PART II

APPEALED BENEFIT DECISIONS

STATE UNEMPLOYMENT COMPENSATION AGENCIES

32857—37——1

APPEALED BENEFIT DECISIONS

FAILURE TO REGISTER

1–Wis. A

Wisconsin Industrial Commission — No. 37–A–5
Decision of Appeal Tribunal
1937

The commission deputy's decision denied the employee an eligible status in week 42 of 1936 on the ground that the employee's failure to register for work in said week was without good cause. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was laid off by the employer in week 41 of 1936 at which time he was given a notice to register for work at the district public employment office. He made his initial registration and filed claim for benefits on Saturday morning of the same week. At that time he was told to return in one week to renew his registration. He understood this instruction to mean that he should not return until the following Saturday, and he did not know that the employment office was closed on Saturday afternoons. He returned to the employment office on the following Saturday afternoon at 2 p. m. and found it closed.

The employee had never previously claimed benefits for total unemployment under the Wisconsin act, the general benefit provisions of which became operative on July 1, 1936.

The appeal tribunal therefore finds that under the circumstances of this case the employee's failure to register for work in week 42 of 1936 was with good cause.

Decision: The decision of the deputy is reversed. Accordingly, the employee had an eligible status in week 42.[1]

2–Wis. R

Wisconsin Industrial Commission — No. 37–C–8
Decision of the Commission
1937

The commission deputy's decision suspended the employee's eligibility for unemployment benefits in weeks 51 and 52 of 1936, on the ground that she failed without good cause to register for work in said weeks. The employee appealed.

The employee alleged that she attempted to register for work on Wednesday or Thursday of week 51, but arrived at the district public

[1] See 2–Wis. R (37–C–8).

employment office after 5 o'clock in the afternoon and found it closed. She alleged that she telephoned the employment office the next day and was told that it would not be necessary for her to register for work until the next week (week 52). She further alleged that she came to the employment office in week 52 about 3 o'clock on Thursday afternoon and found the office closed on account of a half holiday.

Based on the record and testimony in this case the commission makes the following:

Findings of Fact: The employee knew or should have known that the district public employment office was closed after 5 o'clock in the afternoon.[2] When the employee telephoned the employment office on the day following her first attempt to register for work, she misunderstood the instructions given her. Such misunderstanding does not constitute good cause for failure to register.

The employment office was closed on Thursday afternoon of week 52 and remained closed for the balance of that week. The employee did not know and could not reasonably be expected to know that the employment office would not be open beyond Thursday noon of week 52, and therefore her failure to register in week 52 was with good cause.

The commission therefore finds that the employee did not have good cause for her failure to register in week 51, but did have good cause for her failure to register in week 52, within the meaning of section 108.04 (2) of the statutes.

Decision: The deputy's decision is amended to show that the employee had good cause for her failure to register in week 52 and is affirmed as amended. Accordingly, benefits are suspended in part and allowed in part.

3–Wis. A

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–25

The commission deputy's decision denied the employee an eligible status in week 48 of 1936, on the ground that the employee failed to register for work in said week. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was laid off in week 47 of 1936. In week 48 he appeared at the public employment office and duly registered for work, but, through an inadvertence, the interviewer neglected to make a record of such registration.

The appeal tribunal therefore finds that the employee actually did register for work in week 48 of 1936.

Decision: The decision of the deputy is reversed. Accordingly, the employee had an eligible status in week 48.

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[2] See 1–Wis. A (37–A–5).

4–Wis. A

Wisconsin Industrial Commission — No. 37–A–35
Decision of Appeal Tribunal
1937

The commission deputy's decision suspended the employee's eligibility for unemployment benefits in weeks 36 to 43, inclusive, of 1936 on the ground that the employee failed without good cause to register for work in said weeks. The employee appealed.

Based on the record and the testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was laid off in week 35 and registered for work at the district public employment office in that week. He then left the city for the purpose of visiting relatives. He did not register again until his return in week 44.

At the time of his first registration the employee made no request for permission to register in the district for which he was leaving. He did not register for work at any employment office during weeks 36 to 43, inclusive.

The appeal tribunal therefore finds that the employee failed without good cause to register for work during weeks 36 to 43, inclusive, as required by commission rule 260 and section 108.04 (2) of the statutes.

Decision: The decision of the deputy is affirmed. Benefits are suspended accordingly.

5–Wis. A

Wisconsin Industrial Commission — No. 37–A–46
Decision of Appeal Tribunal
1937

The commission deputy's decision denied the employee an eligible status in calendar weeks 48 to 52, inclusive, of 1936 and in calendar week 1 of 1937 on the ground that the employee failed to register for work in said weeks without good cause. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was laid off in calendar week 46 of 1936 and at that time he was instructed by his employer to register for work at the public employment office. During the following week he appeared at the employment office, registered for work, and filed claim for benefits. At the time of this initial registration, either he was not told, or, because of poor hearing, he did not understand that he was required to renew his registration weekly. As a result, he did not register for work in weeks 48 to 52, inclusive, of 1936 and in week 1 of 1937. He had never previously claimed benefits under the unemployment compensation act and was under the impression that he had fulfilled all the prerequisites to obtain benefits.

The appeal tribunal therefore finds that the employee's failures to register for work were with good cause, within the meaning of section 108.04 (2) of the statutes.[3]

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[3] See 6–Wis. A (37–A–108).

Decision: The decision of the deputy is reversed. Accordingly, the employee had an eligible status in weeks 48 to 52, inclusive, of 1936 and in week 1 of 1937.

6–Wis. A

Wisconsin Industrial Commission — No. 37–A–108
Decision of Appeal Tribunal
1937

The commission deputy's decision denied the employee an eligible status in calendar week 52 of 1936 and in calendar weeks 1 to 4, inclusive, of 1937 on the ground that the employee failed to register for work in said weeks without good cause. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was laid off in calendar week 50 of 1936. He reported at the public employment office the following week, registered for work, and filed a claim for benefits. The employee was told at this time to come back next week. The employee failed to register for work in calendar week 52 of 1936 and in calendar weeks 1 to 4, inclusive, of 1937. The employee alleged that he was in the employment office in each of these weeks but did not register for work or file a claim for benefits, because he did not know it was necessary. At the times the employee was in the employment office, he did not identify himself or make any inquiries concerning his benefits.

The procedure of the initial registration for work and filing claim for benefits, together with the instruction to return weekly thereafter, was reasonably calculated to put the employee on notice of the requirements for establishing his eligibility for benefits. Therefore, the employee's misunderstanding of these instructions, even though in good faith, does not constitute good cause for his failure to register for work.

The appeal tribunal therefore finds that the employee's failure to register for work was without good cause, within the meaning of section 108.04 (2) of the statutes.[4]

Decision: The decision of the deputy is affirmed. Benefits are suspended accordingly.

Affirmed, Wisconsin Industrial Commission, No. 37–C–21.

7–Wis. A

Wisconsin Industrial Commission — No. 37–A–109
Decision of Appeal Tribunal
1937

The commission deputy's decision denied the employee an eligible status in calendar week 6 of 1937 on the ground that the employee

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[4] See 5–Wis. A (37–A–46).

failed to register for work in that week without good cause. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was laid off in calendar week 3 of 1937 and at that time received written instructions from his employer to register for work at the public employment office. The employee registered for work and filed a claim for benefits at the employment office in each of weeks 4 and 5. He failed to register for work in week 6. In this week he stated that he called the employment office by telephone and was told that he might forego registering for the week. The employee was unable to furnish the name of the person in the employment office with whom he talked.

The information allegedly afforded the employee was contrary to instructions and established employment office procedure.

Nothing in the circumstances of the employee made for any unreasonableness in the general requirement (rule 260) that registration for work be made in a week and in person. Because of other plans the employee had for the day, registering at the employment office would have resulted in some inconvenience, and it was for this reason the employee sought a special arrangement.

The appeal tribunal therefore finds that the employee's failure to register for work was without good cause.

Decision: The decision of the deputy is affirmed. Accordingly, the employee did not have an eligible status in week 6.

Comment: The requirement that an employee give notice of total unemployment and register for work in accordance with commission rule is specified by section 108.04 (2).

Industrial commission rule 260 relating to this cited section requires that an employee register in a week and give notice for the week in order to receive benefits for that week.

Section 108.04 (2) provides that the registration and notice requirements can only be set aside for "good cause."

In the present case there was nothing in the personal circumstances of the employee that made it unreasonable or impossible for him to comply with the regular registration procedure. Such cause as he may have rests on his contention that he was excused from the requirement by some individual in the employment office.

While a duly authorized representative of the unemployment compensation department stationed at the employment office may pass judgment as to whether a certain situation may or may not constitute good cause, his decision must be subject to the review machinery established by the act. Certainly an examiner (or other local representative of the unemployment compensation department) cannot bind an appeal tribunal or the commission through the giving out of erroneous information. If an appeal tribunal (or the commission) finds that under any given circumstances it was not unreasonable that an employee be required to comply with the registration and notice requirements, the employee concerned cannot rest his claim of "good cause" on his contention that he had been afforded erroneous information. In the instant case it should be noted that the employee was unable to identify the person who allegedly gave erroneous in-

formation. Instructions and office procedure relating to registration have been set up for the purpose of making the handling of registrations uniform and definitive. Administratively, it is necessary to presume that proper instructions are afforded by representatives. This presumption is not to be overthrown by the indefiniteness existing in the present case.

8–Wis. A

Wisconsin Industrial Commission — No. 37–A–219
Decision of Appeal Tribunal
1937

The commission deputy's decision denied the employee an eligible status in calendar weeks 16 and 17 of 1937 on the ground that the employee failed to register for work in those weeks without good cause. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was laid off in calendar week 14 of 1937 and at that time received a written instruction from his employer to register for work at the district public employment office. The employee duly registered for work and filed claim for benefits in week 15 but failed to register for work in weeks 16 and 17.

At the time of his initial registration the employee told the interviewer that he planned on taking a 2 weeks' trip and asked if he could report for the 2 weeks upon his return. He was told that a certification of unemployment would have to be made for each week in the event that he renewed his claim for benefits upon his return. He was not told that failure to register for work under the circumstances would be deemed to be with good cause. He knew that weekly registrations for work were required in order to maintain an eligible status, but despite this understanding he failed to register for work in the weeks in question.

