

FILED  
03-13-2023  
CIRCUIT COURT  
DANE COUNTY, WI  
2022CV000727

BY THE COURT:

DATE SIGNED: March 13, 2023

Electronically signed by Jacob B. Frost  
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 9

DANE COUNTY

Mattie Yoakum,

Plaintiff,

v.

case number 22CV727

Labor and Industry Review Commission et al,

Defendant.

**DECISION AND ORDER**

Mattie Yoakum seeks judicial review of the Labor and Industry Review Commission decision denying as untimely her claim for unemployment insurance benefits for the week ending June 19, 2021. The law and issue are straightforward. Ms. Yoakum needed to file her claim for unemployment insurance within 7 days of June 19, 2021. She admits she did not do so. She filed the claim for the week ending June 19, 2021 on August 16, 2021 (the "Claim"). In her tardy Claim, she explained that the deaths of three of her family members in June 2021 rendered her emotionally devastated such that she was not able to focus on filing the Claim the week it was due.

On September 1, 2021, the Department of Workforce Development denied Ms. Yoakum's Claim. Though there are certain exceptions to the requirement to timely file a claim, DWD found Ms. Yoakum's personal tragedies did not constitute "exceptional circumstances" to justify an untimely filing. The DWD decision does not elaborate why Ms. Yoakum's circumstances are not exceptional circumstances.

Ms. Yoakum timely appealed DWD's decision. An ALJ held a hearing on Ms. Yoakum's Claim and issued a decision affirming DWD's initial determination. The ALJ found as follows:

On August 16, 2021 (week 34), the claimant initiated a claim for unemployment benefits retroactive to week 25 of 2021 (week ending June 19). She did not file the claim sooner because there were three deaths in her family in June, including her sister's son who was killed. She was emotionally devastated and not thinking about filing for benefits. She was unaware of the timeliness requirements for claiming benefits. Her most recent employer had a department issued Notice to Employees poster on the premises.

Dkt. 18 at 19.

The ALJ found that Ms. Yoakum's stated reasons for not filing the Claim timely did not constitute exceptional circumstances permitting waiver of the timely filing requirement. The ALJ also did not elaborate why the deaths of family members cannot constitute exceptional circumstances excusing a late claim, but concluded, "The employee's delay in applying for unemployment benefits for the reasons stated herein does not excuse the delay. This decision was completely within her control and was not due to any exceptional circumstances justifying a waiver of the notice requirements." Dkt. 18 at 20.

Ms. Yoakum then appealed the ALJ's decision to LIRC. LIRC also affirmed. Again, LIRC's explanation for its decision lacks any meaningful detail. LIRC stated

In her petition for commission review the claimant argues, as she did at the hearing, that there were personal circumstances hindering her from filing a timely benefit claim. The claimant states that, because of those circumstances, her mind was all over the place and it never registered for her to file. The commission can certainly sympathize with the difficult personal situation the claimant was dealing with during the time period at issue. However, the law only permits the department to waive the time period for filing a claim if exceptional circumstances are established. In this case, the commission agrees with the administrative law judge that it would have been within the claimant's control to provide timely notice of her unemployment for the week at issue and that none of the other circumstances listed in the administrative code are applicable.

Dkt. 18 at 3. LIRC never explains what constitutes "exceptional circumstances" or why Ms. Yoakum's personal circumstances do not satisfy this term. LIRC simply concludes that it was within Ms. Yoakum's control to timely file notice and she failed to do so.

## STANDARD OF REVIEW

Judicial review of LIRC's decisions under the unemployment insurance law is controlled by statute. Wisconsin statute §108.09(7) provides in relevant part:

(b) Any judicial review under this chapter shall be confined to questions of law and shall be in accordance with this subsection....

(c)

1. The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive. The order of the commission is subject to review only as provided in this subsection and not under ch. 227 or s. 801.02....

.....  
6. The court may confirm or set aside the commission's order, but may set aside the order only upon one or more of the following grounds:

- a. That the commission acted without or in excess of its powers.
- b. That the order was procured by fraud.
- c. That the findings of fact by the commission do not support the order.

