

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH I

MARINETTE COUNTY

JOSHUA L. CAMPBELL,

Plaintiff,

vs.

LABOR AND INDUSTRY REVIEW
COMMISSION and SEEK CAREER
& STAFFING,

Defendants.

FILED ORDER

MAR 25 2011

LINDA L. DUMKE-MARQUARDT
CLERK OF COURTS
MARINETTE COUNTY, WI

Case No.: 10-CV-556

This is a judicial review of a September 21, 2010 decision of the State of Wisconsin Labor and Industry Review Commission. The Plaintiff is Joshua L. Campbell. Mr. Campbell has been found ineligible for unemployment insurance benefits because he voluntarily quit his employment with defendant, Seek Career & Staffing, Inc. The Commission also found that his quitting was not within any exception to the disqualifying effect of voluntary terminations of employment. Mr. Campbell is asking the court to set aside LIRC's decision.

A hearing was held on this matter before Administrative Law Judge Lisa A. Gilmore. She issued the following findings of fact and conclusions of law, among others:

The employee worked six months for a temporary service. The employee's last day of work was April 24, 2010 (week 17/10). She identified the initial issue to be decided is whether the employee quit or was discharged. She found that on April 26, 2010 (week 18/10) the employee called into work and reported that his car was not working and he did not know when he could report to work. There was no

public transportation available. She further found that on April 27 and 28, 2010 (week 18/10) the employee was no call/no show. The employer has a policy which provides for termination after two no call/no show occurrences. The employee was aware of the employer's policy. She further found that on April 29, 2010 (week 18/10), the employer contacted the employee regarding his absences. The employee advised that his car was still not working and he had not moved to Green Bay. She ultimately found that "the employee's failure to contact the employer and to return to work after April 26, 2010 is inconsistent with the continuation of the employee-employer relationship. The employee was not available for work with the employer while living in Marinette because he did not have a car and no public transportation was available between the cities of Marinette (sic) and Green Bay. She ultimately concluded, "therefore, the employee quit in week 17 of 2010". She ultimately found that he quit by abandoning his job and that job abandonment does not fall within any statutory exception that permits the immediate payment of benefits. She concluded that he was not discharged by the employer and that the employee voluntarily terminated employment with the employer within the meaning of section 108.04(7)(a) of the statutes, and that this quitting was not for any reason constituting an exception to benefit suspension under the statutes.

Her decision was ultimately appealed to the State of Wisconsin Labor and Industry Review Commission. On September 21, 2010 the decision of the administrative law judge was affirmed. The brief of the defendant, Labor and Industry Review Commission has accurately set forth the statement of issues and statutes involved. Therefore, the court will not recite those again. In addition, the defendant has correctly stated the scope and standard of judicial review of administrative decisions in its argument. Accordingly, LIRC's findings on factual issues are conclusive on the court if there is any credible, relevant and probative evidence which, construed most favorably to the result arrived at by LIRC, would justify persons of ordinary reason and fairness to make such findings. In addition, it is not the role of the court to substitute its judgment on credibility issues. The LIRC is the sole judge of the weight and credibility of the testimony of witnesses. In this case, the ALJ and LIRC were faced with competing testimony regarding whether Mr. Campbell called in or not. The administrative law judge and consequently the LIRC accepted and credited the testimony of Sarah Schmidt as to whether or not Mr. Campbell called in to report that he would be absent from work on April 27 and April 28.

Again, this is a credibility issue, and the court is not to substitute its judgment. There clearly is evidence in the record by which the ALJ and LIRC could reach this conclusion and therefore it will be sustained. Furthermore, with respect to the determination that Mr. Campbell had notice of the employer's policy regarding no call/no show, the ALJ and LIRC credited the testimony of the

company in which it was established that Mr. Campbell had received a copy of the company's policy handbook and therefore was aware of this policy.

Finally, this court agrees that great weight deference is appropriate in this case in that the agency has been charged by the legislature with the duty of administering the statute, the interpretation of the agency is one of long-standing, the agency employed its expertise or specialized knowledge in forming the interpretation, and the agency's interpretation will provide uniformity and consistency in the application of the statute. For the same reasons previously expressed, the decision of the ALJ and ultimately LIRC will be upheld based on the evidence received from the employer's witnesses.

Therefore, the decision is confirmed in all respects.

Dated this 25th day of March, 2011.

BY THE COURT:



David G. Miron
Circuit Judge

THIS IS A FINAL ORDER.

