving this decision, but it must be received and filed in the appropriate circuit court clerk's office within thirty (30) days from the date the decision is mailed.

In your Petition, you must name the Virginia Employment Commission and either the employer(s) or claimant, whichever is applicable, as defendants. Also, you must state the reasons why you believe the Commission decision is incorrect. Although not required, it would be helpful to include the claimant's Social Security number on the Petition.

The Clerk of the Court will charge a fee to file the petition, as well as a fee to have the petition formally served on the Commission by the Sheriff. These fees must be paid at the time you file your petition. As fees vary in each jurisdiction, you are advised to ask the appropriate circuit court what their fees are. If you cannot pay the fee, you may ask the court to waive the fee. Each jurisdiction has different procedures for waiver of fees, so you should ask the court how to file your petition without paying court costs.

The Commission has designated Norma C. Turner, Clerk of the Commission, 703 East Main Street, Richmond, Virginia, as the person upon whom petitions for judicial review shall be served, and she must be provided with as many copies of the petition as there are defendants in the case.

After the Commission has been properly served with a petition that meets the requirements of Section 60.2-625 of the Code of Virginia, a Record of Proceedings will be prepared and filed with the court. Copies of the record will be mailed to all parties captioned on the Commission's decision or their attorneys.

Although individual claimants and sole proprietor employers may represent themselves, legal counsel is required for corporations and partnerships. While individual claimants and sole proprietors are not required to have an attorney, **ALL PARTIES ARE ENCOURAGED TO SEEK LEGAL ADVICE BEFORE APPEALING TO COURT.** If you have any questions concerning this notice, you should immediately contact an attorney. The Commission cannot give you legal advice.

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Karen L. Jones

S. S. No. 225-17-5919

Lifeline Ambulance Service, Inc.
Christiansburg, Virginia

Date of Appeal

to Commission: August 30, 2006

Date of Review: November 21, 2006

Place: RICHMOND, VIRGINIA

Decision No.: 79317-C

Date of Mailing: November 27, 2006

Final Date to File Appeal with
Circuit Court: December 27, 2006

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This case is before the Commission on appeal by the claimant from Appeals Examiner's Decision (UI-0606966), mailed August 7, 2006.

ISSUES

Should the Commission direct the taking of additional testimony and evidence as provided in 16 VAC 5-80-30(B) of the Virginia Administrative Code?

Was the claimant discharged for misconduct connected with work as provided in Section 60.2-618(2) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The claimant filed a timely appeal from the Appeals Examiner's decision, reversing an earlier Deputy's determination, and finding the claimant disqualified for unemployment insurance benefits, effective April 16, 2006. That disqualification was based on the Appeals Examiner's conclusion that the claimant was discharged for misconduct connected with work. Along with her letter of appeal, the claimant included a number of documents. With regard to documents that are already in the record of the hearing before the

Appeals Examiner, it is unnecessary to enter them into the record again. With regard to documents that are not in the record of hearing before the Appeals Examiner, the Commission will treat that as a request that the Commission direct the taking of additional testimony and evidence.

The findings of fact made by the Appeals Examiner have been reviewed and are supported by the evidence in the record. Accordingly, the Commission hereby adopts the findings of fact made by the Appeals Examiner.

OPINION

16 VAC 5-80-30(B) provides, in part, that:

Except as otherwise provided by this chapter, all appeals to the Commission shall be decided on the basis of a review of the evidence in the record. The Commission, in its discretion, may direct the taking of additional evidence after giving written notice of such hearing to the parties, provided:

1. It is affirmatively shown that the additional evidence is material and not merely cumulative, corroborative or collateral; could not have been presented at the prior hearing through the exercise of due diligence; and it is likely to produce a different result at a new hearing; or
2. The record of proceedings before the appeals examiner is insufficient to enable the Commission to make proper, accurate, or complete findings of fact and conclusions of law.

