

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

April 9, 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. 95-1909

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

DONALD H. MADAUS,

Plaintiff-Appellant,

v.

**LABOR AND INDUSTRY REVIEW COMMISSION
AND INTERNATIONAL STAMPING COMPANY,
MIDAS INTERNATIONAL CORPORATION,**

Defendants-Respondents.

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

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

PER CURIAM. Donald H. Madaus appeals from an order of the circuit court, which affirmed the Labor and Industry Review Commission's decision dismissing his discrimination complaint. Madaus claims that: (1) there is no substantial evidence to support the finding that Madaus was not terminated on the basis of his handicap; and (2) LIRC's decision was erroneous

because it failed to address the reasonable accommodation issue. Because there is substantial evidence to support the finding that Madaus was not terminated on the basis of his handicap and because it was not necessary to address the reasonable accommodation issue under the facts of this case, we affirm.

I. BACKGROUND

Madaus was employed as a tool and die maker for Midas International Corporation. Madaus failed to appear for work or call in with an excuse for three consecutive days in May 1992. Because of prior problems with absenteeism due to alcoholism, Madaus was working pursuant to a "last chance agreement" which provided that he would be discharged in the future if he failed to properly notify the company of a three-day absence.

Robert Lees, Madaus's supervisor at the time of the May incident, testified that when he was informed of Madaus's absenteeism, he contacted Madaus. Madaus told Lees that he had stopped taking his medication because it did not mix with alcohol, and that he had blacked out for a couple of days. Lees informed Madaus that he would be considered discharged pending further investigation.

Several days later, Madaus produced a letter from his doctor, Dr. Michael J. Logan, which indicated that Madaus had suffered an acute dysphoria (depression), and that he had "been unable to work or call in for that matter." Dr. Logan admitted, however, that the conclusion that Madaus could not "call in" was essentially "educated guesswork." Dr. Logan also testified that he had diagnosed Madaus with limbic brain dysregulation, or alcoholism, and with neural transmitter brain dysregulation, which is a permanent and incurable condition that makes people unusually susceptible to major depression. Dr. Logan indicated that the brain dysregulation disorder is controllable with anti-depressant medication.

Midas investigated Madaus's excuse and concluded that it was not acceptable. Midas indicated that it discharged Madaus because he violated the last chance agreement. Madaus filed a complaint with the Equal Rights Division, which issued a probable cause finding. The Administrative Law

Judge that heard the case, however, concluded that Madaus was terminated because he violated the last chance agreement, not because of the brain dysregulation handicap. LIRC adopted the decision of the ALJ. Madaus petitioned the circuit court, which affirmed LIRC's decision. Madaus now appeals.¹

II. DISCUSSION

A. Substantial Evidence.

Our review is limited to determining whether LIRC's findings of fact are supported by substantial evidence in the record. *Chicago, M., St. P. & P. R. Co. v. DILHR*, 62 Wis.2d 392, 396, 215 N.W.2d 443, 445 (1974). If there is relevant evidence which a reasonable mind might accept as adequate to support a conclusion, we must affirm. *Bucyrus-Erie Co. v. DILHR*, 90 Wis.2d 408, 418, 280 N.W.2d 142, 147 (1979) (citation omitted). It is not required that "the evidence be subject to no other reasonable, equally plausible interpretation." *Hamilton v. DILHR*, 94 Wis.2d 611, 617, 288 N.W.2d 857, 860 (1980) (citation omitted). If two reasonable, but conflicting views can be drawn from the evidence, which view to accept is left up to LIRC, not this court. *Robertson Transp. Co. v. Public Service Comm'n*, 39 Wis.2d 653, 658, 159 N.W.2d 636, 638 (1968). Further, in reviewing conclusions of law, this court will give great weight to an agency's conclusion if "the agency's experience, technical competence and specialized knowledge aid the agency in its interpretation." *Jicha v. DILHR*, 169 Wis.2d 284, 291, 485 N.W.2d 256, 258-59 (1992) (citation omitted). We will uphold LIRC's conclusions if they are reasonable. *Barnes v. DNR*, 178 Wis.2d 290, 302, 506 N.W.2d 155, 161 (Ct. App. 1993), *aff'd*, 184 Wis.2d 645, 516 N.W.2d 730 (1994).

Based on our review of the record, we conclude that there is substantial evidence to support LIRC's finding regarding Midas's motivation for terminating Madaus. As noted, LIRC found that Midas's motivation for

¹ Madaus was eventually reinstated following arbitration of his grievance. Accordingly, the only issue remaining is whether he is entitled to back pay from the time of discharge until his reinstatement.

termination was of a non-discriminatory nature. Specifically, LIRC found that Midas fired Madaus because he violated his last chance agreement and not because of his brain disregulation handicap.

There is substantial evidence to support this finding. Madaus admitted to his supervisor that he had stopped taking his medication because it did not mix with alcohol. His supervisor testified to this fact at the hearing. There is evidence, via Dr. Logan's testimony, that the medication would have controlled Madaus's condition so as to prevent the depressive episode altogether. Moreover, these factors lead to a reasonable inference that Madaus freely chose to discontinue taking his medication and that but for this choice, the May episode would not have occurred. Further, there is no evidence that Midas was even aware of Madaus's brain disregulation disorder when Madaus was discharged. We conclude that these factors constitute substantial evidence to support LIRC's finding that Midas's motivation for Madaus's termination was a non-discriminatory one. Accordingly, we affirm.

B. Reasonable Accommodation.

Madaus also claims that LIRC's decision should be reversed because it failed to address the reasonable accommodation issue. Section 111.34(1), STATS., provides: "Employment discrimination because of handicap includes, but is not limited to: ... (b) Refusing to reasonably accommodate an employe's or prospective employe's handicap unless the employer can demonstrate that the accommodation would pose a hardship on the employer's program, enterprise or business." The circuit court concluded that the reasonable accommodation issue need not be addressed until there has been a determination that the employment decision was based on a handicap. We agree that this is the correct interpretation of the law. *See Boldt v. LIRC*, 173 Wis.2d 469, 478 n.1, 496 N.W.2d 676, 679 n.1 (Ct. App. 1992).

In the instant case, LIRC determined that Madaus's handicap was not the basis of his dismissal. Accordingly, it was not necessary to address the reasonable accommodation issue.

By the Court. – Order affirmed.

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