(dm) The court shall disregard any irregularity or error of the commission or the department unless it is made to affirmatively appear that a party was damaged by that irregularity or error.

.....  
(f) If the commission's order depends on any fact found by the commission, the court shall not substitute its judgment for that of the commission as to the weight or credibility of the evidence on any finding of fact. The court may, however, set aside the commission's order and remand the case to the commission if the commission's order depends on any material and controverted finding of fact that is not supported by credible and substantial evidence.

*Id.*

Ms. Yoakum does not challenge LIRC's factual findings, which adopted the ALJ's findings. As such, I do not further detail the standards applicable to review of the facts, though I do question why LIRC wastes the Court's time with argument about inconsistencies in Ms. Yoakum's testimony when the ALJ never found her not credible. See Dkt. 38 at 17-18.

Interpretation of statutes and administrative rules, however, is a question of law which I review de novo. *Cree, Inc. v. LIRC*, 2022 WI 15, ¶13, 400 Wis. 2d 827, 970

N.W.2d 837. So, too, the application of the facts to the law is a legal issue subject to de novo review. Though the courts previously reviewed agency decisions with degrees of deference afforded to the agency, as LIRC summarized, the Wisconsin Supreme Court overruled prior precedent requiring deference to some agency conclusions of law.

Despite this seismic shift in the law regarding review of agency actions, LIRC raises a question whether the courts can or should provide “due weight” to LIRC’s expertise. LIRC explained what the Supreme Court means by giving due weight to an agency as follows:

“[D]ue weight means giving respectful, appropriate consideration to the agency’s views while the court exercises its independent judgment in deciding questions of law.” *Tetra Tech v. DOR*, 382 Wis.2d 496, ¶78. However, “due weight” does not automatically give an agency’s legal conclusion additional rhetorical power or extra heft. *Id.*, 382 Wis. 2d 496, ¶79. The agency should “explain how its experience, technical competence, and specialized knowledge give its view of the law a significance or perspective unique amongst the parties, and why that background should make the agency’s view of the law more persuasive than others.” *Tetra Tech v. DOR*, 382 Wis.2d 496, ¶79. In assessing the degree of persuasiveness of the agency’s perspective, the same type of factors that formerly informed the court’s deference doctrine are considered:

(1) whether the legislature made the agency responsible for administering the statute in question; (2) the length of time the administrative agency’s interpretation has stood; (3) the extent to which the agency used its expertise or specialized knowledge in developing its position; and (4) whether the agency’s perspective would enhance uniformity and consistency of the law.

*Tetra Tech v. DOR*, 382 Wis.2d 496, ¶79.

Dkt. 38 at 11-12. LIRC further explained that *Tetra Tech* left unclear whether the Supreme Court also overruled the “controlling weight” previously given to LIRC conclusions regarding certain administrative rules and regulations. Though neither side thoroughly addressed this issue, *Tetra Tech* quite clearly rejected giving deference to agency decisions on questions of law. I read that decision as applying to all agency determinations of law, not as leaving deference to select (but as of yet unspecified) agency interpretations of certain administrative rules.

**LIRC ERROENOUSLY INTERPRETED ITS RULES AND THEREFORE  
APPLIED THE INCORRECT LAW TO MS. YOAKUM'S CLAIM.**

**I. LIRC NEVER EXPLAINS ITS DECISION, SUCH THAT I CAN GIVE IT  
NO WEIGHT.**

Even if the law allowed me to give due weight to LIRC's decision, it is entitled to no weight for a simple reason. LIRC never explains its decision in any detail. Without explaining itself, LIRC's decision deserves no weight, not due weight. As *Tetra Tech* noted, I can only afford due weight if LIRC "explain[s] how its experience, technical competence, and specialized knowledge give its view of the law a significance or perspective unique amongst the parties, and why that background should make the agency's view of the law more persuasive than others." *Tetra Tech*, 382 Wis.2d 496, ¶79.

