

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 7, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

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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.

No. 00-1401

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

SANDRA L. HALGERSON,

PLAINTIFF-APPELLANT,

V.

LABOR AND INDUSTRY REVIEW COMMISSION,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Walworth County:
JOHN R. RACE, Judge. *Affirmed.*

Before Brown, P.J., Nettesheim and Anderson, JJ.

¶1 PER CURIAM. Sandra L. Halgerson appeals pro se from an order affirming a decision of the Labor and Industry Review Commission (LIRC). LIRC denied unemployment compensation benefits to Halgerson and ordered that she forfeit her entitlement to certain future benefits based on its determination that

she had worked during the period she claimed and collected unemployment benefits and that she had intentionally concealed that fact from the Department of Workforce Development (the Department). We conclude that LIRC's factual findings are supported by credible and substantial evidence and involve a proper application of law. Therefore, we affirm the order of the circuit court.

¶2 In 1997, Halgerson filed a claim for unemployment benefits with the Department. Halgerson made weekly benefit claims via telephone covering the period from the week ending June 14, 1997, through the week ending November 22, 1997. As part of the weekly claim procedure, claimants are required to answer the question, "Did you work?" If a claimant has worked during the period in question, he or she may be eligible for a reduced level of benefits for partial unemployment, *see* WIS. STAT. § 108.05(3) (1999-2000),¹ or the claimant may be denied benefits depending on his or her earnings for that week. Throughout the period during which Halgerson made weekly claim benefits, she repeatedly answered "no" in response to the question whether she had worked. Based on this representation, Halgerson was paid the full amount of benefits to which her previous earnings entitled her and received \$6,719 in unemployment compensation.

¶3 In May 1998, the Department initiated an investigation regarding Halgerson. Following the investigation, the Department determined that Halgerson had in fact worked during the period she claimed full unemployment benefits and that she had failed to disclose this fact to the Department. Specifically, the Department determined that Halgerson had worked as a part-time

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

guide for Old World Wisconsin, a department of the Wisconsin State Historical Society, and for Dunhill Staffing, a temporary staffing service.² Based on her earnings in these two positions, the Department further determined that Halgerson was entitled to receive only \$438 in partial unemployment benefits. Halgerson was ordered to repay the \$6,281 in benefits she received to which she was not entitled. *See* WIS. STAT. § 108.22(8). The Department further ordered that if Halgerson ever became eligible for certain employment compensation benefits, she would be required to forfeit her entitlement to those benefits consistent with WIS. STAT. § 108.04(11) on the grounds that she intentionally concealed material facts from the Department while claiming benefits. Halgerson appealed the Department's decision.

¶4 Following a hearing, the administrative law judge (ALJ) issued a decision adverse to Halgerson.³ She filed a petition for review with LIRC, which agreed with the decision of the ALJ and adopted the findings of fact and conclusions of the Department. Halgerson then brought an action for judicial review pursuant to WIS. STAT. § 108.09(7)(a). The circuit court upheld LIRC's decision in its entirety. Halgerson appeals.

² Consistent with its internal procedures, the Department issued four separate determinations with respect to Halgerson, addressing whether she worked and earned wages during two separate periods and whether she knowingly concealed that information from the Department during those two periods. These proceedings have, effectively, been consolidated and we will address them collectively herein.

³ Hearings were first held on October 29, 1998, before Administrative Law Judge James R. Sturm, who decided against Halgerson. Halgerson appealed the decisions to LIRC, which set aside Sturm's decisions and remanded for new hearings. New hearings were conducted on March 15, 1999, before Administrative Law Judge James H. Moe. Following those hearings, Moe also issued decisions adverse to Halgerson.

