

CATHERINE PETERS,

Plaintiff,

vs.

Case No. 12 CV 1344

LABOR AND INDUSTRY REVIEW COMMISSION and
UNITED RENTALS,Defendants.

DECISION & ORDER

Catherine Peters (Peters) applied for unemployment benefits in 2012. The Department of Workforce Development determined that Peters was discharged but not for misconduct within the meaning of Wis. Stat. § 108.04(5) and was eligible for benefits. Her employer, United Rentals (United) appealed and after a hearing before an administrative law judge (ALJ), it was determined that Peters voluntarily quit her employment. Peters appealed to the Labor and Industry Review Commission (LIRC) which affirmed the decision of the ALJ. Because Peters was paid benefits following her termination of employment, LIRC found she must reimburse the state for the benefits she was paid during that time. Peters seeks review from this court arguing that she did not voluntarily quit her job.

Background Facts

Peters worked for United for approximately seven and a half years as a branch manager. During the last two years of her employment with United, Peters made numerous complaints to her District Manager and Human Resources (HR) within United regarding her treatment by another branch manager, her wages in comparison to other branch managers, the budget allotted

to her to operate her branch, and the number of employees she was allowed to have. United investigated these complaints and found them to be unfounded. When United reported its findings to Peters, she filed a complaint with the EEOC alleging gender discrimination and claiming that she was underpaid compared to other male branch managers.

During the course of the EEOC investigation, United requested mediation to resolve the issues in Peters' complaint. Peters claims that United refused to mediate over the issues in her complaint and offered her a termination agreement. United claims that Peters stated that she wanted to quit. Regardless, an agreement was signed on January 31, 2012, in which the parties agreed that Peters would end her employment in return for a settlement payment. The ALJ and LIRC both found that Peters did not have to sign the agreement and that she could have continued working while her EEOC claim proceeded. Because Peters voluntarily agreed to terminate her employment, LIRC determined that she quit and was ineligible for benefits.

DECISION

In reviewing a decision by LIRC the Court may confirm or set aside an order or award. Wis. Stat. § 102.23(1)(e) (2011). The Court may set an order or award aside only if (1) the commission acted without or in excess of its powers; (2) the order or award was procured by fraud; or (3) the findings of fact do not support the order or award. *Id.* If LIRC's order or award depends on a 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" § 102.23(6). The Court may, however, set aside or remand a case where the order or award depends on a "material and controverted finding of fact that is not supported by credible or substantial evidence." *Id.* Here LIRC's decision is based on a finding of fact that Peters voluntarily quit her employment and did so without good cause attributable to her employer.

Substantial evidence is evidence that is relevant, credible, probative and of quantum upon which a reasonable fact finder could base a decision. *Cornwell Personnel Assocs. v. LIRC*, 175 Wis. 2d 537, 544 (Ct. App. 1993). Substantial evidence for purposes of review of an unemployment insurance decision does not require a finding based on a preponderance of the evidence, but only that reasonable minds could arrive at the same conclusion that the commission reached. *Holy Name School v. DILHR*, 109 Wis. 2d 381, 386 (Ct. App. 1982). In determining whether substantial evidence supports a finding, the evidence is to be construed most favorably to the commission's findings. *Id.*; *R.T. Madden, Inc. v. DILHR*, 43 Wis. 2d 528, 548 (1969). The reviewing court's task is to search the record to locate evidence which supports the commission's decision, not consider evidence contrary to the decision. *Vande Zande v. DILHR*, 70 Wis. 2d 1086, 1097 (1975). An administrative agency's findings of law should be given "great weight" deference when the commission has gained specialized knowledge and expertise in determining when an employee is acting within the scope of his or her employment. *Ide v. LIRC*, 224 Wis. 2d 159, 166 (1999).

For termination to be considered a discharge, it must be an unequivocal action taken by an employer, leaving no shred of doubt as to the employer's intentions. *Rice Lake Creamery v. Ind. Comm.*, 15 Wis. 2d 177, 187 (1961). Voluntary termination, however, is not limited to the employee who says "I quit." *Nottelson v. DILHR*, 94 Wis. 2d 106, 119 (1980). "When an employee shows that he intends to leave his employment and indicated such intention by word or manner of action, or by conduct, inconsistent with the continuation of the employee-employer relationship, it must be held, ... that the employee intended and did leave his employment voluntarily." *Id.*

LIRC reviewed the testimony made before the ALJ and determined that Peters was not forced to sign the agreement but chose to voluntarily. She understood that by signing that agreement that her employment relationship was terminated. Peters claims that United refused to mediate with her and in light of the lengthy process an EEOC investigation would involve, she had no choice but to sign the agreement. LIRC rejected this argument because United testified that it was willing to work with Peters, and the length of time Peters would have to wait for results of the EEOC investigation does not qualify as grounds for termination.