The information given by the interviewer was accurate in view of the employee's question. The misunderstanding, if any, was not due to any improper instruction on the part of the interviewer but resulted from the employee's taking an unwarranted inference from the interviewer's answer.

The appeal tribunal therefore finds that the employee's failure to register for work in weeks 16 and 17 was without good cause, within the meaning of section 108.04 (2) of the statutes.

Decision: The deputy's decision is affirmed. Benefits are suspended accordingly.

9–Wis. A

Wisconsin Industrial Commission — No. 37–A–233
Decision of Appeal Tribunal
1937

The commission deputy's decision denied the employee an eligible status in calendar week 23 of 1937 on the ground that the employee

failed to register for work in that week without good cause. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was laid off on Friday of week 22 and was notified by the employer to register for work at the public employment office. The employee did not register for work until week 24.

Several weeks previous, the employee was laid off temporarily on a Wednesday and he registered for work the following day. At that time he was told by the employment office representative that it was not necessary for him to register in such first week. At the time of the second layoff the employee did not register in week 23 because he understood that week to be the "first" week referred to by the employment office representative.

It was not necessary for the employee to register for work in the week in which the layoff occurred and no registration was therefore required in week 22. He was, however, required to register in week 23, and his misunderstanding of the registration requirements under the circumstances could not reasonably be attributed to misinformation.

The appeal tribunal therefore finds that the employee's failure to register for work was without good cause, within the meaning of section 108.04 (2) of the statutes.

Decision: The decision of the deputy is affirmed. Accordingly, the employee did not have an eligible status in calendar week 23 of 1937.

APPEALED BENEFIT DECISIONS

LABOR DISPUTE

Wisconsin Industrial Commission No. 37–A–19
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee lost his employment because of a labor dispute which was in active progress in the establishment in which he was employed, and that the employee was not eligible for benefits during the duration of said labor dispute. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was refused admittance to his plant by a committee of union employees. The employee, who was not a union member, alleges that there was no grievance between him and the employer and that the action of the union committee in refusing him admittance to the plant did not constitute a labor dispute.

Based on the record and the testimony in this case the appeal tribunal makes the following

Findings of Fact: The employer and the union were operating under a union agreement. The agreement, however, did not provide for a closed shop. On several occasions the employee had been approached by members of the union and had been requested to join their organization. The employee refused and finally was notified by the union committee that he would have to make application for membership by August 18 or action would be taken against him. He made no attempt to join the union by that date and, when he reported for work on August 19 (in week 34), he was refused admittance to the plant by representatives of the union.

The employer had no grievance or dispute with the employee. He had work available for the employee and at no time did he consider the employer-employee relationship terminated.

The employee later made application for membership in the union and on October 10 the union accepted him as a member. On October 12 (in week 42) the union notified the employer that it no longer had any objection to the employee returning to work. The employee returned to work in that week.

The employee was attempting to return to his employment, and the union was preventing him from returning during the entire period between August 19 and October 12.

(Comment:—Section 103.62 (3) of the statutes provides that "the term 'labor dispute' includes any controversy concerning terms or conditions of employment * * * regardless of whether or not the disputants stand in the proximate relation of employer and employee." While this section is not controlling in the interpretation of chapter

108, it does serve as a guide in the interpretation of the term "labor dispute" as used in section 108.04 (5) (a). The period of time during which a labor dispute is deemed to be in active progress depends upon the particular circumstances. In this case the dispute was in active progress so long as the employee was attempting to get back his job and was prevented from doing so by the union.)

The appeal tribunal therefore finds that the employee lost his employment from week 34 to week 42, inclusive, because of a bona fide labor dispute which was in active progress in the establishment in which he was employed and that the employee's eligibility for benefits was suspended during those weeks, in accordance with section 108.04 (5) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

11–Wis. A

Wisconsin Industrial Commission — No. 37–A–34
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee lost his employment because of a labor dispute which was in active progress in the establishment in which he was employed, and that the employee was not eligible for benefits during the duration of said labor dispute. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the unemployment was due to a strike in the establishment in which the employee had been employed. The employee conceded that he lost his employment because there was a strike in active progress in one of the employer's establishments. However, he alleged (1) that the place in which he had been employed was not a part of that establishment but was separate and distinct, and (2) that no labor dispute was in active progress in this separate establishment.

Based on the record and the testimony in this case the appeal tribunal makes the following

Findings of Fact: The employer is a large automobile manufacturing concern composed of several functional corporations. The unemployment compensation department had determined the several corporations to be a single employer within the meaning of section 108.02 (d) of the statutes. However, neither the existence of the several corporate entities nor the "single employer" status as determined under the cited provision is in any manner controlling on the question of whether the employer had separate establishments.

The employer's physical properties, so far as relevant to this case, consisted of 5 buildings, each devoted to particular operations. The employee worked in one of these, known as the parts and service building. This building was located on a parcel of land separated only by a railroad right of way from the parcel on which the other

4 buildings were located and was situated about five hundred feet from a fence surrounding the other 4 buildings. All 5 buildings were heated and powered from a central plant and were under the supervision of a local general manager.

The operations performed in the other 4 buildings were such that a shutdown in one building immediately necessitated a shutdown in the others. This was not true of the operations performed in the parts and service building since they were not immediately essential to nor dependent on the actual manufacture of new automobiles. However, the operations conducted in the parts and service building were an integral part of the employer's automobile manufacturing business and were housed in a separate building merely for convenience in handling the large volume of the employer's business.

The appeal tribunal finds that the physical proximity together with the functional integrality of the parts and service building and the other 4 buildings constitute them a single establishment.

In view of the foregoing finding, and in view of the employee's concession that he lost his employment because of a strike in active progress in the other 4 buildings, it is unnecessary to decide whether a labor dispute was in active progress in the parts and service building itself.

The appeal tribunal therefore finds that the employee lost his employment because of a strike which was in active progress in the establishment in which he was employed within the meaning of section 108.04 (5) (a) of the statutes, and that said strike was in active progress during all of the weeks for which the employee had claimed unemployment benefits.

Decision: The deputy's initial determination is affirmed. Benefits are suspended accordingly.

12–Wis. A

Wisconsin Industrial Commission — No. 37–A–151
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee lost his employment because of a labor dispute which was in active progress in the establishment in which he was employed, and that the employee was not eligible for benefits during the duration of said labor dispute. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employer has never operated under a "closed shop" agreement, although most of the employees are members of the same union.

Some time prior to his employment, this employee had worked in a strike-bound factory. When the union heard of this, the chief

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steward of the union informed the employer that, unless the employee were discharged immediately, he would call a sit-down strike in the employer's factory. At the time, the chief steward had the authority of the union to call such a strike, and, in order to avert it, the employer discharged the employee. At no time thereafter was the employee called upon by the employer to report for work.

The appeal tribunal therefore finds that the employee was discharged, but not for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination is affirmed. Benefits are allowed accordingly.

Comment: It is not necessary to decide whether a labor dispute was in active progress in the employer's establishment. If there was one, it arose in the last week of the employee's employment and terminated in the same week upon the employee's discharge.

There can be no suspension of the employee's benefit rights under section 108.04 (1) of the statutes since the employee was discharged and thereafter was never called on by the employer to report for work.

Affirmed, Wisconsin Industrial Commission, No. 37–C–26.[1]

13–Wis. R

Wisconsin Industrial Commission — No. 37–C–26
Decision of the Commission
1937

The employer petitioned the commission for review of the appeal tribunal decision.[2] The commission has reviewed the evidence and finds that it supports the appeal tribunal findings of fact.

Decision: The decision of the appeal tribunal is affirmed. Benefits are allowed accordingly.

Comment: The employer alleges in his petition for commission review that the employee was ineligible for benefits because a labor dispute existed in the employer's plant, and the employee's unemployment was occasioned by this labor dispute. A demand by a union that an employee be discharged is not to be fairly considered a labor dispute. A refusal of an employer to meet such a demand might well occasion a labor dispute (as suggested by the petitioner) but an employer's acquiescence in the demand has the contrary effect of preserving the industrial peace.

However, if it can be said that such a demand of the union constitutes a labor dispute in active progress, it can only be so considered prior to the time that the employer has acceded to the demand. During such time as the employer was considering the demand of the union, the employee, with respect to whom the demand was made, was not out of employment. Hence, the provision of the statute did not operate. Once the employer acted to discharge the

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[1] See 13–Wis. R (37–C–26).
[2] See 12–Wis. A (37–A–151).

employee, any labor dispute that might have been in active progress was no longer existent. The provision only serves to suspend benefits while a labor dispute is in active progress.

The petitioner further alleges that work was available to the employee with a consequence that the employee's eligible status was suspended because of the employee's unavailability for such work. The employer's assertions that he was forced to terminate the employment of the employee, and that work was available for the employee are inconsistent. An offer of work, which is necessary to test any alleged unavailability of an employee, cannot be implied where the employment relationship has been definitely terminated by a discharge.

An employee who is a member of a union becomes a party to any agreement his union may make with an employer. By reason of such participation in a union-employer agreement the employee may render himself unavailable for work through his conduct or other circumstances that fall within the operation of certain provisions of the agreement.

However, this principle has no application when the employee is not a member of a union. The unemployment compensation act cannot be held to be an instrument to be used either by employers or labor organizations to induce workers (under penalty of losing benefit rights) to assume a course of conduct contrary to their viewpoints on labor organization. Employers are deprived of the use of the act as such an instrumentality by section 108.04 (7). Labor organizations on principles of equity and fair treatment must be found similarly deprived unless there are provisions in the act expressly securing this end. Such provisions are not to be found.

Wisconsin Industrial Commission — No. 37–C–34
Decision of the Commission
1937

The employer denied unemployment benefits, claiming that the employee lost his employment because of a labor dispute which was in active progress in the establishment in which he was employed, and that the employee was not eligible for benefits during the duration of said labor dispute. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The commission on its own motion transferred the proceedings to itself, pursuant to section 108.09 (6) of the statutes.

Based on the record and testimony in this case the commission makes the following

Findings of Fact: The employee last worked as a "coal passer" in the power house of the employer's plant. When he went to work on the morning following his last day of employment, he learned that a strike had been called by his union, and he was denied ad-

mission to the plant by pickets posted by the union. Later that day the union granted him permission to work in the power house. He reported to his foreman but was told that there was nothing for him to do and that he would be called when work was available. The strike continued in active progress for 14 weeks thereafter, during which time the employee was never called upon to return to work for the reason that the inactivity created by the strike did away with the necessity for his services.

