

FLORINE L. ROTH

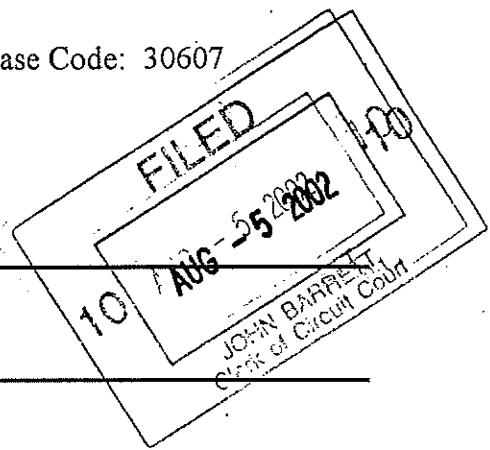
Petitioner

v.

**LABOR AND INDUSTRY REVIEW COMMISSION,
and
WISCONSIN YOUTH CO., INC.,
Respondent**

Case No: 02-CV-00409

Case Code: 30607

DECISION

Florine L. Roth ("Petitioner") appeals the decision of the Labor and Industry Review Commission, ("Commission") affirming the Administrative Law Judge's (ALJ") decision that Plaintiff was ineligible for unemployment benefits. For the reasons stated below, this Court affirms the decision of the Commission.

STATEMENT OF THE CASE

The Petitioner worked approximately 11 months for Wisconsin Youth Co. ("Employer") a childcare program business beginning in July of 2000. Her last day of work was June 28, 2001 and she terminated her employment on July 2, 2001. The Petitioner contends that she had an untenable working relationship with her immediate supervisor and that this relationship ultimately forced her to terminate her employment.

The Petitioner expressed her concerns to her Employer on more than one occasion and the Employer attempted to resolve these problems by meeting with both the Petitioner and her supervisor. However, these meetings did little to resolve the situation.

In June of 2001 Petitioner hurt her back and refused to perform any work duty that aggravated that injury. Further, in that same month, Petitioner, while working at one of Employer's camps, inadvertently left one of the children at the camp after she had locked up for the night. Employer sent a written warning to Petitioner concerning the incident. A few days later, Petitioner went to her physician because the events of the past few weeks had upset her. When the physician suggested that she take two days off work Employer encouraged her to follow her physician's suggestions. Additionally, Employer informed Petitioner that when she returned to work things would be different.

However, when Petitioner returned to work she discovered that her supervisor was still working for the Employer. Petitioner informed her supervisor that she was not going to take any more abuse and immediately quit, but did not inform Employer of her decision. When Petitioner returned home that day she discovered a phone message from Employer's Executive Director informing her that her supervisor, with whom she'd been having such problems, had been discharged. Petitioner made no attempt to contact the Employer after that time.

The Commission determined that petitioner voluntarily terminated her employment and that she did not have "good cause attributable to the employing unit" entitling her to benefits pursuant to §108.04(7), Wis. Stats.

STANDARD OF REVIEW

Judicial review of the Commission's decision is limited to the parameters as set forth in §108.09(7) which confines review to questions of law. As a result, the Commission's findings of fact are binding on this Court if they are supported by any

credible and substantial evidence in the record. *Princess House Inc. v. DILHR*, 111 Wis. 2d 46, 53 (1983). The only grounds for setting aside the Commission's decision are set forth in Wis. Stat. §§102.23(1)(e) and 102.23(6). Such grounds include; (1) a finding that the Commission acted without or in excess of its power; (2) the order was procured by fraud; (3) the findings of fact by the Commission do not support the order; or (4) the Commission's order depends on any material and controverted finding of fact that is not supported by credible and substantial evidence.

ANALYSIS

Petitioner does not dispute that she voluntarily terminated her employment. Therefore, the issue before the court is whether her quitting was made with "good cause attributable to the employing unit" entitling her to unemployment benefits pursuant to §108.04(7), Wis. Stats. The Petitioner argues that her voluntary quitting should not disqualify her for benefits because she was continually harassed by the Employer's management which provided her "good cause" for quitting.

