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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

SUPREME COURT OF APPEALS OF VIRGINIA

AT RICHMOND

RECORD NO. 770306

VERNON BRANCH, JR.,
Appellant

vs.

VIRGINIA EMPLOYMENT COMMISSION

and

VIRGINIA CHEMICAL COMPANY,
Appellees

APPENDIX TO BRIEF

Edward J. Pontifex
Tidewater Legal Aid Society
Counsel for Appellant
700 North Street
Portsmouth, Virginia

TABLE OF CONTENTS

	Page
CLAIM FOR BENEFITS DATED JANUARY 7, 1976	1
RECORD OF FACTS OBTAINED BY DEPUTY DATED JANUARY 22, 1976	2
EMPLOYER'S REPORT OF SEPARATION and WAGE INFORMATION DATED JANUARY 22, 1976	3
NOTICE OF DEPUTY'S DETERMINATION DATED JANUARY 27, 1976	4
NOTICE OF INTRASTATE APPEAL DATED JANUARY 19, 1976	5
TRANSCRIPT OF TESTIMONY BEFORE APPEALS EXAMINER	6
DECISION OF APPEALS EXAMINER DATED FEBRUARY 24, 1976	20
NOTICE OF INTRASTATE APPEAL DATED MARCH 8, 1976	22
DECISION OF COMMISSION	23
FINAL ORDER OF CIRCUIT COURT OF PORTSMOUTH, VA. DATED NOVEMBER 5, 1976	25
NOTICE OF APPEAL AND ASSIGNMENT OF ERROR	27

VIRGINIA EMPLOYMENT COMMISSION

CLAIM FOR BENEFITS

PROPRIATE BLOCKS

FE	UCX	CW	MDTA	DUA	EB	NEW	ADD.	REOP.	TOT. SEP.	TOT. ATT.	PART.	M	F		B.Y.E.
						X			X			X			- -

10. SOCIAL SECURITY NUMBER: 231 72 3258

VERNON L. PRAYER

EFFECTIVE DATE OF CLAIM 01-04-76 LOCAL OFFICE NO 0014

OR ROUTE) 13 LEXINGTON DR. AREA 740 | 11. YEAR OF BIRTH 1952 | CMG. NON-N

IBER

TE, CODE PORTSMOUTH, VA. 23703 | IND. CODE 28 | WK. WAGE 175.20 | OCC. CODE 539.782-

DAY NG UNIT VIRGINIA CHEMICALS, INC.

OR ROUTE) 3340 WEST NORFOLK ROAD AREA 740

IBER

ATE, CODE PORTSMOUTH, VA. 23703

ARTED WORK OVE EMPLOYER) 8-15-72 (MO. DAY YR.) 8. LAST DAY WORKED (FOR ABOVE EMPLOYER) 01-06-76 (MO. DAY YR.)

FOR SEPARATION BOVE EMPLOYER) DISCHARGED - GARNISHEE

12. HAVE YOU HAD ANY ACTIVE MILITARY SERVICE DURING THE LAST 18 MONTHS? YES ☐ NO ☒

13. HAVE YOU WORKED FOR THE FEDERAL GOVERNMENT AS A CIVILIAN DURING THE LAST 18 MONTHS? YES ☐ NO ☒

14. HAVE YOU WORKED IN ANY OTHER STATE DURING THE LAST 24 MONTHS? YES ☐ NO ☒

15. HAVE YOU APPLIED FOR OR ARE YOU RECEIVING ANY KIND OF PENSION? YES ☐ NO ☒

JAN 1976 TRANSCRIPT

Y FILE NOTICE OF MY UNEMPLOYMENT AND REQUEST A DETERMINATION OF MY BENEFIT RIGHTS UNDER THE VIRGINIA UNEMPLOYMENT COMPEN- ACT. I CERTIFY THAT THE INFORMATION GIVEN ON THIS FORM IS CORRECT AND I UNDERSTAND THAT PENALTIES ARE PROVIDED FOR MAKING STATEMENTS OR FAILING TO DISCLOSE MATERIAL FACTS IN ORDER TO OBTAIN BENEFITS.

Vernon L. Prayer — SIGNATURE OF CLAIMANT

J. V. Curnutte — SIGNATURE OF CLAIMS TAKER AND WITNESS

01/07/76 — DATE CLAIM TAKEN

C-B-10 Rev. 8-1-73 (200M 11-29-73)

VIRGINIA EMPLOYMENT COMMISSION

CFE UCX

RECORD OF FACTS OBTAINED BY DEPUTY

mant's Vernon L. Prayer S. S. No. 231-72-3288 Date: From 1/4 Thru 1/17

CLAIMANT'S STATEMENT CONCERNING DISCHARGE

This form is IMPORTANT TO YOU. The requested information will enable us to make a determination of your claim for benefits more promptly. Please complete items 1 thru 5 and submit it to the local office in person or mail as directed. Enter your signature and the date you signed this form in the space provided at the bottom.

The record of your claim indicates that you were discharged from your job with Va. Chemicals Inc. Portsmouth, Va.
To decide your case fairly, detailed information is needed and it is to your advantage to give all the information you can.

