

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JULY 30, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

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

No. 95-3453

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

AMSOIL, INC.,

Plaintiff-Appellant,

v.

**LABOR AND INDUSTRY REVIEW
COMMISSION and
ROBYNN A. SILBERG ANDREN,**

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Douglas County:
MICHAEL T. LUCCI, Judge. *Affirmed.*

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

PER CURIAM. Amsoil, Inc., appeals a judgment affirming a Labor and Industry Review Commission (LIRC) finding that it unreasonably refused to rehire Robynn A. Silberg Andren. Amsoil refused to rehire Andren because she filed a worker's compensation claim for a knee injury that Amsoil characterized as fraudulent. After extensive litigation, the worker's

compensation claim was ultimately determined not to be fraudulent. Amsoil argues that LIRC misapplied the "reasonableness" standard of § 102.35(3), STATS., by using a subsequent event (its decision that the knee injury was work related) to decide that Amsoil's refusal to rehire Andren was unreasonable. Because LIRC found the failure to rehire unreasonable based on the information available to the employer at that time, we reject this argument and affirm the judgment.

Findings made by LIRC, acting within its powers, are conclusive in the absence of fraud. See § 102.23(1), STATS. LIRC's decision in this case depends in part on its assessment of the credibility of several witnesses. It is LIRC's function to weigh the evidence and decide what should be believed. See *E. F. Brewer Co. v. DILHR*, 82 Wis.2d 634, 636-37, 264 N.W.2d 222, 224 (1978). In addition, this court must give great weight to LIRC's interpretation of § 102.35(3), STATS., and affirm it if reasonable, even if an alternative interpretation is also reasonable. See *Hill v. LIRC*, 184 Wis.2d 101, 110, 516 N.W.2d 441, 446 (Ct. App. 1994).

LIRC found that Amsoil's refusal to rehire Andren was unreasonable based on Amsoil's conduct and information it had at the time it decided not to rehire her. LIRC's subsequent finding that Andren suffered a work-related knee injury, while consistent with its decision in this case, was not the basis for LIRC's finding of unreasonable refusal to rehire.

Amsoil's assertion that Andren made a fraudulent claim was based on very weak evidence. Dennis Sailor, Amsoil's Vice President of Finances, testified that a warehouse manager in another state, Robert Wilkinson, first suggested that Andren's worker's compensation claim might be fraudulent. Sailor testified as follows:

Mr. Wilkinson had a workman's comp claim and hurt his back, I believe. So he had knowledge of how these claims are filed, and what benefits could come from it. He told me that she called him and told him that she hurt her back horseback riding. He said "gee, that's too bad you didn't hurt it at work. You could have got all these benefits from workman's comp." It was

shortly thereafter that she filed a workman's comp claim stating that she hurt her back at work. My judgment was that I believe Mr. Wilkinson and made the decision to terminate based on her statement.

Sailor and Amsoil, without further investigation and without confronting Andren with this information, jumped to the conclusion that Andren's claim of a work-related knee injury was fraudulent merely because Andren allegedly told Wilkinson that she had suffered a back injury horseback riding and Wilkinson brought up the question of compensation.

LIRC found several problems with Sailor's testimony. It was inconsistent with Wilkinson's prior testimony at the worker's compensation hearing. According to Sailor, Wilkinson spoke of a back injury from horseback riding as opposed to a knee injury. Wilkinson had earlier testified that he spoke with a different party, not directly with Sailor, and that Andren allegedly told him she hurt her knee, not her back, on her grandmother's back steps, not horseback riding. Sailor's testimony is not reconcilable with Wilkinson's prior testimony.

In addition to Amsoil's reliance on accusations that were inconsistent and unsubstantiated, LIRC properly faulted Amsoil for its failure to investigate the accusations or to notify Andren of the charge so that she could refute or explain the accusation. Andren did not learn of Wilkinson's alleged comments until Wilkinson testified at a proceeding following her termination. The trial court concisely summarized LIRC's decision and the evidence:

ultimately, the commission determined that the employer had acted unreasonably by jumping to the conclusion that Andren had committed fraud based upon flimsy and inconsistent evidence which Amsoil never checked, and then by refusing to rehire her without further investigation and without providing her a chance to refute it.

By the Court. – Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.