

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 10, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

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

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

Appeal No. 2006AP2072

Cir. Ct. No. 2005CV10806

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

AUDREY JEAN SPRECHER,

PETITIONER-APPELLANT,

v.

LABOR AND INDUSTRY REVIEW COMMISSION,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
CLARE L. FIORENZA, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Kessler, JJ.

¶1 KESSLER, J. Audrey Jean Sprecher appeals from a judgment and an order of the circuit court affirming the decision by the Labor Industry and

Review Commission (LIRC) under WIS. STAT. § 102.23 (2003-04).¹ The LIRC found that Sprecher concealed wages earned during specific weeks in which she filed unemployment benefit claims and determined that she must therefore forfeit future benefits under WIS. STAT. § 108.04(11). Because Sprecher has failed to show that the LIRC's determinations were not based upon substantial and credible evidence, we affirm.

BACKGROUND

¶2 Sprecher worked on a weekly basis as a sales representative for Pressure Clean from February 2002 until February 26, 2004. Beginning in week forty of 2003, Sprecher began filing claims for unemployment compensation benefits. She filed twenty-two separate claims through week nine of 2004. For each claim, the Department of Workforce Development (DWD) asked Sprecher if she had performed work and earned wages during the week for which she was requesting benefits. In each week Sprecher replied, "No." In fact, during eighteen of the twenty-two weeks in which Sprecher filed for claims, she was doing work for, and being paid cash wages by, Pressure Clean.

¶3 After an audit, the DWD determined that Sprecher had earned wages from her employment with Pressure Clean and that she had failed to disclose, and did conceal, the work she performed and the wages she earned. The DWD ordered a forfeiture of \$6930 of Sprecher's future unemployment compensation benefits. At the hearing before the administrative law judge (ALJ), Sprecher stated that she did not claim benefits during the weeks in question, but did earn

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

wages. Based upon the DWD's records, the ALJ determined that someone providing Sprecher's name, social security number, address, and date of birth made and received claims each week, providing the same information in each case. Sprecher did not allege identity theft at the hearing. The ALJ affirmed the DWD's determinations, but modified the forfeiture to \$5670 because it found that Sprecher had not worked or earned wages in four of the weeks in question.

¶4 Sprecher appealed the DWD's determination and upon review, the LIRC affirmed and adopted the findings and conclusions of the ALJ, stating that Sprecher had not explained her failure to report work performed and wages earned in her claims for unemployment compensation benefits. Sprecher then sought judicial review of the LIRC's determinations. The circuit court affirmed the LIRC's determinations, holding that Sprecher offered no evidence to show that the findings of the ALJ were not supported by credible and substantial evidence. In addition, the circuit court found no evidence of fraud by the LIRC, or that the LIRC had acted in excess of its powers. On appeal, Sprecher argues that the circuit court was wrong to affirm the LIRC's determinations, and contends that she may have been the victim of identity theft.

ANALYSIS

¶5 At issue in this case is whether the LIRC correctly affirmed the ALJ's order that Sprecher should forfeit future unemployment compensation benefits in the amount of \$5670 under WIS. STAT. § 108.04(11),² because she

² WISCONSIN STAT. § 108.04(11) states, in pertinent part:

FRAUDULENT CLAIMS. (a) If a claimant, in filing his or her application for benefits or claim for any week, conceals any part of his or her wages earned in or paid or payable for that week, or conceals his or her refusal within that week of a job

(continued)

failed to report, and did conceal, work performed and wages earned during eighteen weeks that she filed for, and received, unemployment compensation benefits.

¶6 This court reviews the determinations of the LIRC, not the decision of the circuit court. *Stafford Trucking, Inc. v. DILHR*, 102 Wis. 2d 256, 260, 306 N.W.2d 79 (Ct. App. 1981). A decision of the LIRC may only be reversed upon the following grounds: (1) that the LIRC acted without or in excess of its power; (2) that the LIRC's order or award was procured by fraud; or (3) that the LIRC's findings of fact do not support the order or award. WIS. STAT. § 102.23(1)(e);³ *see also Kenwood Merch. Corp. v. LIRC*, 114 Wis. 2d 226, 236, 338 N.W.2d 312 (Ct. App. 1983).