The commission therefore finds that the employee lost his employment because of a strike in active progress in the establishment in which he was employed, within the meaning of section 108.04 (5) (a) of the statutes; and that said strike was in active progress during the 14 weeks following the week in which he lost his employment.

Decision: The deputy's initial determination is affirmed. Benefits are suspended accordingly.

APPEALED BENEFIT DECISIONS

MISCONDUCT

Wisconsin Industrial Commission No. 37–A–2
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for failing to report for work on November 2 and 3 without giving notice to the employer and without a valid excuse. The employee admitted the facts alleged by the employer, but denied that such facts constituted misconduct.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for this employer for five seasons in various capacities about the plant. He was working for the employer at the end of October 1936, and was expected to report for available work on November 2 and 3.

The employee failed to report for work on November 2 and 3. He did not notify the employer that he would be absent from work on those days. The employee had sufficient opportunity to give the employer notice, but failed to do so. The employee failed to report for work because he had been in a fist fight Sunday night, November 1, 1936, and as a result, he was too sore and bruised to do any work. Engaging in this fight was a matter within the control of the employee, and he could have reasonably anticipated that it might incapacitate him for work the next day.

The employee reported at the office of the employer on November 4, to secure information which would enable him to straighten out an income-tax matter and not for the purpose of reporting for work.

A notice was sent to the employee on November 4 that he was discharged.

The appeal tribunal therefore finds that the employee's failure to report for work and his failure to notify the employer that he would not be at work constitute misconduct within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are denied accordingly.

Wisconsin Industrial Commission No. 37–A–18
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employ-

ment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged on July 13, 1936, for losing time from work because of drunkenness. The employee claimed that he was sick on the day in question and was not intoxicated.

Based on the record and the testimony in this case the appeal tribunal makes the following

Findings of fact: The employee had worked for the employer as a molder since 1929. The employee frequently failed to appear for work following pay days.

Friday, July 10, was a pay day, and the employee was instructed to report for work again on Monday morning, July 13, at 7 a. m. He failed to report for work at that time, and the employer's superintendent went to the employee's room to ascertain the reason for his failure to report. When the superintendent reached the employee's room about 8 o'clock on that morning, the employee was in bed in an intoxicated condition. The employee did not complain of being sick but promised to report for work the next morning.

He failed to report for work on Tuesday morning and was discharged. He did not notify the employer on either occasion that he would be unable to report for work.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

Wisconsin Industrial Commission — No. 37–A–48
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming the employee was discharged for misconduct connected with her employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for failure to do her work and for refusing to take orders.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee had worked for the employer as laundry for about two months. During this time her work was satisfactory although she was absent several times because of illness. On such occasions she either actually notified or made a bona fide effort to notify her employer that she would not be at work, and her reasons for being absent were accepted by the employer without comment.

On the day of her discharge, a Saturday, the employee and several other girls were engaged in folding an order of six thousand towels. At 12 o'clock noon, their regular quitting time, they had folded approximately four thousand of the towels, and, feeling that that amount would meet the customer's requirements over the week-end, they decided to leave without completing the order. The employee left immediately, but, before her fellow workers could leave the building, the general manager asked them to stay and complete the order because the customer required the whole order that afternoon. They complied with his request but no effort was made to call back the employee, who had left without knowledge of such request. She was notified that afternoon that she was discharged.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with her employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination is sustained. Benefits are allowed accordingly.

18–Wis. A

Wisconsin Appeal Tribunal No. 37–A–98
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for leaving his work prior to quitting time, for turning out defective work, and for failing to keep his place of work clean.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer for 7 years as a flash welder and punch-press operator. During the entire period of his employment he did his work to the best of his ability and was never reprimanded for poor workmanship or for keeping his place of work in a disorderly condition.

The employee worked on a "piece-work plus bonus" basis, with a minimum guarantee per day. His work day started at 7:30 a. m. and finished at 4:30 p. m. He occasionally stopped working from 5 to 10 minutes early in order to get cleaned up, but this practice was common in the plant and was not objected to by the foremen. On the occasions when he did stop early, he had already earned what his foreman had led him to believe was the maximum the employer would pay him for a day's work.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–166

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of the employee's failure to give notice of his inability to report for work as required by the employer's rules. The employee alleged that the employer had notice of his inability to report for work.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked as an attendant in one of the employer's gasoline filling stations. On the evening that he failed to report for work there had been a company dinner for the employees. The employee had been drinking, and, after the party had been in progress for about an hour, the employee's immediate superior had him taken home. The employee was to report for work at 11 p. m. that evening but failed to do so. His immediate superior had knowledge of his condition at the time he left the party and had arranged to have another employee at the station to take his place in case he failed to report. The employee reported at the station the next morning and was discharged on the ground that he had violated a company rule requiring employees to notify the employer in advance when they were unable to report for work.

The employer's rule is undoubtedly reasonable when considered with reference to certain conditions and situations that might well arise, but under all the circumstances it has no proper application to this case. While the employee did not give notice of his inability to report for work, the employer had actual knowledge of his inability to work that evening and had arranged to have another employee take his place. The employer, therefore, could not have been prejudiced by the lack of notice.

At the hearing the employer alleged as an additional ground for discharge that the employee's absence from work was due to a cause within his control, namely, excessive drinking. However, the employee was not discharged for this reason.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are allowed accordingly.

Wisconsin Industrial Commission — No. 37–A–172
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report alleged that the misconduct consisted of habitually leaving work before quitting time and failing to turn out sufficient work.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer for two and one-half years. Throughout the period of his employment he stopped working several minutes before quitting time in order to get cleaned up before leaving the shop. This was a general practice among the employees and was not objected to by the employer.

There was no evidence that the employee failed to do his work to the best of his ability.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are allowed accordingly.

Affirmed, Wisconsin Industrial Commission, No. 37–C–31.

Wisconsin Industrial Commission — No. 37–A–177
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report alleged that the misconduct consisted of insubordination.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked in the employer's factory for three and one-half years. The factory was not operated on Saturdays. However, on Friday of the last week of his employment the employee was requested to report for special work on the following day. He stated that he would do so, but because of an urgent personal matter he unexpectedly had to leave the city Friday night.

He instructed his wife to notify his foreman the following morning that he would be unable to report for work that day. His wife called the factory as instructed but was unable to get the message to the foreman. The employee was discharged when he reported for work on Monday morning.

The employer alleged at the hearing that a further reason for the employee's discharge was his habit of leaving work before quitting time. However, the employee's discharge was not related to this course of behavior. It was customary for workers to leave at the completion of their day's assignment. The employee had always completed his work before leaving and had generally asked permission to go. No reprimand or warning had ever been given by the employer to terminate this shop custom.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are allowed accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–185

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for failing to report for work and for failing to notify the employer of his inability to report. The employee alleged he was unable to report for work because he had been arrested on a charge of which he was later acquitted. He further alleged that the employer was notified of his inability to report for work.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was arrested and held in jail for a period of 2 weeks awaiting trial. At the trial he was acquitted of the charge against him.

On the day of the arrest the employer was notified that the employee would be unable to report for work. On Saturday of the same week a friend of the employee called for the employee's regular pay check. The employee was paid in full and sent a letter notifying him that his employment had been terminated.

The employee did everything he could to protect the employer's interests under the circumstances, and his absence from work was due to causes over which he had no control and for which he cannot be held responsible.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

23–Wis. A

Wisconsin Industrial Commission — No. 37–A–188
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged because he failed to report for duty. The employee alleges that he did report for duty and that he received permission from the manager to take time off to notify other employees of a meeting.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee, a youth of 17 years, worked as a messenger for the employer telegraph company. He was a member of a committee that was to represent the telegraph messengers in negotiating with the employer. The messengers had rejected a set of demands which had been drawn up by the committee in conjunction with the superintendent and another set had been drawn up. The employee wished to call a meeting of all the messengers to consider the new demands. This meeting was approved by the employer.

On the last day the employee worked he made some deliveries in the morning and then requested permission to notify the branch offices of the meeting. The manager granted this permission. The employee was gone the rest of the morning and returned for a short while at noon. After lunch he called the manager by telephone and received permission to notify the messengers that were attending vocational school. He returned at 4:30 that afternoon and worked until 6 o'clock.

After the meeting had been held, the employee with the other committee members presented their demands to the superintendent. The employee was then informed that he was discharged for being absent from work most of the day.

The employee had absented himself from work with express permission. The employer can hardly maintain that, since the time away from work was excessive in the opinion of the employer, the employee's action constituted misconduct. There was no understanding as to how much time off the employee was to be allowed. It was not unreasonable for him, under the circumstances, to notify his fellow employees in the manner in which he did. There was no

evidence that he violated his permission by spending his time for any other purpose.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are allowed accordingly.

24–Wis. A

Wisconsin Industrial Commission — No. 37–A–210
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of the employee's failure to report for work without notice and without a valid excuse.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked as an attendant in a bowling alley. One of his duties was to open the employer's place of business at 11 o'clock each morning.

On the day of his discharge the employee was out of the city and was unable to return in time to open up the bowling alley. About one-half hour before he was to report for work, the employee called a poolroom adjoining the bowling alley and got in touch with another attendant of the bowling alley who happened to be there. He got this attendant to open up the establishment and do his work. The employer learned of this and discharged the employee when he reported for work that evening.

The employer had no advance notice of the employee's inability to attend to his duties and had not given the employee permission to engage a substitute.

The employee was charged with the full responsibility of opening and conducting a business establishment. The personal business of the employee that caused him to be out of the city was not of such an emergency nature as would justify his failure to fulfill his responsibility, nor did it prevent his giving the employer such reasonable advance notice as would enable the employer to make suitable arrangements. The fact that the employee was able to engage a substitute at the last minute does not mitigate his obvious disregard of the employer's interests.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination of the deputy is reversed. Benefits are denied accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–212

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report alleged that the misconduct consisted of repeated absences from work without notice.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked as painter and polisher of cars in the employer's garage for four and one-half months. Work became slack during the last 6 weeks of his employment and it became possible on Saturday of each week for the employee to reasonably know whether there would be work available for him the following Monday. On several Mondays during this period the employee did not report for work because of a lack of cars needing painting or polishing. He telephoned his foreman on those days, inquired whether there was work for him, and left word where he could be reached if needed. He was never told that this practice was improper or that he should discontinue it. On the Tuesday after his last absence, he reported for work and was told that there was no work for him, that he would be called if there was work, and that he should seek other employment.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are allowed accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–215

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of the employee's failure to report for duty without a valid excuse. The employee alleged he had trouble with his teeth and was unable to report.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked as an engineer in the employer's hotel. He was on the night shift working from 12 p. m. to

8 a. m. The employee last worked on a Friday night and was supposed to report for work Saturday night.

