STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

GLENN F. ANDERSON,

Plaintiff,

Case No. 92-CV-1257

v.

LABOR AND INDUSTRY REVIEW COMMISSION and THE CHARLTON GROUP, INC.,

Defendants.

DECISION AND ORDER

The parties are before this court on plaintiff's petition for judicial review of the Labor and Industry Review Commission's (Commission) denial of unemployment compensation benefits allegedly due plaintiff. For the following reasons, the decision of the Commission is affirmed.

As a preliminary matter, this court notes that the scope of its review in such a case is curtailed by secs. 102.23(1) and 108.09(7)(b), Stats. Accordingly, the Commission's findings of fact are afforded great deference by the reviewing court. Similarly, the Commission's judgement regarding questions of law is to be supported if reasonably possible. "[T]he circuit court and an appellate court should not upset the department's judgement concerning questions of law if there exists a rational basis for the department's conclusion." Dairy Equipment Co. v. ILHR Department, 95 Wis. 2d 319, 327, 290 N.W.2d 330, 334 (1980). As the Wisconsin Supreme Court has noted, the decision as to whether

a particular set of facts fulfill a particular legal standard such as "voluntary termination" is a legal conclusion. Nottelson v. ILHR Department, 94 Wis. 2d 106, 115-6, 287 N.W.2d 763, 768 (1980). Thus, the Commission's decision is entitled to deference if there is a rational basis for that decision.

After reviewing the Commission's findings of fact and conclusions of law, this court finds that there was a rational basis for the Commission's decision that plaintiff's actions regarding his absences did constitute a resignation as per the employer's policy manual. Plaintiff had received a copy of the policy manual. As his initial phone calls indicate, plaintiff did know of the policy regarding absences. The fact that plaintiff knew of the policy, yet disregarded it in this instance, supports the Commission's finding that the termination was voluntary. Such behavior is certainly "inconsistent with the continuation of the employee-employer relationship." Nottelson at 119, 287 N.W.2d at 770 (1980). Thus, plaintiff was not terminated, but rather resigned voluntarily for purposes of sec. 108.04(7), Stats.

It is conceded that the employer deviated in some respects from the policy manual. However, that deviation does not operate to invalidate the entire manual. The plaintiff was aware of the policy regarding absences, yet for whatever reason, chose to ignore it. It was rational for the Commission to have decided that this constituted a voluntary termination.

Furthermore, the plaintiff's situation does not fall under any of the enumerated statutory exceptions provided in sec. 108.04(7),

Stats. For all of the above-listed reasons, the decision of the Commission is affirmed.

Signed this 25th day of March, 1993.

Judge Daniel Moeser