

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 3

LA CROSSE COUNTY

STANLEY G. THOMAS,
Plaintiff,

v.

LABOR & INDUSTRY REVIEW
COMMISSION, and THE STROH
BREWERY CO.,
Defendants.

**MEMORANDUM
DECISION AND ORDER**

Case No. 00-CV-81

This case is before the court on plaintiff's appeal from a decision by the Labor and Industry Review Commission ("LIRC") affirming a determination by the Unemployment Compensation Division of the Department of Workforce Development that denied benefits to the plaintiff. Because the LIRC abused its discretion in affirming the Unemployment Compensation Division's denial of benefits to the plaintiff, the decision of the LIRC is reversed.

FACTS

Plaintiff, Stanley G. Thomas, began work for G. Heileman Brewing in 1962. During the past several years G. Heileman Brewing, or its assets, have been sold on several occasions, with the assets most recently being owned by Stroh Brewing. Prior to August, 1999, Stroh Brewing announced that it would be closing the La Crosse brewery and selling those assets. In the summer of 1999, the New York investment firm Platinum Holdings purchased the brewery with the intent to reopen the facility under the name of City Brewing Company. Both the City and County of La Crosse agreed to loan money to City Brewing Company contingent upon the brewery having the equivalent of 150 full time jobs when in final operation.

As part of the agreement, the new purchasers would utilize a somewhat modified collective bargaining agreement with the union which preserved the seniority rights already in effect. Due to Mr. Thomas' 37 years of continuous employment with the brewery, he was number two out of approximately 450 persons on the union seniority list. As it was Mr. Thomas' reasonable expectation that he would be returned to his prior position, Mr. Thomas did not conduct a work search under WIS. STAT. § 108.04(2).

Because Mr. Thomas did not perform a work search and because Mr. Thomas did not qualify for a waiver of the work search requirement, the Unemployment Compensation Division denied his benefits. The testimony of Ms. Enerson indicates that a waiver was not granted because Mr. Thomas was not "assured" of returning to work. Consequently, an Administrative Law Judge affirmed the Unemployment Compensation Division's decision to deny benefits, which Mr. Thomas appealed to the LIRC. The LIRC affirmed the decision of the Administrative Law Judge, and now Mr. Thomas appeals to this court.

DISCUSSION

Under WIS. STAT. § 102.23(1)(e), decisions of the commission may be set aside only if the commission acted without or in excess of its powers, the order or award was procured by fraud, or the commission's findings of fact do not support the order or award. The LIRC sets forth the requisite law regarding the overruling of an administrative agency's decision. An agency's interpretation will be sustained if it is merely reasonable. Harnischfeger Corp. v. LIRC, 196 Wis. 2d 650, 661, 539 N.W.2d 98 (Wis. 1995). It will also be sustained even if an alternative interpretation is equally reasonable (Id. at 663) or if an alternative interpretation is more reasonable. UFE Inc. v. LIRC, 201 Wis. 2d 274, 287, 548 N.W.2d 57 (Wis. 1996).

In addition, the Court agrees with the LIRC that “[a]n interpretation is unreasonable if it directly contravenes the words of the statute, if it is clearly contrary to the legislative intent, or if it is without a rational basis.” Harnischfeger, at 662. However, the Court disagrees that the LIRC’s interpretation is reasonable and supported by a rational basis.

The LIRC’s interpretation of the events directly contravenes the words of the statute, namely that only a reasonable expectation of reemployment is required, not an “assured” or “certain” expectation of reemployment within 12 weeks. Also, it is clear that Mr. Thomas is the type of individual committed to participation in the labor market. Mr. Thomas has participated in the labor market for over 37 years and, in August of 1999, he had a reasonable expectation that he would return to his same employment within 12 weeks. Mr. Thomas was not trying to circumvent the system, he was following the law under DWD § 127.02(2) in that he would receive a waiver of his work search requirement due to his personal circumstances.

Here, in determining that the LIRC acted in excess of its powers and that its findings of fact do not support the denial of benefits to Mr. Thomas, the Court looks to the applicable statutes. Under the general qualifying requirements of WIS. STAT. § 108.04(2)(a) “. . . a claimant is eligible for benefits as to any given week for which he or she earns no wages only if:

1. The individual is able to work and available for work and is seeking suitable work during that week; and
2. As of that week the individual has registered for work.”