1. WHEN WERE YOU FIRST TOLD YOU WERE BEING DISCHARGED FROM YOUR JOB? Date: 1/6/76 (mo.) (day) (yr.)

2. WHO DISCHARGED YOU? (Enter his name and title) Harry Potter (name)
Personnel Mgr. (title)

3. WHAT REASON DID HE GIVE FOR LETTING YOU GO? Excessive garnishments on my wages

4. HAD YOU BEEN WARNED BEFORE ABOUT YOUR CONDUCT? YES ( ) NO (X) IF YES,

a. WHEN? (Enter Date(s))

5. FURTHER EXPLANATION OF ANY ITEM ABOVE: The reason I had garnishments on my wages is because I had told my creditors what I could pay them a week on my bills with them, plus leave myself a certain amt to be able to take care of my family. I could only pay each of them a certain amt. per week and some of them could not accept the amt that I could pay weekly, and wanted more (which I couldn't afford to do) so then they garnished my wages. I only had 3 garnishments on my wages from 1973 thru 1975. I worked steadily at [illegible] from 1973 thru 1976 and tried my best to pay

I have made this statement for the purpose of obtaining unemployment insurance, knowing that the Law provides penalties for false statements or for withholding facts.

Date Jan 22, 1976 Your Signature Vernon L. Prayer

50.2 (4-73)

CEE	UCX	CW	MDTA	DUA	EB	NLW	ADD.	REOP	101. SEP.	101. ATT.	PART.	F	B.Y.E.
						X			X				– –

WAGE INFORMATION REQUIRED TO VEC

10 SOCIAL SECURITY NO. 231 72 3288

VERNON L. PRAYER

EFFECTIVE DATE OF CLAIM 01-06-76 LOCAL OFFICE NO 0010

OR ROUTE) 13 LEVINGTON DR. AREA 710 | 11. YEAR OF BIRTH 1932 | CNG. NW-N

TE. CODE PORTSMOUTH, VA. 23703 | IND. CODE 28 | WK. WAGE 175.20 | OCC. CODE 559.782

DAY NG UNIT VIRGINIA CHEMICALS, INC.

OR ROUTE) 3340 WEST NORFOLK ROAD AREA 710

TE. CODE PORTSMOUTH, VA 23703

RTED WORK VE EMPLOYER) 8-15-72 (MO. DAY YR.) 8. LAST DAY WORKED (FOR ABOVE EMPLOYER) 01-06-76 (MO. DAY YR.)

FOR SEPARATION BOVE EMPLOYER) DISCHARGED - GARNISHEE

12. HAVE YOU HAD ANY ACTIVE MILITARY SERVICE DURING THE LAST 18 MONTHS? YES ☐ NO ☒

13. HAVE YOU WORKED FOR THE FEDERAL GOVERNMENT AS A CIVILIAN DURING THE LAST 18 MONTHS? YES ☐ NO ☒

14. HAVE YOU WORKED IN ANY OTHER STATE DURING THE LAST 24 MONTHS? YES ☐ NO ☒

15. HAVE YOU APPLIED FOR OR ARE YOU RECEIVING ANY KIND OF PENSION? YES ☐ NO ☒

FILE NOTICE OF MY UNEMPLOYMENT AND REQUEST A DETERMINATION OF MY BENEFIT RIGHTS UNDER THE VIRGINIA UNEMPLOYMENT COMPENACT. I CERTIFY THAT THE INFORMATION GIVEN ON THIS FORM IS CORRECT AND I UNDERSTAND THAT PENALTIES ARE PROVIDED FOR MAKING TATEMENTS OR FAILING TO DISCLOSE MATERIAL FACTS IN ORDER TO OBTAIN BENEFITS.

Vernon L. Prayer — OF CLAIMANT

M. Curnutte — SIGNATURE OF CLAIMS TAKER AND WITNESS

01/07/76 — DATE CLAIM TAKEN

OYER: The above named claimant for unemployment compensation benefits has shown you as his last thirty-day employer. The information below is needed to determine if the claimant is eligible for benefits. Please complete and return this form, within 5 calendar days after receipt, dress shown on the reverse. Give complete information regarding the claimant's separation from your employ. Benefits may be awarded withdering your reason for this worker's unemployment unless this form is returned promptly. In cases where issues are raised by information obpredetermination fact-finding proceeding will be held, which you may attend. You are not required to attend this proceeding; however, if you rely on written information rather than attend, it will be given full consideration in making the determination. Please reply as to whether or not ttend the proceeding. If you plan to attend, you will be notified as to the time and place.

"X" in the appropriate space.) I Will ____ Will Not ____ attend a predetermination Fact Finding proceeding.

e claimant work during the seven day period ending 01/10/76 ? Yes X No ____

Yes", show gross wages $ 70.08

began working: 8/14/72 Last day worked: 1/6/76

is claimant work as many as thirty work days, or a portion thereof? Yes X No ____

, give number days actually worked)

you paid, or will you pay the claimant vacation, separation, or holiday pay during this layoff? Yes ____ No X

s", show type of payments ____ the period covered: From ____ thru ____ Amt. $ ____

ou have work for this claimant now? Yes ____ No X

have given the claimant a definite date to return to work, please give such date: ____

e claimant fails to report for work in response to your request, please notify this office immediately. This may result in a disqualifica- or benefits.)

laimant became unemployed because:

EFT VOLUNTARILY (Explain further in "Remarks")
- To accept other work.
- ILLNESS (Including pregnancy).
- To get married.
- To leave the area.
- Other

ACK OF WORK
- Permanent
- Temporary (Show return date in Item 6)

XX DISCHARGED (Explain further in "Remarks")
- ☐ Misconduct
- ☐ Absenteeism
- XX Other – Excessive Garnishments

☐ VACATION (Explain in "Remarks")

☐ LABOR DISPUTE (Explain in "Remarks")

☐ RETIREMENT
- ☐ Voluntary
- ☐ Mandatory
- ☐ Disability

person now eligible for any type of pension (excluding Social Security) to which you have made some contribution? Yes ____ X ____. If "Yes", show gross amount of pension to be paid each month. $ ____

know of any reason that this claimant may not be eligible for unemployment benefits, please explain in "Remarks".

