

BEFORE THE
STATE OF WISCONSIN

LABOR AND INDUSTRY REVIEW COMMISSION

In the matter of the
unemployment benefit claim of

ELINOR CHESEN, Employee

Hearing No. 90-005234 JV

Involving the account of

SEE ENCLOSURE AS TO TIME
LIMIT ON FURTHER APPEAL.

PELL LAKE LUMBER COMPANY, INC., Employer

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On November 23, 1990 the Department of Industry, Labor and Human Relations (Department) issued an Initial Determination finding that in week 37 of 1990 the employe quit when as a corporate owner she voluntarily voted for the sale of the business knowing her unemployment would result. Benefits were denied. The employe timely appealed and on December 27, 1990 a hearing was held before an Administrative Law Judge. On January 10, 1991 the Administrative Law Judge issued his Appeal Tribunal Decision finding that the employe terminated her work with good cause attributable to the employing unit, within the meaning of section 108.04 (7)(b) of the statutes. Benefits were allowed. The Department timely petitioned the Commission for review of the Appeal Tribunal Decision.

Based on the applicable law, records and evidence in this case, the Commission makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The employe worked for approximately 14 years as the secretary and treasurer for the employer, a lumber yard. The employe was also a one-third owner of the business. It became financially unfeasible to continue operating

the business and rather than have creditors foreclose against the company, the employe along with her partners sold the business. The employe then reported to a public employment office and filed a claim for unemployment benefits.

The issue is whether the employe quit and if so, whether her reasons for quitting would allow the payment of benefits pursuant to section 108.04 (7) of the Statutes.

The applicable task for determining whether an individual has voluntarily terminated employment within the meaning of section 108.04 (7) of the Statutes is stated in Dentici v. Industrial Commission, 264 Wis. 181, 186 (1953). There the Supreme Court stated "when an employe shows that he intends to leave his employment and indicates such intention by word or manner of action, or by conduct inconsistent with the continuation of the employe-employer relationship, it must be held that the employe intended and did leave his employment voluntarily."

Despite the economic conditions dictating the company's decision to cease operations, the Commission concludes that the employe's actions were voluntary and constitute a quit, pursuant to section 108.04 (7) of the Statutes. The employe asserts that her and her partners were forced into selling the business due to competition and consequently her decision to cease business operations was not voluntary.

The Supreme Court has addressed the issue of voluntary quitting by employe-owners in the context of declining business operations. In Fish v. White Equipment Sales & Service, Inc., 64 Wis. 2d 737 (1974), the employe-owner decided to cease doing business due to adverse economic conditions and declining revenue. Here, the court held that despite the current adverse economic conditions, Fish's decision to cease business operations was

inconsistent with the continuation of the employe-employer relationship. Consequently, the employe-owner was held to have voluntarily quit his employment.

Several years later, the Supreme Court again addressed the issue of voluntary quitting in the context of a business decision to file bankruptcy. In Hanmer v. ILHR Department, 92 Wis. 2d 90 (1979), two business partners filed for bankruptcy upon advice of counsel and after considering other available options. The Court held that the decision to file bankruptcy, although precipitated by declining revenue and adverse economic conditions, was nevertheless, voluntary. The Court reasoned that the partners decision "to file for bankruptcy did not spring from accident or impulse" but instead was the result of a deliberate and thoughtful process. The Court stated "the fact that one particular alternative is recognized as by far the most reasonable course of action does not mean that one is not free to chose another." Consequently, the Supreme Court held in Hanmer that the employe-owners voluntarily terminated their employment.

The Commission has consistently followed the principle that decisions to cease business operations (be it closing company doors, voluntarily filing bankruptcy or liquidating) is a voluntary quit pursuant to section 108.04 (7) of the Statutes. See previous Circuit Court cases affirming LIRC decisions including, Norberg v. LIRC and Brothers Two and Associates, Inc., 10/20/82; Smith v. LIRC, Milwaukee County Circuit Court, No. 579-84-A, 12/21/82.

Most recently, the Commission concluded that an involuntary creditor takeover did not constitute a quit within the meaning of section 108.04 (7) of the Statutes. See Hamachek and Stangel v. Sturgeon Bay IGA Food, LIRC

8/14/90. Here, the business's major creditor took over the store by changing the locks on the store doors. Even though the owners did not fight the takeover, the Commission concluded that this cessation of business was not voluntarily induced by the owners. The Commission believes that the facts upon review are distinguishable from the Hamachek facts. The owners in Hamachek had no control over the major creditor's decision to change the locks on their store doors. In essence, the creditors made the decision, on behalf of the owners in Hamachek, to cease business operations. Accordingly, the Commission concluded that the owners did not voluntarily terminate their employment since it was the creditor that initiated the cessation of the employe-owners business. In other words, the owners involuntarily closed shop.

Here, the owners voluntarily decided to sell the business before foreclosure or filing voluntary bankruptcy. A decision to terminate a business that is the result of a deliberate process in which the decision-makers carefully consider alternatives is held to be a voluntary decision. Accordingly, the Commission concludes that the employe-owner's decision to sell the business is a voluntary quit pursuant to section 108.04 (7) of the Statutes.

Finding a quit, the next level of inquiry is whether the employe quit her employment for any reason which would permit the immediate payment of unemployment benefits. Specifically, if an employe has good cause attributable to the employing unit, pursuant to section 108.04 (7)(b) of the Statutes, an employe is eligible for benefits. However, the Unemployment Compensation Act was never intended to provide benefits to those individuals who become

unemployed by reason of the failure of their own business ventures. See Hanmer v. ILHR Department, supra at pg. 99. For the purposes of this statute, an employe-owner cannot create her own "good cause" so as to make herself unemployed and eligible for benefits. Accordingly, the Commission concludes that the employe quit but not with good cause attributable to the employing unit pursuant to section 108.04 (7)(b) of the Statutes and based upon interpretation of case law.

Therefore, the Commission finds that in week 37 of 1990, the employe terminated her employment but not for good cause attributable to the employer within the meaning of section 108.04 (7)(b) of the Statutes or within any other statutory exception that would allow payment of benefits.

The Commission further finds that the employe was paid benefits in the amount of \$39 for each of weeks 37 through 52 of 1990 and \$37 for each of weeks 1 through 10 of 1991, amounting to \$994.00; for which she is not eligible and to which she is not entitled, within the meaning of section 108.03 (1) of the Statutes. Pursuant to section 108.22 (8)(a) of the Statutes she is required to repay such sum to the Unemployment Reserve Fund.

DECISION

The decision of the Appeal Tribunal is reversed. Accordingly, the employe is ineligible for benefits beginning in week 37 of 1990; 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. She is required to repay the sum of \$994.00 to the Unemployment Reserve Fund.

Dated and mailed

March 27, 1991

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/s/

Kevin C. Rotter, Chairman

/s/

Carl W. Thompson, Commissioner

/s/

Pamela I. Anderson, Commissioner

NOTE: The Appeal Tribunal Decision is reversed as a matter of law. The Commission notes that its decision in Hamachek and Stangel is an exception to a situation where an employe-owner voluntarily sells or ceases business operations. While the question of "voluntariness" is to be determined case by case, business sales or closings precipitated by declining revenue or adverse economic conditions are voluntary quits under the law unless someone or something involuntarily relieves the employe-owner of the business decision concerning the business' termination status.

cc: Glenn E. Kelley, Director
Bureau of Legal Affairs