

CHARLES VOGEL MANUFACTURING
CO., INC.,

Plaintiff,

vs.

WISCONSIN LABOR AND INDUSTRY
REVIEW COMMISSION, KRISTI A.
BLANCHARD,

Defendants.

MEMORANDUM OPINION AND ORDER
Case No. 92CV316

The Labor and Industry Review Commission (hereinafter "commission") decided to award unemployment benefits to Kristi Blanchard, even though she voluntarily quit her job because the commission concluded that she terminated her employment for good cause attributable to her employer. The plaintiff has appealed to this court for review of the commission's decision arguing that the facts do not support the commission's conclusion.

After reviewing the briefs of the parties, the court concludes that the facts found by the commission do support its conclusion and, therefore, orders that the decision of the commission be affirmed.

The findings of fact made by the commission not the Administrative Law Judge control this court review. This court does not weigh the evidence but must accept the findings of fact made by the commission that are supported by credible and substantial evidence. The commission has a right to find that the testimony of Kristi Blanchard is more credible and entitled to more weight than that of Mark Daly and Debbie Denzer. The commission in making its findings of fact gave more credit to the testimony of Ms. Blanchard than it did Mr. Daly and Ms. Denzer when there was a

conflict between their testimony. The plaintiff refers throughout its brief to the fact that Mr. Daly and Ms. Denzer rebutted the testimony given by Ms. Blanchard and her other witness, Ms. Otte. It is hardly unusual in a trial for one witness to deny making a statement that another witness says they made. The essence of fact finding is to choose which of the witnesses to believe. The power to choose which witness's testimony to believe is given to the commission in the case before the court.

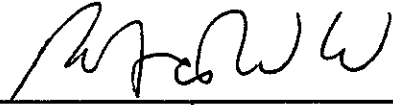
The plaintiff sets forth in its responsive brief several sets of facts that it contends are undisputed and by themselves require a reversal of the commission's decision. If these were the only facts present in the case, plaintiff might be correct. However, there were other facts before the commission presented by Ms. Blanchard and Ms. Otte that established that Ms. Blanchard had a reasonable basis to conclude that Mr. Vogel wanted her out as an employee because of her participation in a sexual harassment lawsuit brought against Mr. Vogel. At best, plaintiff has demonstrated that Ms. Denzer did not want Ms. Blanchard to quit and that Mr. Daly personally did not want her to quit, but it is clear from the facts that Ms. Blanchard had a reasonable basis to believe that Mr. Vogel wanted her out and that even the possible support of Mr. Daly and Ms. Denzer would be insufficient to prevent her eventual discharge.

The other point plaintiff makes in his brief is that the testimony of Ms. Blanchard as to what Mr. Daly and Ms. Denzer told her constituted hearsay. The court agrees with the analysis of this objection contained in the brief filed by Ms. Blanchard's attorney. Given the testimony of Ms. Blanchard as to what she was

told by Ms. Denzer and Mr. Daly, she certainly had an objective, real and substantial basis for fearing discharge.

Dated: August 11, 1993.

BY THE COURT:



Robert W. Wing
Circuit Court Judge

cc: Robert C. Reed
Keith J. Nelson
Catherine R. Quiggle