Employer VIRGINIA CHEMICALS INC. Unemployment Insurance Account No. 2819-740-008740-0

Title Manager-Employee Relations Date 1/9/76

Harry S. Poteet

-10C Rev. 8-1-73 (200M 11-29-73)

X

UI	UCFE	UCX	EB

CLAIMANT

Vernon L. Prayer
13 Lexington Drive
Portsmouth, Va. 23703

EMPLOYER

Virginia Chemical Co.
3340 West Norfolk Rd.
Portsmouth, Va. 23703

VIRGINIA EMPLOYMENT COMMISSION

NOTICE OF DEPUTY'S DETERMINATION

W. P. N/A

Agent State or L. O. 014 B.Y.E. 1/1/77

S.S. No. 231-72-3288 ☐ Re-determination

☐	Sec. 60.1–23	Not Unemployed	(D–8)
☐	Sec. 60.1–52(b)	Labor Dispute	(D-6)
☐	Sec. 60.1–52(d)	Vacation	(D–10)
☐	Sec. 60.1–52(e)	Failure to Report	(D–2)
☐	Sec. 60.1–52(g)	Able and Available	(D–9)
☐	Sec. 60.1–52(h)	Pension	(D–9)
☐	Sec. 60.1–52.2	Service required for Benefits	(D–9)
☐	Sec. 60.1–58(a)	Left Work Voluntarily	(D–4)
☒	Sec. 60.1–58(b)	Discharge–Misconduct	(D–3)
☐	Sec. 60.1–58(c)	Refusal/Suitable Work	(D–5)
☐			Other

You are hereby notified that based on facts obtained in connection with your claim for unemployment compensation filed on 1/4/76 the undersigned deputy pursuant to section of the Virginia Unemployment Compensation Act shown above renders the following determination:

☒ Claimant disqualified, effective 1/4/76.
☐ Claimant declared ineligible, from _____ through _____.
☐ Claimant not subject to disqualification under the section of law indicated above and declared eligible for benefits effective _____.

REASON FOR THE ABOVE DETERMINATION

According to information furnished, you were discharged on 1/6/76 by your last 30 day employer due to excessive garnishments and unsatisfactory attendance. Your employer further states that you were aware of the company policy which states when an employer receives three garnishments within 12 months of each other it results in an automatic discharge.

In view of the above, it is held that the reason for your separation showed a wilful disregard to the employer's best interest as you failed to heed your employer's warning concerning garnishees.

Therefore, you are disqualified for benefits.

William E. Lewis — Deputy, Virginia Employment Commission

APPEAL RIGHTS

*APPLIES TO FEDERAL DETERMINATIONS
Findings, with respect to whether you performed Federal civilian service, the amount of remuneration from a Federal agency, the period of your Federal civilian service, and the reason for separation from any Federal agency, are made by the Federal agency. If you wish further information regarding any of these findings, or if you believe that any of these findings are incorrect, you may request the Federal agency to give you additional information or to reconsider and correct any such findings.

APPLIES TO ALL DETERMINATIONS
This determination becomes final unless notice of appeal therefrom is filed within five days after it is delivered in person, or within seven days after such determination is mailed to the last known address, or within ten days after such determination was mailed to the last known address of an interstate claimant. Such appeal must be filed in writing and shall set forth the grounds upon which the appeal is sought and shall be filed (1) through the local office where this claim was filed or (2) at the Central Office of the Virginia Employment Commission, P. O. Box 1360, Richmond, Virginia 23211.

FINAL DATE FOR APPEAL IS February 3, 1976

NOTE: If any appeal is filed from this determination claimant should continue to report to the Local Office on his regular reporting day in order to receive credit for each week in case the determination contained herein is reversed or revised as a result of the appeal.

Address of Local Office:
VIRGINIA EMPLOYMENT COMMISSION
706-708 HIGH STREET
P. O. BOX 310
PORTSMOUTH, VIRGINIA 23705

Determination to Claimant: 1/27/76 ☒ Mailed ☐ In Person
Determination to Employer: 1/27/76 ☒ Mailed ☐ In Person

VIRGINIA EMPLOYMENT COMMISSION
P. O. BOX 1358
RICHMOND, VIRGINIA 23211

NOTICE OF INTRASTATE APPEAL

1. NAME Vernon L. Prayer
(First) (Middle) (Last)

2. ADDRESS 13 Lexington Dr
(Street or Rural Route No.)

Portsmouth Va 23703
(City) (State) (Zip Code)

3. If an address change is planned within 30 Days, Beginning _____
New address will be:

4. EMPLOYER Va. Chemical Co

ADDRESS 3340 W. Norfolk Rd
Portsmouth Va

5. Appeal Filed By: [X] Claimant [ ] Employer

6. I APPEAL AND REQUEST A HEARING FOR THE FOLLOWING REASONS:

The garnishments received were in fact 2 times if I couldn't pay the amount that was asked for. And the unsatisfactory attendance wasn't a part of the determination, I have a paper to prove it

Vernon L. Prayer
(Appellant's Signature)

