

GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES
EMPLOYMENT SECURITY AGENCY
VIRGIN ISLANDS INSURANCE SERVICE
HEARINGS AND APPEALS UNIT

RECEIVED
JUL 16 2015

[REDACTED]
VIRGIN ISLANDS APPEAL CASE NO. [REDACTED]

IN THE MATTER OF:

SS# [REDACTED]

ANGEL L. FELICIANO
1650 Dronningens Gade
St. Thomas, VI 00802

ISSUE: MISCONDUCT

TITLE 24 V.I.C. § 304 (b)(3)

v.

Date Decision is Mailed: 07/13/2015

Date Decision is Final: 08/12/2015

LSJ EMPLOYEES, LLC

6100 Red Hook Quarters, B-3
St. Thomas, VI 00802
Attn: Anne Rodriquez

APPEAL RIGHTS:

This decision will become final unless a petition for Judicial Review is filed in the Superior Court of the Virgin Islands thirty (30) days after this decision has been mailed or otherwise delivered to each party.

FINDINGS OF FACT:

In an initial **Non-Monetary Determination** dated Wednesday, May 20, 2015, an Adjudicator found, under the Virgin Islands Employment Security Law, that the Claimant was not entitled to receive unemployment insurance benefits. The Adjudicator found:

{On your intake application form, you selected "lack of work" as the separation reason from your job. It was later noted that you were terminated for a number of factors, as stated by your employer.

Some of these factors include your disregard of explicit directions from your superior, and your repeated absences despite several warnings and reminders.

Misconduct has been established in this case. Your employer had a right to expect a certain standard of conduct by you that was undisplayed (sic).

Benefits are denied.}

The Employee Filed a Timely Appeal from this Determination on June 03, 2015. Thereafter, the interested parties received notice that this matter would come on for hearing on July 06, 2015, at 10:00 a.m., at the Virgin Islands Department of Labor, 2353 Kronprindsens Gade, Charlotte Amalie, St. Thomas. On July 02, 2015, this matter was rescheduled to Friday, July 10, 2015, at 10:00 a.m. On July 10, 2015, this matter came on for hearing. The Claimant appeared and represented himself. The Employer appeared through its Caretaker, Anne Rodriquez, and was represented by the law firm of Kellerhals

IMPORTANT: if this decision reverses a previous award of benefits, you may be liable to repay those benefits.

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Ferguson Kroblin PLLC, through Christopher Allen Kroblin, Esq. The parties were duly sworn, and testified under oath. Administrative Law Judge, James W. Kitson, presided.

The Agency Record establishes the following:

1. The employer owns the island of Little Saint James, and manages a large villa built there. On or about November 13, 2014, the Employer hired the Claimant as a mechanic. The Claimant's duties consisted, primarily, of repairing heavy machinery. The Claimant's work schedule was: 7:00 a.m. to 4:00 p.m., Monday to Friday, weekly.
2. It is a policy of the Employer's that employees must report instances of lateness or absence from work to their immediate supervisor or manager, prior to the commencement of the work period in question.
3. On April 10, 2015, the Claimant failed to report to work. The Claimant told the captain of the Employer's boat, which transports employees between Little Saint James and St. Thomas, he would be absent, but did not notify his supervisor, Anne Rodriguez. Rodriguez issued a written warning to the Claimant for the unexcused absence from work. (*See Employer's Exhibit No. 1*) Rodriguez also reminded the Claimant, via text message, to notify her the next time he was going to be either absent due to illness or late for work. (*See Employer's Exhibit No. 2*)
4. On Tuesday, April 14, 2015, the Claimant failed to report to work. The Claimant did not notify Rodriguez that he would be absent. Rodriguez issued a second written warning to the Claimant for his unexcused absence from work. (*See Employer's Exhibit No. 3*) The following day, Wednesday, April 15, 2015, the Claimant again failed to report to work, or to notify Rodriguez that he would be absent. Rodriguez issued a third written warning to the Claimant for his failure to report to work, or to report his absence from work that day. (*See Employer's Exhibit No. 4*)
5. On Tuesday, April 28, 2015 and Wednesday, April 29, 2015, the Claimant failed to report to work, or to notify Rodriguez that he would be absent from work. (*See Employer's Exhibit No. 6*) At the time, the Claimant had been attempting to repair a hydro-seeder for over two weeks.
6. On Monday, May 04, 2015, Rodriguez informed the Claimant that if he could not repair the hydro-seeder, he should not return to work. The Claimant did not finish repairing the hydro-seeder that day. The following day, the Claimant did not report to work. Instead, the Claimant visited the Employer's office in Red Hook, St. Thomas, inquiring about his paycheck.
7. The following day, Rodriguez terminated the Claimant for excessive absenteeism and insubordination, among other things. At the time of separation, the Claimant had been earning \$22.50 per hour.
8. On May 11, 2015, the Claimant filed a claim for unemployment insurance benefits.

