

BEFORE THE
STATE OF WISCONSIN

LABOR AND INDUSTRY REVIEW COMMISSION

In the matter of the
unemployment benefit claim of

MARVIN A. BUSH, Employee

Hearing No. 90-000180 SW

Involving the account of

SEE ENCLOSURE AS TO TIME
LIMIT ON FURTHER APPEAL.

MILWAUKEE PERSONNEL WORLD, INC., Employer
c/o Auto Data PRO-CON

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Pursuant to the timely petition for review filed in the above-captioned matter, the Commission has considered the petition and all relief requested. The Commission has reviewed the applicable records and evidence and finds that the Appeal Tribunal's findings of fact and conclusions of law are supported thereby. The Commission therefore adopts the findings and conclusions of the Appeal Tribunal as its own.

DECISION

The decision of the Appeal Tribunal is affirmed. Accordingly, the employee is eligible for benefits beginning in week 41 of 1989, if he is otherwise qualified.

Dated and mailed

February 19, 1991

135:GD0835

/s/

Kevin C. Potter, Chairman

/s/

Carl W. Theapson, Commissioner

/s/

Pamela I. Anderson, Commissioner

MEMORANDUM OPINION

The employer raises two issues in its petition for Commission review. First, the employer contends that the employe voluntarily terminated his employment within the meaning of section 108.04 (7) of the Statutes to attend a funeral in Georgia. This contention cannot be sustained because the employment relationship never existed because the employe did not report to work on the scheduled day because he attended a funeral out of town. Therefore, since the employment relationship had not been reestablished, the employe did not quit and the proper question to be determined is whether the employe's failure to accept this offer of work was with good cause.

The employer contends that the offer of work is suitable within the meaning of section 108.04 (8)(a) of the Statutes since the employe had no objections to the offer of work and was willing to fulfill the agreement of hire. This fact is undisputed. However, section 108.04 (8)(a) of the Statutes is inapplicable where section 108.04 (9), Protections of Labor Standards applies. The relevant subsection 9 (b) provides "Benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (b) if the wages, hours (including arrangement and number) and other conditions of work offered are substantially less favorable to the individual than those prevailing for similar work in the locality." Here, the Administrative Law Judge properly applied the labor standard provisions and based upon the labor market analyst's conclusions, found that the wages and hours were substantially less favorable to the employe than those prevailing for similar work in the locality.

It should be noted that these labor standard provisions are mandatory inasmuch as they are minimum standards which apply to all denials of benefits or refusals of offers of work regardless of whether an employe raises them. See January 6, 1947 Program Letter No. 130 at page two, issued by the U. S. Department of Labor. This public policy has been adopted by the Wisconsin Unemployment Compensation Division and this Commission reviews such cases accordingly. Therefore, the employer's argument that the labor standards as reflected in 108.04 (9)(b) are irrelevant since the employe did not raise them because he accepted the offer of work, is incorrect.

Based upon the Administrative Law Judge's finding as supported by the labor market analyst's testimony, the Commission concludes that the wages, hours (including arrangement and number) or other conditions of that work were substantially less favorable to the employe than those prevailing for similar work in the employe's labor market, pursuant to section 108.04 (9)(b) of the Statutes.

cc: Curtis A. Brzezinski
Human Resource Systems