7. S. S. # 231 72 3288

[X] UI [ ] UCFE [ ] UCX [ ] _____

8. APPEAL FROM:

[X] Deputy's Determination

[ ] Deputy's Redetermination

[ ] Appeals Examiner's Decision

Date if Delivered in person _____

Date Mailed 1/27/76

9. APPEAL FILED:
(a) [X] In person on 1/29/76 (Date)

(b) [ ] By Mail:

(1) Postmark Date _____

(2) Receipt Date _____

Date this form prepared 1/29/76

10. SIGNATURE OF REPRESENTATIVE PREPARING FORM

[signature]

Local Office Ports No. 014

DISTRIBUTION:

Original - Appeals Section
Duplicate - Local Office
Triplicate - Employer
Quadruplicate - Claimant

VEC-AE-2 (R. 1-14-75)

SEE REVERSE SIDE FOR FURTHER INFORMATION

VIRGINIA EMPLOYMENT COMMISSION

706-708 HIGH STREET

PORTSMOUTH, VIRGINIA

TUESDAY, FEBRUARY 24, 1976

IN THE MATTER OF:

Vernon L. Prayer

S. S. No. 231-72-3288

Appellant

Virginia Chemical Company

Portsmouth, Virginia

Appellee

The above-mentioned matter came on for hearing, pursuant to notice, in the Local Office of the Virginia Employment Commission, 706-708 High Street, Portsmouth, Virginia, before Mr. Kenneth H. Taylor, Appeals Examiner, Virginia Employment Commission, on Tuesday, February 24, 1976.

A P P E A R A N C E S

Mr. Vernon L. Prayer, (Claimant), 13 Lexington Drive, Portsmouth, Virginia 23703

Mr. Harry Poteat, Virginia Chemical Company, 3340 W. Norfolk Road, Portsmouth, Virginia 23703

STATEMENT BY MR. KENNTH TAYLOR, APPEALS EXAMINER, VIRGINIA EMPLOYMENT COMMISSION:

This is a hearing in the matter of the appeal of Vernon L. Prayer. The hearing is being held in the office of the Virginia Employment Commission, Portsmouth, Virginia, on Tuesday, February 24, 1976 before Appeals Examiner Kenneth Taylor. Present for the hearing is the claimant and one employer representative.

Mr. Prayer, the claimant, filed his claim for benefits effective January 4, 1976, giving Virginia Chemicals, Incorporated 3340 West Norfolk Road, Portsmouth, Virginia as his last employer. The Deputy investigated his claim and he issued a Notice of Deputy's determination disqualifying the claimant effective January 4, 1976 for having been discharged due to misconduct in connection with his work. The claimant appealed that determination on January 29, 1976 and that was a timely appeal so we are here this afternoon to take testimony in connection with this appeal. In addition to the separation issue I will also inquire in any other matters that may come up in the hearing that will affect the eligibility for benefits such as your efforts in seeking employment for the period that you claimed benefits. We will begin by taking the employer's testimony first. Now, sir, your testimony must be under oath so will you please raise your right hand and be sworn.

MR. HARRY POTEAT, AFTER FIRST BEING DULY SWORN, WAS CALLED AND EXAMINED BY MR. KENNETH TAYLOR, APPEALS EXAMINER:

Q. Would you state your name, sir, and your position with the employer.

A. Harry Poteat, Manager Employee Relations.

Vernon L. Prayer

Q. Mr. Poteet, how do you spell your last name?

A. P-o-t-e-e-t.

Q. Okay. When did the claimant begin working for your firm?

A. On August 14, 1972.

Q. And what was the last day that he worked for you?

A. The last day he worked was January 6, 1976.

Q. Okay, sir. Could you just explain why he is no longer employed by your company.

A. Virginia Chemicals has had since March of 1969, a policy for handling excess garnishees. In essence the policy is that if an employee receives three garnishees within twelve months of each other he is automatically terminated. Each new employee is given a copy of this policy and he is given a written warning each step of the way. Mr. Prayer was garnisheed first on August 27, 1974. Eleven months later he was garnisheed July 24, 1975. He was garnisheed August 7, 1975 and this one was released by the store, but was not counted against him. He was garnisheed in September 24, 1975 and this was the same indebtedness as the one on July 24, 1975. As you are aware the law says you cannot discipline an employee for garnishees for the same indebtedness. And then on January 6, 1976 he was garnisheed again. So he was garnisheed one time, eleven months he was garnisheed again, and we disregarded the next two, six months after the second he was garnisheed the third. And on that basis in keeping with the policy he was terminated.

Vernon L. Prayer

MR. PRAYER TO MR. TAYLOR:

Could I see that letter.

MR. TAYLOR TO MR. PRAYER:

We will get your testimony when we swear you in. We will give you an opportunity to make a statement then.

MR. TAYLOR TO MR. POTEAT:

Q. Okay, sir. I noted on the separation information that your company had filled out in reference to excessive absenteeism also.

A. Well, I don't think that's true on that.

Q. We have unsatisfactory attendance as determined by the Deputy.

A. That's on the Deputy's determination?

Q. Yes, sir.

A. The lady called me about the plicy of garnishment and I mentioned the attendance thing just in passing but that has no bearing in this case.

Q. The garnishment --

A. Is the only reason. I mentioned this other things just in passing. We were talking of policy. We have an established policy and that sort of thing also, but that is not a factor in this termination.