The employee had had a new set of teeth which caused him so much discomfort that he was unable to get any rest. He called the employer at noon on Saturday and requested permission to take Saturday night off, but the employer refused to grant the time off on account of the manner in which the employee planned to seek relief. Later that afternoon the employee again requested time off and was refused. Shortly before the employee's shift started, he notified the employer that he was unable to report for work.

The following morning the employee called the employer's place of business and was informed that someone was being hired to replace him. He therefore did not report for work Sunday night. He went to see his superior on Monday morning and his discharge was confirmed.

The discomfort suffered by the employee, together with his inability to rest, constituted a good reason for his failure to report for work; and his plan for alleviating the pain did not affect the validity of his excuse.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination of the deputy is reversed. Benefits are allowed accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–217

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of repeated tardiness and absence from work without a valid excuse.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee reported for work late 3 out of the last 4 days of his employment. On the day of his discharge he called the employer and informed him that he would not be at work that day because he was going down town with his sister. The employer was very busy and asked the employee if he could report for work at noon, but the employee said he could not. The employee was then discharged.

That the employer did not act arbitrarily in the matter was indicated by an offer made the following day to reemploy the employee if he could afford a reasonable explanation for his conduct. The

employee did not see fit to disclose to the employer or to the appeal tribunal such reason as he had for absenting himself from work.

The employee's failure to report for work without sufficient reason, when he knew his services were urgently needed by the employer, constituted a disregard of the employer's interests.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

Wisconsin Industrial Commission — No. 37–A–253
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged because his work was so unsatisfactory that other employees refused to work with him, and because he failed to report for work without notifying the employer.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee had worked for the employer about 7 months operating a machine that sealed boxes. In the course of operating the sealer, boxes were broken from time to time. However, the number of boxes broken by the employee was not substantially greater than the normal anticipated breakage. There was no evidence that the amount of breakage in excess of that normally anticipated was due to anything but inefficiency.

There was no showing made that other workers refused to work with the employee or that they disliked to work with him.

The employee's singing on the job did not constitute misconduct. It was not contrary to any rules or orders of the employer, nor had the employee been specifically told to discontinue such conduct.

During the latter part of his employment, work had been irregular, and the employee had been working about 3 nights per week. The employee frequently had to call the employer in order to determine whether or not work was available. Under such an irregular practice as this, the failure of the employee to call the employer cannot be considered a failure to report for work.

The appeal tribunal therefore finds that the employee was not discharged for misconduct, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are allowed accordingly.

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Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–1

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged on July 22, 1936, (1) for failure to machine properly any of the work given him on July 13, (2) for breaking a chuck valued at $75 on July 14 and putting a turret lathe out of operation for several days, and (3) for unexplained absences following pay days.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: Employee was hired as a turret-lathe operator on June 10, 1936. Though the employee had had 5 years of experience as a turret-lathe operator, he was untrained in the precision work done in this employer's shop. This was understood by employer at the time of hiring.

Employee took an unexplained leave from work of 3 days after his first pay day on June 20. This conduct was repeated with an unexplained absence of one week following his second pay day on July 3.

On the 9th of July, in the course of the second absence period in question, employee came to employer's plant and talked with the shop superintendent. Employee stated that because of marital trouble he was planning to leave Milwaukee. The superintendent persuaded him that this was not the proper course of action; advanced him money, and encouraged employee to return to work, which he did on Monday, July 13.

From the date of hiring, employee's efficiency, as measured in terms of "scrap record," had been considerably below that of any other turret-lathe operator then working for the employer. Each operator's "scrap record" indicated the proportion of his total work that was unsalvageable. From the date of hiring to July 3 (second pay day) employee's "scrap record" was approximately 30 percent. This "scrap record" became worse, namely, about 45 percent through the period July 13 (date of second return to work) to date of discharge. During this latter period the employee's "scrap" was nearly double that of any other operator.

On the July 13th night shift the employee failed to produce a single satisfactory piece of work, i. e., his "scrap record" reached 100 percent. Also, on the latter part of this shift he broke a four-jaw chuck and otherwise materially damaged the lathe at which he was working.

The employee's record was noted to the proper employer officials, and he was discharged on July 22, 1936. He was at that time acquainted with the reason for his discharge.

The employee offered the appeal tribunal no explanation of his absences. He attributed his inefficiency (scrap record) to his lack of experience with the type of precision work on which he was engaged.

Dispute occurred as to the manner in which the chuck was broken. The employee testified that his attempt to remove the chuck was made in the usual manner, but that a slipping clutch prevented the power from being disengaged and that this defect in the clutch was responsible for breaking the chuck and otherwise damaging the lathe. He stated that he had previously informed his foreman of the clutch defect, with the added remark that unless it were fixed he would "go through it with a sledge."

The employer denied that the clutch was defective and asserted that it had been in constant use from the time of the accident until the date of the hearing without any tightening or other alteration. It was further contended that, had the clutch been slipping, this alleged defect would not have affected the tendency of the clutch to disengage when it was released. The employer further contended that carelessness on the part of the employee in the chuck change operation occasioned the accident with resulting damage, which reasonably could have been foreseen. It was the employer's position that the attempt to remove the chuck must have been made at high speed with no disengaging of the clutch. The usual practice in the chuck removal operation is to run the machine at low speed and then disengage the power at the time of inserting the blocks or stops which serve to loosen the chuck. It was contended that the torque necessary to produce the break could not have resulted from a low speed, even had the clutch not been disengaged at the proper moment.

The appeal tribunal examined the broken piece and could ascertain no flaw or other latent defect.

The appeal tribunal finds that the breaking of the chuck and the damaging of the lathe were due to negligence on the part of the employee in attempting the chuck removal operation without first disengaging the clutch.

Generally speaking, a single negligent act or mistake, though it may be unsatisfactory conduct, is not misconduct. This rule, however, does not properly apply where an act or omission is attributable to a reckless and wanton disregard of the employer's interest, and where the direct consequences of negligence are obvious and are such as to occasion serious loss to the employer.

The appeal tribunal finds that the employee's threat to go through the machine "with a sledge" was indicative of a wanton and reckless attitude which manifested his intention to handle, and that, in fact, he did handle, the lathe without proper regard to consequences. If the alleged defect did exist, he should have used, if anything, more care rather than less care. His experience with lathes was certainly sufficient to impress on him the necessity of making the change operation with care and to make obvious to him the direct consequences of any inattention.

The inefficiency (scrap record) of the employee is only relevant in so far as the employee's attitude, as adduced from other factors, creates an implication that such inefficiency was not due solely to

inexperience with and inadaptability to the type of precision work in question.

The appeal tribunal therefore finds that the employee's behavior in this case constitutes misconduct within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

30–Wis. A

Wisconsin Industrial Commission — No. 37–A–11
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged because of inefficiency, lack of interest in his work, and for sleeping while on duty.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked in the employer's paper mill approximately 3 years. It was his duty to unload a drying machine at intervals throughout the day and to keep an area in the vicinity of the machine in a clean and orderly condition.

For some time prior to May 1936, the employee's work had been unsatisfactory. He lost interest in his work and did not carry out his duties in the manner required by the employer. He was particularly negligent with reference to his clean-up work. On one day in May, while at work, he fell asleep three different times. On this occasion he was warned by his superiors that he would be given one month to improve his work. Thereafter, he did his work satisfactorily until approximately the first of August when he again evinced a disregard for the employer's interest by poor workmanship and by failing to attend to his clean-up duties.

On August third he was criticized for overloading a box with aluminum sticks used in the operation of the drying machine. He became angry and kicked the box, thereby causing several of the sticks to fall to the floor and become damaged.

Later in August, while working on a platform raised several feet above the floor he violated a safety rule by tipping back on the back legs of his chair.

On September second, because of inattention to his duties, two hundred yards of material valued at three dollars a yard were damaged.

On September third he again violated the same safety rule by tipping back on his platform chair, and, presumably to make his position more comfortable, he placed his legs through a strap which

he had suspended from an overhead pipe. On the same day he was discharged.

The employee was not discharged solely for inefficiency. He was discharged because of a general willful disregard of the employer's interest, and because he was unwilling to carry out instructions or obey rules established for his own safety. His record from some time prior to May 1936, to the date of his discharge discloses such disregard and unwillingness on several occasions, including the one which directly resulted in his discharge.

The appeal tribunal therefore finds that the employee was guilty of misconduct connected with his employment within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination of the deputy is reversed. Benefits are denied accordingly.

Wisconsin Industrial Commission — No. 37–A–22
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for displaying a poor attitude toward his job and for wrecking a new rubber plate on a folding machine by running lugs through it. The employer alleged that the damage to the plate was due to carelessness on the part of the employee.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: During several months prior to the employee's discharge, one of the men in the plant was making large bonuses because of his high production. The employee had complained that this man failed to clean up around the machine and left it in a dirty condition for the man on the next shift, but there was no evidence that the employee had ridiculed this man, or that the employee's attitude toward his work was improper in any other respect.

On June 30, 1936, the employee put wrong labels on a two-hour run of paper napkins. This mistake was discovered before the napkins left the machine room so that it resulted in little or no loss. The employee was not reprimanded or warned at this time.

On the night shift of November 26, 1936, the employee broke a rubber plate on a folding machine causing damage in the amount of $12.00. This was the first time the employee had broken a rubber plate. This breakage was due to the fact that the employee, in setting up the machine, had left one loose lug in the cylinder. As a result of breaking the rubber plate, the employee was called into the office the next day and discharged.

The breakage of the rubber plate was due to a momentary inadvertence, and there was nothing to indicate that it was attributable to a wanton or reckless attitude or a general disregard of the employer's interest.