These requirements may be waived under WIS.ADM.CODE § DWD 127.02, which states:

“The Department may waive a claim and search for suitable work requirement under s. DWD 127.01 for any week under any of the following circumstances:

(2) The Claimant has been laid off from work but has a reasonable expectation of reemployment by an employer within 12 weeks after the week in which he or she appears at the public employment office to initiate the benefit claim In determining whether a claimant has a reasonable expectation of re-employment, the Department shall consider factors including, but not limited to, the following:

(a) The past history of layoffs and re-employments by the employer;

(b) Any information which the employer furnished to the Claimant or the Department about the expected re-employment date; and

(c) Whether the Claimant has recall rights with the employer under the provisions of any applicable collective bargaining agreement.

(3) The claimant has a reasonable expectation of starting work with a new employer within four weeks after the week in which he or she appears at the public employment office to initiate the benefit claim”

A waiver of the work search requirement should have been granted under DWD § 127.02(2), because the claimant need only meet the “reasonable” expectation of reemployment standard opposed to the “assured” or “certain” standard that the LIRC has incorrectly used to deny benefits to Mr. Thomas. Ms. Enerson testified that “[t]here’s a waiver up to a 12-week period of time if you’re assured you’re going to be returning to work for a customary employer.” (DWD T. Hr’g. at 15 line 21). (Emphasis added). In failing to waive the work search requirement for Mr. Thomas, the LIRC completely contravenes its own rule. The LIRC has abused its discretion by implementing an “assured” or “certain” standard; the law states that a “reasonable” expectation of reemployment is required. (Emphasis added).

In the summer of 1999, when the New York investment firm Platinum Holdings decided to purchase Stroh Brewing (previously G. Heileman Brewery), there was a clear understanding, made known to Mr. Thomas and all the other employees, on August 1, 1999, that Platinum

Holdings “would recall from the current seniority list with the Stroh Brewery, in order on seniority as soon as they could become operational in late September or early October.” (DWD T. Hr’g. at 12, line 20). Due to the fact that Mr. Thomas was number two out of 450 employees on the seniority list, it is overwhelmingly reasonable for him to expect reemployment at his same facility, doing the same work, under substantially the same collective bargaining agreement within 12 weeks.

In addition, the 12 week standard applies to Mr. Thomas’ circumstances. Although, the brewery changed ownership from G. Heileman, to other owners, to Stroh Brewing, and eventually to City Brewery under Platinum Holdings, the 12 week standard is applicable and the work search requirement should have been waived. First of all, Mr. Thomas has been continuously employed at the same facility, doing the same job, under substantially the same collective bargaining agreement (with recall rights) since 1962. Even though Mr. Thomas’ paycheck would technically come from a “new employer”, his job location, his type of work, and his seniority status, maintained over a 37-year period, were carried over to City Brewery. He did not have “new employment”; for all intents and purposes, and in the spirit of DWD § 127.02(2), Mr. Thomas was going to return to work for his “customary employer”.

The decisions of the DWD, the Administrative Law Judge, and the LIRC are totally unsupported by a rational basis. Not only do the facts point to the granting of a work search waiver for Mr. Thomas’ personal circumstances, but the testimony of the LIRC’s only witness does not shed light on how this determination was made. Basically, the LIRC “rubber-stamped” the findings of the initial claims intake person without looking at the factual circumstances. This is an abuse of power. At no time do any of the decision-making bodies, that denied benefits to

Mr. Thomas, render a well-reasoned, rational, or logical analysis on why the benefits were denied.

“A discretionary determination, to be sustained, must demonstrably be made based upon the facts appearing in the record and in reliance on the appropriate and applicable law. Additionally, and most importantly, a discretionary determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together with the purpose of achieving a reasoned and reasonable determination.” Hartung v. Hartung, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (Wis. 1981).

The LIRC did not properly apply its own regulations and did not give any reasons for its decision. Because the decision of the LIRC is without a rational basis, the LIRC improperly denied Mr. Thomas benefits by not granting him a waiver of the work search requirement under DWD § 127.02(2).


ORDER

For the above stated reasons:

The decision of the LIRC is reversed.

Dated at La Crosse, Wisconsin, this 8th day of September, 2000.

BY THE COURT:


Dennis G. Montabon
Circuit Judge, Branch 3

cc: W. A. Kirkpatrick, Hale Skemp, Hanson, Skemp & Sleik
Earl G. Buehler, Labor and Industry Review Commission