

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 3, 2012**

Diane M. Fremgen  
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. 2011AP2531**

**Cir. Ct. No. 2011CV600**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

---

**LALITA A. SALLIS,**

**PETITIONER-APPELLANT,**

**v.**

**LABOR AND INDUSTRY REVIEW COMMISSION AND STEIN OPTICAL, INC.,**

**RESPONDENTS-RESPONDENTS,**

**TALX UCM SERVICES,**

**RESPONDENT.**

---

APPEAL from an order of the circuit court for Milwaukee County:  
WILLIAM W. BRASH, III, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 FINE, J. Lalita A. Sallis appeals, *pro se*, the circuit court’s order affirming an order entered by the Labor and Industry Review Commission that denied Sallis’s application for unemployment compensation because it determined that Stein Optical fired Sallis, an optometrist assistant, for misconduct. Sallis argues that the Commission erred because: (1) she contends that there was no evidence, other than hearsay, to support a finding of misconduct; and (2) it did not credit her undisputed testimony that she had created false appointments previously for a Stein Optical doctor who needed to leave early. We affirm.

### I.

¶2 Sallis started to work at Stein Optical in September of 2007. On March 18, 2010, at the end of her shift, Stein Optical fired her, claiming that she had violated “company policy” the previous day. She signed a discharge notice that related:

On 3/17/2010, it was noticed that 3 fake appointments were entered in the appointment book for 6:00, 6:15, and 6:30 for 3/18/2010. The [General Manager] called all three entries and none knew of any such appointment being made. After inquiring about this, [Sallis] admitted to entering those fake appointments in order to leave early on 3/18/2010.

[Sallis]’s actions are in violation of [Stein Optical’s parent company] Rules of Personal Conduct and are not in keeping the company’s core value, integrity; being credible, honest, and ethical each and everyday. “Do the right thing,” an everyday motto, was not followed. By filling in false appointments, we would not be able to serve our customers wanting to come in for an eye exam thus ending up with a potential loss of business.

Because of this being a violation of [Stein Optical’s parent company] policy, core values, and performance, [Sallis]’s employment is being terminated, effective immediately.

¶3 Sallis applied for unemployment compensation, claiming:

I was discharged on March 18, 2010 for writing down three false appointments in the appointment book on March 17, 2010. I did this because I needed to leave early so I could take my mid term exams in school scheduled that night. I asked my boss if I could leave early for that she said no. I had to take my tests or I would fail my classes. So I made it look like I had [appointments] at the end of the day so that no one who really could make [appointments] would be able to do so and keep me there longer than I needed to. I had never done this before. I was not sure what would happen if I did it.

¶4 Two witnesses testified at the administrative hearing: Sallis and Jemina Kalis, the Stein Optical store manager who replaced the manager who fired Sallis. Kalis explained that fake appointments prevented the store from seeing “patients in those time slots, and that’s business loss.” She also testified that Sallis got an employee handbook that, as material, forbid “Dishonesty,” which included “Falsification of records.”

¶5 Sallis testified:

- She made “three fake appointments for 6:00, 6:15, and 6:30 on March 18th” because “I had midterms for my class at Alverno, which is on the other side of town, and I just needed to leave an hour earlier,” but her manager would not let her leave.
- “I made those appointments so I could go to my midterm. I made the appointments, yes.”
- “I did put the fake appointment in there so no one would show, and that’d give me enough time to leave. But I put it just in case no one doesn’t show. So she wouldn’t be able to take walk-in appointments, but I also know that if no one was going to come in,

then I felt like, okay, I have a better chance of getting to my midterms for my class.”

- She had asked her manager “[a] week before” to leave early for the exam and “[s]he said okay ... but I also know we were short-staffed that day, so I had to stay.”
- “I know that I used to do it [create fake appointments] for the doctor too, so if the doctor had to be somewhere, I just put an appointment in.”
- She signed an acknowledgment that she received the handbook.

¶6 The administrative law judge found Sallis’s actions to be misconduct:

The employee admits that she recorded three false appointments in the employer’s schedule. However, she claims that this does not constitute misconduct because she had given the employer advanced notice that she needed to leave early for an exam and the employer ultimately did not allow her to leave early. This contention cannot be sustained.

Trust is an essential component of the employment relationship. An employer has a right to expect honesty from its employees. ... An employee’s dishonesty in the course of the employment relationship supports a conclusion of misconduct. ... While the employee may have had a valid reason for wanting to leave work early, this does not justify her dishonest conduct of recording false appointments. The employee’s dishonesty showed an intentional and substantial disregard both for the employer’s interest and for her duties and obligations to the employer. Therefore, the employee was discharged for misconduct connected with her employment.