The appeal tribunal therefore finds that the employee was not guilty of misconduct within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

32–Wis. A

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–26

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with her employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged because of inefficiency and unreliability.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee had been employed for approximately five and a half years as a bookkeeper in one of the employer's meat markets. It was her duty to control the cash, keep the books, and take telephone orders from customers. Prior to March 1936, her work had been entirely satisfactory, but during and after said month and until the time of her discharge in December she made bookkeeping mistakes on 10 different occasions. These mistakes resulted in slight discrepancies between amounts entered and amounts banked.

The employee's bookkeeping work was subject to numerous interruptions in the taking of telephone orders, and these interruptions contributed in part to her record of errors. Likewise 2 of the more serious errors occurred during a period when the employee was burdened by extra work. Some of the mistakes may not have been attributable to the conditions under which the employee worked. However, her carelessness was not of such a nature as to indicate a willful disregard of the employer's interests. Whenever her mistakes were called to her attention she immediately made the necessary corrections. She was doing the work to the best of her ability under the circumstances.

The appeal tribunal therefore finds that the employee was not guilty of misconduct connected with her employment within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are allowed accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–30

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged on August 19, 1936, because of defective workmanship. The employee admitted that his work was defective but denied that this constituted misconduct.

Based on the record and the testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee, an experienced harness maker, worked in the employer's harness department during the years 1934, 1935, and 1936. The work in this department was seasonal and the employee was usually laid off in the spring of the year. The employee's work in this department was highly satisfactory.

In 1936 the employer attempted to regularize his employment and in May transferred the employee to the specialty department. In this department the employee was called upon to do various kinds of work under a new foreman. The foreman found that he did not do his work well and transferred him frequently in an attempt to find work which he could do satisfactorily.

On August 10 the employee was put to work riveting leather bindings on tractor seats. This work was very similar to that which he had done in the harness department and required the use of a machine with which he was familiar.

On August 19 the foreman discovered among the seats which were being prepared for shipment one which was defective because of improper riveting. This seat was identified as one on which the employee had worked, and the defect was called to his attention by the foreman. The employee admitted that he was responsible for the defect and also admitted that there were 24 seats in all, which he had riveted improperly and had permitted to be prepared for shipment. These defective seats had been mingled with a group of 400 seats, and the defects had been concealed by further processes so that they could not be segregated without considerable expense to the employer. The employee was discharged promptly.

The employee's act in permitting seats which he knew to be defective to be finished so that the defects were concealed, and in permitting such defective seats to be prepared for shipment evinced a willful disregard of the employer's interests.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–93

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged because he was involved in several automobile accidents while using the employer's car.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: In connection with his work as automobile salesman, the employee was given the use of a company car. During the year 1936 the employee was involved in 5 automobile accidents. One of them, which occurred 7 months prior to the date of discharge, resulted in serious personal injury to the occupant of another car, but the other accidents were minor and caused only slight damage to the employer's car. The cost of the repairs to the employer's automobile was charged to the employee's drawing account.

The mere fact that an employee is involved in automobile accidents does not constitute misconduct unless it is shown that the accidents were caused by a failure to comply with the employer's instructions or by such negligence as to indicate a disregard of the employer's interests. No such showing was here made.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–114

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged because of a surly and uncooperative attitude. The employer further alleged that the employee intentionally placed a load of paper in a press feeder in such a manner that considerable loss might have resulted.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked as a "stock hustler" in the employer's printing establishment. The major part of his work consisted of trucking paper stock to the various presses. Although the employee did not obey orders cheerfully, he never refused to carry them out. He performed his work satisfactorily and there was no evidence of insubordination on his part.

On the last day the employee worked he and his helper placed a load of paper stock in a press feeder in such a position that if it were run through the press the entire stock would have been ruined. It was the employee's duty to see that the stock was placed in the proper position to be fed into the presses. The workman in charge of the automatic feeder noticed that the stock was in the wrong position and consequently no damage resulted. When the foreman was told of this, he discharged him.

There was no evidence that the improper placing of the stock was done intentionally as alleged by the employer. Although the mistake was due to carelessness, the single careless or negligent act under the circumstances did not constitute misconduct.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

36–Wis. A

Wisconsin Industrial Commission — No. 37–A–155
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of the employee's failure to do his work in accordance with instructions.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked in the employer's tannery as a machine setter for approximately 4 months. He was paid on a piece-work basis. His work was satisfactory until about 3 weeks before his discharge, when, in order to increase his earnings, he started a practice of eliminating one of the operations of his machine essential to the proper working of the leather. As a result, many of the hides that he turned out had to be reworked. He was warned on several occasions but continued the practice and was finally discharged.

The employee was not merely inefficient. He was capable of doing good work, and his failure to do so constituted a disregard of the employer's interest.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

37–Wis. A

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–169

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report alleged that the misconduct consisted of willful carelessness.

Findings of Fact: The employee worked in the employer's paper mill for several years. During the last 10 months he worked in the bleaching department. It was his duty to see that the paper pulp was properly bleached before dropping it to the paper-making machine underneath. A standard sample of pulp was given to the employee, with which he was to compare the pulp being bleached, in order to ascertain whether it had attained the proper whiteness.

On the last day of his employment the employee dropped 13 tons of pulp before it had been bleached properly. He knew that the pulp had not been sufficiently bleached when he dropped it but did so because the supply of pulp available for the paper-making machine was low. The pulp in question was mixed with other pulp and caused the employer a considerable loss. As a result of this incident the employee was discharged.

The employee's action was a disregard of explicit instructions without the existence of special circumstances in any way warranting such disregard.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

38–Wis. A

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–176

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of failure to follow instructions.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked as a "set up" man in the employer's plant. It was his duty to set the dies on the various machines and give orders to the operators to run the jobs after the machines were properly set up. The employee was instructed to use a pattern when setting up a machine and, if no pattern was available, to get the department supervisor's approval before letting an operator run a job.

The employee "set up" a machine without using a pattern and without consulting his superior but relied instead upon a chart which contained no specifications and was never intended to be used for this purpose. The machine was put in operation, and a large amount of defective work was turned out. As a result of this incident, the employee was discharged.

The employee's action was a disregard of explicit instructions calculated to avoid mistakes likely to result in serious loss to the employer. There were no special circumstances in any way warranting such disregard.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are denied accordingly.

39–Wis. A

Wisconsin Industrial Commission — No. 37–A–186
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of carelessness.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked as an inspector in the employer's machine shop. His duties were to inspect engine parts as they were turned out by the machine operators, to call the operator's attention to parts improperly machined, and to see that the machines were adjusted so that the defects would be eliminated.

On several occasions the employee had inspected and approved defective operations. On each of these occasions he was cautioned that such oversights could not continue. About 3 weeks before the employee was discharged, he failed to check an operation properly and

over one hundred crank cases were defectively machined. He was warned at this time that he would be discharged if it happened again. On his last day of work the employee approved another defective operation which resulted in the scrapping of more than twenty cylinder heads. When this was discovered, he was discharged.

The employee had had considerable experience as an inspector and was capable of doing the work properly. His unsatisfactory conduct was not attributable to inefficiency, but was due to carelessness.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are denied accordingly.

Affirmed, Wisconsin Industrial Commission, No. 37–C–37.

40–Wis. A

Wisconsin Industrial Commission — No. 37–A–193
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report alleged that the misconduct consisted of performing work improperly and claiming wages for work not done.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked in the leather-staking department of the employer's tannery for 17 years. His work consisted of putting hides through a staking machine, a process by which the hides were softened by the application of machine-operated knives. This work was on a piece-rate basis.

Until the day of his discharge no complaint had ever been made to the employee about the quality of his work. On the last night of his employment he was timed on a particular load of hides. This load was inspected the following morning and was found to have been improperly staked. The employee was discharged when he reported for work later that day.

While the employee's conduct may have been unsatisfactory on this one occasion, a single instance of unsatisfactory conduct cannot be considered misconduct in the absence of facts and circumstances evincing a disregard of the employer's interests. No such facts or circumstances are found in this case.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–222

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with the employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of the employee's failure to take proper care of a truck he was driving.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked as a truck driver for more than 3 years. One of his duties was to check his truck and see that it was properly lubricated. He had been cautioned a number of times in this regard.

About 2 months before his discharge the truck broke down because the universal joint had not been greased. On the last day the employee worked, the differential of the truck ran dry and the gears were ruined due to lack of grease. It had not been greased for 4 months. When the cause of the breakdown was discovered, the employee was discharged.

The employee had had considerable experience with trucks and knew how to take care of them. The employer had provided facilities for greasing trucks, and the employee knew it was his duty to see that his truck was greased regularly.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

Affirmed, Wisconsin Industrial Commission, No. 37–C–50.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–249

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with her employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged because she: (1) failed to maintain the employer's standards of efficiency; (2) was the cause of numerous complaints from customers; (3) made a deliberate false statement to her superior.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked as a clerk in the employer's store for more than one year. Her work was satisfactory until the last 2 months of her employment, at which time complaints started coming in from customers at the rate of 2 and 3 per week. During this period more than one-half of the complaints received from customers concerned the employee. Each of the complaints was discussed with the employee personally, and she was cautioned that the conduct complained of could not be tolerated. The employee failed to improve in spite of the warnings. The employee could have removed the cause of the complaints by paying a reasonable amount of attention to her duties and following the instructions of the employer.

The employee was discharged when, in order to cover her failure to have a certain item displayed, she told her superior that it was not in stock. The article was in stock, and the employee knew or should have known that the item was in stock.

The appeal tribunal therefore finds that the employee was discharged for misconduct, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination of the deputy is reversed. Benefits are denied accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–270

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of intentionally trying to damage the machinery of the employer.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked as a "slab-puller" on a horizontal resaw in the employer's sawmill. It was his duty to guide the lumber on a moving chain as it came out of the resaw.

There is no stopping device on the resaw, and it continued to run for several minutes after quitting time. The machine was stopped each noon and night by inserting lumber into the resaw. This necessitated the employee's working about 5 minutes overtime twice a day.

The employee objected to working this amount of overtime without pay, and on the last day he worked he inserted a piece of lumber between the feed rolls and the lumber planking so that any lumber

coming through the machine would be stopped. This might have resulted in considerable damage to the machine if it had not been discovered by the machine operator. When the employer learned of this, the employee was discharged.

The employee's conduct, under the circumstances, indicates a willful disregard of the employer's interests.

