

STATE OF WISCONSIN: CIRCUIT COURT: WAUKESHA COUNTY
BRANCH NO. III; CIVIL DIVISION

ALLEN M. CHABOT,

Plaintiff,

-vs-

LABOR AND INDUSTRY
REVIEW COMMISSION,

Defendant.

MEMORANDUM DECISION

FILE NO. 94-CV-1471

The above-entitled matter comes on before this Trial Court by virtue of the Plaintiffs filing an appeal with this Circuit Court of Waukesha County, Wisconsin, on July 14, 1994, of the Decision of the Defendant, State of Wisconsin, Labor and Industry Review Commission, dated June 17, 1994, affirming the Decision of the Appeal Tribunal, Emma Parker, Administrative Law Judge, issued April 15, 1994. The Plaintiff filed this said appeal pursuant to Section 102.23(1) Wisconsin Statutes - JUDICIAL REVIEW, and, Section 108.09(7) Wis. Stats. - JUDICIAL REVIEW. Section 102.23(1)(e) JUDICIAL REVIEW, provides:

"Upon such hearing, the Court may confirm or set aside such order or award; and any judgment which may theretofore have been rendered thereon; but the same shall be set aside only upon the following grounds:

1. That the Commission acted without or in excess of its powers.
2. That the order or award was procured by fraud.
3. That the findings of fact by the Commission do not support the order or award."

Section 102.23(b) Wis. Stats., further provides:

"If the Commission's order or award depends on any fact found by the

Commission, the Court shall not substitute its judgment for that of the Commission as to the weight or credibility of the evidence on any finding of fact. The Court may, however, set aside the Commission's order or award and remand the case to the Commission if the Commission's order or award depends on any material and controverted finding of fact that is not supported by credible and substantial evidence."

The "Brief of Defendant Labor and Industry Review Commission" provides a synopsis of the facts in this case, as follows:

"The plaintiff was an employe of Technipower Temporary Agency, a temporary employment agency (T.5). The plaintiff had also sent resumes to other technical agencies (T.5). Technipower Temporary Agency had placed the plaintiff in a job at Briggs & Stratton (T.5). That placement lasted for about ten months (T.5) and ended in the end of October 1993 (T.7). The plaintiff applied for and began receiving unemployment compensation benefits for the week ending November 6, 1993 (week 45)(Commission Record p.8).

Tad Technical, another temporary employment agency (T.6), contacted the plaintiff about a position (T.5) with Johnson Controls in January 1994 (T.7). The plaintiff agreed to find out what the job was about and Tad Technical arranged an interview (T.6) for him with Johnson Controls (T.7). After the interview Johnson Controls advised Tad Technical that they would hire the plaintiff (T.7). Tad Technical contacted the plaintiff and offered him a placement at Johnson Controls at a wage of \$13.50 per hour (T. 7-8). After considering the offer for one day, the plaintiff told Tad Technical that he was going to turn down the job (T.8).

On March 11, 1994, a deputy for unemployment compensation of the Department of Industry Labor and Human Relations determined that the plaintiff did not have good cause for failing to accept an offer of work in the week ending January 8, 1994 (week 2) (Commission Record p. 27). In accordance with sec. 108.04(8)(a), Wis. Stats., the deputy concluded that no benefit eligibility existed beginning in that week. The plaintiff appealed that determination on March 17, 1994 (Commission Record pp. 25-26.)

In response to the plaintiff's appeal a hearing was held by Administrative Law Judge Emma Parker on April 11, 1994 (T.1). The plaintiff appeared at that hearing in person (T.1). Administrative Law Judge Parker issued a decision on April 15, 1994 which affirmed the initial determination (Commission Record pp. 19-21). She found that the plaintiff failed, without good cause, to accept an offer of suitable work within the meaning of sec. 108.04(8)(a), Wis. Stats. She also found that the wages, hours and other conditions of the work

offered were not substantially less favorable to him than those prevailing for similar work in his labor market area. She therefore concluded that the plaintiff was not eligible for benefits beginning in week 2 of 1994. The plaintiff petitioned for review of the administrative law judge's decision by the Labor and Industry Review Commission on May 6, 1994 (Commission Record pp. 17-18).

On June 17, 1994 the commission affirmed the decision of the administrative law judge and concluded that the plaintiff was not eligible for unemployment compensation benefits beginning in week 2 of 1994 (Commission Record pp. 12-13). The plaintiff then initiated this action by serving a summons and complaint on the commission on July 18, 1994."

