

MARY L. MORMANN,

Plaintiff,

Case No. 04-CV-1961

vs.

LABOR and INDUSTRY REVIEW
COMMISSION and THE LUTHERAN
HOME,

Defendants.

DECISION

This is an action for judicial review filed by the plaintiff, Mary Mormann, pursuant to Wis. Stat. Secs. 108.09(7) and 102.23.

Based upon a review of the record, the Court makes the following findings of fact:

Ms. Mormann filed a claim for unemployment compensation benefits on August 19th, 2004. The defendant issued a determination finding that Ms. Mormann quit, but not for a reason which would allow the payment of benefits. The determination, on the lower right of the document, clearly states:

Decision final unless a written appeal is received or postmarked by September 2, 2004.

The back side of the determination gives instructions on how and where to file an appeal. The instructions reiterate:

To be timely, your appeal must be received or postmarked by the last appeal date shown on the front of this determination. **An appeal by FAX must be received by midnight (central time) on the last appeal date.** A claimant in another state may file an appeal at the nearest public employment office.

Ms. Mormann's written appeal was postmarked and received on September 9th, 2004. (Record 20-21).

In her appeal Ms. Mormann stated that she had to move back in with her mother in Minnesota on a temporary basis. She stated she was only able to pick up her mail and phone messages every couple of weeks and this is how she "missed everything at times." (Record page 20).

Administrative Law Judge Kevin Carr reviewed Ms. Mormann's appeal pursuant to 108.09(4)(c) governing late appeals. 108.09(4)(c) governing late appeals provides:

If a party files an appeal which is not timely, an appeal tribunal shall review the appellant's written reasons for filing the late appeal. If those reasons, when taken as true and construed most favorably

to the appellant do not constitute a reason beyond the appellant's control, the appeal tribunal may dismiss the appeal without a hearing and issue a decision accordingly ...

The tribunal appeal issued on September 23rd, 2004, found that the explanation given by Ms. Mormann "does not even raise an inference that the appeal was late for reasons beyond the appellant's control. Since the appellant had in possession the information necessary to file a timely request for hearing, it cannot be held the failure to file a timely hearing request was for a reason beyond the control of the applicant." (Record page 12). A.L.J. Carr dismissed Ms. Mormann's appeal and request for a hearing. (Record 10-12).

Ms. Mormann timely filed an appeal of A.L.J. Carr's decision on October 6th, 2004. (Record 6-8). On October 20th, 2004, the commission issued its decision affirming A.L.J. Carr's decision. Ms. Mormann timely filed her summons and complaint in circuit court seeking judicial review on November 8th, 2004.

The issue is whether the Labor and Industry Review Commission erred in finding that Ms. Mormann's failure to file a timely appeal were for reasons not beyond her control within the meaning of Wis. Stat. 108.09(4)(c).

The standard of review on judicial review is very narrow and is governed by Wis. Stat. Sec. 102.23 which provides:

(1)(a) The findings of fact made by the commission acting within its powers shall, in the absence of fraud be conclusive.

. . .

(e) Upon such hearing the Court may confirm or set aside such order or award, and any judgment which may theretofore have been rendered thereon; but the same shall be set aside only upon the following grounds:

(1) That the commission acted without or in excess of its powers.

(2) That the order or award was procured by fraud.

(3) That the findings of fact by the commission do not support the order or award.

. . .

(6) If the commission's order or award 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...

This Court gives the commissioner's determination of what constitutes "a reason beyond the appellant's control" great weight. Harnischfeger Corp. V. L.I.R.C., 196 Wis. 2d 650 (1995).

L.I.R.C. has the statutory authority to make determinations regarding unemployment eligibility benefits, hearing procedures and appeals. As pointed out in the defendant's brief, L.I.R.C. has interpreted the standard of "reason beyond the appellant's control" in hundreds, if not thousands, of decisions. In so doing, L.I.R.C. has expertise in forming its interpretation such that uniformity and consistency is provided in the application of the statute. Harnischfeger Corp at 660.

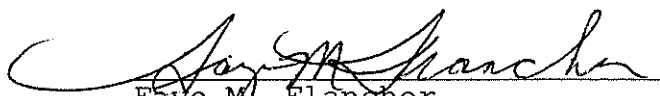
There is nothing in Ms. Mormann's submissions to show that her failure to timely appeal was for a reason beyond her control. While sympathetic with her financial plight and the emotional decision made to leave Wisconsin to care for her elderly and infirm mother in Minnesota, these demands and stresses do not excuse or provide a valid reason for failure to deal with time-sensitive matters. Under the circumstances, it was not reasonable or logical to have the post office hold her mail until she returned to Racine.

The commissioner's findings of fact are supported by the evidence and is consistent with the purpose of the

legislation. The findings of the commission are affirmed and its decision confirmed.

Dated this 2 day of September, 2005.

BY ORDER OF THE COURT


Faye M. Flancher
Circuit Court Judge