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**DISTRICT IV**

December 29, 2016

To:

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You are hereby notified that the Court has entered the following opinion and order:

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2016AP448

Zamon Cockrell v. LIRC (L.C. # 2015CV1377)

Before Kloppenburg, P.J., Lundsten and Sherman, JJ.

Zamon Cockrell, pro se, appeals a circuit court order that affirmed a decision by the Labor and Industry Review Commission (LIRC) that determined Cockrell had been discharged for misconduct and therefore was ineligible for unemployment benefits. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).<sup>1</sup> We summarily affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Cockrell applied for unemployment benefits after he was discharged from his employment with SSM Healthcare. The Department of Workforce Development (DWD) determined that Cockrell had been discharged for misconduct and was therefore ineligible for unemployment benefits. Cockrell appealed to the department appeal tribunal, and a hearing was held before an administrative law judge (ALJ). The ALJ issued a decision determining that Cockrell had not been discharged for misconduct and that he was therefore eligible for unemployment benefits. SSM Healthcare petitioned for review by LIRC, and LIRC reversed the ALJ's decision and reinstated the DWD's initial determination that Cockrell had been discharged for misconduct. Cockrell sought certiorari review in the circuit court, which affirmed LIRC's decision.

In this appeal, we are reviewing LIRC's decision that Cockrell was discharged for misconduct and was therefore ineligible for unemployment benefits. *See ITW Deltar v. LIRC*, 226 Wis. 2d 11, 16, 593 N.W.2d 908 (Ct. App. 1999). We will uphold LIRC's factual findings if there is credible and substantial evidence in the record to support them. *See id.* LIRC's conclusion that Cockrell's actions amounted to misconduct is a question of law that we review de novo.<sup>2</sup> *See Patrick Cudahy Inc. v. LIRC*, 2006 WI App 211, ¶8, 296 Wis. 2d 751, 723 N.W.2d 756.

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<sup>2</sup> “This court generally applies one of three standards of review, with varying degrees of deference, when reviewing an agency's legal conclusions under a statute: great weight deference, due weight deference or de novo review.” *See Patrick Cudahy Inc. v. LIRC*, 2006 WI App 211, ¶9, 296 Wis. 2d 751, 723 N.W.2d 756. LIRC argues that it is entitled to great weight deference review of its legal conclusion that Cockrell's actions amounted to misconduct. So far as we can tell, Cockrell disputes that LIRC is entitled to great weight deference, although Cockrell does not provide a developed argument as to what level of deference LIRC is entitled to in this case. In any event, we need not resolve the dispute as to the level of deference to accord LIRC's decision. For the reasons set forth in this opinion, we affirm LIRC's decision even under a de novo standard of review.

An employee discharged for misconduct is ineligible to receive unemployment benefits. WIS. STAT. § 108.04(5). “Misconduct” includes “one or more actions or conduct evincing such willful or wanton disregard of an employer’s interests as is found in deliberate violations or disregard of standards of behavior which an employer has a right to expect of his or her employees.” *Id.*

LIRC made the following factual findings underlying its conclusion that Cockrell was discharged for misconduct. Cockrell suffered a work-related injury in October 2014. On January 13, 2015, Cockrell received a note from his doctor with work restrictions related to the shoulder injury. The SSM Healthcare worker in charge of creating transitional work duties for workers with restrictions reviewed Cockrell’s restrictions, created a transitional duty assignment for Cockrell, and explained to Cockrell what work duties he could perform within his restrictions.

On January 14, 2015, Cockrell’s supervisor instructed Cockrell not to report for work the next morning until after his 8:30 doctor’s appointment, so that they could discuss his schedule in accordance with his work restrictions. The supervisor told Cockrell that she did not want Cockrell to work that day because Cockrell was scheduled to put away stock, which would violate Cockrell’s work restrictions. Cockrell understood those instructions, and did not express any concern about not working on January 15 at that time.

Cockrell reported to work at 5:11 a.m. on January 15, 2015, knowing his supervisor had instructed him not to, because he did not want to lose his wages for the day. Cockrell’s supervisor arrived at 7:45 and asked Cockrell why he was at work, to which Cockrell responded that a co-worker had asked Cockrell to come in to work to help direct the new stock delivery.

The supervisor asked Cockrell to return to work after his doctor's appointment. When Cockrell returned to work, he was suspended pending an investigation of Cockrell reporting to work that morning. Later that day, Cockrell's supervisor called Cockrell and informed him that he was being discharged for insubordination.

LIRC concluded that Cockrell's insubordination to his supervisor's order not to report to work on the morning of January 15, 2015, was misconduct. It explained that LIRC generally held that refusal to follow a reasonable employer directive was misconduct, unless the employee had a defensible reason for refusing to follow the directive. It found that Cockrell's reason for refusing to follow his employer's directive—that he did not want to lose his wages for those hours—was not a defensible reason.

Cockrell contends that LIRC erred by concluding that he was discharged for misconduct. He contends that his conduct did not amount to "misconduct" as defined in WIS. STAT. § 108.04(5).

Cockrell first disputes LIRC's factual finding that Cockrell intentionally disobeyed his supervisor's instruction not to report for work on the morning of January 15, 2015. He asserts that he reasonably understood his supervisor's instruction on January 14, 2015, as telling him not to put away stock on the following day. He points out that his supervisor specifically tied her instruction to the stocking task and Cockrell's work restrictions, rather than a blanket statement that Cockrell was not to come in to work. He also points out that he had been given transitional duty instructions, which, Cockrell asserts, led him to believe he was allowed to come in to work so long as he stayed within his restrictions. He asserts that, if he had been instructed not to arrive at work at all, his supervisor would have informed him of his insubordination immediately upon

seeing him at work rather than waiting until after his doctor's appointment. He contends that there was insufficient evidence in the record to support LIRC's finding that Cockrell's supervisor mentioned Cockrell's doctor's appointment when she gave him directions for January 15, 2015. He also argues that he was working under the supervision of a kitchen supervisor during the hours he worked that morning. Cockrell finally contends that his act was, at most, an isolated act of insubordination without prior warning, which Cockrell argues does not amount to "misconduct" under the statute.

As to Cockrell's factual disputes, Cockrell effectively argues for different factual findings that LIRC could have made, but was not required to make. Cockrell, his supervisor, and the worker in charge of transitional work duties provided testimony that supported LIRC's findings that Cockrell understood his supervisor's direction included not reporting for work on the morning of January 15, 2015, and that Cockrell reported for work that morning knowing he had been instructed not to do so. There was credible and substantial evidence in the record to support those findings, and therefore we will not disturb them.

As to LIRC's finding that Cockrell's supervisor told Cockrell specifically not to come to work until after his doctor's appointment, we agree with Cockrell's assertion that the testimony does not support that fact. Nonetheless, the testimony supports LIRC's findings that Cockrell's supervisor instructed Cockrell not to report to work on January 15, 2015, because he was scheduled to put away stock, contrary to Cockrell's work restrictions, and that Cockrell understood that direction and did not express any concern about missing work at that time. Those facts are sufficient to support LIRC's finding that Cockrell was insubordinate when he reported for work on the morning of January 15, 2015.

We conclude that Cockrell's insubordination amounted to "misconduct" under WIS. STAT. § 108.04(5). Cockrell's refusal to follow his supervisor's order not to report to work on January 15, 2015, because Cockrell did not want to lose his wages for the day, was "conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which an employer has a right to expect of his or her employees." *Id.*

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*