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OF WISCONSIN

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

October 5, 1995

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

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

No. 94-1442

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

RICHARD A. COMMANDER,

Plaintiff-Appellant,

v.

**STATE OF WISCONSIN LABOR AND INDUSTRY,
REVIEW COMMISSION
and CITY JANITORIAL SERVICE, INC.,**

Defendants-Respondents.

APPEAL from an order of the circuit court for Dane County:
DANIEL R. MOESER, Judge. *Reversed and remanded.*

Before Gartzke, P.J., Dykman and Vergeront, JJ.

PER CURIAM. Richard Commander appeals from an order affirming a Labor and Industry Review Commission decision denying him unemployment

compensation. Commander quit a part-time job with City Janitorial Service, Inc., (CJS). LIRC denied him benefits under the Voluntary Quit Rule, § 108.04(7)(a), STATS. He contends that he qualified under one of the exceptions to that rule, § 108.04(7)(k). Because Commander's eligibility under that exception has not been fully or properly determined, we reverse the trial court's order and remand with directions to remand to LIRC for further proceedings.

Commander worked thirty hours per work for CJS from August 1992 until January 6, 1993, when he voluntarily went to a fifteen-hour work week so that he could take another full-time job. He was terminated from the full-time position after only eight days. Commander attempted to return to a thirty-hour work week for CJS, but failed. For six more weeks he continued with the fifteen hours per week position before quitting. He then filed for unemployment compensation. This appeal derives from denial of benefits on that claim.

Section 108.04(7)(k), STATS., provides that a voluntary quit does not disqualify an employee "who terminates his or her part-time work ... if the employee is otherwise eligible to receive benefits because of the loss of the employee's full-time employment and the loss of the full-time employment makes it economically unfeasible for the employee to continue the part-time work." LIRC's decision did not address these statutory criteria, instead holding that § 108.04(7)(k) did not apply

because Commander's two employments were not related. That is an error of law. The statute plainly imposes only two criteria on claimants who seek to qualify under § 108.04(7)(k). LIRC's decision imposes a third without legislative authority to do so.

The circuit court should remand to LIRC for a determination whether Commander satisfied the two criteria set forth in § 108.04(7)(k), STATS. At Commander's hearing, the hearing examiner improperly excluded evidence Commander offered to prove that he was otherwise eligible for unemployment compensation after losing his full-time job.¹ On remand LIRC shall allow Commander the opportunity to submit the excluded evidence.

By the Court.—Order reversed and cause remanded for further proceedings as indicated in this opinion.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

¹ Commander offered a document indicating that he would be eligible for unemployment benefits from the loss of the full-time job. The hearing examiner responded

We are talking about a different issue I'm not concerned with that initial determination.... It is strictly limited to the separation which occurred with the [full-time job].... That doesn't mean you are eligible otherwise. If you know that the statute says, an employ who quits and is otherwise eligible. This hearing is whether you are otherwise eligible. It does not pertain to the reasons for the separation. I want to know why you quit this one. That material is immaterial. I don't want to hear about it again.