

STEVEN D. HAISE,

Plaintiff,

vs.

CASE NO.: 95-CV-51

LABOR AND INDUSTRY REVIEW

COMMISSION and WEAVERS INC.,

Defendant.

DECISION

This action for review of a decision of the Labor and Industry Review Commission involves two determinations concerning Mr. Haise's eligibility for compensation. The local office determined that Haise was employed during the period of time in question and, therefore, not eligible for benefits. It also determined that he concealed employment and wages and imposed a forfeiture. The overpayment was calculated at \$2,369.00. The forfeiture was set at \$4,681.00. Haise appealed. The determination concerning overpayment was numbered 94607257WK, while the concealment determination was numbered 94607258WK.

In effect two hearings were held before an Administrative Law Judge on November 1, 1994. The initial hearing concerned the overpayment. During the course of that hearing Haise and his attorney admitted that he worked and earned wages and that the determination was accurate. The appeal was, therefore, withdrawn. He was advised as to how he could retract the withdrawal. A full hearing, with Mr. Haise testifying, was held on the other issue.

Haise, through his attorney, attempted to retract the withdrawal. The notice, which must be received by the Administrative Law Judge within twenty-one days, was received one day late. It is conceded, however, that the last day for the receipt was Thanksgiving Day which means it was timely received. The Administrative Law Judge ruled that it was not and this was confirmed by the Commission.

There are two issues:

I. Did Haise work and receive wages during the time in question?

II. Did he conceal the fact that he worked and received wages?

I. DID HAISE WORK AND RECEIVE WAGES DURING THE TIME IN QUESTION?

The first part of this issue is procedural: Did Haise withdraw his appeal? The determination concerning whether he worked and had wages goes to whether he should have received any compensation. Since he did receive compensation, if he did work and receive wages he has to repay that compensation. At the hearing Haise and his attorney conceded this point. Therefore, no testimony or other evidence was taken.

The Commission concedes that the determination by both the Administrative Law Judge and the Commission that the retraction was not timely is incorrect. Haise should have had a hearing. The Commission argues that Haise had the right to appeal the Administrative Law Judge's ruling which technically he did not

do. The Commission addressed this issue in its decision; obviously the Commission concluded that this issue was before it. In fact, the Commission states "the claimant also requests the Commission to review a companion decision...in which the appeal tribunal refused to retract the claimant's withdrawal..." I do not agree with the Commission that this issue is not before the Court.

This issue could be referred back to the Commission for an Administrative Law Judge to hold a hearing. This would be an exercise in futility. I see no way that the Administrative Law Judge could find other than that Mr. Haise worked and received wages. The issue of his confusion about his status with the employer, Weavers Inc., does not change the fact that he did work and received wages. Under the statute he is, therefore, ineligible to receive unemployment compensation. His unusual employment status is relevant to the concealment issue but not relevant to this issue.

I am satisfied that the appeal under 94607257WK would be without merit and that there is no point in returning this to the Commission for a hearing. The decision on that matter is, therefore, affirmed.

II. DID HE CONCEAL THE FACT THAT HE WORKED AND RECEIVED WAGES?

The more difficult issue is whether the petitioner concealed work and earnings. There is no question that he did not reveal that he was working and had wages. As part of the record there

are copies of his certification which clearly states that he did not work.

Haise testified that he was hired by Weavers Inc. to do sales work. According to him, the contract, which he claims to have signed, provided that he would receive salary for the first nine months and then go on commission. If he left the company within the first year he had to repay all the salary. Haise did not have a copy of the contract. The Administrative Law Judge accepted his testimony as fact. He testified that, because he thought he might in the future have to repay the salary, he did not report it to the Department. He did not think it was salary but somehow in the nature of a loan. He was laid off by Weavers after several months employment. He testified at the hearing that there had been no request for repayment.

The Administrative Law Judge found that there was concealment. This is a mixed finding of fact and law which is subject to review by the Court. He made findings of fact, but the conclusion that it was a concealment is a finding of law.

I am aware of the requirements for Court review in this type of case. The Administrative Law Judge is the finder of fact and determines credibility of witnesses. When a matter involves intent the finder of fact has to reach conclusions based upon the evidence and the inferences drawn therefrom. The finder of fact is not bound by the statement of the witness as to intent if other circumstances show that the contrary finding is more appropriate.

This review is brought pursuant to §108.09(7), Wis. Stats. which provides that it be conducted as provided in Chapter 102, the workers compensation law. §102.23(1)(a) provides that findings of fact made by the Commission are conclusive unless fraud is involved. There is no showing of fraud. The Court must determine if there is credible evidence to support the finding. In this case there is. The findings of the Administrative Law Judge, as adopted by the Commission, are appropriate and affirmed.

§102.23(1)(e) sets forth the grounds upon which the Court may confirm or set aside an order of the Commission. These are:

1. That the Commission acted without or in excess of its powers.
2. That the order award was procured by fraud.
3. That the findings of fact by the Commission do not support the order or award.

The issue here is the application of the law as it applies to concealment to the facts that are actually not in dispute.

§108.04(11)(a) covers concealment. It does not require that concealment be with intent to defraud. Giving false information with the intent to attain benefits is a crime covered under §108.24. §108.04(11) does not require intent.

The facts found by the Administrative Law Judge, based upon Mr. Haise's testimony at the hearing, are clear: he had a job with Weavers Inc. and was paid wages. Whether or not he had an illegal contract requiring him to repay those wages does not change the fact that he was working. He answered the

questionnaire by indicating that he was not working which was clearly contrary to the fact. The Administrative Law Judge, based on his findings of fact, concluded that petitioner did conceal wages and work and therefore was in violation of §108.04(11). The Commission affirmed this finding. The Commission was acting within its powers and the Commission's findings, adopting the Administrative Law Judge's findings, support its order.

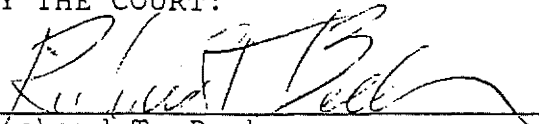
Under §102.23 I must affirm the finding of the Commission. This Court cannot substitute its judgment for that of the Commission. The determination is consistent with the law. The fact that imposing the forfeiture may be inequitable under the circumstances is not a factor for me to consider. The question on the form was "for the week you are claiming, did you work full or part-time?" To this Mr. Haise answered "no" by darkening the circle under the "no". The question does not even ask if he received wages. He was working. Even if he was confused by his unusual employment contract, he had an obligation to disclose this information to the Commission.

I agree with the Commission that the system is based on the honesty of the applicants. This is similar to the income tax system which is based on honest self-reporting. While many people may not give honest information to the IRS, apparently the bulk of taxpayers do and the system works. The same is true for unemployment compensation. The Department, of course, has ways of checking on the information as was done here.

Counsel for the Commission shall prepare an order consistent with this decision dismissing the appeal.

Dated at West Bend, Wisconsin, this 16th day of June, 1995.

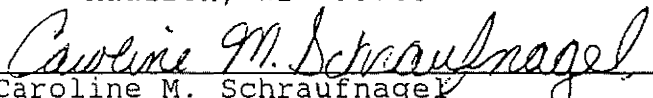
BY THE COURT:


Richard T. Becker
Circuit Judge, Br. III

Copies of the foregoing Decision were mailed to the following on the 16th day of June, 1995:

Mr. Walter A. Paget
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Mr. David B. Nance
Labor & Industry Review
Commission
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Caroline M. Schraufnager
Senior Court Assistant, Br. III