¶5 In reviewing a circuit court order affirming an order of an administrative agency, an appellate court's scope of review is the same as that of the circuit court. *See West Bend Co. v. LIRC*, 149 Wis. 2d 110, 117, 438 N.W.2d 823 (1989). Thus, we do not deal with the correctness of the circuit court's decision brought to us on review, nor do we owe that decision any deference. We review LIRC's decision. *See id.*

¶6 LIRC's factual findings are entitled to substantial deference. We are to affirm LIRC's findings if there is any credible evidence in the record to support them. *Id.* at 117-18. In reviewing the sufficiency of credible evidence, we need find only that the evidence is sufficient to exclude speculation or conjecture. *L & H Wrecking Co. v. LIRC*, 114 Wis. 2d 504, 508, 339 N.W.2d 344 (Ct. App. 1983). LIRC has leeway in determining and drawing inferences from conflicting evidentiary facts. *See Milwaukee County v. DILHR*, 48 Wis. 2d 392, 399, 180 N.W.2d 513 (1970). If more than one reasonable inference can be drawn from the facts, the drawing of that inference is still a finding of fact and conclusive on review. *See Sauerwein v. DILHR*, 82 Wis. 2d 294, 300, 262 N.W.2d 126 (1978). Further, it is well established that it is the function of LIRC, not the reviewing court, to determine the credibility of witnesses and the weight of the evidence. *Eastex Packaging Co. v. DILHR*, 89 Wis. 2d 739, 745, 279 N.W.2d 248 (1979). Indeed, the level of deference is such that LIRC's findings must be upheld even if they are against the great weight and clear preponderance of the evidence. *See L & H Wrecking*, 114 Wis. 2d at 508.

¶7 Halgerson challenges LIRC's decision. She argues that there was insufficient evidence to support the claim that she worked at Dunhill Staffing for certain weeks, as alleged by the Department. Specifically, she objects to the Department's reliance on facsimile copies of her timecards, and to the fact that

Dunhill produced no original timecards and was unable to produce any timecard for some of the weeks she was found to have worked.

¶8 The reason for Halgerson's strong objection to the introduction of facsimile copies of her timecards, rather than original documents, is somewhat obscure. It appears that LIRC ordered the second hearing before an ALJ in part to enable Dunhill Staffing to provide Halgerson with a complete, original set of timecards for her review and comment, but this never happened. Halgerson also questions Dunhill Staffing's credibility in asserting that it did not have an entire set of timecards for her because she had, earlier in the proceeding, obtained an entire set from the Department.⁴ Halgerson challenges the accuracy of the facsimile versions of the timecards, asserting that Dunhill Staffing improperly altered them to reflect time entries that Halgerson denies having worked.

¶9 First, we address the evidentiary issue raised by Halgerson—her objection to the Department's admission of facsimile copies of the disputed timecards. We conclude that the admission of facsimile copies of the timecards was proper because it was consistent with the Department's rules of evidence applicable to such a hearing. WIS. ADMIN. CODE § DWD 140.16(1). Pursuant to the Department's rules, hearsay evidence is admissible if it is reasonably probative on an issue, but an issue cannot be determined solely based on hearsay evidence. *Id.*

¶10 Halgerson's claims that because the timecards were not original documents, there was insufficient direct evidence on which to base a determination that she had worked for Dunhill Staffing. We note that LIRC's

⁴ Halgerson's set was unavailable at the time of the hearings.

determination was not made solely on the basis of these timecards. The authenticity of the timecards was supported by the testimony of a Department witness, Michelle Paszek, a branch manager for Dunhill Staffing. Paszek identified the timecards and testified that Halgerson worked for Dunhill Staffing in a continuous assignment from June 16, 1997, through February 6, 1998. By referring to her payroll register, Paszek was able to provide the Department with specifics regarding the hours Halgerson worked for Dunhill Staffing, as well as her earnings for the periods no timecards were available. She further testified that she had spoken with Halgerson on the telephone about Halgerson's request to pick up her paychecks at the office, and that she had personally seen Halgerson in the office. Indeed, Halgerson herself admitted that Dunhill Staffing assigned her to a position with the law firm of Foley & Lardner that was intended to run for several months, and that she received a W-2 Form from Dunhill Staffing.

