

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

APRIL 30, 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. 95-2467

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

CLIFFORD E. GRAHAM,

Plaintiff-Appellant,

v.

**LABOR & INDUSTRY
REVIEW COMMISSION
and LOUISIANA
PACIFIC CORPORATION,**

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Washburn County: WARREN E. WINTON, Judge. *Affirmed.*

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

PER CURIAM. Clifford Graham appeals a judgment that upheld a worker's compensation decision of the Labor and Industry Review Commission. Graham claimed that Louisiana-Pacific Corporation (L-P) unreasonably terminated his employment under § 102.35(3), STATS., for

sustaining a work injury. L-P claimed that it terminated Graham for substandard job performance. Once Graham sustained a work injury, L-P could discharge him only for reasonable cause unrelated to the work injury. See *West Bend Co. v. LIRC*, 149 Wis.2d 110, 123, 438 N.W.2d 823, 829 (1989). After reviewing the evidence and judging the credibility of the witnesses, LIRC accepted L-P's position. The trial court upheld LIRC's findings and conclusions. On appeal, Graham essentially argues that L-P misstated its true reasons for discharge and that its discharge decision stands in stark contrast to other evidence, including its failure to issue him any deficient performance warnings. We reject Graham's arguments and affirm the judgment.

Courts must uphold LIRC if it based its worker's compensation decision on substantial and credible evidence. See *Ray Hutson Chevrolet v. LIRC*, 186 Wis.2d 118, 124, 519 N.W.2d 713, 716 (Ct. App. 1994). L-P presented evidence of its employee ranking system and Graham's substandard job performance. The plant manager explained that L-P expected a high degree of performance from its employees. The human resources manager explained L-P's goals. L-P wanted to make the employees' profit sharing plan an effective, economically motivating form of compensation. It sought to increase plant production, individual employee productivity, and plant profitability. This required L-P to seek to put together a workforce of the best available, most productive employees. In its judgment, increased plant production and higher employee productivity provided the best means of keeping the plant open and thereby the best job security for all employees. In fact, L-P did increase production at Graham's plant during the human resources manager's tenure from 450,000 board feet per day to over 1,000,000 board feet per day. As part of its productivity raising effort, L-P evaluated each employee's job performance twice annually.

L-P's human resources manager based his testimony about Graham's job performance on a compilation of several years' evaluations done by others. According to the human resources manager, Graham consistently performed below the average in his work group. The manager reported that L-P fired many others besides Graham. Graham stated that he never received any warnings and claimed that his evaluations had not been critical of his performance. He also pointed out that L-P had lost six of his eight evaluations, that the two remaining evaluations considered him an average employee, and that L-P once issued him a letter of commendation. L-P responded that Graham's commendation letter was a form letter issued by mistake and that the

more recent remaining evaluation was a training exercise for young supervisors, many of whom were reluctant to confront inadequate employees. As the human resources manager explained, L-P's employee ranking system, which compared employees within each employee work group, compensated for this phenomenon.

Our review of worker's compensation matters is limited, and we are unable to hold L-P's evidence inadequate as a matter of law. Through its law judge, LIRC weighed the credibility of the evidence. It found L-P's evidence more credible and more persuasive. Although Graham has attempted to attack the credibility and persuasiveness of L-P's evidence, LIRC could reasonably accept L-P's contention. In the final analysis, Graham failed to convince LIRC that L-P misstated its true reasons for his discharge. As the arbiter of the evidence's weight and credibility, LIRC could reasonably conclude that L-P adequately refuted the discrepancies Graham attempted to exploit in L-P's evidence. The human resources manager's testimony and the compilation of Graham's evaluations he relied on was sufficient evidence to warrant LIRC's decision, despite the fact that L-P could no longer locate six of the underlying eight evaluations and had once issued Graham a letter of commendation. In sum, LIRC could reasonably accept L-P's reasons for Graham's termination.

By the Court. – Judgment affirmed.

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