Because LIRC found Peters quit, it considered whether she qualified for benefits despite quitting. Wis. Stat. § 108.04(7)(a) imposes a complete bar to unemployment benefits or a period of benefit suspension for employees who voluntarily leave their employment. The burden of showing that a statutory exception applies is on the proponent of the exception. *Chi. & Nw. R.R. v. LIRC*, 91 Wis. 2d 462, 467 (Ct. App. 1979). In this instance Peters has the burden. One exception found at Wis. Stat. § 108.04(7)(b) provides that an employee who terminated his or her work “with good cause attributable to the employing unit” is eligible for benefits.

LIRC found that Peters decided that she did not want to continue working at United for the two to three years that the EEOC would need to conclude its investigation, and she decided that accepting the settlement offered by United was a better course of action. Therefore, LIRC determined that she voluntarily quit and that her decision was not attributable to United. LIRC’s conclusions are supported by substantial evidence and affirmed.

LIRC also found that Peters is ineligible for benefits and must repay any benefits she had received in error pursuant to Wis. Stat. § 108.04(13)(f). Wis. Stat. § 108.22(8)(c) stipulates that an overpayment may be waived if the overpayment resulted from departmental error and did not result from the fault of the claimant or because of the claimant’s false representation.

In reviewing the ALJ's decision, it appears that the ALJ relied on (1) the fact that Peters reported that she was fired and (2) that the ALJ found that Peters quit to support the determination that Peters provided incomplete and inaccurate information to the Department. This is unsupportable. Peters provided her position with respect to the dispute to the Department. When LIRC reviewed the ALJ's finding it simply stated without analysis that "The employee is required to repay the sum of \$2,217 to the Unemployment Reserve Fund." (UI Dec. Hr'g No. 12400788AP (LIRC Aug. 31, 2012).)

In its supporting brief to this Court, LIRC argues that Peters provided the Department with inaccurate and incomplete information when she described her termination as resulting from United's decision not to mediate. In support of this argument LIRC cites Peters' testimony at the hearing as an admission that she gave inaccurate information to the Department. (LIRC Br. 18-19, Feb. 25, 2013.) The testimony LIRC cited is included below:

Mr. Paradiso: ... on page U2, you stated, um, that the Employer decided to separate the employment relationship rather than mediate. Is that statement true or false?

Peters: Um, I think that terminology is not correct.

(Hr'g Tr. 41:20-15, May 24, 2012.) Peters' response continues, however, on the next page.

Peters' entire response was, "Um, I think that terminology is not correct. Rather than resolve the issues is how it should have been worded." (Hr'g Tr. 41:25-42:2.) Peters did not admit that she had given the Department inaccurate information; Peters was stating her position.

The issue in this case was whether Peters quit or was discharged. To uphold the ALJ and follow LIRC's argument on this matter would be to find any party which is unsuccessful in an appeal provided inaccurate or incomplete information. There is no substantial evidence to support LIRC's argument that the overpayment was due to Peters providing inaccurate or

incomplete information. In addition, LIRC's decision does not specifically address the basis under which it is requiring Peters to repay the sum of \$2,217 to the Unemployment Reserve Fund as required by Wis. Stat. § 108.22(8)(a). Because LIRC did not comply with the requirements of § 108.22(8)(a), the Court remands this issue to the Department to determine whether Peters is entitled to a waiver in light of the lack of support for LIRC's position. *See* Wis. Stat. § 108.22(8)(a) (2011) (requiring the Court remand for a determination where the commission fails to make a finding of fault under § 108.22(8)(c)).

ORDER

LIRC's decision that Peters voluntarily terminated her employment without good cause is supported by credible and substantial evidence. This part of the August 31, 2012 Decision is AFFIRMED. LIRC's decision that Peters must repay the sum of \$2,217.00 is not supported by a finding of fault attributable to her. This part of LIRC's Decision is REMANDED for LIRC to determine whether the overpayment of benefits was attributable to the fault of Peters.

Dated this 26^{*} day of April 2013.

BY THE COURT:



Honorable Dee R. Dyer

Circuit Court Judge, Branch VI