

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

AUGUST 15, 1995

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(1), 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. 95-0547-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

JAN ISAAC MC KITTRICK,

Plaintiff-Appellant,

v.

**CATAWBA FARM SUPPLY, INC.,
and LABOR AND INDUSTRY
REVIEW COMMISSION,**

Defendants-Respondents,

NATIONAL FARMERS UNION,

Defendant.

APPEAL from an order of the circuit court for Rusk County:
FREDERICK A. HENDERSON, Judge. *Affirmed.*

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

PER CURIAM. Jan McKittrick appeals a trial court order that upheld a worker's compensation decision of the Labor and Industry Review Commission.¹ McKittrick sought back wages after his employer, Catawba Farm Supply, Inc., refused to rehire him after he suffered work injuries. The worker's compensation act bars employers from refusing to rehire injured workers on account of the injuries themselves. *Universal Foods Corp. v. LIRC*, 161 Wis.2d 1, 6, 467 N.W.2d 793, 795 (Ct. App. 1991); § 102.35(3), STATS. In denying McKittrick's claim, LIRC and the trial court accepted Catawba's proof that it had dismissed McKittrick for reasons other than his injuries. On appeal, McKittrick argues that LIRC and the trial court misjudged the evidence. We reject this argument and affirm the trial court's order.

The trial court correctly upheld LIRC if the administrative record contained any credible evidence supporting LIRC's ruling. *West Bend Co. v. LIRC*, 149 Wis.2d 110, 117-18, 438 N.W.2d 823, 827 (1989). In the administrative proceedings, Catawba gave three basic reasons for its decision: McKittrick had displayed a poor work attitude; Catawba had been temporarily overstaffed; and the company had experienced unaccounted for fuel inventory shortages during McKittrick's tenure as a fuel truck driver. None of these involved McKittrick's injuries; all reflected other forces. Catawba supported these reasons with consistent evidence. Specifically, McKittrick had experienced verbal conflicts with both an employee and one of the owners, Catawba's business had tailed off, McKittrick's work schedule had been part time, and he had wrongly interjected himself into corporate finances, having examined a corporate checkbook without permission and then questioned an employee about a check she received. In addition, Catawba acted consistently with two other employees who it believed shared responsibility for the fuel shortages; it did nothing to dissuade them from leaving the company when they decided to quit on their own volition.

As the judge of the evidence's weight and credibility, LIRC could reasonably accept this evidence and infer that Catawba had not violated the worker's compensation code. Although McKittrick states that Catawba's reasons varied over time, any employer that had multiple grounds might skip one here and stress another there. Moreover, an employer might be understandably hesitant to directly accuse an employee of theft, despite a high

¹ This is an expedited appeal under RULE 809.17, STATS.

degree of suspicion. We see nothing making Catawba's proof incredible as a matter of law. *Universal Foods*, 161 Wis.2d at 7, 467 N.W.2d at 795. On the other hand, McKittrick's proof was to a large extent post hoc – that is, his dismissal followed the injuries and therefore must have been injury connected. Except for the fact of dismissal itself, he offered no proof that Catawba had ever questioned his injuries or displayed any disapproval over them in any way. In fact, he even took an inconsistent position, asserting that Catawba terminated him for complaining about the fuel truck's brakes. McKittrick also concentrated on trying to undermine Catawba's evidence. Compared to Catawba's proof, LIRC was entitled to conclude McKittrick's proof was less persuasive. Under such circumstances, LIRC could rationally reject McKittrick's proof and the inferences he asked LIRC to draw.

By the Court. – Order affirmed.

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