

STATE OF WISCONSIN

CIRCUIT COURT

FOND DU LAC COUNTY

ROGER P. BALOGH,

Plaintiff,

vs.

MEMORANDUM DECISION

Case No. 00-CV-079

LABOR AND INDUSTRY REVIEW
COMMISSION and CHARTER
MANUFACTURING COMPANY, INC.

Defendants.

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The above entitled matter was brought before this ^{LABOR & INDUSTRY}~~REVIEW~~ COMMISSION following an appeal to the Labor and Industry Review Commission which Commission did on January 27, 2000, issue a Decision and Memorandum Opinion affirming the Appeal Tribunal Decision. This action is pursuant to Section 108.09(7) of the Wisconsin Statutes, for Judicial Review of the Commission's decision.

The Plaintiff, Roger Balogh, is represented by Attorney Michael Haza of Campbellsport, Wisconsin. The Defendants, Labor and Industry Review Commission are represented by Attorney William W. Cassel, of Madison, Wisconsin; and the Defendants, Charter Manufacturing Company, Inc. are represented by Attorney Fred G. Groiss, of Milwaukee, Wisconsin.

Very briefly and succinctly the facts are that the employee in this particular case, planned a moose hunting trip to Canada for a period of time from September 22, 1999 through October 5,

1999. He had been planning this trip for over a year, and it was officially booked in June of 1999. He had about \$4,000 invested in the trip and he requested a leave of absence in August. Since he had used up his vacation time, he had asked if his leave could be considered family and medical leave. He was denied leave for this trip, and appealed to the plant superintendent, who again denied his request. He was needed at work, and had already utilized his vacation time for that year. Other workers, he claimed, offered to work for him so that he could take the trip, but the employer rejected that offer since it would require the payment of overtime. The employee then offered to work for free upon his return to make up for the other workers' overtime, an offer the employer also rejected. The employee then did on September 21, clean out his locker before he left and the manager of the human resources at the firm called him at home to ask him if he had quit. They had a cordial conversation during which the employee stated that he was taking a trip to Canada, he had planned that. The manager urged him to reconsider, telling him what he would lose and would have to start again with new retirement benefits in a new company. She told him he still had a chance to keep his job if he came to work that night for his next scheduled shift. He said he would not be in to work that night, and he went on the trip to Canada as he planned.

Termination papers were prepared by the employer approximately a week later.

The issue in the case is, did the Commission properly find that the employee terminated (quit) his employment with the employer within the meaning of Wis. Stat. §108.04(7)(a), and that such quitting was not with good cause attributable to the employer, within the meaning of Wis. Stat. §108.04 (7)(b).

The employee and Petitioner and/or Plaintiff herein argue that he acted reasonably in making his request for a leave of absence. Because in making the request, he advised the employer of other employees making similar requests for similar reasons that were granted. He said his request was similar to others that were granted and despite such action the Plaintiff's request was denied. He claimed this was discriminatory in nature and bias treatment of the Plaintiff. The practice of granting non-medical and non-family leaves of absence existed prior to the Plaintiff's termination and continues to date.

The employer argued that the request was denied because the employee who volunteered to cover Plaintiff's hours of work would have to to be paid overtime pay. That this was a burden not acceptable to the employer, therefore denied Plaintiff's leave of absence.

The manner in which a Circuit Court in reviewing a decision

of the Commission is well documented in Wisconsin Law. Wisconsin Statutes §102.23(1)(a) states:

The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive.

Paragraph (e) states:

Upon such hearing, the court may confirm or set aside such order or award; and any judgment which may theretofore have been rendered thereon; but the same shall 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.
3. That the findings of fact by the commission do not support the order or award.

The standard for Judicial Review is found in Wisconsin Statutes §102.23:

The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive.

The Court may not substitute its judgment for that of the Commission as to the weight of the credibility of the evidence on any finding of fact, and the Commission's findings of fact must be upheld if they are supported by credible and substantial evidence. Princess House, Inc. v. DILHR, 111 Wis. 2d 46.

The reviewing court's role is to search the record to locate credible evidence which supports the commission's determination,

rather than weighing the evidence opposed to it. In this particular case, four requirements must be met in order for an agency interpretation to be afforded great weight:

1. The agency must be charged by the legislature with the duty of administering the statute;
2. The interpretation of the agency must be one of long-standing;
3. The agency must have employed its expertise or specialized knowledge in forming the interpretation; and
4. The agency's interpretation must provide uniformity and consistency in the application of the statute.

The Defendants argue:

The commission's determination of a quitting in this case meets all of the above tests for application for the great weight standard of review.

In this particular case, as pointed out by the Defendants at Page 10 of their brief:

This is a straightforward case in which the employee refused to accede to the employer's reasonable demand that he report to work as scheduled rather than go on a two-week, unauthorized moose hunting trip to Canada.

As pointed out, the employee's motivation was simply stated in his own words:

I had a four-thousand dollar investment in a trip and I was not going to lose that investment.

The Defendants then quoted two cases, Dentici v. Industrial

Comm., 264 Wis. 181 and Shudarek v. LIRC, 114 Wis. 2d 181. These cases are found on Pages 10 and 11 of the Defendant's Brief.

These cases are controlling in the case at hand.

The employee's quitting was not with good cause attributable to the employer. To demonstrate good cause for his quitting, the employee would need to show real and substantial fault on the part of the employer. Fault which would justify his quitting. These facts do not demonstrate that that occurred. It was conceded that the employee had already used his vacation time for 1999. The employer could not have been more forthcoming in his response to the employee's request for the additional time off. The record also discloses no creditable or competent evidence of the employer granting a leave of absence for a recreational pursuit analogous to a hunting trip. Even had there been absent special rules or circumstances, the employer has the right to determine whether his business needs would allow the granting of a particular employee's requests for a particular period off work.

Nowhere in the arguments made by the Plaintiff here can this Court find sufficient justification for overturning the Commission's decision.

The Commission's legal determination that the employee quit his employment is that such quitting was not with good cause

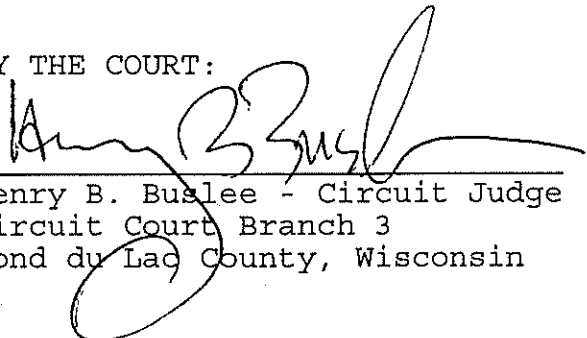
attributable to the employer are subject to the great weight standard of review. The evidence reveals that these determinations are not only reasonable, but are the most reasonable of determination and therefore they should be confirmed by the Court.

It is the decision therefore of this Court that the Commission's decision shall be confirmed in all respects.

The Defendant may draft Findings of Fact, Conclusions of Law in accordance herewith.

Dated this 13th day of November, 2000.

BY THE COURT:



Henry B. Buslee - Circuit Judge
Circuit Court, Branch 3
Fond du Lac County, Wisconsin