Q. Well, I believe you told me that the claimant had been counseled on occasion about this policy. Is that true, sir?

A. Both policies, that's true.

Q. Okay, with respect to the garnishment policy, who talked with him?

Vernon L. Prayer

Q. You did?

A. Yes, sir, and he was given a letter, he was given it in writing each time.

Q. Each time he received a garnishment he was --

A. He was given the notice in writing and here is the first offense. He was garnisheed on this date. You are hereby warned that repeated occurrences which indicate you are unable to handle your financial affairs in a satisfactory manner may result in your dismissal. That's my signature. He comes to the office and is given this. Garnishee. Second offense.

Q. So he received one of these letters on each occasion?

A. Yes, sir. If there is another occurrence of this situation within one year you will be subject to immediate dismissal. That's my signature.

Q. Okay. July 24 --

A. Is the first one, this one is August 27th. This is one that was he was later had lifted. But I can show you the form.

Q. Well, the ones that we would be concerned with would be the July 24th, September 23rd and the January 6th.

A. Okay.

Q. They would be the most recent.

A. There is the last one, January 6th. That's the one that resulted in his termination.

Q. Okay.

A. He received a garnishment on January 6th. He received garnishment July 24, 1975, August 27, 1974, and we gave

him letters of warning on each occasion. In spite of these repeated warnings he failed to correct the situation, therefore effective January 6, 1976, his employment with Virginia Chemicals is terminated. Once again with my signature handed to Mr. Prayer in person.

Q. Did the final warning come with respect to the September 23rd garnishment?

A. No. January 6th.

Q. I mean the final warning, the one that said if you are garnisheed again you will be terminated?

A. 7-24-75.

Q. Let me ask you another question while you are looking. If it hadn't been for this last garnishment assuming that he had performed his job in a satisfactory manner, would he still be working for your company?

A. Yes, if he hadn't gotten that final garnishment, he would be.

Q. All right.

A. There is the first one, August 27th.

Q. Could you just describe the reason for your company's policy for the record.

A. Because it works an undue hardship on the management of the company to take care of people's financial obligations in this manner. It is additional work for the payroll, Accounting Department and it is just something that we don't tolerate.

Q. Okay, sir. I don't have any more questions to ask you. Is there anything that you would like to add that you feel

that we haven't covered relative to the issue of his termination.

A. No. I have explained the policy and have the documents here to support what I have said to you. I have nothing else to add.

Q. Okay, sir. Well, we are going to take the claimant's testimony.

MR. VERNON L. PRAYER, HAVING BEEN FIRST DULY SWORN, WAS CALLED AND EXAMINED BY MR. KENNETH TAYLOR, APPEALS EXAMINER:

Q. Would you state your name, please?

A. Vernon L. Prayer.

Q. What is your present address, Mr. Prayer?

A. 13 Lexington Drive.

Q. Where is that, in Portsmouth?

A. Yes, sir.

Q. What was your job at Virginia Chemicals Company?

A. C operator aerosol.

Q. Would you repeat that?

A. I was a C operator.

Q. C like the letter C?

A. Right.

Q. Well, what did you do?

A. I control the water bath, you know, leaking cans would come in the water bath and I would take the leaking cans out. That was my primary job.

Q. What was that job title again? C Operator of what?

A. C operator of water bath.

Q. Water bath. Okay. Now, what was your rate of pay at the

time?

A. $4.30.

Q. Was that an hourly wage?

A. Hourly.

Q. Okay, how many hours a week did you work?

A. Forty.

Q. Okay, could you just explain why your employment came to an end?

A. Well, it was the point that I wasn't paying my bills. I was paying my bills, you know, and my credit, all my creditors, you know, I had a certain amount to give them, you know, and before you know, I had, you know I admit that I have, you know, went over my limit you know in bills, I have a little bit more bills than I was supposed to but at the time I was being helped from the Credit Union on the job and so you know the people you know who I was paying, you know, they put me out so much a month basis, you know. I pay about $30.00 a month.

Q. How much did you have after -- well, let's take it back to August 27th. That was the first garnishee you had, that Mr. P oteet was referring to. Did you have any garnishments against you prior to that date? Was this the first one?

A. That was the first one.

Q. Okay. How much did you have left over have that garnishment? Well you make $4.30 an hour.

A. After thatgarnishment?

Q. Uh huh.

A. Well --

Q. How much did they take out?

A. A fourth.

Q. A fourth? Okay. And you had one in July of 1975. How did it come about?

A. '75?

Q. Uh huh.

A. Just like I say, you know I told them that I would pay them a certain amount but times came, you know, that I couldn't pay them all that, you know, I would probably pay them half, you know, so you know in a sense I kind of got behind like that, you know, then all of a sudden the people wanted to get their, you know, wanted me to catch up and they asked me could I pay this and this amount. And I told them no that I could only pay this amount, you know and so you know they just -- and then --

Q. What was the information after about these garnishments on August 27th, July 24th and September 23rd and January 6th? Do you take issue with any of those dates? Those garnishment dates and that they were imposed on those dates?