This Court is not bound by the Commission's interpretation of a statute, which is considered a question of law. However, when the Commission is interpreting an unemployment statute the Court will give great deference to its interpretation and will not set aside the conclusion of law if any rational basis exists or if one of the requirements of §102.23(1)(e)¹ is not present. *Dairy Equipment Co. v. ILHR Dept.*, 95 Wis. 2d 319, 327,

¹ §102.23(1)(e) states;

Upon such hearing, the court may confirm or set aside such order or award; and any judgment which may therefore have been rendered thereon; but the same shall be set aside only upon the following grounds;

1. That the commission acted without or in excess of its powers.
2. That the order or award was procured by fraud.

(1980). In analyzing the grounds required to set aside the Commission's determination, this Court finds that a rational basis exists for the determination and none of the requirements of §102.23(1)(e) are met.

The Commission is the administrative agency charged with the duty to apply the unemployment insurance statutes. *Cronwell Personnel Assoc., Ltd. v. LIRC*, 175 Wis. 2d 537 (Ct. App. 1993). Furthermore, the Commission is granted the authority to review a tribunal decision pursuant to commission rules. (§108.09(6)) In reviewing such decision, the Commission may affirm, reverse, modify or set aside the findings of fact and conclusion of law of the ALJ. Therefore, this Court does not find that the Commission acted without or in excess of its powers when affirming the ALJ's findings of fact and conclusions of law.

Lastly, there is no evidence that the decision of the Commission was procured by fraud.

The Commission's findings of fact support its final conclusion that plaintiff voluntarily terminated her employment making her ineligible for benefits. These findings are adequately supported by evidence in the record. The record reflects that the Petitioner did complain to the Employer about her supervisor, (Tr. 10/15 pg. 102, 103, 104-05, 106) and the Employer attempted to resolve the situation by meeting with both the Petitioner and her supervisor. (Tr. 10/15 pg. 100, 102,103, 130) The record also reflects that the Employer was taking action on the Petitioner's complaints by advising the Petitioner that upon returning to work from medical leave "things would be different". (Tr. 10/15 pg. 107, 120) Upon returning to work, the Petitioner discovered that her supervisor was still there and the Petitioner decided to quit her employment. (Tr.

3. That the findings of fact by the commission do not support the order or award.

8/27 pg. 26). The executive director contacted the Petitioner on that same day, leaving a message on her voice mail, indicating that her supervisor had been discharged. (Tr. 10/15 Pg. 108). The Petitioner never contacted the employee after that time. (Tr. 8/27 Pg. 15).

Based on these findings of fact the Commission determined that the Employer's actions were not substantial enough for the Petitioner to justify terminating her employment. The Commission reasoned that an employee must establish that he or she had no other choice except to quit. The Petitioner failed to provide adequate notice to the Employer that she was contemplating quitting and in the absence of such notification the Employer was not presented with an opportunity to prevent the Petitioner from terminating her employment.

Based on the evidence in the record, coupled with the Commission's findings of fact, this Court finds that there is credible and substantial evidence in the record to support the Commission's factual findings.

Finally, the Petitioner alleges that the ALJ acted improperly by not considering certain evidence from Petitioner and by threatening to deny benefits if her presentation took too long. There is no evidence in the record that the ALJ acted in a manner contrary to department rules, in fact, the record suggests that the ALJ took every opportunity to ensure that the Petitioner had a fair hearing. The instances in the record where the ALJ refused to let the Petitioner testify as to certain issues, were deemed irrelevant by the ALJ. Preventing the introduction of irrelevant evidence is completely within the discretion of the ALJ. The ALJ did not act improperly by not allowing the Petitioner to testify on irrelevant issues. Finally, there is no evidence in the record that supports the

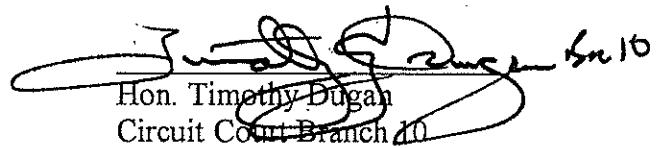
allegation that the ALJ threatened to deny unemployment benefits to the Petitioner if her presentation carried on too long.

CONCLUSION

Based on the foregoing, this Court hereby affirms the decision of the Labor and Industry Review Commission.

August 5, 2002

BY THE COURT:



Hon. Timothy Dugan
Circuit Court Branch 10

THIS IS THE FINAL ORDER OF THE COURT AND NO FURTHER ORDERS ARE CONTEMPLATED BY THE COURT AND THE CLERK SHALL ENTER JUDGMENT BASED UPON THIS ORDER.