In this case, the evidence which the claimant seeks to have admitted does not meet the criteria set forth above. In particular, this evidence could have been presented at the prior hearing through the exercise of due diligence. Therefore, the claimant's request that the Commission direct the taking of additional testimony and evidence must be denied. This decision is based on the existing record.

The opinion of the Appeals Examiner has been reviewed. The Commission is of the opinion that the Appeals Examiner correctly applied the law to the facts in this case. Accordingly, the

Commission hereby adopts the opinion of the Appeals Examiner with the addition of the addition of the following paragraphs.

In her letter of appeal, the claimant argued that her case should be governed by the case of Johnston v. Kennedy's Piggly Wiggly Stores, Inc., Commission Decision 030052-C, (June 28, 1988). The Commission disagrees because the two cases are factually different.

In the Johnston case, the claimant worked for her husband as a cashier in his store. In July, 1987, the claimant's husband left her and she was experiencing a great deal of emotional stress. In August, 1987, the claimant began making mistakes with regard to assisting another cashier in redeeming manufacturers coupons, a cash shortage in the amount of \$60, and the improper of handling and cashing of WIC vouchers which were one day out of date on the day that the claimant accepted them. The claimant also had a cash shortage of \$29.85 and \$19.90 on two different days prior to her discharge. The Commission found that the claimant's discharge was due to misconduct connected with work because the claimant was aware of the employer's rule and she had repeated violations of the rules which the Commission concluded represented negligence of such a degree in recurrence as to rise to the level of misconduct connected with work. However, the Commission found that the claimant had established sufficient mitigation so as to avoid disqualification because of the obvious stress she placed under after her husband left her with two children to support.

In the instant case, the claimant was not simply making mistakes in making improper change causing a \$20 or \$30 cash shortage, or taking coupons that were out of date, the claimant in this case was admittedly in charge of the significant portion of the financial matters of the company. Further, she was not making mistakes in performing her job, she was not performing functions of her job. She was not making payments to customers, employees, and lenders. The Commission is of the opinion that the facts of this case are significantly different from the facts in the Johnston case above. While the claimant was certainly under emotional stress due to the marital breakup, this does not mitigate her failure to perform job functions that she was aware were her responsibility.

Based on the above, the Commission agrees with the Appeals Examiner that the claimant was discharged for misconduct connected with work for which she has not proven mitigation. Therefore, she is subject to a disqualification under the Code of Virginia.

DECISION

The claimant's request that the Commission direct the taking of additional testimony and evidence is hereby denied.

The decision of the Appeals Examiner is hereby affirmed.

The claimant is disqualified for benefits, effective April 16, 2006, because she was discharged for misconduct connected with work.

This disqualification shall remain in effect for any week or weeks benefits are claimed until she has performed services for an employer for 30 days, or for 240 hours and subsequently becomes totally or partially separated from such employment.

The Deputy is instructed to calculate what benefits may have been paid to the claimant after the effective date of disqualification which will become an overpayment which she will be liable to repay this Commission.



Erin G. Euen
Special Examiner

NOTICE TO CLAIMANT

IF THE DECISION STATES THAT YOU ARE DISQUALIFIED, YOU WILL BE REQUIRED TO REPAY ALL BENEFITS YOU MAY HAVE RECEIVED AFTER THE EFFECTIVE DATE OF THE DISQUALIFICATION. IF THE DECISION STATES THAT YOU ARE INELIGIBLE FOR A CERTAIN PERIOD, YOU WILL BE REQUIRED TO REPAY THOSE BENEFITS YOU HAVE RECEIVED WHICH WERE PAID FOR THE WEEK OR WEEKS YOU HAVE BEEN HELD INELIGIBLE. IF YOU THINK THE DISQUALIFICATION OR PERIOD OF INELIGIBILITY IS CONTRARY TO LAW, YOU SHOULD APPEAL THIS DECISION TO THE CIRCUIT COURT.