A. I don't know how they be taken out on those dates, I don't know too much about that but --

Q. Were you informed each time that a garnishment came in to your employer that your wages were being garnisheed?

A. That is right, yes, sir.

Q. And what did they tell you about their policy?

A. Well, --

Q. Or did they tell you anything about their policy?

A. Yeah, he told me, he gave me, he found out the garnishee was coming on the job and each time he would give me you know, statement, like the first one, the second and the third offense. Anyway, I only received that first offense. In other words, I supposed to have had one garnishment and --

Q. You only received one?

A. Well --

Q. One garnishment notice before and one statement?

A. You know, I had received two garnishments but by the time that you know the third one, the time I had gotten that second one, you know, the first one had had, you know, been had been over with. They had forgot about that, you know, had been off the record so I remember, you know, because that was supposed to have been gone. Anyway, by the time I had got the second one, you know, --

Q. Are you referring to the July 24th one?

A. Well --

Q. Here is the first one.

A. Right.

Q. That is the second one. The first one was August 27th. The second one was July 24th the following year and that is eleven months later, right? Did you receive any notice of the garnishment after thisone, the second one?

A. Yes, let me see, let me see I think I got my second one fixed. Yeah, I got my second one fixed, but during the time, you know --

Q. What was your understanding of the rule, how many offenses

like that?

A. Three.

Q. You got three.

A. You know, but at the time I only had in mind that I had one. He told me that I had one, you know but when I --

Q. Who is he?

A. Mr. Harry Poteet. Anyway I had went to his office, you know, to get my records right anyway, as far as how many garnishees I was supposed to have had, you know, and he told me I had one garnishment. I asked him would he put that on paper and he told me yeah so he put it on paper because I had needed that, you know, because I was trying to get money from the Credit Union or the Credit Union was giving me a time, too, you know. But anyway, so he gave me that piece of paper saying I had one garnishment.

Q. When did he give you that? After this one?

A. It was --

Q. July 1975?

A. I think he got it on file, I don't know the exact date. Anyway --

Q. Did you get any further notices that you had been garnisheed after that one?

A. Naw.

Q. You mean you just had notice of one?

A. Yeah, right, just one.

Q. And then you were terminated after that?

A. It was two, but the first one had, you know, had left, that was just about when I had just about started to working,

you know. That was a long time ago. That one there had been forgotten. He kind of like brought it up not too long ago and it kind of surprised me because I thought it was gone.

Q. Uh huh.

A. Well, anyway, he gave me a piece of paper saying I had one garnish ment, you know, so I had to carry that to the Credit Union, you know, because I had to try to get some money saying I had one garnishment so they claimed I was a risk, you know, because I had two garnish ments, you know, but I had went to them and tried to get it fixed because I had only one. I found out that I had one and he give me a piece of paper saying I had one to give to the Credit Union to get some money. And so anyway, they turned my application down, they didn't give me the money, you know, and I was wondering why but anyway, I didn't get it so another garnishment had changed, you know.

Q. Was that the September one?

A. I think so. I think so. I think another one had came.

Q. Well, that was two, is that right?

A. Right. Two, yeah. Because he said I had one.

Q. Okay. Were you told that you were terminated? Who terminated you?

A. Mr. Poteet.

Q. Did he do that on January 6th or after January 6th?

A. I think it was on January 6th. It was that same day.

Q. Okay. That was after the third garnishment, was it not?

A. I had one garnishment. See, what I am -- anyway, as far

as I know, I had one garnishment. And the reason I knew that was because he told me I had one.

Q. On January 6th you didn't know that you had had but one garnishment?

A. Right, and I didn't get no second offense, you know, as far as you know the garnishment is concerned, you know, I just only had one, all I had. So this man here came you know -- I thought this one was the second one. And he told me that you know, it was the third one and that he was sorry that he lied to me but really I had two garnishments and this one right here was the third one.

Q. Okay. I want to ask Mr. Poteet a question.

MR. TAYLOR TO MR. POTEET:

Q. Sir, did you ever require the employees to sign a statement acknolwedging that they had received a notice or warning that they had been garnisheed? I mean is there anything to indicate that the claimant might have acknowledge on different occasions the garnishees?

A. No, that is not required.

Q. It is just your signature on that form.

A. My signature on there. The garnishees are reported in the file here, if you care to examine them. And certainly when an individual is garnisheed, the same papers are served on him and 25 percent of his pay disappears, he must realize that he has been garnisheed.

Q. Okay, we are going off the record momentarily to examine these documents. Okay, we are back on the record. We have examined the garnishments that were served and they did

account for the period that the employed indicated on the different occasions.

MR. TAYLOR TO MR. PRAYER:

Q. Mr. Prayer, I want to ask you some additional questions. Have you been seeking employment since you filed the claim for benefits?

A. No, sir.

Q. You haven't been seeking employment. Have you been looking for a job?

A. Oh, yeah, I been looking for a job.

Q. Where have you been?

A. She have it on record because I comes in here every two week, you know.

Q. All right.

A. I been to Crown, I been to Supermarkets, on construction jobs, welding,

Q. Have you been offered any work?

A. No, sir. Ain't nobody hiring.

Q. Okay, sir. I don't have any further questions for you. Is there anything that you would like to add? That you feel like we have not covered?

