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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals pursuant to s. 808.10 within 30 days hereof, pursuant to Rule 809.62 (1).

NOTICE

This opinion is subject to further editing. If published the official version will appear in the bound volume of The Official Reports.

No. 89-1330

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

JANICE L. ANDING,

Plaintiff-Respondent,

v.

LABOR AND INDUSTRY REVIEW COMMISSION
STATE OF WISCONSIN,

Defendant-Appellant,

AND RHINELANDER PAPER COMPANY, INC.,

Defendant-Co-Appellant.

APPEAL from a judgment of the circuit court for Oneida county: ROBERT E. KINNEY, Judge. *Reversed and cause remanded for entry of a new judgment.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Rhineland Paper Company, Inc., and the Labor and Industry Review Commission appeal a judgment that reversed LIRC's decision to deny Janice Anding unemployment compensation benefits. Anding, a maintenance supervisor, had possessed and displayed a pistol on Rhineland Paper's premises in an attempt to coercively continue her amorous relationship

with a coworker. LIRC found Anding understood the impropriety of her conduct, wilfully disregarded her employer's interests, and was therefore guilty of misconduct. Anding appealed the decision to the trial court. LIRC contends that the trial court erroneously rejected LIRC's finding on Anding's intent and LIRC's legal conclusion on the misconduct issue. We agree with LIRC. We therefore reverse the judgment and remand the matter for entry of a new judgment.

Any employee who is guilty of misconduct is not entitled to unemployment compensation benefits. Sec. 108.04(5), Stats. "Misconduct" is the intentional and unreasonable interference with an employer's interest. *Baez v. DILHR*, 40 Wis.2d 581, 588, 162 N.W.2d 576, 579 (1968). An employee's intent behind committing an act is a question of fact. *Holy Name School v. DILHR*, 109 Wis.2d 381, 388, 326 N.W.2d 121, 125 (Ct. App. 1982). The question of whether an employee's act constitutes misconduct is a question of law. *Id.* at 387, 326 N.W.2d at 125.

Reviewing courts may reverse LIRC's factual findings if the findings are not supported by credible and substantial evidence. *Id.* at 385-86, 325 N.W.2d at 124. If the evidence will sustain two conflicting but reasonable views, reviewing

courts are bound by the view LIRC chose to accept. *Id.* Although LIRC's conclusions of law do not bind reviewing courts, LIRC's conclusions are given appropriate weight when its administrative expertise is significant to its legal conclusion. *Id.* Appellate courts owe no deference to trial courts' review of LIRC decisions. *See id.* at 385, 325 N.W.2d at 124.

We conclude that substantial evidence supports LIRC's finding that Anding understood the impropriety of her conduct and wilfully took a firearm and ammunition into Rhinelander Paper's plant. Although Anding claimed she was under tremendous stress, her actions required conscious planning. Due to the required three-day waiting period, she was not allowed to take possession of the gun immediately after purchase. Once she did obtain possession, she chose to remove the gun from her car and take it into the plant. She knew that her employer had issued a rule against having weapons and ammunition in the plant. After she took the weapon into the plant, she did not display it for several hours. This delay provided time for deliberation. This evidence supports LIRC's finding that Anding acted with control, not on impulse, and that Anding devised and executed a conscious plan designed to intimidate a coworker despite knowing that her actions violated company policy.

We also accept LIRC's conclusion that Anding's behavior constituted misconduct under sec. 108.04(5), Stats. Anding claims that she was under great stress for various reasons when she took the weapon to the plant. However, substantial evidence supports LIRC's finding of fact that Anding acted intentionally and with full knowledge that her conduct violated her employer's rules. There can be little doubt that an employer's interest is seriously damaged when employees possess and display firearms on the employer's premises without the employer's permission. Such behavior threatens other employees and disrupts normal work activities. LIRC could reasonably conclude that no special circumstances existed requiring Rhinelander Paper to tolerate such behavior. Under these circumstances, LIRC correctly concluded that Anding committed misconduct.

By the Court.--Judgment reversed and cause remanded with directions to issue a judgment that affirms LIRC's decision.

Not recommended for publication in the official reports.