¶7 In the absence of fraud, findings of fact made by the LIRC under WIS. STAT. ch. 108 are conclusive if supported by any credible evidence in the

offer or any other material fact relating to his or her eligibility for benefits, so much of any benefit payment as was paid because of such concealment shall be recovered by the department as an overpayment.

³ WISCONSIN STAT. § 102.23(1)(e) states, in pertinent part:

(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.

record. WIS. STAT. § 102.23(1)(a);⁴ *see also Stafford Trucking*, 102 Wis. 2d at 260. The reviewing court must search the record to locate credible evidence supporting the LIRC’s determination and not weigh evidence opposed thereto. *Kannenberg v. LIRC*, 213 Wis. 2d 373, 384, 571 N.W.2d 165 (Ct. App. 1997); *see also Vande Zande v. DILHR*, 70 Wis. 2d 1086, 1097, 236 N.W.2d 255 (1975). A reviewing court may not substitute its own judgment in evaluating the weight or the credibility of the evidence. WIS. STAT. § 102.23(6); *Princess House, Inc. v. DILHR*, 111 Wis. 2d 46, 54, 330 N.W.2d 169 (1983), *overruled on other grounds* by WIS. STAT. § 108.02(15)(k). If there is “relevant, credible, and probative evidence upon which reasonable persons could rely to reach a conclusion, the finding must be upheld.” *Id.*

¶8 Upon review of the LIRC’s determinations in this case, we conclude that the findings of fact, as well as the order requiring Sprecher to forfeit future unemployment compensation benefits, are supported by substantial and credible evidence in the record. There is no evidence in the record to show that the LIRC was acting without or in excess of its power when it affirmed the determinations of the ALJ. The record does not show, and Sprecher does not claim, that the order was procured by any fraud on the part of the LIRC. The record provides substantial support for the LIRC’s findings of fact. The record shows that each time Sprecher filed a claim for unemployment compensation benefits she was asked whether she worked and whether she had earned any wages. It also shows that Sprecher answered “No” eighteen times, despite having both worked and earned wages during those subject weeks. Sprecher conceded at the hearing

⁴ WISCONSIN STAT. § 102.23(1)(a) states, in pertinent part: “The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive.”

before the ALJ that she earned wages in this time period and does not offer any explanation for failing to report them on her claims.

¶9 On appeal, Sprecher argues that she was a victim of identity theft and asserts that the circuit court should have investigated this possibility on its own. However, the record does not show that she raised this issue or offered evidence in support of such a claim before the DWD or the ALJ. Rather, the LIRC's determination that Sprecher concealed work performed and wages earned was based upon her own admissions at the hearing before the ALJ, as well as upon the testimony of Sprecher's former employer at Pressure Clean and an unemployment benefits specialist from the DWD. Sprecher now claims that she was "stunned and confused at the questions [she] was asked and at the documents" presented at the hearing, and that, in fact, she never submitted these claims, but rather was a victim of identity theft. However, Sprecher offers no evidence in support of this contention. Sprecher's conclusory assertions, without more, are not the "relevant, credible, and probative evidence upon which reasonable persons could rely to reach a conclusion." *Princess House, Inc.*, 111 Wis. 2d at 54.

¶10 If a claimant "conceals any part of his or her wages earned in or paid or payable for that week," then "so much of any benefit payment as was paid because of such concealment shall be recovered by the department as overpayment." WIS. STAT. § 108.04(11)(a). The LIRC reviewed the record and the findings of fact made by the ALJ and, based upon that review, determined that Sprecher had concealed both work she had performed and wages she had earned during eighteen of the twenty-two weeks in which she had applied for unemployment compensation benefits. The LIRC therefore affirmed the order of the ALJ requiring Sprecher to forfeit future unemployment compensation benefits in the amount of \$5670 because she had concealed material facts relating to her

unemployment eligibility when she filed an unemployment compensation benefit claim and also worked and earned wages. Because we conclude that the LIRC's application of § 108.04(11) to the facts in the record is reasonable and consistent with the language of the statute, we affirm.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

