STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

BRANCH 17

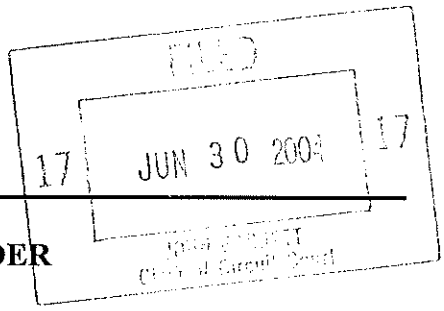
THEODORE J. RICHTER,

Plaintiff,

v. Case No: 03-CV-008710

LABOR AND INDUSTRY REVIEW COMMISSION, And CPP-PINKERTON'S

Defendants.



MEMORANDUM AND ORDER

Plaintiff Theodore Richter appeals the September 4, 2003, decision of the Labor and Industry Review Commission ("the Commission"). In its decision, the Commission found that Plaintiff voluntarily terminated his employment with his employer within the meaning of Wis. Stat. §108.04(7)(a), that Plaintiff did not meet an exception to the voluntary quit disqualification of the statute, and that Plaintiff therefore was not eligible to receive unemployment insurance benefits beginning in week 49 of 2002. Plaintiff does not dispute that he voluntarily terminated his employment. The only argument advanced by Plaintiff is that Plaintiff was entitled to the immediate payment of benefits because he terminated work with "good cause attributable to the employer," as provided in Wis. Stat. §108.04(7)(b). This Court is not persuaded by Plaintiff's argument.

Plaintiff previously made $10.93 per hour as a security guard/lead officer at the Bank One Plaza building for CPP-Pinkerton's, Inc. ("the employer"), which provides

security services to its clients. After the employer's contract with Bank One ended, the employer offered Plaintiff continued employment as a patrolman at the rate of $10.00 per hour.

Under section 108.04(7)(a), Wis. Stats., an employee who voluntarily terminates with an employer is ineligible for benefits unless the quitting falls within a statutory exception permitting the immediate payment of benefits. The statutory exception relied upon by Plaintiff is Wis. Stat. §108.04(7)(b), which provides that if an employee voluntarily terminates employment with good cause attributable to the employer, he or she is eligible for the immediate payment of unemployment benefits. "Good cause attributable to the employer" means that the employee's resignation is caused by some act or omission by the employer which justifies the quitting. *Kessler v. Industrial Comm.*, 27 Wis. 2d 398, 401 (1965). It involves some fault on the employer's part and must be "real and substantial." *Id.*

The Commission stated, in pertinent part:

> The employee asserted that the decrease in pay and loss of supervisory responsibilities justified his refusal of the employer's offer. The commission finds that the decrease in pay from $10.93 to $10.00 and the lack of supervisory duties in the new assignment, did not give the employee good cause attributable to the employer for quitting his employment. The decrease in pay was not substantial enough to justify the employee's decision to become unemployed rather than continue in his work with the employer. Further, the employee was alerted to the potential changes in the conditions of his work by the employer's handbook.[1] The employee received a copy of the handbook and it was his

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[1] The handbook states:

> Security officer services are only contracted to the clients of *Pinkerton-Burns-Securitas*. You are not employed by the facility to which you are assigned. Based on this condition of employment you can expect transfers among various clients, a varied work schedule/work week and different rates of pay and related benefits as dictated by the client contract. *Pinkerton-Burns-Securitas* encourages you to use the appropriate chain of command with questions regarding working hours, rates of pay, benefits or similar subjects.

Record at 2.

responsibility to read the handbook. The conditions of the work offered were not substantially less favorable to the employee than existed for similar work in his labor market.

(Record at 3).

In his brief, Plaintiff argues that the offered position involved (1) a substantial drop in skill level and (2) a 13.08% decrease in final rate of pay (after health insurance premiums are considered). According to Plaintiff, the position at the Bank One building encompassed supervisory duties and technical job skills that involve building knowledge, computer literacy and emergency response procedures. Plaintiff argues that the employer is at fault for losing the Bank One contract. Plaintiff also argues that the Commission did not consider the insurance contribution in recognizing the real wage loss, and did not address the technical job skills that were required for each position. According to Plaintiff, when these issues are considered, the employer's failure to offer a similar position in terms of pay rate and job skill is "real and substantial."

Although the employer testified at the hearing that Plaintiff would be responsible for 25% of the health insurance premium, the record does not indicate the dollar amount that Plaintiff would be required to pay. This Court will not consider evidence that has not been offered to the Commission. *See Weibel v. Clark*, 87 Wis. 2d 696, 708 (1979).

Plaintiff also testified that one of the reasons for declining the employer's offer was because it involved a significant drop in skill level. (Hearing Transcript at 19, 21). This Court has no reason to conclude that the Commission did not consider this portion of the record.

The Commission's determination that Plaintiff had not demonstrated "good cause" for terminating her employment within the meaning of section 108.04(7)(b) is

entitled to great weight deference. *Klatt v. Labor & Indus. Review Comm'n*, 266 Wis. 2d 1038, 1049 (Ct. App. 2003). Therefore, this court will not substitute its view of the law for that of the Commission and will sustain the Commission's conclusion of law if it is reasonable. *Brown v. Labor & Indus. Review Comm'n*, 267 Wis. 2d 31, 46 (2003). The Commission's conclusion of law will be sustained even if an alternative view of the law is just as reasonable or even more reasonable. *Id.* at 46-47. In this case, the Commission could reasonably find that the wage reduction, drop in skill level, and loss of supervisory duties were not substantial enough to justify Plaintiff's decision to terminate his employment. After all, the unemployment compensation statute was not intended to provide relief when reasonable work is available which the employee can but will not do. *Roberts v. Industrial Commission*, 2 Wis. 2d 399, 403 (1957).

ORDER

THEREFORE, based upon a thorough review of the record, it is hereby ordered that the September 4, 2003, decision of the Commission is AFFIRMED.

Dated at Milwaukee, Wisconsin, this 30th day of June, 2004.

BY THE COURT:

F. T. Wasielewski

Francis Wasielewski
Circuit Court Judge
Branch 17