The appeal tribunal therefore finds that the employee was discharged for misconduct, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are denied accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–3

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for inefficiency and for failure to live up to representations he made to the employer. The employer alleged that the employee misrepresented his abilities at the time of hiring and such misrepresentation constituted misconduct connected with his employment. The employee took issue with the facts as alleged by the employer and further denied that such facts constituted misconduct.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for this employer for 7 weeks as a pressman, operating several types of presses. At the time of hiring, the employee represented himself as a pressman with more than 15 years of experience on various types of presses including those he was hired to operate.

The employee was told several times that his production was so low that the jobs he worked on were unprofitable. He explained that the low production was due to the fact that the press was out of adjustment. A factory expert was secured and the press was adjusted properly, and its operation explained to the employee. After the press had been adjusted, the employee's production continued to be unsatisfactory, his production rate being less than one-half of the average rate for the kind of work he was doing.

In addition to his low rate of production on the presses, the employee took an hour to set up, or "make ready," as it is known in the printing trade, a job which other men set up in 15 minutes.

The quality of the work done by the employee was satisfactory. There was no complaint as to his attitude toward the work, and he

was trying to increase his efficiency. The employee's rate of production was unsatisfactory, but there was no element of willfulness involved.

The employee made no specific representation as to his speed of production other than might be inferred from his statement that he was an experienced pressman. If there was misrepresentation, it could have been discovered during the probationary period; since he was retained beyond that, the employer was not misled.

The appeal tribunal therefore finds that neither the representation made by the employee at the time of hiring, nor his failure to meet the standards of production set by the employer constitutes misconduct within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–32

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with the employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged the employee was discharged on October 10, 1936, because of cash shortages in the gasoline station where he was employed. The employee denied that he was responsible for the cash shortages.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was employed as a filling-station attendant in October 1935. From that date until July 1936, he was employed during the day. During this period all moneys he handled were immediately turned over to the manager of the station. From July until October 10, 1936, he was employed at night. During this time it was his duty to sell gasoline and oil, and he was required to accept cash, make change, and keep a proper record of his receipts. He accounted with the manager of the station every morning and turned over the evening's receipts to him.

On October 3, 1936, the employer discovered that the meter of a gasoline pump had been tampered with and that it did not register the actual number of gallons of gasoline sold. He also discovered that receipts for miscellaneous repairs and services had not always been reported, or had been reported at less than the amount actually received.

During the year 1935 the gasoline unaccounted for at this station was greatly in excess of the normal amount lost through evaporation. The employer attributed this abnormal shrinkage to the sale of gasoline which was not recorded. During that year the employee worked

for the employer for slightly more than two and one-half months. In 1936, the year in which the employee's longest period of employment occurred, the shrinkage was less than normal.

In addition to this employee, 4 others were employed at this station. The employer could not determine who was responsible for the cash shortages and discharged all the employees on October 10. Although part of the cash shortage probably occurred during the period of this employee's employment, there is no evidence to indicate that he was responsible therefor.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with the employment within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

Wisconsin Industrial Commission No. 37–A–116
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee failed to account for cash received on a delivery order.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked as a clerk in the employer's grocery store. He was required to deposit in the cash register all moneys received from sales in the store. He was required to turn over to the manager all moneys from deliveries of orders. However, if the manager was busy when the employee returned from a delivery, he was authorized to deposit the money in the cash register directly.

Several days prior to his discharge the employee delivered an order and collected $1.25. When he returned, the manager was busy. Later that day the manager checked the cash register tape and, finding no entry of $1.25, questioned the employee. The employee explained that he had deposited the money in the cash register upon his return to the store but had punched the wrong keys and registered 75¢ instead of $1.25. He explained that he had corrected this mistake by "ringing up" an additional 50¢, and that these two entries on the cash register tape represented the receipts from the delivery order. The manager was not satisfied with this explanation and discharged the employee at the end of the week.

The manager could not ascertain, at the close of the day, whether there actually was a cash shortage of $1.25. In the absence of such evidence, and in view of the employee's explanation of the cash reg-

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ister entries, the employer has failed to substantiate his claim that the employee did not account for the money received from the delivery order.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

47–Wis. A

Wisconsin Industrial Commission — No. 37–A–168
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report alleged that the misconduct consisted of misappropriation and concealment of merchandise.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked in the employer's warehouse for about eight months. Among the items stored there were cigarettes, candy, and chewing gum.

During the last three months of the employee's employment, shortages were noted in the cigarette inventory. A carton of cigarettes belonging to the employer was discovered among the rafters of the warehouse, and the employee admitted that he had hidden it there. There was also evidence that he had misappropriated other merchandise of the employer. As a result of this conduct the employee was discharged.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are denied accordingly.

48–Wis. A

Wisconsin Industrial Commission — No. 37–A–174
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report alleged that the misconduct consisted of the employee's including in his piece-work count pieces which he had produced while on an hourly rate.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer as drill-press operator for about 8 months. This work was on a piece-rate basis. However, when it was necessary for the employee to repair his machine or tools, he was paid on an hourly rate basis for the time thus spent.

On various occasions the employee had operated his machine while he was "clocked in" for repairs and thus received double pay. He had been warned several times to discontinue this practice.

On the day prior to his discharge the employee "clocked in" on the hourly rate basis to make a minor repair to his machine. He remained "clocked in" on that basis for considerably longer than necessary to make the repair, and during part of the time was engaged in operating his machine. The next day the foreman called the matter to his attention. The employee told the foreman that he did not know what he was talking about. He was discharged immediately.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are denied accordingly.

49–Wis. A

Wisconsin Industrial Commission — No. 37–A–197
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report alleged that the misconduct consisted of misappropriating property of the employer.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked as painter in the employer's apartment hotel for about 7 months. During the last 2 months of his employment he converted several gallons of paint and other material of the employer to his own use. The employee was discharged when this matter was brought to the attention of the hotel manager.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–223

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged because he was convicted of larceny and sentenced to jail.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked in the salvage department of the employer's plant, handling and sorting automobile tires and tubes, storage batteries, headlights, and other automobile parts.

On the last day the employee worked he was arrested while on the job and was taken to jail. He was tried and convicted of stealing radiator shells from a plant adjoining that of the employer. The theft had occurred during the time the employee was working for the employer. The employee was discharged.

Under the terms of his sentence it was possible for the employee to work during the day and spend the night in jail. In accordance with this arrangement, the employee reported for work the following day. He was notified of his discharge at the time.

Working arrangements in the salvage department were such as to present numerous opportunities for a person so inclined to steal articles of considerable value. The employer had suffered loss through thievery in the department from time to time and only recently had lost a quantity of goods valued at $250. In view of the nature of the work and past experience, the employer considered honesty one of the primary qualifications for the job.

The theft for which the employee was convicted, while not from his employer, did, under the circumstances of this case, so directly affect the suitability of the employee for the work in question as to connect his misconduct with his employment.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are denied accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–231

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his em-

ployment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report alleged that the misconduct consisted of leaving the plant before the regular quitting time and having a co-employee punch his time card at the end of the work day.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer about 2 months. One day he left the plant an hour before the end of his shift. He did not punch his time card upon leaving but had a co-employee punch it at the end of the shift. The employer took this matter up with the shop committee at its regular meeting 2 weeks later. This committee made an investigation and approved the discharge. The employer then discharged the employee.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

52–Wis. A

Wisconsin Industrial Commission — No. 37–A–255
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with her employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of the employee's misappropriation of articles belonging to a guest.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked as a cleaner in the employer's hotel. Three rings disappeared from the rooms of one of the guests. The employee was the only member of the hotel staff who had access to the personal belongings of the guest during the period in which the rings disappeared. She had previously admired the rings and offered to purchase them from the guest, but the latter refused to sell them, explaining that one ring in particular had a unique value to her because it was an heirloom.

When the loss was reported, the employer called the employee into the office and questioned her, and an investigation was made by a detective of the police force. The employee was told that in view of the circumstances it would be necessary to place her under arrest unless the rings were returned by the following morning. The employee was the only person apprised of the contemplated action.

The following morning the one ring (the heirloom) that the guest was particularly interested in was found wrapped in a lady's handkerchief before the door of the manager's office. The employee was discharged.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with her employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are denied accordingly.

53–Wis. A

Wisconsin Industrial Commission — No. 37–A–267
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of punching the time card of another employee, who had quit early, under such circumstances as to cause the employer to pay the other employee for time not actually worked.

Based on the record and testimony in this case, the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer about 2 months. Some time before his discharge the employee punched, at the end of the work day, the time card of a fellow workman who had left the plant an hour before the end of his shift. The employer took this matter up with the shop committee at its regular meeting two weeks later. The committee made an investigation and approved the discharge. (See Wisconsin Appeal Tribunal Decision 37–A–231.)[1]

The employee contended that the offense was condoned by the superintendent, but there was no showing that the superintendent had the authority to do so.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

54–Wis. A

Wisconsin Industrial Commission — No. 37–A–113
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employ-

[1] See 51–Wis. A.

ment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged because he made a practice of publicly denouncing the employer and the employer's product in front of customers in a public place.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked as a brewery worker for this employer for about 3 years. The employer relied upon one incident to support his allegation of misconduct. On the occasion in question the employee was in a tavern drinking beer with 3 fellow workers. One of the employer's truck drivers came in the tavern, asked the employee what kind of beer he was drinking, and accused the employee of drinking a competitor's product. The employee told the truck driver that the kind of beer the employee was drinking was none of the truck driver's business. The employee said nothing of a derogatory nature concerning the employer or the employer's product and was, in fact, drinking beer made by the employer. Any remarks made by the employee were of a personal nature and were prompted by the impertinence of the truck driver.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

55–Wis. A

Wisconsin Industrial Commission — No. 37–A–175
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee left her employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee quit. At the hearing the employer withdrew this allegation and alleged that the employee was discharged because of an uncooperative attitude and because she criticized her superior.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked part time as a saleslady in the employer's department store. When the employer failed to call her to work, the employee went to see the manager and was told that she had been discharged because of her criticism of a change in personnel that had been made in her department.

The employee had told another employee that she did not think that the new manager of the department would be as good as the

one that had been discharged. However, she had continued to do her work to the best of her ability and had given the new manager full cooperation.

The appeal tribunal therefore finds that the employee was discharged, but not for misconduct connected with her employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is amended in accordance with the foregoing findings and as amended is affirmed. Benefits are allowed accordingly.

