

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**JAN 15 1986**

A party may file with the Supreme Court a petition to review an order or decision by the Court of Appeals pursuant to s. 808.10 within 30 days hereof, pursuant to Rule 809.62 (1).

**NOTICE**

This opinion is subject to further editing. If published the official version will appear in the next volume of The Official Reports.

No. 84-2526

STATE OF WISCONSIN                    IN COURT OF APPEALS  
  DISTRICT II

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DORAN L. BLUM,

Plaintiff-Respondent,

v.

STATE OF WISCONSIN  
LABOR AND INDUSTRY REVIEW  
COMMISSION,

Defendant-Appellant,

CONLEY AND ASSOCIATES, INC.,

Defendant.

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APPEAL from an order of the circuit court for  
Waukesha county: ROBERT T. MC GRAW, Judge. Reversed and  
cause remanded with directions.

Before Scott, C.J., Brown, P.J., and  
Nettesheim, J.

PER CURIAM.            The Labor and Industry Review  
Commission appeals from an order for judgment<sup>1</sup> of the  
circuit court for Waukesha county setting aside a Commission  
decision which had denied unemployment compensation benefits  
to Doran L. Blum. The Commission determined that Blum had

been discharged for misconduct connected with his employment and thus was barred from receipt of benefits. See sec. 108.04(5), Stats. Because the Commission's findings of fact are supported by substantial and credible evidence and support the Commission's conclusion that Blum was discharged for misconduct, the circuit court erred. Accordingly, we reverse.

We first summarize this court's standard of review. In reviewing a circuit court's reversal of a determination of an administrative agency, this court's scope of review is the same as that of the circuit court. City of Sheboygan v. WERC, 125 Wis.2d 1, 4, 370 N.W.2d 800, 802 (Ct. App. 1985). This court owes no deference to the decision of the circuit court. Stafford Trucking, Inc. v. DILHR, 102 Wis.2d 256, 260, 306 N.W.2d 79, 82 (Ct. App. 1981).

A reviewing court cannot substitute its judgment for that of the Commission in matters of the weight and credibility of evidence. Amtronix Industries, Ltd. v. LIRC, 115 Wis.2d 108, 114-15, 339 N.W.2d 802, 805 (Ct. App. 1983); sec. 102.23(6), Stats. The Commission's findings of fact are conclusive if supported by credible and substantial

evidence. Amtronix, 115 Wis.2d at 115, 339 N.W.2d at 805; sec. 102.23(6). Evidence is substantial when it is "relevant, probative, and credible, and ... in a quantum that will permit a reasonable factfinder to base a conclusion upon it." Princess House, Inc. v. DILHR, 111 Wis.2d 46, 54, 330 N.W.2d 169, 173 (1983). Substantial evidence need not be a preponderance of the evidence. Farmers Mill of Athens, Inc. v. DILHR, 97 Wis.2d 576, 579, 294 N.W.2d 39, 41 (Ct. App. 1980). Stated conversely, the Commission's determination will be set aside only when the evidence, including the inferences therefrom, is found to be such that a reasonable person, acting reasonably, could not have reached the same decision as did the commission. Hamilton v. DILHR, 94 Wis.2d 611, 618, 288 N.W.2d 857, 860 (1980).

While this court need not defer to the Commission's determination of a question of law, this court will defer to agency expertise in the interpretation and application of a statute which the Commission regularly enforces. Heigel v. LIRC, 121 Wis.2d 205, 215-16, 359 N.W.2d 405, 410-11 (Ct. App. 1984). This court will sustain the Commission's legal conclusion even if an alternative

view may be equally reasonable. Evans Brothers Co. v. LIRC, 113 Wis.2d 221, 225, 335 N.W.2d 886, 888 (Ct. App. 1983).

On October 8, 1982, the claimant, Doran L. Blum, was discharged from his employment as a vice president with Conley and Associates, Inc. Conley is a multi-state management consulting firm, dealing primarily in executive recruitment and placement. Blum had joined Conley in October 1977 and was promoted to a vice-presidency in 1979. Conley gave four reasons for Blum's discharge: Blum's failure to dress in a professional manner, his continued receipt of personal telephone calls at work, his insubordination toward his supervisors and his failure to engage in business development, that is, the procurement of new client accounts.

