

VIRGINIA EMPLOYMENT COMMISSION

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ORDER

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IN THE MATTER OF:

Timothy L. Wade
[REDACTED]

Coca Cola Bottling Co.
Roanoke, Virginia

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§ Date of Appeal: December 28, 1989
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§ Order No.: 33050-C
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§ Date of Mailing: January 26, 1990
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§ Place: Richmond, Virginia
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On December 28, 1989, the employer filed a timely appeal from the Decision of Appeals Examiner (UI-8911267), which was mailed on December 15, 1989. The Appeals Examiner found that the claimant was qualified to receive benefits, effective October 15, 1989, inasmuch as the employer had not proven that his discharge was for reasons that would constitute misconduct connected with his work. By letter dated January 11, 1990, the employer requested that its appeal be withdrawn because it no longer desired to pursue the case.

Regulation VR 300-01-4.3C of the Rules and Regulations Affecting Unemployment Compensation provides that withdrawals of appeals before the Commission shall be handled in the same manner as withdrawals of lower authority appeals, except that requests shall be made through the Office of Commission Appeals or through the Special Examiner assigned to hear the case. Regulation VR 300-01-4.2E of the Rules and Regulations Affecting Unemployment Compensation provides that a withdrawal should be granted only if (1) the appellant understands the effect that withdrawal will have upon benefit entitlement, potential benefit charges, or potential overpayments; (2) the request is not the result of any coercion, collusion, or illegal waiver of benefits pursuant to Section 60.2-107 of the Code of Virginia; and (3) the appealed determination is not clearly erroneous based upon the existing record.


Since the request for a withdrawal was communicated to the Commission by the employer's representative, the tax accounting firm of R. E. Harrington, Inc., the Commission is satisfied that the employer understands the effect that the withdrawal will have upon potential benefit charges. Furthermore, there is no evidence before the Commission that the withdrawal is being requested as a result of any coercion, collusion, or illegal waiver of benefits.

The Commission has carefully reviewed the Appeals Examiner's decision that was issued in this case. The test under the regulation is not whether reasonable people might differ in the application of the law to the facts found, but whether the decision is clearly erroneous. It is not enough that the conclusion reached by the Appeals Examiner may be subject to doubt, or that another Appeals Examiner may have reached a different conclusion sitting as the fact finder. To be clearly erroneous, the decision must be contrary to the clear weight of the evidence or induced by an erroneous view of the law. (Underscoring supplied)

In reviewing the Appeals Examiner's decision in light of these principles, the Commission cannot conclude that it is clearly erroneous. Unlike the Appeals Examiner, the Commission would not have afforded any probative value to the results of the drug test that the claimant had performed 11 days after the drug test which resulted in his dismissal. Nevertheless, even when that factor is discounted, the Commission cannot conclude that the Appeals Examiner's decision is clearly erroneous.

Therefore, the employer's request that its appeal be withdrawn is hereby granted. This case is hereby dismissed with prejudice and stricken from the Commission's docket.

Entered this 26th day of January, 1990.


M. Coleman Walsh, Jr.
Special Examiner