56–Wis. A

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–202

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with her employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report alleged that the misconduct consisted of an unauthorized act injurious to the reputation of the employer.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for 6 months as attendant in the employer's sanitarium for mental patients. In the performance of her duties she had no authority to exercise any independent judgment regarding the care or treatment of patients.

A patient, who had been legally declared insane, complained to the employee that letters from her mother were being withheld from her. Actually no mail was being withheld from the patient. Without consulting anyone in authority, the employee induced a third person to write to the mother of the patient requesting the mother to write to the patient in care of said third person and stating that she (the third person) would have the letters delivered without the knowledge of the sanitarium officials. The mother of the patient brought this letter to the attention of the director of the sanitarium who discharged the employee.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with her employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are denied accordingly.

Affirmed, Wisconsin Industrial Commission, No. 37–C–41.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–236

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report alleged that the employee was discharged for drunkenness and disorderly conduct.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer, a trucking company, as truck driver. During the last 3 months of his employment he was employed exclusively outside the State.

On the day of his discharge, a Sunday, the employee visited the city in which the employer's main office is located. In the afternoon he went to the employer's place of business, about which several employees were loitering. He remarked to them that he had not been receiving his pay checks on time. Some of the other employees stated that they also often received their checks late. The gathering grew larger and the employee induced the others to join with him in concerted action against the employer. They intimidated an employee who was working to stop further work and prevented several drivers from proceeding on scheduled trips. The employer was called to the garage. He investigated the reason for the disturbance and found that no one but the employee had any complaints. He then discharged the employee.

The employee did receive his pay checks late on several occasions. He was, however, able to make advance cash drawings, and had done so on numerous occasions. He had never previously indicated to the employer that he was dissatisfied with the time or method of payment. Under the circumstances the employee acted arbitrarily and unnecessarily in fomenting a misunderstanding between the employees and the employer and in interfering with the work of employees.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–95

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employ-

ment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for appearing at work under the influence of liquor. The employee denied that he had ever appeared at work under the influence of liquor and alleged that the reason for his being laid off was that the employer did not have work for him to do.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: On two occasions within a month prior to the date of discharge, the employee had appeared at work in an intoxicated condition and had been sent home. He had been warned that, if this recurred, he would be discharged. On the last day of his employment he again appeared at work under the influence of liquor. Another employee reported his condition to the foreman and expressed the opinion that it was dangerous to allow the employee to work around the machinery in that condition. The foreman made personal observations and found that the employee was under the influence of liquor and discharged him.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are denied accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–110

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the employee was intoxicated while at work.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was employed as a night watchman for about 6 weeks. He was warned at the time he was assigned to that job that no drinking would be tolerated.

The foreman's suspicions were aroused when the employee unnecessarily called him to the plant one night because of a trivial accident. He noticed an odor of liquor on the employee's breath at that time. He made an investigation of the employee's conduct and discovered that on two occasions the employee had brought intoxicating liquor to the plant when he reported for work. He also discovered that on another occasion the employee had had several glasses of wine

shortly before he reported for work and staggered when he came on the job. He discharged the employee immediately.

In view of the nature of the duties of a night watchman, the employer's instructions that he would tolerate no drinking and his strict enforcement of such instructions were reasonable.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are denied accordingly.

60–Wis. A

Wisconsin Industrial Commission — No. 37–A–261
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the employee became intoxicated during working hours.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer as a truck driver. On the day of last employment he went to lunch with one of the employer's customers at about 1:10 p. m. During his lunch hour the employee drank one glass of whiskey and 5 or 6 glasses of beer. He continued his work at about 2:15 p. m. and returned to the employer's store at about 5:30 p. m. The employee admitted that he still felt the effects of the liquor he had drunk when he returned to the store at 5:30 p. m. He was discharged immediately.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are denied accordingly.

61–Wis. A

Wisconsin Industrial Commission — No. 36–A–1
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged because of continually complaining that his work was not suitable and because of inefficiency. The employee denied the allegations of the employer.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was employed on January 30, 1936, as a slitter in the employer's copper-rolling mill. He worked in this and other capacities in the rolling mill until March 23, 1936, and during this time he did his work properly and willingly, although he was somewhat handicapped by an old injury to his right wrist, of which the employer was cognizant at the time of hiring.

On March 23, 1936, he was laid off for 2 or 3 days because of slack work in the rolling mill, and then was employed in the rod mill. He worked in the rod mill for approximately one month. While in this department he developed a cyst on the back of his right hand which made it difficult for him to continue his work. He was treated at the company first-aid station, and then on April 27, 1936, he was transferred to a third department where it was his duty to inspect rods. While in this department, he began to suffer from hemorrhoids, but this condition did not impair his work.

Early in July he began to suffer from eyestrain and his work was affected thereby. He immediately secured glasses, but even with them he was unable properly to carry on his work of inspecting rods. He reported his poor eyesight to his foreman and asked for a change of work. He was willing to work and physically able to do other work. On August 17, 1936, he was discharged.

The employee was not discharged for complaining or insubordination or any other willful or negligent act or omission, but lost his employment because of inefficiency due to the fact that his eyesight was imperfect for the type of work at which he was last engaged.

The appeal tribunal therefore finds that the employee was not guilty of misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are allowed accordingly.

62–Wis. A

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–28

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with her employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for defective work due to carelessness.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee operated a shoe-stitching machine for the employer from July 23, 1933, through August 19, 1936. Her work had been satisfactory until 6 weeks before she lost her employment. During the last 6 weeks of her work she turned out several defective shoes on 3 different occasions. On each occasion she was working on a rush order and the leather had not been sufficiently impressed with a discernible line for her to follow in putting in the stitches. On several occasions throughout the period of her employment the employee had called her foreman's attention to this lack of an impression on the leather, and each time she had been told to put in the stitches to the best of her ability when the shoes were a part of a rush order. On the last occasion when the employee turned out defective shoes she was discharged.

There was no evidence that the employee's defective workmanship was due to any willful disregard of her employer's interests.

The appeal tribunal therefore finds that the employee was not guilty of misconduct connected with her employment within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination is affirmed. Benefits are allowed accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No 37–A–87

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee neglected his duties because of intoxication.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was employed as laborer on the night shift. On Sunday evenings, however, he was required to perform watchman duties and to take care of the heating plant.

On the day preceding his discharge, a Sunday, the employee reported for work at 11 o'clock in the evening. The night was unusually cold and the regular fireman came to the shop especially to put the heating plant in order for the evening. Before he left he instructed the employee to maintain the steam pressure at a certain level and to turn on the steam at 6 o'clock in the morning. Because of the cold the employee turned on the steam at 5 o'clock.

When the foreman arrived at the shop shortly after 6 o'clock, the plant was cold. An investigation revealed that the steam pipes were frozen. The employee was discharged later in the day.

The employee was not a fireman and knew little about the operation of the heating plant. The employer knew that his knowledge in this respect was very limited. The employee took care of the heating plant to the best of his ability but was unable to cope with the unusual situation presented by the cold weather.

There was no evidence that the employee was intoxicated on that night.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

64–Wis. A

Wisconsin Industrial Commission — No. 37–A–105
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for incompetence.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employer is a common motor carrier of passengers. The employee worked for this employer for about a year and a half as a bus driver. During this period the employee had a number of minor accidents. The large majority of these occurrences were of a trivial nature in which no damage resulted to the employer.

Each accident was discussed with the employee shortly after it had occurred, and the employee was further instructed in the operation of the busses, with a view to avoiding similar accidents in the future. However, the employee's accident record was unsatisfactory to the employer, especially in that it failed to show improvement. The employee was cautioned on numerous occasions and was discharged following the last accident.

The employee was driving the busses to the best of his ability, and there was no evidence that the accidents were due to a reckless attitude or an intentional disregard of the employer's interests.

The mere fact that an employee does not perform his work as efficiently as other employees does not constitute misconduct, unless such inefficiency or incompetence is due to a willful or intentional disregard of the employer's interests. The failure of an employee to improve his efficiency to the degree expected by the employer does not of itself constitute misconduct.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

65–Wis. A

Wisconsin Industrial Commission — No. 37–A–134
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged because he was habitually slow and careless in his work and failed to improve after repeated warnings.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was a mill worker in the employer's wood-working establishment. The quality of his work was satisfactory, but the employer was dissatisfied with the employee's rate of production. The employee was told on a number of occasions that he would have to speed up, but he failed to do so.

There was no evidence introduced tending to show that the employee's failure to perform his duties at a rate satisfactory to the employer was due to anything but inefficiency.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are allowed accordingly.

66–Wis. A

Wisconsin Industrial Commission — No. 37–A–238
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of the employee's failure to

maintain and increase the volume of his sales. At the time of the hearing the employer further alleged that the employee was ineligible for benefits on the ground that he had refused suitable employment when offered to him.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked as a salesman selling and delivering the employer's bakery products to retailers. The employer was dissatisfied because the employee failed to increase his volume of sales and discharged him for that reason. There was no evidence, however, that the employee's failure to increase his sales was due to causes within his control. While the employee may have been inefficient, inefficiency does not constitute misconduct.

At the hearing the employer further alleged that the employee was ineligible for benefits on the ground that he had refused suitable employment when offered to him. However, the employee was not in fact offered a job. The purported offer was merely a suggestion by a third party that the employee ask the employer for work.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

The appeal tribunal further finds that the employee was not offered suitable employment, within the meaning of section 108.04 (6) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are allowed accordingly.

67–Wis. A

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–245

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with her employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of not following the employer's orders and refusing to do work assigned to her.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer for approximately 8 months, the last 4 or 5 weeks of which she was engaged in operating a facing machine. The process consisted of placing castings on the machine and pressing a foot lever which caused indentations to be made on the metal. The castings were of a very light and delicate construction and were easily damaged.

The employee's work on this machine was unsatisfactory because of her high percentage of damaged castings. The average worker's

percent of damage was about 10 percent while the employee's reached as high as 50 percent on certain days. However, the employee's poor record was not due to any disregard of the employer's interests but was due to inefficiency.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with her employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is overruled. Benefits are allowed accordingly.

68–Wis. R

Wisconsin Industrial Commission
Decision of the Commission
1937

No. 37–C–14

The employer denied unemployment benefits, claiming that the employee voluntarily left his employment without good cause attributable to the employer. The commission deputy's initial determination overruled the employer's denial and found that the employee was discharged, but not for misconduct connected with his employment. The employer appealed.

