COURT OF APPEALS
DECISION
DATED AND FILED

December 30, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 96-1105

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

RICK G. LARSON,

PLAINTIFF-APPELLANT,

V.

LABOR AND INDUSTRY REVIEW COMMISSION AND CLEAN POWER, INC.,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County: ARLENE D. CONNORS, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

WEDEMEYER, P.J. Rick G. Larson appeals *pro se* from a circuit court order denying reversal of a decision denying him unemployment compensation. He contends that the Labor & Industry Review Commission (LIRC) should have upheld the hearing examiner's decision that he had good

cause for terminating his employment with Clean Power, Inc. We affirm the order.

Larson was hired by Clean Power as a maintenance mechanic. On occasion, he was assigned to cleaning projects. In December 1994, he was disciplined for insubordination when he refused to work on a cleanup involving blood. At the unemployment compensation hearing, Larson testified that he objected to cleaning blood because it was disgusting and because the possibility that it contained blood-borne pathogens made it dangerous. Larson noted that he frequently had scrapes, cuts, and nicks on his hands from working on equipment. He was, however, willing to accept the increased risk presented by blood cleanup if he received additional compensation. When a paycheck did not include an expected pay increase for doing so, he confronted management. He was told he was expected to cleanup blood without additional compensation. Larson terminated his employment.

Generally, an employee who voluntarily terminates employment is not eligible for unemployment benefits. Section 108.04(7)(a), STATS. An exception exists if the employee does so for "good cause" attributable to the employer, § 108.04(7)(b). This requires some fault by the employer that is real and substantial. *See* ***Nottelson v. DILHR***, 94 Wis.2d 106, 120, 287 N.W.2d 763, 770 (1980).

The hearing examiner concluded that Larson quit his employment for good cause. The examiner found a material breach of the employment contract because Larson was hired to do maintenance and repairs and the additional risks associated with the cleanup of blood-borne pathogens presented a significant change in the conditions of employment.

Clean Power appealed to LIRC, which reversed the examiner's decision. LIRC concluded that Larson did not have good cause for terminating his employment because he had previously cleaned buildings, he "received training for the cleanup of blood[-]borne pathogens," and Clean Power provided protective devices to protect employees from infectious diseases.[1] Further, Larson's personal revulsion to cleaning up blood was not a sufficient reason for refusing an assigned duty. The trial court affirmed LIRC's decision denying benefits.

In reviewing a circuit court's order affecting an administrative agency's decision, this court's scope of review is identical to the circuit court's. *See* ***Hubert v. LIRC***, 186 Wis.2d 590, 596, 522 N.W.2d 512, 514 (Ct. App. 1994). Our review is of LIRC's order, not the circuit court's decision. ***Id.***

The hearing examiner and LIRC disagreed over whether the expectation that Larson would occasionally cleanup blood was a change of conditions in employment. Both, however, concluded that he had received training and was provided protective equipment to alleviate the risk from contaminated blood. In his appellate brief, Larson challenges this finding, and he argues that the training was inadequate.

Larson's brief provides a lengthy description of the training; however, this description was not presented at the administrative hearing. We are precluded from considering information not contained in the record. *See* ***Jenkins v. Sabourin***, 104 Wis.2d 309, 313, 311 N.W.2d 600, 603 (1981). Thus, we consider only the testimony before the hearing examiner.

[1] LIRC's decision indicated that it had conferred with the hearing examiner on the witnesses' credibility and demeanor, and the decision explained why LIRC reached a different conclusion on the legal issue.

Clean Power's witness testified at the hearing that Larson was trained on building cleanup within a week of being hired and that he was later trained to cleanup blood. In response to the examiner's question about the nature of the training, the witness asserted that Larson was completely trained on the contents and use of the protective kit and on how to handle potentially infectious materials. Larson testified that, like other employees, he had received training regarding blood-borne pathogens; however, he believed the purpose was to limit the company's liability. He testified that the training included the procedures for marking and covering blood until a manager or supervisor could handle it. Larson did not answer the examiner's direct question of whether the training included use of safety equipment and removal of blood. Instead, he answered, "Well, basically never having done it[,] it was not very fresh in my mind. And never even — never considering that I would have — have to go and do it. It was not real sharp, exactly — what to — how to do it."

In the absence of fraud, LIRC's factual determinations are binding on this court unless they are not supported by substantial and credible evidence. Section 102.23(1)(a) and (6), STATS. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." ***City of La Crosse Police & Fire Comm'n v. LIRC***, 139 Wis.2d 740, 765, 407 N.W.2d 510, 520 (1987) (citation omitted). Here, LIRC's factual determination that Larson was trained to cleanup blood was supported by substantial evidence.

Whether an employer's conduct constituted good cause for a voluntary termination of employment presents a question of law, but one that is heavily intertwined with value determinations and the facts of the case. *See* ***Nottelson***, 94 Wis.2d at 115-17, 287 N.W.2d at 768. LIRC has long-standing experience, technical competence, and specialized knowledge in administering the unemployment

compensation statutes, *see* ***Hubert***, 186 Wis.2d at 597, 522 N.W.2d at 515, and this expertise, plus the nature of the legal question, dictates that we give great weight to LIRC's decision, *see* ***Charette v. LIRC***, 196 Wis.2d 956, 960, 540 N.W.2d 239, 241 (Ct. App. 1995). We conclude that LIRC's determination that Larson lacked good cause for terminating his employment was appropriate.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

No. 96-1105(D)

FINE, J. *(dissenting)*. I would remand to the Commission so it can consider the material presented to us by Larson. Accordingly, I respectfully dissent.