A. Not, at the time right at this moment.

Q. Okay. Mr. Poteet, is there anything that you would like to add before we close this hearing?

A. No, sir.

Q. There being no further testimony or evidence to be presented, the hearing is now closed.

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF APPEALS EXAMINER

NOTICE: This decision becomes final unless appealed in writing by any party named setting forth the grounds upon which the appeal is sought either at the office where the claim was filed or by mail to the Appeals Section, Virginia Employment Commission, P. O. Box 1358 Richmond, Virginia 23211, not later than midnight of March 8, 1976

he matter of:

Claimant	
Vernon L. Prayer 13 Lexington Drive Portsmouth, VA 23703	
Employer	
Virginia Chemical Co. 3340 W. Norfolk Rd. Portsmouth, VA 23703	

Appellant:	[ ] Employer [X] Claimant
Claimant's S.S. No.:	231-72-3288
Decision No.:	UI-76-921
Date Deputy's Determination:	January 27, 1976
Date Referred or Appealed:	January 29, 1976
Date of Hearing:	February 24, 1976
Place of Hearing:	Portsmouth, Virginia
Date of Decision:	February 24, 1976
Date of Mailing:	February 27, 1976

APPEARANCES: Claimant; Employer Representative

STATUTORY PROVISION & POINT AT ISSUE: Code of Virginia §60.1-58(b) Was the claimant discharged due to misconduct in connection with his work?

FINDINGS OF FACT: The claimant appealed from a determination of the Deputy which disqualified him for benefits effective January 4, 1976 for having been discharged due to misconduct in connection with his work.

The claimant's last employer was Virginia Chemical Company, where he worked as an operator in the water bath section from August 14, 1972 through January 6, 1976.

This employer promulgated a policy to all employees that any employee receiving three garnishments within a twelve-month period would be automatically discharged. The employer was required to garnish the claimant's wages on July 24, 1975, September 23, 1975, and finally on January 6, 1976. The claimant was informed of this policy after each summons in garnishment was served and he understood that after the garnishment on September 23rd had been served that any further garnishments within the period ending in July 1976 would result in his dismissal. The claimant was terminated effective January 6, 1976 when the employer was required to garnishee the claimant's wages for a third time within the one-year period.

OPINION: §60.1-58(b) of the Virginia Unemployment Compensation Act provides a disqualification if it is found that an individual was discharged due to misconduct in connection with his work.

The Commission, in Decision No. 1054-C, had this to say, in part:

"The evil for which the disqualification for misconduct was designed is conduct which is detrimental to the interests of one's employer. This is not to say that all conduct resulting in prejudice to an employer's interests is misconduct. It has been repeatedly held by this Commission that mere inefficiency in the performance of work, or a bona fide mistake in judgment, where there is no evidence of neglect or wilful disregard of an employer's interests, is not sufficient to sustain a disqualification for misconduct. On the other hand where there is evidence of an act, or a series of acts, which a reasonable person would recognize as injurious to the best interests of his employer, and yet that act is perpetrated or those acts are persisted in, it can only be concluded that such behavior constitutes misconduct."

Inasmuch as this claimant, after being warned, continued to persist in irresponsible management of his personal finances in a manner that was injurious to his employer by requiring that employer to garnish his wages excessively, it is concluded that his actions brought about his own separation and he is subject to the disqualification as provided in §60.1-58(b) of the Act.

DECISION: The determination of the Deputy disqualifying the claimant effective January 4, 1976 for having been discharged due to misconduct in connection with his work is hereby affirmed and remains in effect for any week or weeks benefits are claimed until he has performed services for an employer during thirty days, whether or not such days are consecutive.

Kenneth H. Taylor

Kenneth H. Taylor, Appeals Examiner

KHT/js

VIRGINIA EMPLOYMENT COMMISSION
P. O. BOX 1358
RICHMOND, VIRGINIA 23211

Co... 5-6-76
10.00
ASSISTANT ... SECRETARY

NOTICE OF INTRASTATE APPEAL

NAME Vernon L. Payne
(First) (Middle) (Last)

ADDRESS 13 Lexington Dr.
(Street or Rural Route No.)

Portsmouth, Va. 23703
(City) (State) (Zip Code)

If an address change is planned within 30 Days, Beginning _____
New address will be:

EMPLOYER Virginia Ornamentals

ADDRESS 3340 W. Portsmouth Blvd
Portsmouth, Va. 23703

Appeal Filed By: [X] Claimant [ ] Employer

I APPEAL AND REQUEST A HEARING FOR THE FOLLOWING REASONS:

Being accused of false misrepresentation. I feel this is not true and I request a hearing.

Vernon L. Payne
(Appellant's Signature)

7. S. S. # 231 70 3288

[X] UI [ ] UCFE [ ] UCX [ ] Other

8. APPEAL FROM:

[ ] Deputy's Determination

[ ] Deputy's Redetermination

[X] Appeals Examiner's Decision

Date if Delivered in person 3-8-76

Date Mailed _____

9. APPEAL FILED:
(a) [ ] In person on 3-8-76 (Date)

(b) [ ] By Mail:

(1) Postmark Date _____

(2) Receipt Date _____

Date this form prepared 3-8-76

10. SIGNATURE OF REPRESENTATIVE PREPARING FORM
Griffin P. Barnes
Local Office Portsmouth No. 01

DISTRIBUTION

Original - Appeals Section
Duplicate - Local Office
Triplicate - Employer
Quadruplicate - Claimant

C-AE-2 (R. 6-1-66)

SEE REVERSE SIDE FOR FURTHER INFORMATION

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

In the Matter of Vernon L. Prayer, Claimant S. S. No. 231-72-3288 Virginia Chemical Co. Portsmouth, Virginia Employer	Date of Appeal To Commission: March 8, 1976 Date of Hearing: May 6, 1976 Decision No.: 7954-C Date of Decision: June 16, 1976 Place: Richmond, Virginia

---o0o---

This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UI-76-921), dated February 24, 1976.