In deciding Ms. Yoakum's Claim, LIRC never interpreted the relevant statute or rule, much less explained how or why it reached the decision it did. Even in the brief to this Court, LIRC never explains why its interpretation of "exceptional circumstances" deserves more persuasive value than any other interpretation. The only explanation it provides why I should afford LIRC's interpretation due weight is because LIRC is the authority designated to review DWD's administration of UI Claims. That LIRC is appointed to review these decisions does not give it carte blanche to do as it sees fit with no meaningful explanation of why it makes any particular decision. Thus, I give no weight to LIRC's view on what the relevant administrative code means.

**II. ADMINISTRATIVE CODE ALLOWS LIRC TO CONSIDER  
EXCEPTIONAL PERSONAL CIRCUMSTANCES AS A BASIS TO  
WAIVE THE TIMELY FILING RULE AND ITS HOLDING TO THE  
CONTRARY IS ERRONEOUS.**

As LIRC's decision offered no explanation for me to review, I turn to the law applicable to Ms. Yoakum's claim to explain why the reasoning LIRC applies in its briefing on judicial review is wrong.

**A. The Administrative Code Unambiguously Allows DWD to Consider All  
Extraordinary Circumstances as a Basis to Excuse an Untimely Filing.**

Wisconsin statute §108.08 requires a claimant for unemployment insurance benefits to "give notice" of her claim "within such time and in such manner as the department may by rule prescribe." *Id.* §108.08(1). DWD issued Wis. Admin. Code §DWD 129.01 establishing the time and manner requirements for UI claims. It requires a claimant to file a claim for benefits for any given week of unemployment either during that week the person is unemployed or "within 7 days after the close of that week." §DWD 129.01(1). The rule goes on to establish a waiver of the rule's requirements in certain circumstances:

(4) Waiver; exceptional circumstances. The department shall waive the requirements of this section if exceptional circumstances exist. Exceptional circumstances include any of the following:

(a) An error made by an employee of the department when providing notice to the claimant or a reasonable misunderstanding by the claimant based on information given to the claimant by the department.

(b) Action by an employer, in any manner, directly or indirectly, instructing, warning, or persuading the claimant not to file a benefit claim.

(c) The claimant did not comply because the claimant was not aware of the duty to notify the department, and the claimant's most recent employer failed to post and maintain the notice on claiming unemployment benefits that was supplied to the employer under s. DWD 120.01.

(d) The claimant performed services as a school year employee in other than an instructional, research, or principal administrative capacity and had reasonable assurance of performing services for the employer in a similar capacity in the 2nd academic year or term but was subsequently not offered the opportunity to perform such services.

(f) Other exceptional circumstances over which the claimant has no control.

Wis. Admin. Code § DWD 129.01(4).

LIRC points out that in a variety of its prior decisions, LIRC read the exception under (f) as applying only to circumstances created by either the DWD or the claimant's employer. Even if true that LIRC applied this interpretation of the "exceptional circumstances" waiver consistently in a variety of cases, that does not mean LIRC's interpretation is correct. I am not required to affirm just because LIRC is consistent in its error.

Moreover, LIRC's brief is somewhat misleading. Two of the prior LIRC decisions LIRC cited themselves rely on a Milwaukee Circuit Court decision that seems to say exceptional circumstances can be broader than actions by DWD or the employer. LIRC never mentions that portion of the prior decision. It states:

While exceptional circumstances are not limited to those listed, other possible exceptions must likewise be attributable to actions of one other

than the claimant. *Levy v. Dep't of Health and Social Services*, No. 003-742 (Wis. Cir. Ct. Milwaukee Cnty. Aug. 29, 1988).

Dkt. 38 at 36, *Dargis*, UI Dec. Hearing No. 14603525MW (LIRC Aug. 14, 2014) <https://lirc.wisconsin.gov/ucdecsns/4051.htm>. Though the Court does not have the *Levy* decision<sup>1</sup> to review to determine the exact context of this statement, that decision and LIRC's summary of it reflect that exceptional circumstances must arise from the actions of someone other than the claimant and cause the claimant to be unable to timely file the claim. Of course that is true; the administrative code specifically says the same in (f).

There is no language in the rule that limits the third parties who can create exceptional circumstances to only DWD or the employer. Rather, the rule is broad, referring only to "other exceptional circumstances over which the claimant has no control." This includes no limitation as to who caused those circumstances, except the restriction that the claimant could not control the circumstances.

