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DISTRICT II

May 8, 2013

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

2012AP552	Faraz Jabbar v. LIRC (L.C. #2011CV490)
2012AP553	Faraz Jabbar v. LIRC (L.C. #2011CV491)

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

In these consolidated appeals, Faraz Jabbar appeals from a circuit court order affirming decisions of the Labor and Industry Review Commission (LIRC) dismissing his late appeals of adverse determinations involving his unemployment insurance claim. Based on 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 (2011-12).¹ We affirm the order of the circuit court.

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

In March 2009, Jabbar began a claim for unemployment insurance benefits with the department of workforce development. In about August or September 2009, he left the United States to move to the Ukraine.

After moving to the Ukraine, Jabbar continued to use an address in Milwaukee for his correspondence with the department because he had been told that the department could not send correspondence to a foreign address. Jabbar arranged for a friend to notify him if he received mail at the Milwaukee address, though the friend only went to the address “off and on.”

On November 26, 2010, the department mailed Jabbar two adverse determinations concerning his ongoing unemployment insurance claim. Both determinations stated that they would be final unless appealed by December 10, 2010, and both were mailed to Jabbar’s Milwaukee address.

Because Jabbar was in the Ukraine, he never received the adverse determinations. Jabbar later testified that he first learned of the determinations in January 2011, when he called the department after having noticed that he was no longer receiving unemployment insurance benefits. Jabbar eventually filed late appeals on January 19, 2011, over one month after the December 20, 2010 deadline.

In February 2011, a department ALJ held a hearing to determine whether Jabbar’s appeals were filed late “for a reason that was beyond [his] control” as provided by WIS. STAT. § 108.09(4)(c). At the hearing, Jabbar testified about having his mail monitored by a friend. He also testified that it seemed like he had trouble getting his mail at the Milwaukee address and that there was a difficulty with the postman so that correspondence sent there was not delivered or

“bounced back.” Jabbar further acknowledged that while he was actually living at the Milwaukee address, he did not receive some items of mail and had to have them resent.

The ALJ concluded that Jabbar failed to establish that his appeals of the adverse determinations were late for a reason that was beyond his control and dismissed the appeals. Jabbar petitioned to LIRC, which issued its own decisions, modifying and affirming the ALJ’s decisions. Jabbar then sought review in the circuit court, which affirmed the decisions of LIRC. This appeal follows.

On appeal, we review LIRC’s decisions and not the decision of the circuit court. *Pick ’n Save Roundy’s v. LIRC*, 2010 WI App 130, ¶8, 329 Wis. 2d 674, 791 N.W.2d 216. We will uphold LIRC’s findings of fact so long as they are supported by credible and substantial evidence. *See* WIS. STAT. § 102.23(6).

When reviewing LIRC’s conclusions of law, we apply a sliding scale of deference that is dependent upon its level of experience, technical competence, and specialized knowledge. *Epic Staff Mgmt., Inc. v. LIRC*, 2003 WI App 143, ¶15, 266 Wis. 2d 369, 667 N.W.2d 765. Here, we conclude that great weight deference is warranted due to LIRC’s longstanding history of interpreting and applying the “beyond the appellant’s control” standard under WIS. STAT. § 108.09(4)(c). When we accord great weight deference, we will affirm any reasonable decision of LIRC, even if an alternate decision might have been more reasonable. *UFE, Inc. v. LIRC*, 201 Wis. 2d 274, 287, 548 N.W.2d 57 (1996).

Jabbar’s primary contention on appeal is that he had established that his appeals were late for a reason beyond his control. In support of this argument, he cites the various steps he took to

ensure that he received the department's correspondence (e.g., attempting to change his address, having a friend monitor his mail, etc.).

Reviewing LIRC's decisions, we are satisfied that they contain a reasonable application of the facts to the "beyond the appellant's control" standard set forth in WIS. STAT. § 108.09(4)(c). As noted, Jabbar was out of the country while he was claiming unemployment insurance benefits. During his absence, he provided the department with a mailing address that was unreliable and arranged to have his mail checked only occasionally by a friend. Given these measures, we conclude that LIRC reasonably dismissed Jabbar's late appeals.²

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals

² To the extent we have not addressed an argument raised by Jabbar on appeal, the argument is deemed rejected. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.").