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   STATE OF WISCONSIN : CIRCUIT COURT : FOREST COUNTY
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   ROBERT THORNTON,
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                   Plaintiff,
                                          81-CV-93
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                                          DECISION
         -vs-
   DEPARTMENT OF INDUSTRY,
   LABOR and HUMAN RELATIONS,
   and INDUSTRY REVIEW COMMISSION,
   and U. S. DEPARTMENT OF
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   AGRICULTURE, NATIONAL FINANCE
   CENTER,
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                   Defendants.
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                   Partial transcript of proceedings held in
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   the above-entitled matter before the Hon. Frederick H. Fowle,
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   Circuit Judge for Forest County, at the Courthouse, in the
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   City of Crandon, Forest County, Wisconsin, on the 6th
   day of July, 1983.
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                   APPEARANCES
                   ROBERT A. KENNEDY, SR., Attorney at Law and
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   ROBERT A. KENNEDY, JR., Attorney at Law, appeared on behalf
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   of the Plaintiff.
                   MELVIN H. JARCHOW, Attorney at Law, appeared
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   on behalf of the Defendants.
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                   PROCEEDINGS
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                   THE COURT: Reiterating the Court's recollection
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   of the facts in this case, during the first five weeks of
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   unemployment which are at issue the wife of the claimant,
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Mr. Thornton, was licensee and operator of a tavern in the village of Laona, and that although the administrative hearing has disposed of the matter of whether or not Mr. Thornton actively sought work in that period, there's nevertheless materials in the record that he did assist his wife in housekeeping chores, et cetera, in running the This factual situation is very easily distinguishable tavern. from the case that the Court has in hand entitled Sue A. Krueger, plaintiff, versus the Department of Labor and Industry Review Commission and General Motors Assembly Division, in that on the facts therein cited this lady was actually making \$400 by gainful employment which she indicated that she was not employed. And on page 5, the Court goes into the following language: The Court is completely satisfied that under the provisions of Section 108.04 (11), forfeiture of future benefits may not be imposed against a claimant who makes an honest mistake. It is quite apparent that a forfeiture is to be imposed against a claimant only as a result of his or her wilfull act of concealment, not due to ignorance, lack of knowledge. Clearly there must be intent on the part of the claimant to receive benefits to which he or she knows they are not entitled. No question that this recitation is a sound recitation, particularly sound in applying to the facts in the Krueger case here where the woman actually was collecting

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\$400 a week. This is not the case as this Court finds in the activities engaged in by Mr. Thornton which were in the nature of an accommodation to his wife in the operation of her business. Secondly, in reviewing the briefs and the arguments here, the attempt to reserve the matter of litigating concealment which was made by the commission with reference to the first five weeks was subsequently pursued by applying a different standard than was applied to the balance of the seventeen weeks previously at issue.

The basic facts are found not to constitute a grounds for reasonable inference that Mr. Thornton intentionally concealed any facts relative to working. again returning to page five of the Krueger decision, repeating the language that's therein set forth: The Court is completely satisfied under the provisions of 108.04 (11), statutes, forfeiture of future benefits may not be imposed against a claimant who makes an honest mistake and this Court will find that if the accommodation and services that were offered by Mr. Thornton to his wife in the operation of the tavern did in fact constitute employment, reading the question that was posed to him in his application did he do any work and answering the same no, constitutes a reasonable and honest mistake because in reading the language work, a man who's used to operating heavy equipment is not going to consider housekeeping duties as work. He is going to

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1 consider work as being that kind of effort that he ordinarily 2 exerted in order to make the wage he was ordinarily accustomed 3 to receiving. 4 The next factor that comes to the Court's 5 attention is the reasonableness of attempting to partially Throughout the general body of the litigate the matter. practice of the law in the state judiciary, why we have to 8 litigate our action completely at one time up at bat. We can't divide our causes of action and those the commission 10 works under more favorable or flexible rules. The Court 11 will find that this matter should be remanded in relation to the five weeks believing that the inference upon which the 13 commission has acted is not supported by facts that would 14 make such an inference reasonable. 15 16 STATE OF WISCONSIN SS) 17 COUNTY OF FOREST 18 I, Carol A. DuValle, Official Court Reporter 19 for the Circuit Court of Forest County, do hereby certify 20 that the foregoing is a true and correct partial transcription 21 of my original stenograph notes taken in the above-entitled 22 matter at the time and place so indicated. 23

> Carol A. DuValle Court Reporter