

State of Wisconsin



Labor and Industry Review Commission

Chris Segedy
Applicant

Pabst Theater Foundation
Employer

Claim No.2021-000673

Worker's Compensation Decision¹

Dated and Mailed:

August 5, 2024

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Order

The commission **affirms** the decision of the administrative law judge. Accordingly, the applicant is not entitled to any additional compensation under Wis. Stat. § 102.35(3), as she was not discharged due to her workplace injury and the respondent-employer had reasonable cause to discharge the applicant. The hearing application is dismissed with prejudice.

By the Commission:

/s/

Michael H. Gillick, Chairperson

/s/

Georgia E. Maxwell, Commissioner

/s/

Marilyn Townsend, Commissioner

¹ **Appeal Rights:** See the yellow enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the following as defendants in the summons and the complaint: the Labor and Industry Review Commission, and all other parties in the caption of this decision or order (the boxed section above). Appeal rights and answers to frequently asked questions about appealing a worker's compensation decision to circuit court are also available on the commission's website, <http://lirc.wisconsin.gov>.

Procedural Posture

This case is before the commission to consider the applicant's entitlement to worker's compensation benefits. An administrative law judge (ALJ) for the Division of Hearings and Appeals of the Department of Administration held a hearing and issued a decision. A timely petition for commission review was filed.

The commission has considered the petition and the positions of the parties, and has reviewed the evidence submitted at the hearing. Based on its review, the commission agrees with the decision of the ALJ, and it adopts the findings and conclusion in that decision as its own.

Memorandum Opinion

The issue before the commission is whether the respondent-employer is liable for an unreasonable refusal to rehire penalty under Wis. Stat. § 102.35(3).

In her petition for commission review, the applicant contends that the substantial and credible evidence contained in the record does not support the ALJ's decision. In addition, the applicant argues that the ALJ misstates the legal standard of an unreasonable refusal to rehire claim. The commission has considered the applicant's arguments but does not find them persuasive.

The applicant argues that the proper standard in unreasonable refusal to rehire claim cases is not whether the employer had a valid business reason for terminating an employee, but whether the work injury played any part in the termination. As support for this argument, the applicant cites *Great Northern Corp. v. LIRC*, 189 Wis.2d 313, 319, 525 N.W.2d 361 (Ct. App. 1994). However, *Great Northern* dealt with the application of Wis. Stat. § 102.35(3) to employer attendance policies that assigned absence points to employees who missed work due to a work injury. *Id.* *Great Northern* did not create a new test or expand upon the test used when evaluating unreasonable refusal to rehire claims.

Wisconsin Stat. § 102.35(3) provides as follows:

Any employer who without reasonable cause refuses to rehire an employee who is injured in the course of employment where suitable employment is available within the employee's physical and mental limitations, upon order of the department and in addition to benefits, has exclusive liability to pay to the employee the wages lost during the period of such refusal, not exceeding one year's wages...

Under Wis. Stat. § 102.35(3), the applicant has the burden of proving she was an employee with a compensable injury who was discharged. *Patricia Ashton v. Distribution Services*, WC Claim No. 2001018971 (LIRC Jan. 30, 2003); *See West Bend Co. v. LIRC*, 149 Wis. 2d 110, 123, 438 N.W.2d 823 (1989). The burden then shifts to the employer to show reasonable cause for discharging the employee. *West Bend*, 149 Wis. 2d at 123. An employer may only refuse to rehire an employee for a

cause or reason that is “fair, just, or fit under the circumstances.” *West Allis School District v. DILHR*, 116 Wis. 2d 410, 426, 342 N.W.2d 415 (1984). The unreasonable refusal to rehire statute also applies to unreasonable discharges following a work injury. *Dielectric Corp. v. LIRC*, 111 Wis.2d 270, 278, 330 N.W.2d 606 (Ct. App. 1983).

Here, the applicant met her *prima facie* case that she suffered a work injury to her upper left extremity and that she was discharged from the employer. The burden then shifts to the respondent-employer to show reasonable cause for the discharge. The applicant argues that the record does not contain sufficient credible evidence to support the ALJ’s finding that the respondent-employer met its burden of showing that it discharged the employee for reasonable cause. The applicant’s main argument on this point is that, on the day of discharge, she was presented a termination letter that informed her she was being terminated for the February 16, 2020, work incident, which resulted in her work injury. The commission finds that the evidence in the record pertaining to the February 16, 2020, incident is sufficient for a finding that the respondent-employer discharged her for a reasonable cause.

Simply put, the commission finds that the respondent-employer had reasonable cause to discharge the applicant for her disruptive actions with a patron on February 16, 2020. The applicant’s own witness, security guard David Wahl, stated that the argument was so loud that he felt compelled to get involved. Mr. Wahl further stated that while the patron was louder than the applicant, the applicant did raise her voice. In addition, the ballet’s manager emailed the theatre’s owner to express her displeasure in how the applicant handled the situation. The evidence regarding the February 16, 2020, incident was sufficient to meet the respondent-employer’s burden of showing it discharged the applicant for a reason that was just under the circumstances. Any additional evidence, such as prior warnings the applicant received and testimony regarding her history of problems with other vendors, employees, and patrons, provides further support for the employer’s decision to discharge the employer for a reasonable cause.

cc: Atty. James T. Barrett
Atty. Ronald S. Stadler