

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

May 21, 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. 95-1192

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

CHARLES McMILLON,

Plaintiff-Appellant,

v.

LABOR AND INDUSTRY REVIEW COMMISSION,

Respondent-Respondent,

BPS GUARD SERVICE,

Respondent-(In T.Ct.).

APPEAL from an order of the circuit court for Milwaukee County:
WILLIAM D. GARDNER, Judge. *Affirmed.*

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

PER CURIAM. Charles McMillon appeals from an order of the circuit court affirming a decision by the Labor and Industry Review Commission, which determined that McMillon was not entitled to

unemployment compensation benefits. The order of the circuit court confirming the decision of the LIRC is affirmed.

McMillon was employed by BPS Guard Service as a security officer. During the course of his employment, McMillon was assigned to Donohue Engineering Company. Donohue complained to BPS that McMillon had been seen sleeping on the job and had not made all of his required rounds. At a meeting with the BPS operations manager and the BPS general manager, McMillon admitted that he had not performed all of his rounds. He also admitted filing false records regarding his rounds. He was terminated at this meeting.

McMillon applied for and was denied unemployment compensation. McMillon appealed this determination and a hearing was held. An administrative law judge found that McMillon had been discharged for misconduct and was ineligible for unemployment benefits. McMillon then appealed to the LIRC. The LIRC affirmed the decision of the ALJ. McMillon then sought review of the decision by the circuit court, which affirmed the decision of the LIRC.

On appeal, this court reviews the decision of the administrative agency, not that of the circuit court. *Wisconsin Pub. Serv. Corp. v. Public Serv. Comm'n*, 156 Wis.2d 611, 616, 457 N.W.2d 502, 504 (Ct. App. 1990). Findings of fact made by the Commission are conclusive on the courts if there is any credible, relevant, and probative evidence upon which reasonable persons could rely to reach a conclusion. *Princess House, Inc. v. DILHR*, 111 Wis.2d 46, 53, 330 N.W.2d 169, 175 (1983).

First, McMillon contends that the LIRC's findings of fact are not supported by credible evidence because the person from Donohue who accused him of not making the required rounds did not appear at the unemployment eligibility hearing. Although a representative from Donohue did not appear at the hearing, two employees of BPS testified that they were present at the meeting where McMillon admitted that he had not made all of the required rounds. This testimony is sufficiently credible to support the LIRC's findings. Although McMillon later denied making the admission, the fact that McMillon's testimony conflicts with that of the BPS employees is not grounds for reversing

the LIRC's findings. *Eastex Packaging Co. v. DILHR*, 89 Wis.2d 739, 745, 279 N.W.2d 248, 251 (1979).

McMillon also argues that there is no credible evidence to support the LIRC's decision that his conduct constituted "misconduct" within the meaning of § 108.04(5), STATS. Misconduct as used in § 108.04(5) "is limited to 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 or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to his employer." *Boynton Cab Co. v. Neubeck*, 237 Wis. 249, 259-260, 296 N.W. 636, 642 (1941).¹

The record indicates that McMillon was required to make his rounds every hour. He failed to make his rounds and then falsified reports indicating that he had made the rounds. Failing to make rounds, virtually the only requirement of this particular job, constitutes a wilful and substantial disregard of BPS's interests and of McMillon's duties as an employee. We therefore affirm the order of the trial court.

By the Court. – Order affirmed.

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

¹ *Boynton Cab* interpreted § 108.04(4)(a), STATS. (1941). This is now § 108.04(5), STATS.