¶11 Essentially, the conflicting testimony of Halgerson and Paszek required LIRC to make a credibility determination. With respect to Halgerson's allegation that Dunhill Staffing fraudulently altered her timecards, we note, as did LIRC, that Halgerson wholly failed to demonstrate what, if any, benefit could possibly accrue to Dunhill Staffing by participating in the type of fraud alleged by Halgerson. We agree that the record reveals no persuasive evidence to support Halgerson's contention. In short, LIRC found Paszek credible and we defer to that determination.

¶12 Halgerson also strenuously objects to LIRC's determination that the fact that she filed a tax return reporting a salary consistent with the 1998 W-2 Form provided by Dunhill Staffing constituted an acknowledgment that she did, in fact, earn the wages reflected on that W-2 Form. Halgerson disputes this assumption. She disputes the reported salary and contends that she intended to file

an amended return. Again, LIRC's factual findings are entitled to substantial deference and we are to affirm its findings if there is any credible evidence in the record to support them. *L & H Wrecking*, 114 Wis. 2d at 508. Although perhaps more than one reasonable inference can be drawn from the fact of Halgerson filing the income tax return in question, LIRC's inference that it reflected an implicit acknowledgement of the earnings reflected in the W-2 Form is a finding of fact which is conclusive on review. See *Sauerwein*, 82 Wis. 2d at 300. We will not substitute our judgment for that of LIRC as to questions regarding the weight of the evidence. See *Advance Die Casting Co. v. LIRC*, 154 Wis. 2d 239, 249, 453 N.W.2d 487 (Ct. App. 1989).

¶13 Halgerson concedes that she worked for Old World Wisconsin during the period she claimed and received unemployment benefits. However, she disputes LIRC's finding that she intentionally concealed that work from the Department.

¶14 WISCONSIN STAT. § 108.04(11)(a) provides:

If a claimant, in filing his or her application for benefits or claim for any week, conceals any part of his or her wages earned in or paid or payable for that week, or conceals his or her refusal within that week of a job offer or any other material fact relating to his or her eligibility for benefits, so much of any benefit payment as was paid because of such concealment shall be recovered by the department as an overpayment.

¶15 Questions concerning a person's acts, or his or her intent in doing such acts, are issues of fact. *Holy Name Sch. v. DILHR*, 109 Wis. 2d 381, 386, 326 N.W.2d 121 (Ct. App. 1982). Intent may be inferred. See *McGraw-Edison Co. v. DILHR*, 64 Wis. 2d 703, 712, 221 N.W.2d 677 (1974). As such, "where the evidence and reasonable inferences therefrom would support any one of two or

more findings, a finding by the commission is conclusive.” *Cheese v. Indus. Comm’n*, 21 Wis. 2d 8, 15, 123 N.W.2d 553 (1963).

¶16 The finding that Halgerson intentionally concealed the material fact of her working while claiming unemployment benefits from the Department was a reasonable inference from the facts of record. The facts of record—not only the facsimile copies of timecards, but also the testimony of Paszek—support the Department’s determination that Halgerson worked for Old World Wisconsin and for Dunhill Staffing during the periods in question. Halgerson does not dispute that during each of the weeks she filed a benefit claim she answered “no” to the question whether she worked that week. Halgerson’s claim that she was informed in a telephone conversation that she need not report the hours she worked for Old World Wisconsin because this was not “new work” required LIRC to make a credibility determination with respect to Halgerson’s understanding of whether she knew she was required to report this work. We defer to LIRC’s determination that the scenario Halgerson describes was “unlikely.”

¶17 The objective of the unemployment compensation program is to provide benefits to those individuals who are committed to the labor market but are unable to find work. *Esparza v. DILHR*, 132 Wis. 2d 402, 410, 393 N.W.2d 98 (Ct. App. 1986). We affirm LIRC’s conclusion that Halgerson violated WIS. STAT. § 108.04(11)(a) by intentionally concealing the fact that she was working and earning wages while simultaneously claiming and collecting unemployment benefits. Consistent with this finding, LIRC properly imposed a forfeiture of certain future benefits pursuant to § 108.04(11). LIRC’s factual findings are supported by credible and substantial evidence and involve a proper application of law. Therefore, we affirm.

By the Court.—Order affirmed.

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