The Commission found that Blum refused to wear a suit and tie at work despite requests of his employer that he do so to maintain a professional and executive atmosphere in the office. The Commission found that Blum's claimed medical reason for not wearing a suit and tie was not substantiated and that on numerous occasions after the onset of the medical condition, Blum did wear a suit and tie. The Commission further accepted the employer's allegations of

continued insubordination by Blum. The Commission found that Blum had "displayed an obstinate and uncooperative attitude toward the employer's president" during discussions relating to Blum's job performance. Blum frequently left those meetings prior to their completion and in a state of anger. The Commission also found that on two occasions in September 1982, Blum had been warned that such behavior and his casual dress would result in dismissal. The Commission found that Blum responded to the second warning by leaving the office "in a state of anger." Upon those findings, the Commission concluded that Blum "evinced a willful, intentional and substantial disregard of the employer's interests."<sup>2</sup>

The initial question is whether those findings are supported by the substantial and credible evidence. We conclude that they are. The record contains divergent accounts of various meetings between Blum and his superiors. Similarly, conflicting testimony regarding Blum's work attire and the employer's reaction is present. For example, Blum questioned the reasonableness and necessity of any dress expectations and denied that he had been warned that he would be dismissed if he did not wear a suit and tie. As

noted above, the credibility of witnesses and weight of testimony is solely within the province of the Commission. Employer witnesses provide the requisite relevant, probative and credible evidence to support the Commission's findings.

The next question is whether the Commission's findings support a determination that Blum was discharged for misconduct connected with his employment. Although "misconduct" is not defined in ch. 108, the meaning of the term is well-settled. Holy Name School v. DILHR, 109 Wis.2d 381, 389, 326 N.W.2d 121, 126 (Ct. App. 1982). An employee's behavior is misconduct if found to be an intentional and unreasonable interference with the employer's interest. Baez v. DILHR, 40 Wis.2d 581, 588, 162 N.W.2d 576, 579 (1968). Deliberate violations or disregard of standards of behavior which the employer has the right to expect of the employee is misconduct. Id. at 589, 162 N.W.2d at 579-80, quoting Boynton Cab Co. v. Neubeck, 237 Wis. 249, 259-60, 296 N.W. 636, 640 (1941). Whether an employee's conduct constitutes misconduct is a question of law. Miller Brewing Co. v. DILHR, 103 Wis.2d 496, 501, 308 N.W.2d 922, 925 (Ct. App. 1981).

The Commission's findings establish a series of intentional acts by Blum showing a pattern of insubordination and deliberate disregard for the employer's standards of behavior. Under these circumstances, Conley's expectations relating to dress were not unreasonable. The Commission's conclusion that Blum was discharged for misconduct is reasonable and will be affirmed. Therefore, Blum is not entitled to receipt of unemployment compensation benefits. The order of the circuit court must be reversed and the findings of fact and conclusions of law of the Labor and Industry Review Commission reinstated. We direct the circuit court to reinstate the findings and decision of the Commission and to enter judgment thereon.

By the Court.--Order reversed and cause remanded with directions.

Not recommended for publication in the official reports.

## APPENDIX

<sup>1</sup>The document labeled "Order for Judgment" is, in this case, the final document which disposes of the entire matter in litigation. The language of the order for judgment indicates that the circuit court contemplated the document to be a final judgment or order at the time it was entered. See Frederick v. City of Janesville, 92 Wis.2d 685, 688, 285 N.W.2d 655, 657 (1979).

<sup>2</sup>The Commission did not base its order upon Conley's allegations relating to personal telephone calls or Blum's failure to engage in business development. As to the latter, the Commission found that Blum had been advised when hired that business development would be a job expectation and that Blum later denied that the development of new business was an initial job duty. The Commission made no findings relating to the personal phone calls allegation. Because those two bases for Conley's action were not integral to the Commission's determination, we need not examine the evidence relating to those two issues.