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AARON WINTERS,

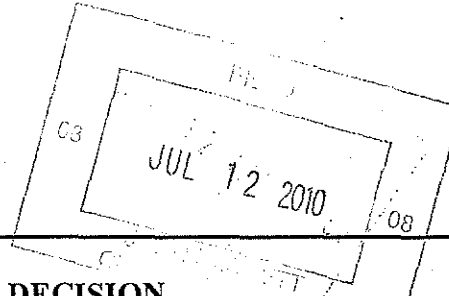
Plaintiff,

Case No: 09-CV-20135

vs.

LABOR AND INDUSTRY  
REVIEW COMMISSION and  
APB SECURITY, L.L.C.

Defendants.



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**DECISION****This is a final decision per Wis. Stat. §808.03(1).**

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Aaron Winters seeks judicial review of the December 4, 2009, decision of the State of Wisconsin Labor and Industry Review Commission ("LIRC"). LIRC concluded that Winters had been discharged for "misconduct"<sup>1</sup> connected with his employment, within the meaning of Wis. Stat. §108.04(5), and that Winters was therefore ineligible for certain unemployment insurance benefits. Because LIRC's conclusion is reasonable, this Court affirms.

**INTRODUCTION**

On August 24, 2009, an appeal tribunal decision issued by the Department of Workforce Development Administrative Law Judge Steven Glick concluded that Winters engaged in misconduct within the meaning of Wis. Stat. §108.04(5), based on Winters'

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<sup>1</sup> "Misconduct" is conduct that evinces an intentional disregard of an employer's interests as found in deliberate violations or disregard of standards of behavior which the employer has a right to expect of its employees. *Boynton-Cab Co. v. Neubeck & Industrial Comm.*, 237 Wis. 2d 249, 259-60 (1941).

interactions with another employee and his supervisor. On December 4, 2009, LIRC agreed. At the hearing, the employer's secretary, Lisa Millner, testified that Winters yelled at her after she denied his request to switch a work day for a personal reason. In addition, Winters' supervisor, Jimmy Mangun, testified that when he approached Winters to counsel him about behaving disrespectfully towards Ms. Millner, Winters "suddenly went ballistic" and threatened to "kick [his] ass." LIRC credited the testimony of these witnesses over the testimony of Winters, who denied making any improper threats. As a result, LIRC concluded that Winters had been discharged for actions on his part which amounted to misconduct within the meaning of the law.

Winters now seeks judicial review of LIRC's final decision.

### **STANDARD OF REVIEW**

In the absence of fraud, LIRC's findings of fact are binding on this Court unless they are not supported by credible and substantial evidence. *DILHR v. LIRC*, 155 Wis. 2d 256, 262 (Ct. App. 1990). The role of the reviewing court is to search the record to locate credible evidence, which supports LIRC's decision, rather than weighing the evidence opposed to it. *See Kannenberg v. LIRC*, 213 Wis. 2d 373, 384 (Ct. App. 1997).

LIRC's determination of whether an employee's conduct constitutes "misconduct" under Wis. Stat. §108.04(5) is entitled to great weight deference. *Bunker v. Labor and Industry Review Com'n*, 257 Wis.2d 255, 270-71 (Ct. App. 2002). Under the great weight standard, the Court must uphold an agency's reasonable interpretation of the statute if it is not contrary to the clear meaning of the statute, even if the Court concludes another interpretation is more reasonable. *Id.* at 271. The Court must therefore determine whether LIRC's decision in this case is reasonable. The burden of establishing that

LIRC's interpretation is unreasonable is on the party seeking to overturn the agency's decision; the agency does not have to justify its interpretation. *Id.*

### DISCUSSION

The determinations that Winters made the physical threats are factual findings that are supported by the testimony of Mr. Mangun and Ms. Millner. The Court may not set them aside.<sup>2</sup> It is entirely reasonable to conclude that physical threats constitute misconduct, even if no physical violence actually occurs. Threats cause workplace disruption by corroding working relationships and creating an atmosphere of fear. Workplace safety is a major concern for employers and employees alike, and threats of physical violence towards coworkers and supervisors should not be tolerated. The conclusion that Winters was discharged for misconduct is neither unreasonable nor contrary to the clear meaning of the statute.

After considering the facts and the arguments advanced by the parties, LIRC reasonably concluded that Winters' actions constituted "misconduct" within the meaning of Wis. Stat. §108.04(5), and that Winters was therefore ineligible for unemployment insurance benefits. LIRC's decision is reasonable in all other respects.

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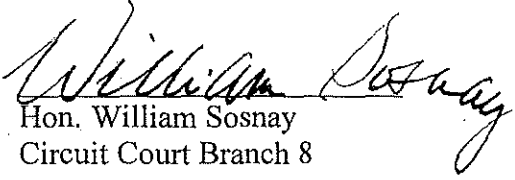
<sup>2</sup> Although Winters testified to a different version of events, this Court is unwilling to upset LIRC's credibility determinations.

## CONCLUSION

THEREFORE, based on a thorough review of the record and the arguments of the parties, IT IS HEREBY ORDERED that the decision of LIRC is AFFIRMED.

Dated at Milwaukee, Wisconsin this 12<sup>th</sup> day of July 2010.

By the Court:

  
Hon. William Sosnay  
Circuit Court Branch 8