The Plaintiff contends in his handwritten appeal that he is 51 years of age and that he:

"... can no longer afford to continue adding temporary jobs to my resume and ever hope to get a permanent job. Taking this stance would enable me to not rely on unemployment compensation benefits in the future.

I am still contending that I acted out of belief in what I understood the unemployment compensation handbook to say and informed the job service office of such. First and foremost, after checking with my unemployment compensation handbook that it was not required of me to accept a job out of my field that I was not qualified for. I am enclosing this page as Exhibit 1."

A synopsis of the Plaintiff's contentions throughout these proceedings is provided in his "UC CLAIM INVESTIGATION - EMPLOYEE STATEMENT" signed and dated 2-17-94, in which document he states:

"On either late December 1993 or early Jan. 1994, this employer (Johnson Control) offered me a job. I don't remember the person's name but he offered me a job as an assembler tech. This was to be a temp. full time job. The job was on the first shift. They offer me \$13.50 an hour. They wanted me to start right away.

I refused the offer of work because the employer gave me the run-around on the wages I was willing to accept. I also refused the offer of work because this was a temporary position. Also the division was going to be sold according to the person that interview me. I also refused the offer of work because there is a position with Briggs that I want to get. The job that was offered to me was not in my field.

I am able and available for full time day shift work. My training and experience are as follows:

Small Engine Tech.....20 yrs.
Cabinet maker.....2 yrs.
Carpenter.....3 yrs.
Building Maint.....2 yrs.
Small Engine Instructor.....1 yr."

In the Administrative Law Judge's "Decision" affirming the Department's initial determination, under the Sub-heading "Findings of Fact and Conclusion of Law," the said Administrative Law Judge stated:

"The employe worked for his last employing unit until October, 1993. He interviewed with the employer's client in January, 1994 and was offered employment. As reason for failing to accept the employment, the employe contended that the pay rate was less than his required minimum of \$15.00 per hour and the job was out of his field. He further contended that the job offered was only a short term position, and he had applied for and had hopes of obtaining a permanent position with another employing unit.

The issue to be decided is whether the employe had good cause for failing to accept an offer of work.

Although the employe's reasons for not accepting the job might be considered understandable, they do not amount to good cause for failing to accept the offer of work. He was offered a job as an assembler technician paying \$13.50 per hour which is higher than the average pay range for similar positions within his labor market. Additionally, while the employe has twenty years experience in working with engines, the position he was offered did not require special skills and provided on the job training. Moreover, an employe is not justified in refusing a position merely because it is temporary in nature. A claimant for unemployment benefits is expected to take work of a temporary nature unless taking such a job would substantially interfere with the prospects of obtaining full-time work which he has some assurance of obtaining or unless some other reason justifies the refusal. This was not the case. Although the employe had applied for a position with another employing unit which he hoped to secure, his prospects of obtaining it were tenuous at best. In fact, he was not offered the position he was seeking.

Based on the above, the employe did not establish that he had good cause for failing to accept an offer of work."

Upon review of Plaintiff's testimony at the hearing before the Administrative Law Judge and the decision of the ALJ, this Trial Court can find no evidence that the findings of the ALJ are not supported by the evidence. She found, and this Trial Court agrees, the

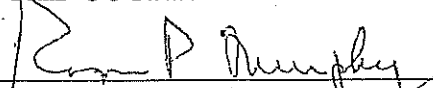
Plaintiff failed, without good cause, to accept an offer of suitable work, within the meaning of Section 108.04(8)(a) Wis. Stats. The work offered was not the same he was best trained to do, but, and this Trial Court finds is a most important factor, that the proposed job did not require specialized skills and was accompanied with job training; and, although the job did not pay exactly what the Plaintiff wanted, it was comparable for the type of work while being trained. As the ALJ stated, an unemployed worker seeking compensation under the Workers Compensation Act cannot turn down employment offers because he'd rather work for a prior employer, hoping to get full time work -- which he did not get. The job offered by Johnson Controls was not the type of work the Plaintiff was unable to do, physically or mentally, and the hours and other conditions of work were comparable to the work the Plaintiff decided to hold-out for, and to similar work in this labor market area. Also, because the employer might sell that division is not sufficient reason to refuse the employment offered him at Johnson Controls.

This Trial Court affirms the decisions of the Labor and Industry Review Commission which affirmed the decision of the Administrative Law Judge, as indicated above and, that the Plaintiff is not eligible for unemployment benefits, as indicated in those Decisions, and is required to repay the overpayments.

IT IS SO ORDERED,

this 20th day of January 1995.

BY THE COURT:



Roger P. Murphy, Circuit Judge
Branch No. III; Civil Division