

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

BEVERLY K BOYD, Employee

UNEMPLOYMENT INSURANCE
DECISION

KILBOURN CARE CENTER, Employer
C/O UC EXPRESS

Hearing No. 04601876MW

**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 timely 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 decision of the administrative law judge is affirmed. Accordingly, the employee is ineligible for benefits beginning in week 40 of 2003 and until four weeks have elapsed since the end of the week of quitting and she has earned wages in covered employment performed after the week of quitting equaling at least four times her weekly benefit rate which would have been paid had the quitting not occurred. The employee is required to repay \$4,176 to the Unemployment Reserve Fund.

Dated and mailed

JUL 30 2004

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/s/

James T. Flynn, Chairman

/s/

David B. Falstad, Commissioner

/s/

Robert Glaser, Commissioner

MEMORANDUM OPINION

The confusion and uncertainty here were created by the employee's initial request to go casual, and the fact that the only notice she provided to the employer that she had changed her mind in this regard was her failure to complete the necessary paperwork. Once it became apparent to the employer that the employee had changed her mind, she was placed back on the schedule. The posted schedule, of which the employee was aware, indicated that the employee was scheduled to work on October 1, 3, 6, 10, 11, 12 and 13, 2003. The employee did not report to work these shifts or provide notice to the employer that she would be absent.

The employee's efforts to verify her employment status were inadequate. An employee owes a duty to definitely ascertain what her employment status is before concluding that the employment relationship is fully terminated. *Eisenberg v. Ind. Comm. & Planasch*, Case No. 116-225 (Dane Co. Cir. Ct., Jan. 5, 1966); *Leo N. John v. DILHR & Julian Galst, et al.*, Case No. 134-448 (Dane Co. Cir. Ct., Feb. 23, 1973); *Rupcic v. Wis. Liquor Co.*, Case No. 150-045 (Dane Co. Cir. Ct., Feb. 21, 1977); *Arnold v. RD Roman, Inc.*, UI Hearing No. 980000732MD (LIRC Nov. 19, 1998); *Wilson, supra*. Any doubt the employee may have had concerning her employment status could easily have been resolved by visiting the work site and consulting with management, or by showing up ready to work her next scheduled shift, and it was her duty to do so. *See, Wilson, supra.; Arnold, supra*. The commission concludes as a result that the employee's actions here should be interpreted as conduct inconsistent with the continuation of the employment relationship supporting a conclusion that she quit.

There is no exception to the quit disqualification which would apply. Although the employee claims that she did not go back to the work site after September 28 because she "felt threatened" when her calls were not returned, i.e., that there was good cause attributable to the employer for her actions, the basis for the employee's stated fears in this regard are speculative at best.

cc: Kilbourn Care Center (Milwaukee, Wisconsin)