Neither side offers any proposed definition of "exceptional circumstances" with reference to the rules regarding interpreting administrative code. The Court is aware of the law. Courts apply the rules of statutory interpretation to administrative code. *Piper v. Jones Dairy Farm*, 2020 WI 28, ¶13, 390 Wis. 2d 762, 940 N.W.2d 701. "When a statute does not define an essential term, we examine the ordinary meaning of that term. We normally turn to a 'recognized dictionary to determine the common and ordinary meaning of the word.'" *Orion Flight Servs., Inc. v. Basler Flight Serv.*, 2006 WI 51, ¶24, 290 Wis. 2d 421, 714 N.W.2d 130 (citations omitted). Further, "statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶¶45-46, 271 Wis. 2d 633, 681 N.W.2d 110 (citations omitted).

Therefore, I turn to the dictionary for the ordinary meaning of "exceptional" and "circumstances." Merriam-Webster provides in relevant part as follows:

**exceptional** (adjective)

- 1 : forming an exception : RARE  
an *exceptional* number of rainy days
- 2 : better than average : SUPERIOR  
*exceptional* skill
- 3 : deviating from the norm: such as  
a : having above or below average intelligence

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<sup>1</sup> Circuit Court decisions are not generally available to this Court for searching or review and if LIRC possesses that decision, it did not provide it to me to review.

**b** : physically disabled

Merriam-Webster dictionary, (<https://www.merriam-webster.com/dictionary/exceptional>, last visited February 21, 2023)(Emphasis in the original).

**circumstance** (noun)

1

**a** : a condition, fact, or event accompanying, conditioning, or determining another : an essential or inevitable concomitant

the weather is a *circumstance* to be taken into consideration

**b** : a subordinate or accessory (see ACCESSORY entry 2 sense 2)

fact or detail

cost is a minor *circumstance* in this case

**c** : a piece of evidence that indicates the probability or improbability of an event (such as a crime)

the *circumstance* of the missing weapon told against him

the *circumstances* suggest murder

Merriam-Webster dictionary (<https://www.merriam-webster.com/dictionary/circumstances>, last visited February 21, 2023)(Emphasis in the original).

Therefore, exceptional circumstances are conditions or events that are unusual and provide an exception from the norm. As drafted, this includes the broad array of possible events and actions in life that may reasonably justify a party's failure to file a claim timely.

These terms do not contain any inherent meaning that limits them only to those circumstances that DWD or the claimant's employer cause. LIRC attempts to convince the Court that such a limitation is needed when (f) is considered in comparison to (a) to (d). LIRC notes that each prior subdivision of this rule relates to actions by an employer or DWD and argues that the Court should therefore interpret this last "catch all" subdivision as similarly limited.

Though I must read this subdivision in context and with consideration of closely related sections, that the prior four subdivisions covered the range of conduct from employers and DWD that can excuse an untimely filing tells the Court that this final subdivision was meant to capture all other circumstances in life. To read (f) as limited to actions by DWD and employers would likely read this last subdivision out of existence. For example, (b) broadly covers actions by an employer that cause an employee not to file a claim. What other actions does LIRC propose an employer could take that do not fall within (4)(b) but could fall under (f)? Similarly, what other action could DWD take that leads to a late filing that does not fall under



(4)(a)? I need to read (4)(f) as applying to actions other than what the other subdivisions already cover so as to give meaning to each term, where possible.

The ordinary person would understand the broadly worded “[o]ther exceptional circumstances over which the claimant has no control” as including potentially any conceivable event that reasonably justifies not filing on time. Things such as severe and unusual personal trauma are well within the realm of what an ordinary person would consider exceptional circumstances to excuse noncompliance with a rule or deadline. In everyday life we routinely excuse tardiness resulting from life events such as a flat tire, a sick child, a personal illness or the death of a loved one.

