STATE OF WISCONSIN
LABOR AND INDUSTRY REVIEW COMMISSION
P O BOX 8126, MADISON, WI 53708-8126 (608/266-9850)

JESUS C VILLARREAL, Employee

UNEMPLOYMENT INSURANCE DECISION

Hearing No. 03007822MD

LAND O' LAKES INC, Employer
C/O UC EXPRESS

SEE ENCLOSURE AS TO TIME LIMIT AND PROCEDURES ON FURTHER APPEAL

An administrative law judge (ALJ) for the Division of Unemployment Insurance of the Department of Workforce Development issued a decision in this matter. A petition for review was filed.

The commission has considered the petition and the positions of the parties, and it has reviewed the evidence submitted to the ALJ. Based on its review, the commission agrees with the decision of the ALJ, and it adopts the findings and conclusion in that decision as its own.

DECISION

The employee's petition for commission review is accepted. The decision of the administrative law judge is affirmed. Accordingly, the employee is ineligible for benefits beginning in week 41 of 2003 and until four weeks have elapsed since the end of the week of quitting and he has earned wages in covered employment performed after the week of quitting equaling at least four times his weekly benefit rate which would have been paid had the quitting not occurred.

Dated and mailed
MAR 31 2004

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/s/
David B. Falstad, Chairman

/s/
James T. Flynn, Commissioner

/s/
Robert Glaser, Commissioner

MEMORANDUM OPINION

Late petition for commission review

The appeal tribunal decision (ATD) denying benefits was dated and mailed December 5, 2003, and specified an appeal deadline of December 26, 2003. The employee's petition was dated and received by the department on January 5, 2004. The employee asserted in his petition that he had not received the ATD, and only learned of it when he contacted the department on January 5 to inquire about the status of his benefits. The commission remanded the case for hearing to permit the employee an opportunity to prove this assertion.

At hearing, the employee testified that he had moved in December of 2003, but had notified the department of the address change at the hearing on December 4, 2003, which was confirmed by the fact that the ATD was mailed to his new address, and had filed a change of address directive with the post office.

Although there is a presumption that mail properly addressed and mailed is received, the employee successfully rebutted this presumption here. There is no basis in the record to question the credibility of his testimony that he did not receive the ATD, the ATD was mailed during a period of time when the employee was moving to a different address and postal delivery personnel were adjusting to the change, and the employee has been otherwise uniformly diligent in participating in the department's process.

As a result, the commission accepted the employee's late petition for commission review, and considered the merits of his claim.

Merits

The employee does not dispute that he was absent without notice, after receiving an attendance warning, on 7/27/03, 10/6/03, 10/8/03, and 10/9/03, after which he was terminated. He testified, without rebuttal by the employer, that, when he called in his absence on 10/7/03, a fellow crew leader told him that he had been terminated, and, based on this, he failed to call or report for work thereafter.

The commission concludes that this was a job abandonment which constituted a quit. *See, e.g., Adams v. MM Schranz Roofing, Inc.*, UI Hearing No. 00600375MW (LIRC March 24, 2000); *Mills v. Emmpak Foods, Inc.*, UI Hearing No. 03605739MW (LIRC Jan 8. 2004). The employee attempts to justify his actions by asserting that he reasonably relied upon the representation of a co-worker on 10/7/03 that he had already been terminated. However, if an employment relationship is to be terminated by the employer, there must be something more in the record than the mere assumption or impression of the employee to the effect that he is fired. An

employee owes a duty to definitely ascertain what his employment status is before concluding that the employment relationship is fully terminated. *Rupcic v. Wis. Liquor Co.,* Case No. 150-045 (Dane Co. Cit. Ct., Feb. 21, 1977); *Arnold v. RD Roman, Inc.,* UI Hearing No. 980000732MD (LIRC Nov. 19, 1998); *Wilson v. Reinke Service,* UI Hearing No. 02600504MW (LIRC July 31, 2002). Any doubt the employee may have had concerning his employment status could easily have been resolved with a phone call to a supervisor, or by showing up ready to work his next scheduled shift. *See, Wilson, supra.; Arnold, supra.* Instead, the employee relied on a statement from a non-management co-worker. Such reliance was not reasonable and does not justify the employee's actions here. *See, Mindham v. ESA Services, Inc.,* UI Hearing No. 02403197AP (LIRC May 16, 2003)(reliance on statement of non-management co-worker that name had been taken off schedule not reasonable justification for employee's assumption she had been terminated and her failure to report to work thereafter was a quit).

There is no exception to the quit disqualification which would apply here.

The employee asserts that he was suffering from depression and being treated with medication during the relevant time period. However, the medical evidence of record, even if competent, does not establish that the employee's illness or medication prevented him from providing notice of his absences to the employer.

cc: Gara Sliwka
Land O' Lakes, Inc. (Madison, Wisconsin)