

DIVISION OF EMPLOYMENT SECURITY  
NC DEPARTMENT OF COMMERCE

**PRECEDENT DECISION NO. 5**

*IN RE DALEY*

(Adopted September 14, 1983)

FINDINGS OF FACT:

1. The claimant last worked for the employer on December 13, 1982. From January 9, 1983 until January 15, 1983, the claimant has registered for work and continued to report to an employment office of the Commission and has made a claim for benefits in accordance with G.S. 96-15(a) as of the time the Adjudicator issued a determination. The claimant appealed the Adjudicator's determination, and an evidentiary hearing was held by an Appeals Referee, under Docket No. IX-UI-84236, who held that the claimant was disqualified for unemployment benefits. The claimant filed a timely appeal to the Commission.
2. The claimant was discharged from his job as a registered nurse for two (2) separate reasons. The first reason was for alleged attendance at work on December 13, 1982 while under the influence of an intoxicating substance. The second reason was claimant's failure to truthfully respond to the employer's inquiry concerning his hospitalization which caused him to be absent from work and unavailable to perform those duties for which he had been employed.
3. The employer witnesses had no firsthand, direct knowledge concerning claimant's being at work on December 13, 1982 while under the influence of an intoxicating substance. Nor has claimant ever admitted to the employer that he was in such condition while at work on December 13, 1982, or any other day. Claimant denied this allegation of wrongdoing leveled by the employer witnesses.
4. On December 13, 1982, claimant left his job prior to the end of his shift without first requesting permission from his immediate supervisor. The supervisor was able to contact the claimant on the night of December 13, 1982

to set up an appointment for the morning of December 14, 1982, to discuss the reason why the claimant had left the job without first obtaining the supervisor's permission. Claimant, however, was hospitalized on December 14, 1982, due to an adverse reaction to his use of cocaine on December 8, 9 and 10, 1982. The supervisor was merely informed on the 14th by claimant's wife that claimant had been hospitalized.

5. After his release from the hospital, claimant was scheduled for a conference with his supervisor on December 23, 1982. At the December 23, 1982 conference, claimant told his supervisor that he had been hospitalized due to anxiety and having pushed himself too hard. When requested by the supervisor to sign a release authorizing Forsyth Hospital to forward his medical records to the employer for verification that the reason for his hospitalization was as stated by him, claimant admitted that his hospitalization had resulted from his adverse reaction to 'some bad cocaine.' In response to questioning by the Appeals Referee, claimant admitted that he had initially lied to the supervisor as to the cause of his hospitalization, and he had done so because "I was afraid that if anything came up about the cocaine that I'll get fired, and I was just trying to keep my job."
6. In his appeal to the Commission, claimant petitioned the Commission to admit, as additional evidence to the record, excerpts from what was purportedly the High Point Memorial Hospital, Incorporated Employee Handbook. These excerpts were in response to the employer's allegation that claimant's lack of truthfulness was a violation of the employer's Code of Ethics requiring truthfulness in all aspects of employment. The written employer's Code of Ethics was not offered into evidence at the hearing before the Appeals Referee.

#### MEMORANDUM OF LAW:

N.C.G.S. 96-14(2) provides that an individual shall be disqualified for benefits for the duration of the unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because the individual was discharged for misconduct connected with the work. The term "misconduct connected with work" is not a defined term in the Employment Security Law of North Carolina; however, in the case of *In re Collingsworth*, 17 N.C. App. 340, 194 S.E.2d 210

(1973), the North Carolina Court of appeals quoted with approval the following definition:

\*\*\*[T]he term 'misconduct' (in connection with one's work) is limited to conduct evincing such wilful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employers interests or of the employee's duties and obligations to his employer.\*\*\*

Yelverton v. Kemp Industries, 51 N.C. App. 215, 275 S.E.2d 553 (1981); Intercraft Industries Corporation v. Morrison, 305 N.C. 373, 289 S.E.2d 357 (1982).

It is concluded from the facts at hand that the employer has failed to present sufficient evidence to carry its burden of proof of showing that the claimant while in attendance at work on December 13, 1982, was under the influence of an intoxicating substance. The employer, therefore, has not shown misconduct connected with work on the part of the claimant in regard to this allegation.

As to claimant's untruthfulness in response to his supervisor's initial inquiry as to the reason for his hospitalization, the employer has shown misconduct connected with work. Fabrication by an employee of an excuse for absence constitutes wilful misconduct. Dunlap v. Unemployment Compensation Board of Review, 366 A.2d 618 (1976). Indisputably, an employee's deliberate lie or attempt to mislead his employer constitutes wilful misconduct. Walkowsky v. Board of Review, 432 A.2d 365 (1981); Smith v. Board of Review, 411 A.2d 712 (1980); Glaser v. Board of Review, 404 A.2d 768 (1979). The employer has a right to expect an employee to adhere to a standard of behavior which encompasses truthfulness in the employee's responses to inquiries made by the employer. Furthermore, an employee has a duty and/or obligation to the employer to deal with the employer in a truthful and trustworthy manner. This standard of behavior or duty arises by virtue of the existence of the employer/employee relationship. It is not necessary for the employer to have a written code of ethics wherein this standard of behavior or duty is specifically set out. A breach of the duty or standard of behavior requiring truthfulness in dealings with the employer constitutes misconduct connected with work when good cause for such breach does not exist.

The claimant in the present case breached the standard of behavior or duty of truthfulness in his dealings with his employer. The only reason advanced by the claimant to justify his lack of truthfulness was to avoid losing his job. It must be concluded that although such reason may have been a compelling one for the claimant, it does not amount to good cause or justification for his act of untruthfulness.

The claimant was discharged from his job for misconduct connected with his work and, therefore, must be disqualified for unemployment insurance benefits pursuant to G.S. 96-14(2).

It is further concluded that since this decision does not rest upon the employer's Code of Ethics, the admission into evidence of the purported excerpts from the Employer's Employee Handbook as it relates to the Code of Ethics would serve no useful purpose. Claimant's petition to the Commission to admit additional evidence, therefore, is denied.

DECISION:

The claimant is disqualified for unemployment benefits beginning January 9, 1983, and continuing until the claimant qualifies for benefits in accordance with the Employment Security Law.