

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 14, 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. 95-1663

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

DENNIS A. GRAHAM,

Plaintiff-Appellant,

v.

**LABOR AND INDUSTRY REVIEW COMMISSION
and GENERAL MOTORS TRUCK/BUS
JANESVILLE DIV.,**

Defendants-Respondents.

APPEAL from an order of the circuit court for Rock County:
JAMES P. DALEY, Judge. *Affirmed.*

Before Eich, C.J., Vergeront, J., and Robert D. Sundby, Reserve
Judge

PER CURIAM. Dennis A. Graham appeals from an order affirming a determination of the Labor and Industry Review Commission denying his application for unemployment compensation benefits. In 1990,

Graham terminated his employment at the Janesville General Motors assembly plant and received a \$55,000 " buy-out" payment from GM. In 1994, Graham applied for unemployment benefits. The Administrative Law Judge found that Graham had voluntarily quit his job, in return for the one-time payment from GM. The ALJ also held that neither of the statutory exceptions relied on by Graham, § 108.04(7)(am) nor § 108.04(7)(b), STATS., applied. The Commission adopted the ALJ's findings of fact and conclusions of law as its own, and affirmed. Because substantial and credible evidence supports the Commission's factual findings and because we concur in the Commission's legal conclusions, we affirm.

FACTS

The facts are not disputed. Graham had worked at the GM plant for approximately seventeen years when he accepted GM's buy-out offer. The terms of the buy-out were negotiated in the national contract between Graham's union and GM. Graham was one of over 200 employees in Janesville that accepted the buy-out offer. GM acknowledged that the buy-out was designed to reduce its workforce. A plant supervisor testified, however, that Graham was not forced to accept the buy-out offer and that if Graham had refused the offer, another employee would not have been laid off. The supervisor also testified that if Graham had refused the buy-out, he would have kept his job.

In his testimony, Graham acknowledged that he was not told that he would lose his job if he did not accept the buy-out offer. Graham described several past disagreements with his employer, mostly stemming from his dissatisfaction with his medical coverage. Graham also recounted that he had been discharged in 1983 for not returning to work after a leave of absence. Graham challenged that termination and won reinstatement.

DISCUSSION

Section 108.04(7), STATS., states the general rule that an employee who voluntarily terminates employment is ineligible for unemployment compensation benefits. *Nottleson v. DILHR*, 94 Wis.2d 106, 118, 287 N.W.2d

763, 769 (1980). Graham relies on two statutory exceptions to that general rule. Neither argument is persuasive.

Graham first argues that he was eligible for benefits because the termination of his employment "was in lieu of a suspension or termination by the employer of another employe's work" within the meaning of § 108.04(7)(am), STATS. It is evident that Graham believes that another GM worker would have been terminated if Graham had not accepted the buy-out offer.

The evidentiary record, however, does not support Graham's belief. The plant supervisor testified that another employee would not have been terminated if Graham had not accepted the buy-out offer. Graham did not present any contrary evidence. As the Commission aptly states in its appellate brief: "While General Motors and the plaintiff's union instituted the buyout program in order to *induce* voluntary quitings, there was no requirement that anyone had to be laid off or had to quit." (Emphasis in original.)

Graham also argues that his quitting was for good cause attributable to GM so that § 108.04(7)(b), STATS., would authorize the receipt of benefits. "Good cause" under § 108.04(7)(b) "must involve some fault on [the employer's] part and must be real and substantial." *Kessler v. Industrial Comm'n*, 27 Wis.2d 398, 401, 134 N.W.2d 412, 414 (1965).

However, none of the conduct that Graham disagreed with over the course of his employment constitutes "real and substantial" fault on the part of GM. The record shows that Graham had been discharged and reinstated in 1983. He had recurring conflicts with GM over medical benefits available to him through his employment. Graham unsuccessfully sought worker's compensation benefits in 1988 after he contracted giardia from contaminated water. However, Graham failed to prove that he contracted the parasite at work. Most importantly, Graham testified that he would have continued working for GM had he not been offered the \$55,000 buy-out opportunity. In sum, none of Graham's complaints about GM's treatment of him can be said to constitute "good cause" for his quitting.

This court must accept the Commission's findings of fact if they are supported by credible and substantial evidence. *Nottleson*, 94 Wis.2d at 114-15, 287 N.W.2d at 767. The record contains ample evidence that Graham quit his job in order to receive the \$55,000 buy-out payment, that he could have stayed on the job if he chose to, and that no other employee would have been terminated if Graham had declined the buy-out offer. The record further supports the finding that Graham's claimed "good cause" was not related to his quitting and that the \$55,000 payment was "the motivating reason" for Graham's decision to quit. Therefore, the Commission's denial of unemployment benefits was proper.

By the Court. – Order affirmed.

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