LIRC also points to related statutes to support its interpretation of “exceptional circumstances.” LIRC cites Wis. Stat. §108.09(4)(c) which allows an untimely appeal if the failure to timely file “was beyond the appellant’s control.” LIRC goes on to explain:

When the Legislature created the “beyond control” standard in what was then § 108.09(3)(f), it included an explanatory note of the Advisory Council stating:

NOTE: Provides a party an opportunity to obtain a hearing *if outside factors prevented making a timely appeal...*

May 1976 Assembly Bill 1, page 26 (emphasis added).

Dkt. 38 at 19.

I agree that §108.09(4)(c) requires proof that circumstances the claimant cannot control occurred to allow a late appeal - in other words that outside factors caused the delay. However, this matches my interpretation of “exceptional circumstances.” The language of (4)(f) specifically says it must be exceptional circumstances “over which the claimant has no control.” Nothing in §108.09(4)(c) suggests, much less requires, that those outside circumstances can only include acts of DWD and the employer.

**B. LIRC Erred Because It Never Explained What Standard it Applied for Exceptional Circumstances and It Apparently Applied an Unreasonably Narrow Standard to Ms. Yoakum’s Claim.**

The deaths and illness in her family were beyond Ms. Yoakum’s control. She did not kill her family members. Nor could she miraculously heal them. Her grief at losing a loved one is also beyond her control. Her need to attend to the circumstances caused by that death may be beyond her control and may have rendered her failure to timely file exceptional.

LIRC and the ALJ never explain why any of these things are within Ms. Yoakum's control. To the extent that LIRC's decision concluded these events were within her control, those findings of fact lack substantial evidence, as there is no evidence she had any control over any of these circumstances. What this Court reads the LIRC and ALJ decisions as holding are that Ms. Yoakum could still have timely filed her claim had she just ignored these personal tragedies long enough to file her claim. In other words, they say Ms. Yoakum controlled her choices what to do with her time and mental energy – she chose to focus on her family issues and not her UI claim. As that choice was in her control, her actions are not exceptional circumstances. Nonsense.

This ignores that exceptional circumstances did occur in Ms. Yoakum's life. Where does LIRC draw the line? If a bus that veers onto the sidewalk where she is lawfully walking hits a person, breaking both of her arms and putting her in the hospital for the week following her claim week, does her choice to get treatment rather than file a UI claim mean she loses the claim? If a person's child tragically dies in an accident at school at the end of the claim week, is LIRC's position that the person needs to file the UI claim before attending to her own grief or the funeral arrangements for her child because that tragic death is not an "exceptional circumstance" outside her control?

These examples highlight the absurdity of LIRC's position. They are extreme examples, but not inappropriately or impossibly so. A milder example – if a person has her appendix burst and is hospitalized from days 1 through 7 after a claim week, must she ensure she files her UI claim as her hospitalization and treatment for a potentially life threatening condition are not exceptional circumstances? All these examples could easily happen. I must not interpret a rule to reach an absurd result, but should avoid such interpretations. *Kalal*, 2004 WI 58, ¶ 45-46.

LIRC's final argument also fails. LIRC argues I should adopt its interpretation of "exceptional circumstances" as not applying to personal circumstances that overwhelm a person because a person is only eligible for UI benefits if they are ready and able to work. Thus, if a person is so emotionally devastated that they cannot file a UI claim, they surely are not available to work. This rests on a faulty premise. A person must be able and available to work in the claim week to be eligible for benefits. A claim, however, need not be filed during that week, but can be timely filed up to 7 days after the claim week ends. Thus, a person could be able and available to work during the full claim week, yet face overwhelming personal circumstances the following 7 days that reasonably interfere with filing a claim timely. That a person is emotionally not able to work the following week is irrelevant to whether they are eligible for UI benefits for the prior week.

If LIRC's position is that Ms. Yoakum was actually not eligible for UI benefits because her emotional circumstances occurred during the Claim week, they did not make the factual findings necessary to sustain that position. They would need

to find that she was not available for work. They cannot rely on a fact never found as a basis to deny her Claim.

For these reasons, I find that LIRC acted without or in excess of its powers, as its apparent interpretation of the administrative code was erroneous. I also find that the findings of fact by LIRC do not support its order as noted above.

#### **ORDER**

I set aside LIRC's decision and remand for further proceedings consistent with this decision.

**This is a final order for purposes of appeal.**