ISSUE

Was the claimant discharged for misconduct in connection with his work within the meaning of Section 60.1-58(b) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT AND OPINION

The findings of fact of the Appeals Examiner are adopted by the Commission, with the following corrections:

The first sentence of the third paragraph is corrected to read: "This employer promulgated a policy to all employees that any employee receiving three garnishees within twelve months of each other is automatically terminated."

The second sentence of the third paragraph is corrected to read: "The employer was required to garnish the claimant's wages on August 27, 1974, July 24, 1975, and January 6, 1976.

Section 60.1-58(b) provides a disqualification for benefits if it is found that a claimant was discharged for misconduct connected with his work. The Commission has consistently interpreted misconduct to be conduct which evinces a willful or wanton disregard of an employer's interest as is found in deliberate violations of employers' rules or of standards of behavior which the employer has a right to expect of his employees.

It has been held that where an employee permits excessive and multiple garnishments to be issued against his wages in violation of a company rule, such sufferance constitutes a disregard of his employer's interests and is misconduct within the contemplation of an unemployment compensation statute. See American Sugar Refining Co. v Taylor (La App) 115 So 2d 898.

In view of the foregoing, it is concluded that this claimant deliberately violated a company policy and his discharge was for misconduct in connection with his work.

DECISION

This case has come before the Commission for a review of the transcript of evidence taken before the Appeals Examiner. After having reviewed the entire record and decision of the Examiner, the Commission is of the opinion that the decision should be affirmed, and hereby sustains and affirms the same.

B. Redwood Councill
Director of Appeals

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

VERNON BRANCH, JR. FORMERLY VERNON L. PRAYER Petitioner, v. VIRGINIA EMPLOYMENT COMMISSION and VIRGINIA CHEMICAL COMPANY Defendants.	§ § § § § § § § § § § § § § §	IN CHANCERY NO. C-76-451

FINAL ORDER

This cause came to be heard on October 26, 1976 upon the petitioner's Petition for Judicial Review of the proceedings of the Virginia Employment Commission filed July 8, 1976, concerning his unemployment benefits and the defendant's Answer filed in response thereto and was argued by counsel for the petitioner and defendant, Virginia Employment Commission; and, having examined the transcript of the record of the proceedings before the Virginia Employment Commission and having considered the contents of said record and case authorities and arguments of counsel, the Court is of the opinion and doth ADJUDGE that the Record is sufficient to support the findings of the Commission; that the petitioner was discharged by his employer for misconduct in connection with his work, and that the findings of the Virginia Employment Commission are supported by the transcript of Record filed in the case and that there is no evidence of fraud.

It is further ADJUDGED that effective January 4, 1976, the petitioner is disqualified from receiving benefits under § 60.1-58 (b) of the Code of Virginia for any week benefits are claimed until he has performed services for an employer during thirty days, whether or not such days are consecutive, because he was discharged for misconduct in connection with his work.

The petitioner hereby objects and excepts to the entry of this Order.

This cause is ordered stricken from the docket.

Entered:

_____
Judge

I ASK FOR THIS:

Gilman P. Roberts, Jr.
Assistant Attorney General
Counsel for Virginia Employment Commission
P. O. Box 1358, Richmond VA 23211

SEEN AND OBJECTED TO:

_____

William P. Sellers, IV
Counsel for Petitioner
324 London Boulevard
Portsmouth, Virginia 23704

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

VERNON BRANCH, JR. FORMERLY VERNON L. PRAYER, Petitioner	:	IN CHANCERY
vs.	:	NO. C-76-451
VIRGINIA EMPLOYMENT COMMISSION	:	
and	:	
VIRGINIA CHEMICAL COMPANY Defendants	:	

NOTICE OF APPEAL

TAKE NOTICE that the petitioner in the above-styled action hereby notes his Notice of Appeal and Assignment of Error to the denial of the relief prayed for in this action by this Honorable Court.

The petitioner filed, on July 8, 1976 with this Honorable Court, his petition for Judicial Review of the proceedings of the Virginia Employment Commission concerning unemployment compensation benefits pursuant to Title 60.1 of the Code of Virginia (1950), as amended, and concerning the specific issue of whether or not the petitioner was discharged for misconduct in connection with his employment within the meaning of 60.1-58 (b) of the Code of Virginia (1950), as amended.

On October 26, 1976 this matter came to be heard ore tenus upon the petitioner's petition and other papers formerly read and argued by counsel, with the result that on November 5, 1976, by Order of this Honorable Court, the finding that the Record was sufficient to support the finding of the Virginia Employment Commission that the petitioner was discharged by his employer for misconduct in connection with his employment and that the evidence found in the Record was sufficient to support such finding of fact, thusly denying the petitioner his relief prayed for in his petition.

ASSIGNMENT OF ERROR

The error of the Virginia Employment Commission and of this Honorable Court is that there has been a failure by both to correctly construe and interpret the rule and policy of the employer as it relates to termination due to excessive garnishments, to-wit:

> "This employer promulgated a policy to all employees that any employee receiving three garnishees within twelve months of each other is automatically terminated."

This Honorable Court is in error in finding that there was sufficient evidence to support the findings of the Virginia Employment Commission as to the facts of the Record and that they should be conclusive and the jurisdiction of this Honorable Court confined to questions of law.

STATEMENT

Pursuant to Rule 5:6 of the Supreme Court of Appeals of Virginia, the Transcript, statement of facts, testimony, and other incidents of this case are to be filed hereafter.

EDWARD J. PONTIFEX
TIDEWATER LEGAL AID SOCIETY
700 NORTH STREET
PORTSMOUTH, VIRGINIA