
EILEEN H. PARPART,

Plaintiff,

DECISION

VS

Case No. 88 CV 5864

STATE OF WISCONSIN LABOR
and INDUSTRY REVIEW COMMISSION
and WISCONSIN PHYSICIANS SERVICE
INSURANCE CORPORATION,

Defendant.

This is an action by plaintiff, Eileen H. Parpart, for judicial review under Chapters 108 and 102, Stats., of an unemployment compensation decision by defendant, Labor and Industry Review Commission (Commission). The Commission's decision modified the ALJ's findings of fact, added a NOTE to their decision and adopted the conclusion of law that plaintiff was discharged for misconduct connected with her employment, within the meaning of sec. 108.04(5), Stats. On March 1, 1989, plaintiff requested oral arguments. The Court determines oral arguments are unnecessary and denies plaintiff's request.

DECISION

Section 108.04(5), Stats., provides that an employee who ". . . has been discharged by the employing unit for misconduct connected with his or her employment . . ." is ineligible for unemployment benefits. In the case at hand, plaintiff was discharged for violating her employer's dress policy.

The determination of whether an employee's conduct is "misconduct" under sec. 108.04(5) Stats., is a question of law. Fitzgerald v. Globe-Union, Inc., 35 Wis.2d 332, 337, 151 N.W.2d 136 (1967).

When determining whether a worker's conduct constitutes "misconduct", the focus is on the employee's conduct rather than the merit of the employer's rule. Milwaukee Transformer Co. v. Industrial Comm., 22 Wis.2d 502, 509-10, 126 N.W.2d 6 (1964).

The test to be applied to the employee's conduct is an objective test, namely, whether a reasonable person would have considered the employee's conduct to be willful interference with the employer's interests. Universal Foundry Co. v. ILHR Department, 86 Wis.2d 582, 591-92, 273 N.W.2d 324 (1979).

The relevant portion of the Commission's modification states:

Employers do have the right to establish reasonable dress codes, for purposes of general appearance and company image. These legitimate business purposes are cited in the first paragraph of the employer's written dress policy. The employe disagreed with the necessity of this policy, but again, it was the employer's prerogative to establish reasonable dress guidelines. The employe's repeated and deliberate defiance of the dress policy was unreasonable and evinced an intentional and substantial disregard of the employer's interests in establishing such policy. Evidence was presented that some of the employer's supervisors failed to consistently enforce the employer's dress policy, but this cannot change the fact that the employe received specific, repeated and substantial disciplinary action concerning her continued wearing of jeans. Nevertheless, she refused to stop wearing them."

Plaintiff maintains that, in order to find statutory misconduct justifying a denial of unemployment benefits, the work rule must be found to be reasonable. Plaintiff contends that a work rule is reasonable only if its violation is reasonably likely to harm the employer's business interests. This being so, plaintiff contends that "there is absolutely no evidence as to why the policy was necessary to WPS' business interests nor what interest was intended to be protected." This Court disagrees.

Assuming arguendo, that the reasonableness of the work rule must be established, it is clear from the Commission's modification that it considered the dress code to be reasonable.

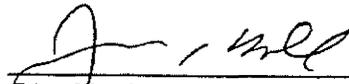
The Commission's modification shows that it examined the business interests sought to be protected, found the interests to be legitimate and further found that the plaintiff's repeated, deliberate and intentional defiance of the dress policy was unreasonable.

This Court finds the Commission's legal conclusion that the plaintiff's actions constituted misconduct to be reasonable, and although another view may be equally reasonable, the Court will not disturb that finding. See Tecumseh Products Co. v. Wisconsin Employment Relations Board, 23 Wis.2d 118, 129, 126 N.W.2d 520 (1964).

The Commission's decision is hereby affirmed.

Dated this 26 day of July, 1989.

BY THE COURT



JAMES C. BOLL
Circuit Judge

JCB:bs

cc: Atty. Allen D. Reuter

Atty. Robert C. Reed

Atty. J. Thomas Jacobs