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DISTRICT III

January 11, 2022

To:

Hon. George L. Glonek
Circuit Court Judge
Electronic Notice

Andrew John Rubsam
Electronic Notice

Michele Wick
Clerk of Circuit Court
Douglas County Courthouse
Electronic Notice

Randy M. Hanson
5817 Lamborn Avenue
Superior, WI 54880

Kim T. Castelaz
Electronic Notice

Northwest Wisconsin Community Service
Agency
1118 N. Tower Avenue
Superior, WI 54880

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

2020AP335

Randy M. Hanson v. Northwest Wisconsin Community Service
Agency (L. C. No. 2019CV210)

Before Stark, P.J., Hruz and Gill, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Randy Hanson, pro se, appeals the denial of his unemployment insurance benefits after he was discharged for substantial fault, within the meaning of WIS. STAT. § 108.04(5g) (2019-20),¹ for violating Northwest Wisconsin Community Service Agency's (hereinafter "Northwest") company policies. Based upon our review of the briefs and record, we conclude at

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

conference that this case is appropriate for summary disposition, and we affirm. *See* WIS. STAT. RULE 809.21.

Hanson filed a claim for unemployment benefits after he was discharged from his employment as a maintenance worker for Northwest. As relevant here, the Labor and Industry Review Commission (hereinafter “Commission”) affirmed the findings of an administrative law judge (hereinafter “ALJ”) that on several occasions upon exiting a company vehicle Hanson left the keys in the ignition switch. Hanson subsequently received a written warning from Northwest advising him that he was not to leave the keys in the ignition switch of a company vehicle when he was not driving the vehicle. Less than a week later, Hanson left a Northwest vehicle running unattended in an alley by a warehouse for ten minutes with the driver’s side door ajar. The Commission found that the act was one over which Hanson had not exercised reasonable control and which violated the employer’s reasonable requirements. The Commission stated that “it cannot be found that employee’s actions were merely a minor infraction of the rules, which was not repeated after warning.” Therefore, the Commission determined that Northwest discharged Hanson for substantial fault connected with his work for the employer.²

The result of this appeal is dictated by the Commission’s credibility determinations. Hanson argues that his employer’s testimony “is fraudulent and manufactured.” Hanson further

² The Commission modified the ALJ’s decision in several respects. First, the Commission concluded that Hanson’s actions in leaving the keys in the vehicle amounted to substantial fault rather than misconduct. Regarding a warning that Hanson received prohibiting him from giving customers rides in the employer’s vehicles, the Commission also concluded that Hanson’s “misunderstanding that he could use his own vehicle to transport a client when he was no longer on the clock was the result of an inadvertent error and does not amount to substantial fault.” Hanson testified that he was off work at the time he gave the female customer a ride home, and the Commission credited his testimony in that regard. However, the Commission explicitly stated that it “did not modify the ALJ’s decision based on a differing impression of witness credibility as it largely agrees with the ALJ’s credibility determinations.”

contends the written warning was “never given to me,” noting it was not signed by him signifying that he read and understood its contents. Hanson also denies he ever “left a car running for 10-15 min with the door open and unattended.” According to Hanson, “proof of this is there was no mention of this at the time I was terminated ... nor any mention of this to the [unemployment insurance] investigator.”

However, as the Commission stated in its memorandum opinion:

The employee presented detailed testimony regarding this [conduct] at the hearing but the ALJ and the commission credited the employer’s testimony that it gave the employee a November 27, 2018 warning for leaving keys in an unattended vehicle and that he was discharged because he repeated the behavior on December 3. The commission is not persuaded that the ALJ reached an incorrect credibility determination after considering the employee’s theories and arguments regarding why he believes the employer was not credible.

With respect to any divergence between Northwest’s witnesses and Hanson’s testimony, the credibility of the witnesses lies exclusively within the province of the Commission. *See Vocational, Tech. & Adult Educ. Dist. 13 v. DILHR*, 76 Wis. 2d 230, 241, 251 N.W.2d 41 (1977). As the circuit court in the present case correctly observed: “There is nothing fraudulent about the ALJ and the Commission hearing the evidence, weighing the evidence, and determining credibility of the witnesses. That is their role.”

Hanson asserts a number of purported “facts” that contradict the Commission’s findings—or that were not found by the Commission. We cannot reverse based on findings the Commission could have made but did not; our role is to determine whether the evidence supports the Commission’s findings. *See Brickson v. DILHR*, 40 Wis. 2d 694, 699, 162 N.W.2d 600 (1968). Here, the record on appeal establishes that the Commission’s findings were based upon

substantial and credible evidence. *See* WIS. STAT. § 108.09(7)(f). The Commission’s findings thus may not be set aside.³ *See* § 108.09(7)(c)6.

The Commission also reasonably concluded that Hanson’s infraction, repeated after the employer warned him about the infraction, violated his employer’s reasonable requirements and constituted substantial fault connected with his work, all within the meaning of WIS. STAT. § 108.04(5g). Indeed, although Hanson strenuously contends testimony adverse to him was fraudulent and manufactured, he concedes “if this had happened it would have been a valid reason to be terminated.”

Upon the foregoing, therefore,

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

³ Hanson further argues the circuit court erred when:

[i]t did not request a subpoena of my personal file so I could show that my employer was not being truthful as she told the commissioner of the [Commission] during the phone hearing that she had given me a verbal warning and it was signed by me, dated and documented and that she would provide this to them.

Hanson contends that had he been able to subpoena Northwest’s records, he could have proven that the employer’s testimony was manufactured. Hanson misapprehends the nature of our appellate review of the administrative process. A reviewing court is bound to consider only the facts found in the record, based on the hearing transcript and evidence taken at the administrative hearing. *See* WIS. STAT. § 108.09(7); *International Harvester Co. v. Industrial Comm’n of Wis.*, 157 Wis. 167, 172, 147 N.W. 53 (1914). During the administrative hearing, Hanson requested, on several occasions, an opportunity to keep the record open to produce these additional documents. The ALJ responded that she would not keep the record open because the witnesses were available to offer firsthand evidence of the events leading to Hanson’s termination. Given the Commission’s findings based on the testimony at the hearing, including that Hanson received a verbal warning from his employer’s CEO in addition to the written warning, the documents sought by Hanson would have added nothing that would not be irrelevant, immaterial, or unduly cumulative or repetitive. *See* WIS. ADMIN. CODE § DWD 140.10(2) (2020).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals