COURT OF APPEALS
DECISION
DATED AND FILED

March 8, 2007

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2006AP557 **Cir. Ct. No. 2005CV2825**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

CAROL L. AUSTIN,

PLAINTIFF-APPELLANT,

V.

LABOR AND INDUSTRY REVIEW COMMISSION AND CUNA MUTUAL INSURANCE SOCIETY,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County: RICHARD G. NIESS, Judge. *Affirmed*.

Before Lundsten, P.J., Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Carol Austin appeals an order affirming a decision by the Labor and Industry Review Commission that denied her claim for unemployment compensation. We affirm.

¶2 The pertinent facts, as found by the administrative law judge and adopted by the commission, appear to be undisputed. Austin worked for CUNA Mutual Insurance Society as a "law specialist/paralegal." As of December 30, 2004, she voluntarily terminated her employment. Previously, in June 2004, the employer had imposed new work-processing procedures in the legal office. After that, there was a period during which Austin believed she was not keeping current with her workload, objected to performing additional new clerical work, and claimed that doing the additional clerical work prevented her from meeting her clients' needs. The employer advised her that the new procedures would not be changed. Austin believed her employer intended to terminate her, which led to her decision to quit.

¶3 An employee's voluntary termination of employment ordinarily results in the employee being ineligible to receive unemployment compensation benefits. *See* WIS. STAT. § 108.04(7)(a) (2005-06).[1] However, the statute also provides exceptions in voluntary termination situations. *See* § 108.04(7)(am)-(s). The commission concluded that none of these exceptions applied in Austin's case and, therefore, declared her ineligible for benefits. Austin sought judicial review in the circuit court, which affirmed the commission. On appeal, we review the decision of the commission, not the circuit court. ***Lopez v. LIRC***, 2002 WI App 63, ¶9, 252 Wis. 2d 476, 642 N.W.2d 561.

¶4 Whether a claimant is entitled to unemployment benefits is a mixed question of law and fact. ***Klatt v. LIRC***, 2003 WI App 197, ¶10, 266 Wis. 2d

[1] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

1038, 669 N.W.2d 752. The commission's application of unemployment compensation statutes to the facts is a question of law. ***Id.*** Generally, questions of law regarding voluntary termination and good cause attributable to the employer are reviewed using "great weight" deference. *See* ***id.***, ¶¶11-14. Under that standard, we uphold the agency's decision if it is reasonable, even if we conclude that another interpretation is more reasonable. *See* ***Lopez***, 252 Wis. 2d 476, ¶16.

¶5 Austin argues that we must review the commission's decision *de novo*. She contends that the commission's decision in her case was inconsistent with certain past commission decisions. In support, she relies on our statement in ***Lopez*** that *de novo* review is applicable "when the issue before the agency is clearly one of first impression or when an agency's position on an issue has been so inconsistent so as to provide no real guidance." ***Id.***, ¶11. However, this sentence does not refer to an inconsistency between the current decision and past agency decisions. Rather, it refers to inconsistencies among past decisions. Further, even if Austin means to argue that the commission's past decisions are inconsistent, we need not decide whether this is true. Regardless whether we accord deference to the commission's decision or review it *de novo*, we would affirm it.

¶6 Austin argues that she was entitled to terminate her employment because there was "good cause attributable to the employing unit" within the meaning of WIS. STAT. §108.04(7)(b). In particular, there was good cause because she was subjected to "a request, suggestion or directive by the employing unit that the employee violate federal or Wisconsin law." ***Id.*** The burden is on the employee to prove good cause. ***Klatt***, 266 Wis. 2d 1038, ¶25.

¶7 According to Austin, she was effectively directed to violate the fair claims laws of other states, such as California. She asserts that she was responsible for delivering timely coverage letters to CUNA's insureds; timely letters were a legal obligation under the laws of these other states; the employer's new work procedures prevented her from complying; and her employer did not intend to improve the situation. The problem with this argument is that Austin fails to present a developed factual and legal argument showing "a request, suggestion or directive by the employing unit" that she violate a law, much less a "federal or Wisconsin law." Austin pointed to California law as an example of a state whose law she was effectively directed to violate, but our review of the record persuades us that the commission aptly concluded: "[Austin] did not establish that she worked on California claims that did not meet the requirements of [California law]."

¶8 Austin argues that the commission is not qualified to decide whether the procedures imposed on her amounted to a directive that she violate a law. She asserts the commission lacks the experience and specialized knowledge necessary to determine how insurance laws apply to her situation. This argument, however, ignores the burden placed on Austin. Even assuming the commission lacked adequate expertise, it was Austin's burden to present evidence, whether expert testimony or otherwise, meeting her burden. Austin seems to assume that if the commission lacked adequate expertise, it was required to accept her assertions of law on the topic. We are aware of no authority for that proposition.

¶9 Austin complains that the commission failed to address the credibility of the testimony of Austin's supervisor regarding insurance law. But the credibility of the supervisor on this topic is immaterial. It does not appear that the commission relied on the supervisor's opinion and, even if it did, we would

still affirm because Austin failed to meet her burden of showing that she had effectively been required to violate a law.

¶10 Finally, Austin asserts she had a reasonable basis to believe that her supervisor wanted her out of her position and that he made statements she construed as ultimatums. However, the commission found there was no credible evidence that the supervisor intended to terminate Austin or that he made the statements Austin attributes to him. We may set aside the commission's factual findings only if they are not supported by credible and substantial evidence. WIS. STAT. § 102.23(6). The commission's findings were supported by sufficient evidence in the testimony of Austin's supervisor.

¶11 For the above reasons, we affirm the commission.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.