

DANIEL M. QUINNELL,

Plaintiff,

DECISION

vs.

Case No. 00CV000270

LABOR AND INDUSTRY REVIEW COMMISSION
and WISCONSIN POWER & LIGHT CO.
a/k/a ALLIANT,Defendants.

The plaintiff's Complaint seeks review and relief from the Order of the Labor And Industry Review Commission. For this decision, the Court has reviewed the brief and attachments submitted by the plaintiff, pro se, on July 18th, 2001. The Court has further reviewed the response briefs from the Wisconsin Power & Light Co. and from the Labor And Industry Review Commission.

The facts are that the plaintiff worked with WP&L as a customer field representative. WP&L had a drug and alcohol policy which the employer believed the plaintiff violated. The employer gave the plaintiff a suspension for a positive drug test result and was informed that any further positive drug tests would result in termination. The employer required the plaintiff on December 15th, 1999, to submit to a random drug test and the plaintiff reported to a lab and submitted a urine sample. The employer concluded that the urine test had been adulterated and therefore decided to terminate the plaintiff's employment. The plaintiff filed for unemployment compensation and the Department of Work Force Development determined the discharge was not for misconduct and allowed unemployment compensation benefits, however, WP&L appealed

that decision. After the appeal before the Administrative Law Judge, a decision was rendered that the plaintiff was discharged for misconduct and therefore ineligible for unemployment benefits. The plaintiff then petitioned LIRC for review and on May 18th, 2001, LIRC affirmed the decision of the Administrative Law Judge.

Upon the plaintiff's Complaint, the Court is guided by Wisconsin Statute 102.23(1)(e), which permits a court to set aside a LIRC decision only upon the grounds that the Commission acted in excess of its powers, fraud, or that the findings of fact by the Commission do not support the order. The statutes also prohibit the judge from substituting its judgment for that of the Commission as to the weight or credibility of the evidence. See Section 102.23(6), Stats.

This Court has reviewed the record and file from LIRC, which includes the transcript and various other exhibits and matters within the record. As stated in Princess House, Inc. v. DILHR, 111 Wis.2d 46, 53, 330 N.W.2d 169 (1983), if there is any creditable, relevant, and probative evidence when viewed most favorably that would justify persons of ordinary reason and fairness to make findings of fact as made by the LIRC, they then become conclusive upon the court. The reviewing court is not to weigh the evidence brand new, but to search the record and determine whether evidence in the record supports that decision. See Vande Zande v. ILHR Department, 70 Wis.2d 1086, 1097 (1975). Furthermore, when a reviewing court examines an administrative agency's conclusions of law, that deal with matters within the expertise of the agency, courts are to defer to the decision of the agency when issues of law are intertwined with the facts. See, West Bend Education Ass'n v. WERC, 121 Wis.2d at 12 (1984).

When applying these requirements for judicial review, upon the record presented, and in light of the Complaint and plaintiff's brief, the key issue is whether there was a proper chain

of custody for the specimen that was tested and whether there was adulteration. The ALJ determined that the plaintiff was not credible and had the prerogative to disregard the testimony of the plaintiff. The chain of custody information submitted by WP&L contained evidence, upon which the ALJ was entitled to believe, and when so believed, would demonstrate that the specimen had been properly collected, labeled, and sealed. The ALJ was free to conclude the records were proper and not give any weight to the contentions by the plaintiff that the records were falsified.

The Court therefore concludes that the record before the agency demonstrate that there were sufficient facts upon which the LIRC was entitled to consider and rely upon in its decision. There has been no showing that the agency has acted outside of its powers, that there was no fraud before the ALJ, and the Court concludes that the findings of fact by the Commission are supported in the record and does therefore support the order of the LIRC.

Therefore, the LIRC decision is hereby affirmed.

Dated this 12 day of September, 2001.

BY THE COURT:



Honorable Peter L. Grimm
Circuit Judge

xc: Ms. Mari E. Nahn
Mr. Earl G. Bueler
Mr. Daniel M. Quinnell

Mailed this 12th day of September, 2001, by hfs.