

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 10, 2010

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2009AP2160

Cir. Ct. No. 2008CV18305

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

TENESHA HARTFIELD,

PETITIONER-APPELLANT,

v.

LABOR AND INDUSTRY REVIEW COMMISSION,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
MAXINE A. WHITE, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Tenesha Hartfield, *pro se*, appeals from a circuit court order affirming a Labor and Industry Review Commission decision. The Commission affirmed an Administrative Law Judge's (ALJ) decision that Hartfield was terminated from her employment with Site Staffing, a temporary

help service, for misconduct and, therefore, she was ineligible for unemployment benefits. We affirm.

BACKGROUND

¶2 The following facts appear in the record of the hearing before the ALJ. Hartfield had been employed by Site Staffing, intermittently, for several years. The work assignment underlying this dispute was with Kleen Test Products (KTP). On May 30, 2008, Hartfield called her Site Staffing supervisor, Allen Mendoza, to tell him she could not work her assigned shift at KTP that day because she needed to take her daughter to the hospital. The next day, Hartfield called Mendoza to see if any work was available for her. Mendoza told her that KTP had cancelled her work assignment because of attendance issues. Mendoza testified that during that conversation, he told Hartfield that Site Staffing policy prohibited any contact between a worker and the client after the cancellation of a work assignment. Mendoza also testified that he told Hartfield that she would be terminated from her employment with Site Staffing if she contacted KTP.

¶3 Mendoza testified that Hartfield told him she was going to go to KTP because she felt that the cancellation was not fair. Mendoza testified that a KTP representative contacted him during the afternoon of May 31, 2008, and told him that Hartfield was at their facility trying to contact her supervisor. He also testified that the general manager of KTP telephoned him on Monday, June 2, 2008, and told him that Hartfield was trying to talk with him about why her work assignment had been cancelled.

¶4 Liz Demos, another Site Staffing manager, testified that the nature of their business is to stand as the employer of the temporary worker and that temporary workers are not permitted to have direct contact with their work sites

after the cancellation of a work assignment. She testified that Site Staffing policy forbids contact after the cancellation of a work assignment and that the person who informs the worker about the cancellation, in this case, Mendoza, is required to tell the temporary worker about the policy and that violation of the policy will result in termination. Demos testified that Site Staffing would “lose accounts” if their employees were permitted to return to a work site and ask why an assignment had been cancelled.

¶5 Hartfield also testified before the ALJ. She admitted missing her shift at KTP on May 30, 2008, because her daughter was sick. When she called Mendoza on May 31 to ask about available work, he told her that KTP had cancelled her work assignment because of attendance issues. She denied being told that she could not contact KTP or that she would be terminated from Site Staffing if she contacted KTP. Hartfield admitted going to KTP on May 31, 2008, and leaving a letter for her supervisor with a cleaning person. In the letter, Hartfield included medical documentation about her May 30 absence and asked that the supervisor contact Mendoza and tell him that she could return to work at KTP. Hartfield also testified that on Monday, June 2, 2008, she spoke with another KTP representative, told him that she was a temporary worker, and asked if he would look into why she was terminated. After that phone call, someone from Site Staffing contacted her and told her that she was terminated because she had contacted KTP.

STANDARD OF REVIEW

¶6 We review the decision of the Commission, not the circuit court. *Secor v. LIRC*, 2000 WI App 11, ¶8, 232 Wis. 2d 519, 606 N.W.2d 175. Judicial review is “confined to questions of law.” WIS. STAT. § 108.09(7)(b) (2007-08).¹ We uphold the Commission’s findings of fact as long as they are supported by substantial and credible evidence. *Cornwell Pers. Assocs. Ltd. v. LIRC*, 175 Wis. 2d 537, 544, 499 N.W.2d 705 (Ct. App. 1993). We may not substitute our “judgment for that of the [C]ommission as to the weight or credibility of the evidence on any finding of fact.” WIS. STAT. § 102.23(6). We may only reverse if the Commission “acted without or in excess of its powers,” “the order or award was procured by fraud,” or “the findings of facts by the [C]ommission do not support the order or award.” WIS. STAT. § 102.23(1)(e).

¶7 The sole issue on appeal is whether Hartfield’s conduct was misconduct under WIS. STAT. § 108.04(5). The Commission’s legal determination that an employee’s actions amount to misconduct is entitled to great weight deference because the Commission has been administering the statute for many years and because the legal question of misconduct is intertwined with factual and policy determinations. *Charette v. LIRC*, 196 Wis. 2d 956, 960, 540 N.W.2d 239 (Ct. App. 1995).

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

DISCUSSION

¶8 Hartfield’s appellate brief is one-and-one-half pages long and primarily takes issue with the credibility of Mendoza and Demos. We must defer to the Commission’s assessment of witness credibility. WIS. STAT. § 102.23(6); *Princess House, Inc. v. DILHR*, 111 Wis. 2d 46, 54, 330 N.W.2d 169 (1983). In this case, the Commission adopted the decision of the ALJ who found that Site Staffing personnel had told Hartfield that it was against company policy for her to contact KTP and that she would be discharged if she contacted KTP. Therefore, the Commission accepted the testimony of Mendoza and Demos as credible. This court cannot disturb that determination.

¶9 Moreover, in both her appellate brief and her testimony before the ALJ, Hartfield admitted contacting KTP. She admitted going to KTP on May 31, 2008, with a letter for her supervisor. She also admitted contacting a KTP representative on June 2, 2008, to inquire about why she had been let go. Thus, Hartfield’s own testimony supports the Commission’s finding that she had violated a Site Staffing policy.

¶10 The only remaining question is whether Hartfield’s actions constituted misconduct. We give great weight deference to the Commission’s decision as to whether an employee’s actions constitute misconduct. *Lopez v. LIRC*, 2002 WI App 63, ¶16, 252 Wis. 2d 476, 642 N.W.2d 561. We will uphold the Commission’s interpretation and application of the misconduct standard if it is reasonable, even if we could determine that an alternative interpretation is more reasonable. *See Ide v. LIRC*, 224 Wis. 2d 159, 167, 589 N.W.2d 363 (1999).

¶11 “Misconduct” is not defined in WIS. STAT. ch. 108, but it has been defined by the supreme court as:

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 the employer has the right to expect of his employee, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.

Boynton Cab Co. v. Neubeck, 237 Wis. 249, 259-60, 296 N.W. 636 (1941).

¶12 The Commission adopted the ALJ's opinion, which stated: "[Hartfield] engaged in blatant insubordination. She flagrantly disobeyed [Site Staffing]'s warning to leave [KTP] alone. This caused a disturbance in [Site Staffing]'s relationship with [KTP]. As such, [Hartfield]'s behavior was in substantial disregard of [Site Staffing]'s interests, and because it was willful, it violated the *Boynton* standard." The Commission found that Hartfield had been told of Site Staffing's policy of no-contact yet she chose to contact KTP. The Commission further found that Hartfield had been told that she would be terminated if she violated the policy. Hartfield's own testimony established her violation of the no-contact policy. Given the nature of Site Staffing's business, the Commission's conclusion that Hartfield acted in substantial disregard of her employer's interests is reasonable and must be affirmed.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

