

COURT OF APPEALS OF VIRGINIA

Present: Judges Kelsey, Petty and Senior Judge Bumgardner

BEN K. GAVIE

v. Record No. 0246-09-4

VIRGINIA EMPLOYMENT COMMISSION AND
AGC FIELD OPERATIONS, LLC

MEMORANDUM OPINION*
PER CURIAM
JULY 7, 2009

FROM THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY
Mary Grace O'Brien, Judge

(Ben K. Gavie, *pro se*, on brief).

(William C. Mims, Attorney General; Elizabeth B. Peay, Assistant
Attorney General, on brief), for appellee Virginia Employment
Commission.

No brief for appellee AGC Field Operations, LLC.

Ben K. Gavie appeals the October 15, 2008 decision by the circuit court affirming a decision by the Virginia Employment Commission (commission) disqualifying him for unemployment compensation due to misconduct.¹ We have reviewed the record and the commission's opinion and find that this appeal is without merit. Accordingly, we affirm for the reasons stated by the commission in its final opinion. See Gavie v. AGC Field Operations LLC, Commission Decision

* Pursuant to Code § 17.1-413, this opinion is not designated for publication.

¹ The record supports the appeals examiner's decision that the employer's witnesses were more credible than Gavie. Virginia Employment Comm'n v. Gantt, 7 Va. App. 631, 635, 376 S.E.2d 808, 811, aff'd on reh'g en banc, 9 Va. App. 225, 385 S.E.2d 247 (1989). The record supports the appeals examiner's decision that Gavie violated the employer's harassment policy by making inappropriate comments about a co-worker's disability. Branch v. Virginia Employment Comm'n, 219 Va. 609, 611, 249 S.E.2d 180, 182 (1978). The record supports the commission's finding that Gavie failed to show that the evidence could not be presented at the appeals examiner's hearing through the exercise of due diligence. Code § 60.2-622(A); 16 VAC 5-80-30(B).

74665-C (July 21, 2006). We dispense with oral argument and summarily affirm because the facts and legal contentions are adequately presented in the materials before this Court and argument would not aid the decisional process. See Code § 17.1-403; Rule 5A:27.

Affirmed.