

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 14, 2015

Diane M. Fremgen
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. 2014AP2763

Cir. Ct. No. 2014CV89

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

JASON R. LILLIS,

PLAINTIFF-APPELLANT,

V.

LABOR AND INDUSTRY REVIEW COMMISSION AND FAST PARK AND

RELAX,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Ozaukee County:
JOSEPH W. VOILAND, Judge. *Affirmed.*

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

¶1 PER CURIAM. Jason Lillis appeals pro se from a circuit court order affirming the decision of the Labor and Industry Review Commission (LIRC) that he is not eligible for unemployment benefits because he voluntarily

terminated his employment with Fast Park. We affirm because there was substantial and credible evidence to support LIRC's determination.

¶2 For three months in 2013, Lillis worked for Fast Park as an airport parking shuttle driver. After Lillis's employment ended, the Department of Workforce Development awarded him unemployment benefits, but LIRC reversed the department. Lillis sought circuit court review of LIRC's decision denying him unemployment benefits. The circuit court concluded that the record contained substantial and credible evidence supporting LIRC's decision, and LIRC reasonably deemed Lillis ineligible for unemployment benefits. Lillis appeals.

¶3 Whether Lillis was entitled to unemployment benefits under Wis. STAT. ch. 108 (2013-14)¹ is a mixed question of law and fact. *Klatt v. LIRC*, 2003 WI App 197, ¶10, 266 Wis. 2d 1038, 669 N.W.2d 752. We apply the great deference standard of review to LIRC's conclusions of law because: (1) LIRC administers the unemployment insurance statute, "(2) the interpretation of the agency is one of long-standing, (3) the agency employed its specialized knowledge or expertise in forming the interpretation, and (4) the agency's interpretation will provide consistency and uniformity in the application of the statute." *Id.*, ¶11.

¶4 We apply the following standard of review to LIRC's findings of fact:

It is well established that on review, we will uphold LIRC's findings of fact, provided there is credible and substantial evidence in the record on which reasonable persons could rely in reaching the same findings. Credible and substantial evidence is that which is "sufficient to exclude speculation

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

or conjecture.” Moreover, WIS. STAT. § 102.23(6) provides that where LIRC’s order or award depends on a finding by LIRC, “the court shall not substitute its judgment for that of the commission as to the weight or credibility of the evidence on any finding of fact....” The burden of showing that LIRC’s decision was not supported by credible and substantial evidence is on the party seeking to set aside LIRC’s findings and order.

Xcel Energy Srvs. v. LIRC, 2013 WI 64, ¶48, 349 Wis. 2d 234, 833 N.W.2d 665 (citations omitted).

¶5 Lillis’s unemployment benefits proceeding focused on the proper characterization of his departure from Fast Park. LIRC found that Lillis suffered a non-work related injury on October 28, 2013. On October 30, when Lillis’s companion notified Fast Park of Lillis’s injury-related absence from work, Fast Park advised that Lillis had to provide a doctor’s excuse and personally contact Fast Park management once he was able to do so.

¶6 Lillis returned to work on November 4 and learned that he was considered absent without notice on October 30 and 31 because Fast Park management had not been informed that he would be absent those days. Furthermore, Fast Park had not received a doctor’s excuse or other documentation of the October 28 injury. Lillis was told to go home and await contact from Fast Park the following day.

¶7 As of November 5, Fast Park continued to claim that no doctor’s excuse had been received. Lillis was not scheduled to work future shifts because he had been absent on October 30 and 31 without notice.

¶8 On November 6, Fast Park’s facility manager, Misty Donough, informed Lillis via e-mail that Fast Park had not received a doctor’s excuse. Fast Park directed Lillis to resolve this issue by having the doctor send an excuse

indicating the date the excuse was originally sent to Fast Park.² Lillis also had to provide a release indicating that he could return to work. Lillis did not respond to Fast Park's November 6 request,³ which LIRC found Lillis received, despite his claim to the contrary. Lillis did not work for Fast Park again.

¶9 LIRC found that despite multiple requests to do so, Lillis knowingly failed to document the reason he missed work and failed to provide a release to return to work. Lillis's failure to comply with Fast Park's documentation requests was inconsistent with continuing his Fast Park employment. Therefore, Lillis voluntarily terminated his employment. Having voluntarily terminated his employment, Lillis was not entitled to receive unemployment benefits, and the benefits he had erroneously received had to be repaid.

¶10 “[A]n employee who voluntarily terminates his or her employment ... is ineligible for benefits.” *Klatt*, 266 Wis. 2d 1038, ¶15. Voluntary termination occurs when an employee demonstrates an intent to leave employment “by word or manner of action, or by conduct inconsistent with the continuation of the employee-employer relationship, [such that] it must be held ... that the employee

² The appendix to Lillis's appellant's brief contains a November 25, 2013 letter from his physician stating that on October 30, the medical office faxed a doctor's excuse to Fast Park. The November 25 letter appears in the record as an attachment to Lillis's circuit court complaint. However, there is no indication that this document was before the administrative law judge at the unemployment benefits hearing held on December 17, 2013. While Lillis contends that this document was before the administrative law judge, he does not provide a citation to that portion of the hearing transcript where the reference can be found. We will not search the record to support Lillis's claim. *Fuller v. Riedel*, 159 Wis. 2d 323, 330 n.3, 464 N.W.2d 97 (Ct. App. 1990). Therefore, we do not consider the letter.

³ The confusion about whether Fast Park's office equipment was working such that Fast Park could have received a doctor's excuse by facsimile is of no consequence to this case. Lillis did not comply with Fast Park's requests to provide documentation Fast Park repeatedly stated it had not received.

intended and did leave his [or her] employment voluntarily.” *Id.* (citation omitted). An employee who refuses to comply with an employer’s instructions to execute an employment-related document can be deemed to have voluntarily terminated his or her employment. *Kierstead v. LIRC*, 2012 WI App 57, ¶21, 341 Wis. 2d 343, 817 N.W.2d 878.

¶11 On appeal, Lillis challenges LIRC’s findings of fact. Lillis claims that his doctor sent a medical excuse by facsimile to Fast Park on October 30, and his companion informed Fast Park that he would be absent for the week of October 28-November 1, 2013. Lillis infers that Fast Park’s failure to inquire about his absence before he returned to work on November 4 suggested that Fast Park knew he would be absent the entire week.

¶12 Lillis’s appellate arguments require us to reweigh the evidence before LIRC, which we cannot do. *Xcel Energy Svcs.*, 349 Wis. 2d 234, ¶48. We conclude that LIRC’s findings are supported by substantial and credible evidence in the form of the testimony of Fast Park’s facility manager, Misty Donough. LIRC did not find credible Lillis’s claim that he did not receive Donough’s November 6 e-mail requesting documentation for his absence and clearance to return to work.⁴ Although the record contains a release for return to work from Lillis’s physician, the document was printed and signed on November 5, and Donough testified that Fast Park did not receive this document. LIRC found that “[f]or whatever reason, following the November 6 e-mail [Lillis] refused to have his doctor submit the excuse to [Fast Park] an action inconsistent with continuing

⁴ Lillis acknowledged that he received all other e-mails in the e-mail chain relating to his absence and attempt to return to work.

employment with Fast Park. LIRC's findings of fact satisfy the legal standard for voluntary termination.

¶13 We affirm the circuit court's order affirming LIRC's decision denying Lillis unemployment benefits because he voluntarily terminated his employment.

By the Court.—Order affirmed.

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

