

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

#120-040

RETAIL STORE EMPLOYEES UNION #444,

Plaintiff,

vs.

MEMORANDUM

INDUSTRIAL COMMISSION OF WISCONSIN
and SHIRLEY DOMNITZ,

DECISION

Defendants.

This is an action to review a decision of the Industrial Commission holding that the defendant, Shirley Domnitz, was not discharged for misconduct connected with her employment and was therefore eligible for unemployment benefits.

The defendant-employee worked for the employer, a union, as a stenographer and office worker for about nine and one-half months. She was discharged on October 29, 1965. The employer alleged a variety of reasons in support of its allegation that she was discharged for misconduct, including gross incompetency, insubordination, mistreatment of union members, refusal to take and carry out orders, disrespect, arguing and fighting with fellow employees, failure to follow office regulations, and creating a disturbance with the other office girls.

Misconduct has been defined as a wilful and intentional disregard of the employer's interests as is found in deliberate violations or disregard of the standards of behavior which the employer has the right to expect of his employee. Boynton Cab Co. v. Neubeck (1941), 237 Wis. 249, 259. Milwaukee Transformer Co. v. Industrial Comm. (1964), 22 Wis. (2d) 502, 510. This interpretation was made to effect the general purpose of the legislature in providing for unemployment compensation.

In every disputed benefit case involving a charge of misconduct the assessment of the employee's conduct must be made by the Industrial Commission. The employee's conduct must be measured against the legal standard defining misconduct set out above, and this measuring is a proper and required function of the administrative body. Application of the misconduct standard to particular conduct is seldom susceptible of sharply-defined precision and is an area in which reasonable individuals may well reach different conclusions.

Undoubtedly, ambiguous conclusions can be reached on the basis of the evidence in this case; but, if the evidence and the reasonable inferences drawn therefrom support the findings of the Commission, a court is not at liberty to set those findings aside.

The incidents and the evidence upon which the employer relies permit a reasonable inference that the employee's actions were not "misconduct" as contemplated by the statute. The employee's version differed in many ways from the testimony elicited on behalf of the plaintiff. The Commission had a right to accept the applicant's version, which it apparently did.

The Commission found that the employer failed to establish that the employee refused to obey orders, that she was insubordinate, that she failed to perform her work properly, and that she was in general neglectful of her duties and uncooperative with co-workers and management. The Commission further found that the employer had not shown that she was discharged because of wilful or substantial disregard of the employer's interests or of the ordinary duties or obligations of her employment. Although the employee might have committed some minor infractions of the employer's standards of behavior and although some aspects of her work might have been unsatisfactory, these instances fall short of manifesting wrongful intent or evil design or intentional and substantial disregard of the employer's interests or the employee's duties.

The plaintiff makes a point that many items of alleged misconduct claimed are uncontradicted and unimpeached in the record and that the Commission was obliged to accept such testimony. Without detailing all of these grounds, it appears from the evidence that all of these incidents can be explained by evidence from which the reasonable inference can be drawn that the employee was not guilty of misconduct in the statutory sense. This is not to say that the discharge itself was improper; this is a matter within the reasonable discretion of the union. In this matter the court is concerned only with the eligibility for unemployment compensation and concludes that the findings of the Commission are supported by credible evidence.

The order of the Commission is confirmed, and counsel may prepare an appropriate judgment.

Dated September 22, 1967

BY THE COURT:
William C. Sachtjen
Circuit Judge