¶7 The Commission affirmed. The circuit court affirmed the Commission.

## II.

¶8 We review the Commission’s decision, not the circuit court’s. *See Hill v. Labor & Industry Review Commission*, 184 Wis. 2d 101, 109, 516 N.W.2d 441, 445 (Ct. App. 1994). The Commission’s factual findings are invulnerable when “they are supported by credible and substantial evidence.” *General Casualty Co. of Wis. v. Labor & Industry Review Commission*, 165 Wis. 2d 174, 178, 477 N.W.2d 322, 324 (Ct. App. 1991). Substantial evidence is relevant, credible and probative evidence on which it is reasonable to rely to reach a conclusion. *Sills v. Walworth County Land Management Committee*, 2002 WI App 111, ¶11, 254 Wis. 2d 538, 549, 648 N.W.2d 878, 883. Our review and level of deference owed to the Commission on legal issues depends upon its experience and expertise in the area. *See Andersen v. Department of Natural Resources*, 2011 WI 19, ¶26, 332 Wis. 2d 41, 55, 796 N.W.2d 1, 8 (“While we are not bound by an agency’s conclusions of law, this court has articulated three levels of deference that we may accord an agency’s statutory interpretation and application: great weight deference, due weight deference, and no deference.”) “This court has determined that the question of whether certain conduct constitutes misconduct is intertwined with factual and value determinations, and therefore ‘great weight’ should be assigned to [the Commission’s] decision.” *Bernhardt v. Labor & Industry Review Commission*, 207 Wis. 2d 292, 303, 558 N.W.2d 874, 878 (Ct. App. 1996).

¶9 WISCONSIN STAT. § 108.04(5), as material, provides: “[A]n employee whose work is terminated by an employing unit for misconduct connected with the employee’s work is ineligible to receive benefits[.]” *Boynton Cab Co. v. Neubeck & Industry Commission*, 237 Wis. 2d 249, 259–260,

296 N.W.2d 636, 640 (1941) defined misconduct for unemployment-insurance purposes:

[M]isconduct ... is ... conduct evincing such wilful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree ... as to manifest equal culpability ... or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.

(Quotation marks omitted.)

¶10 Sallis contends that the Commission's decision is supported only by uncorroborated hearsay and therefore cannot support its findings or conclusion. We disagree.

¶11 As we have seen, Sallis *admitted* that she falsified the appointment book, that creating the fake appointments prevented Stein Optical from serving customers, and that she did so because she wanted to leave early. Sallis's testimony is not hearsay. *See* WIS. STAT. RULE 908.01(3) ("Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."). Her testimony alone supports the Commission's determination that what she did was misconduct because she disregarded her employer's interests.

¶12 Sallis also contends that the Commission should not have discredited her testimony that she had previously entered fake appointments in order to accommodate a doctor at Stein Optical who wanted to leave early.<sup>1</sup> She argues

---

<sup>1</sup> As we have seen, however, Sallis's application for unemployment benefits admitted that she made fake appointments so she could leave early, but asserted that she had "never done this before."

that this showed that what she did for herself was an accepted practice at Stein Optical. But the Commission is the sole judge of the witnesses' credibility. *See Princess House, Inc. v. Department of Labor and Industry Review Comm'n*, 111 Wis. 2d 46, 54, 330 N.W.2d 169, 173 (1983). Although Sallis is correct that no one contradicted her testimony about making the fake appointments for the doctor, whom she did not name, Kalis testified "fake" appointments were bad for business because it prevented the store from serving customers who otherwise could have been served. Indeed, this is why Sallis made the fake entries—so there would be no business at the store after she planned on leaving that day. The Commission was within its authority to reject her testimony and the inferences she wanted the agency to draw from that testimony. *See Redlin v. Union Mutual Life Ins. Co.*, 56 Wis. 2d 215, 219, 201 N.W.2d 497, 498 (1972) ("The testimony of a witness may be disregarded if it contains inherent improbabilities or contradictions which, alone or in connection with other circumstances in evidence, furnish a reasonable ground for concluding that the testimony is not true.") (quoted source omitted).

¶13 There is substantial credible evidence to support the Commission's findings and, applying great weight deference on the legal issue of whether what Sallis did was "misconduct," we uphold the Commission's determination that Sallis was not entitled to unemployment compensation.

*By the Court.*—Order affirmed.

Publication in the official reports is not recommended.