OPINION:

The issue to be resolved is: whether the Employer discharged the Claimant for misconduct.

Title 24 V.I.C. §304 (b)(3) provides, in pertinent part, that an insured worker shall not be disqualified for benefits for any week of his unemployment unless with respect to such week the Commissioner of Labor finds that he was discharged for misconduct connected with his most recent work.

Misconduct, pursuant to 24 V.I.C. §304(b)(3), has been interpreted to mean an act of wanton or willful disregard of an employer's interests, deliberate violation of the employer's rules, a disregard for standards of behavior which an employer has a right to expect from an employee, or negligence indicating an intentional disregard of the employer's interest, or of the employee's duties and obligations to the employer. *Jackman v. Heyliger*, 20 V.I. 536 (D.V.I. 1984).

At the hearing on July 14, 2014, the Employer's Caretaker, Anne Rodriquez, testified that she terminated the Claimant on May 05, 2015, for excessive tardiness and insubordination, among other things, as a result of the Claimant's failure or refusal to follow the company's reporting procedure, notwithstanding several warnings regarding the same, which required him to notify her, his supervisor, of his intent to be absent from work.

In support of his appeal, the Claimant testified, among other things, that on April 28, 2015, Rodriquez' assistant, "Daphnie" suspended him, but did not tell him when he was to return to work. The Claimant stated, additionally, that on May 5, 2015, Daphnie called him and told him to come to the office, and when he arrived at the office in Red Hook Daphnie informed him that he was terminated.

In rebuttal, Rodriquez testified that neither she nor Daphnie suspended the Claimant, stating, additionally, that Daphnie did even not have the authority to suspend the Claimant.

The record establishes, by a preponderance of the evidence, that the Employer terminated the Claimant for excessive absenteeism and failure to follow absence-reporting protocol, after having warned him regarding the same on several occasions. The undersigned finds that the Claimant's repeated failure to notify his supervisor of his intended absences constituted deliberate violations of the standards of behavior the Employer had a right to expect from the Claimant, and, as such, constitutes misconduct, as interpreted under *Jackman, supra*. The undersigned finds, further, that the Employer discharged the Claimant as a result of such misconduct.

DECISION:

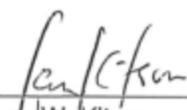
In light of the foregoing, it is hereby

ORDERED, that the Adjudicator's determination that the Claimant was discharged for misconduct is **AFFIRMED**.

THE CLAIMANT IS INELIGIBLE FOR UNEMPLOYMENT INSURANCE BENEFITS.

DATE: _____

7/13/15



James W. Kitson
Administrative Law Judge

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Note: Requests for Reconsideration Not Applicable

Title 24 V.I.C. §305(g)(1) states:

"The Commissioner may reconsider any **determination** upon application by any party entitled to notice thereof filed within the period authorized by subsection (f) of this section or on his own motion within 10 days after the date of the **determination**."

This language permits reconsideration of determinations, not decisions. Determinations are rendered by the Division of Unemployment Insurance in the form of a document that is captioned, "Notice of Nonmonetary Determination or Redetermination."

¶ Procedures for Appeal to Superior Court: Please review rights found on the first page. ¶

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