

STATE OF WISCONSIN

CIRCUIT COURT
Branch 9

DANE COUNTY

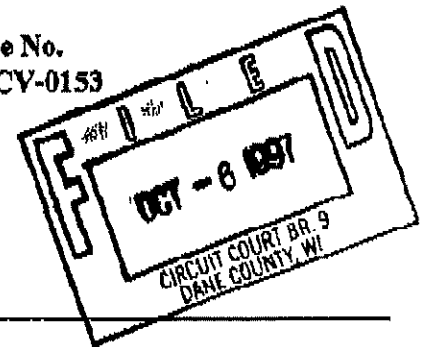
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**LAW OFFICES OF ALAN D. EISENBERG,
ALAN D. EISENBERG,**
Plaintiff,

**LABOR & INDUSTRY REVIEW COMMISSION
and
HOWARD S. PECK,**
Defendants.

DECISION

Case No.
97-CV-0153



This case is before us by request for review of the decision of the Labor and Industry Review Commission ("Commission") in a dispute over the right of Howard Peck, a former employee of Attorney Alan Eisenberg, to collect unemployment compensation benefits.

Peck was a law clerk who worked in the offices of Eisenberg from September 6, 1995 through May 14, 1996 while attending law school. He graduated from law school in May 1996. After leaving Eisenberg's employment, Peck moved to Hawaii where he filed for unemployment compensation benefits.

On June 5, 1996, a deputy of the Department of Industry, Labor and Human Relations ("DIHLR") issued an initial determination that Peck had quit his employment with Eisenberg within the meaning of sec. 108.04(7)(a), Stats., and was therefore ineligible for unemployment compensation benefits. Peck appealed to DIHLR; confirmation of the initial decision was then issued by a Administrative Law Judge ("ALJ"). Peck appealed to the Commission, which on December 20, 1996 issued a

decision reversing the ALJ. Eisenberg has requested that we review the Commission's decision.

Standard of Review

Judicial review of Commission decisions is closely circumscribed by sec. 102.23(1)(e), Stats., which states that the findings of the Commission may 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; or 3) that the findings of fact by the Commission do not support the order or award. Under sec. 102.23(6), Stats., we cannot substitute our judgment of the facts for that of the Commission unless the Commission's findings are not supported by credible and substantial evidence.

The crux of the factual issue here is whether Peck was terminated from his employment or whether he quit. Both Eisenberg and Peck agree discussing Peck's plans after graduation. Eisenberg wanted Peck to remain in Milwaukee, forming his own independent service corporation (law firm) to which Eisenberg would rent space. Peck wanted Eisenberg to allow him to remain in Eisenberg's office as an associate. Neither party agreed to the other's proposal, and Peck subsequently left Milwaukee after graduation.

The Commission and the ALJ disagreed as to the meaning of these facts. The ALJ based its findings that Peck had quit on 1) Peck's having told Eisenberg when he was first hired that he would be leaving after graduation, indicating both Peck and Eisenberg

intended Peck's job to be of limited duration only; and 2) Peck's having set his final date at May 13, 1996.

As the Commission points out, however, Eisenberg's offer to allow Peck to remain in the office as an independent contractor was not an offer to continue to employ Peck; therefore, contrary to Eisenberg's contention, Peck's refusal to accept that suggestion was not a "quit." Furthermore, as the Commission pointed out, even when a worker is hired for only limited term employment, the worker is still eligible for unemployment compensation benefits assuming he is otherwise qualified. The dispositive fact to the Commission was that Peck would have stayed with Eisenberg's office if he had been allowed to.

The issue then before the Commission was whether Peck could have stayed with Eisenberg as a law clerk or whether, by not accepting Eisenberg's suggestion, he was required to find employment elsewhere. At the heart of the controversy is a lack of understanding on this point between the two parties. Eisenberg argues that he did nothing to prevent Peck from remaining with the firm as a law clerk until finding other employment; however, both parties agree that in March 1996 Eisenberg told Peck he wasn't interested in having an attorney as an employee. Peck apparently believed, and the Commission agreed, that this statement of Eisenberg's meant that if Peck did not accept Eisenberg's suggestion to become an independent contractor, he was not welcome to stay in Eisenberg's office as a clerk.


We hold the Commission's findings of facts are based on credible and substantial evidence. Therefore, under sec. 102.23(1)(e)(3), Stats., the judgment of the Commission may be set aside only if the findings of fact do not support the order or award.

With the Commission's finding that Peck was discharged from employment, sec. 108.04(2), Stats., allows him to collect unemployment compensation benefits.

For the reasons stated above, the holdings of the Commission are hereby affirmed.

Dated this 6th day of October, 1997.

BY THE COURT:


Gerald C. Nichol, Judge
Circuit Court Branch 9