Prior to the issuance of any decision herein by the appeal tribunal, the commission transferred the proceedings to itself, pursuant to section 108.09 (6) of the statutes.

On the basis of the record and testimony in this case the commission makes the following

Findings of Fact: The employee worked for the employer as a cab driver for three and a half months. Six weeks after he started working, his superior called him in and warned him about his low income per mile. Three weeks later the employee was again called in and told he would have to increase his income per mile.

On the last day of his employment the employee was called in for a third time by his superior. On this occasion he was told that he was not making any money for himself or for the employer, that he would never make a cab driver, and that he might as well get into some other kind of work. The employee understood this to mean that he was discharged, and his superior made no effort to place a different interpretation upon his remarks.

There was no evidence to indicate that the employee's low income per mile was due to any lack of diligence or effort on his part. He was merely inefficient in the performance of his duties.

The commission therefore finds that the employee was discharged, but not for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–82

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for insubordination and for refusing to perform work assigned to him.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employer is engaged in the harbor construction, repair, and maintenance business. The employee worked for the employer as a laborer over a period of 4 years.

On the day of his discharge the employee was engaged in moving heavy timbers from a dock to a scow. The deck of the scow was below the level of the dock, and the employee was instructed by his foreman to skid the timbers down a plank. He was about to place rollers under a timber so that it could be moved more easily. The foreman told him that it would not be feasible to use rollers, and that it would be dangerous to attempt to move the timber in that manner. The employee then proceeded to skid the timber down the plank in accordance with his instructions. When the end of the timber touched the scow, the foreman suggested that he could then try to use rollers. It was obviously impossible to use rollers at this point because the timber was not parallel to the deck of the scow, and the foreman's suggestion was merely for the purpose of ridiculing the employee. The employee replied with a rude and obscene remark and was discharged immediately.

There was no evidence that the employee refused to do his work in accordance with the instructions. He was discharged solely because of the manner in which he replied to the foreman. Although the employee's reply was extremely discourteous, the want of courtesy, in view of the provocation by the foreman and in view of the rather strong language customarily used in this type of employment, does not amount to misconduct.[2]

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

Reversed, Wisconsin Industrial Commission, No. 37–C–22.[3]

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[2] See 72–Wis. R (37–C–40).
[3] See 70–Wis. R.

Wisconsin Industrial Commission
Decision of the Commission
1937

No. 37–C–22

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed. The appeal tribunal found that the employee was not discharged for misconduct connected with his employment and affirmed the deputy's initial determination (Wisconsin Appeal Tribunal Decision No. 37–A–82).[4] The employer petitioned for commission review. The commission set aside the appeal tribunal's decision and directed that additional testimony be taken.

Based on the record and testimony herein the commission makes the following

Findings of Fact: The employer is engaged in the harbor construction, repair, and maintenance business. The employee worked for the employer as laborer over a period of 4 years.

On the day of his discharge the employee was engaged in moving heavy timbers from a dock to a scow. The deck of the scow was eight or ten feet below the dock, and the employee was instructed by his foreman to skid the timbers down a plank. The employee skidded the timber down the plank until one end touched the deck of the scow. At this point he was about to place a roller under the end of the timber so that it could be moved more easily. The foreman ordered him not to use a roller at this point and explained to him that it would not be feasible to do so since the timber was not parallel to the deck of the scow. The employee continued to skid the timber until it was almost level with the deck of the scow. The foreman then instructed him to use a roller. The use of a roller was feasible at this point and the order was not given to ridicule the employee. The employee replied with a rude and obscene remark and was discharged immediately.

The commission therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.[4]

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

Wisconsin Industrial Commission
Decision of the Commission
1937

No. 37–C–24

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employ-

[4] See 69–Wis. A (37–A–82); 72–Wis. R (37–C–40).

ment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of calling his foreman a rude and vulgar name. The employee admitted having made a vulgar remark but denied that it was directed at the foreman.

Subsequent to the hearing and before formal decision had been rendered by the appeal tribunal, the commission on its own motion transferred the proceedings to itself, pursuant to section 108.09 (6) of the statutes.

Based on the record and testimony in this case the commission makes the following

Findings of Fact: The employee worked as a laborer in the employer's sawmill and box factory. On the day of his discharge he was ordered by his foreman to get a load of wooden slabs for the fire, a task which he had frequently been called upon to do. He was gone longer than the foreman thought necessary, so the foreman went to the slab pile and asked him the reason for the delay. The employee replied with a rude and vulgar remark. The foreman then confronted the employee and asked if the remark had been directed at him. The employee refused to answer and was discharged immediately.

The commission therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.[5]

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

72–Wis. R

Wisconsin Industrial Commission — No. 37–C–40
Decision of the Commission
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report alleged that the misconduct consisted of insubordination.

The appeal tribunal reversed the deputy's initial determination. Subsequent to the hearing and before formal decision had been rendered by the appeal tribunal, the commission on its own motion transferred the proceedings to itself, pursuant to section 108.09 (6) of the statutes.

Based on the record and testimony in this case the commission makes the following

Findings of Fact: The employee, 74 years of age, had worked for the employer as night foreman for 27 years. About 4 weeks before

[5] See 72–Wis. R (37–C–40).

his discharge the employer installed a new machine in the plant. The employee's crew worked with this machine, and he was instructed to see that it was washed at the end of the night shift.

The employee failed to wash the machine as instructed and this failure was called to his attention on various occasions. On the day before his discharge he was again told by the foundry superintendent to wash the machine when his shift was completed. The employee replied with a rude remark. He was discharged when he reported for work the following day.

The employee was not discharged for his failure to wash the machine, but was discharged solely because of his remark. While the remark was of a rude and vulgar nature, its use, under the circumstances, did not constitute misconduct.

The commission therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.[6]

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–213

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of the employee's leaving his place of work and soliciting union memberships during working hours.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was paid on an hourly basis. He frequently left his work to talk with fellow workers in other parts of the shop for the purpose of soliciting memberships in a labor union. The employer objected to this practice during working hours because it wasted both the employee's time and that of the other workmen, and the employee had been requested to remain at his work.

On the last day the employee worked, the day foreman, under whose supervision the employee's work was checked, told the employee that he was leaving his press too frequently and cautioned him against such practice. The employee became impudent and told the foreman that if he fired the employee he would have to rehire him. The foreman recommended the discharge of the employee, which took place the following day.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

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[6] See 69–Wis. A (37–A–82); 70–Wis. R (37–C–22); 71–Wis. R (37–C–24).

Decision: The initial determination of the deputy is affirmed. Benefits are denied accordingly.

Affirmed, Wisconsin Industrial Commission, No. 37–C–44.

74–Wis. A

Wisconsin Industrial Commission — No. 37–A–49
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for unsatisfactory work, failure to cooperate, and causing dissension.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was a steward under a union agreement with the employer. In such capacity he was authorized to take up grievances with the foreman and, in case no satisfactory adjustment could be reached, to present such grievances to the shop committee. He had no authority to threaten a strike under any circumstances.

The employee, in presenting a grievance to his foreman, exceeded his authority as steward by presenting it in the form of an ultimatum. Because of this act the employee was discharged. The discharge was approved by the shop committee.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination is affirmed. Benefits are denied accordingly.

Affirmed, Wisconsin Industrial Commission, No. 37–C–5.

75–Wis. A

Wisconsin Industrial Commission — No. 37–C–59
Decision of the Commission
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of insubordination, interfering with production, and instigating and participating in an unauthorized strike in violation of an agreement with the employer and of the constitution of the union.

The commission on its own motion transferred the proceedings to itself, pursuant to section 108.09 (6) of the statutes.

Findings of Fact: The employee had been satisfactory until the last 2 or 3 months he worked. During the latter part of his employment he became very unsatisfactory. On several occasions he left the plant and went home without permission or without an explanation. He frequently left his place of work and interfered with the work of other men despite the fact that he had been told to discontinue this practice.

On several occasions the employee became impudent to his foreman and refused to grind certain castings. They were a part of the normal run of work and his refusal was unjustified.

He also interfered with the making of time studies of various jobs by shouting to the workers and asking them to slow down while the study was being made so as to get a more liberal piece rate. This was a matter entirely outside the province of the employee, and his actions seriously impaired the discipline and morale of the plant.

The employer, though not operating a "closed shop," had a working agreement with the union, of which the employee was a member and an officer. The employee was the shop steward of the union, and it was his duty to take up the grievances and disputes between the employer and the union members in accordance with the procedure established by the agreement.

When an agreement is entered into between an employer and a union, each of the members of that union becomes a party to the agreement and is bound by its terms. One of the most valuable considerations of the agreement to an employer is the pledge by the union that all differences or disputes will be handled through agreed procedural channels, and strikes will not be called until this established procedure had proved insufficient.

The employee instigated and participated in a strike at the employer's plant without going through the prescribed procedure. The strike was not authorized by the local union—in fact, the union members refused to sanction it and expelled the employee from the union, because his conduct constituted a violation of the union constitution.[7] The employee as an officer knew the rules and procedure, and it was his duty to see that they were obeyed. Despite that fact he went ahead with the strike in violation of the union's agreement with the employer.

His action with reference to the strike was a substantial breach of an agreement to which he was a party, and his conduct on the job evinced such a disregard of the employer's interests as to constitute misconduct connected with his employment.

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[7] The first paragraph of section 28 of the Constitution and General Laws of the International Brotherhood of Foundry Employees provides: "In event of a disagreement between a Local Union and an employer, which, in the opinion of the Local Union, may result in a strike, such Union shall notify the Secretary of the International Brotherhood of Foundry Employees, who shall investigate or cause an investigation to be made of the disagreement and endeavor to adjust the difficulty. If his efforts should prove futile, he shall take such steps as he shall deem necessary in notifying the Executive Board, and if the majority of said Board shall decide that a strike is necessary, such Local Union shall be authorized to call a strike, but under no circumstances shall a strike or lockout be deemed legal, or money expended on that account, unless the strike or lockout shall have been authorized and approved by the President and the General Executive Board."

The commission therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are denied accordingly.

76–Wis. A

Wisconsin Industrial Commission — No. 37–A–66
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for insubordination.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer for about 2 years as a common laborer. On the day of the employee's discharge his foreman ordered him to make a delivery with a truck. The order was given in such a manner that it caused the employee to become angry. He refused to make the delivery and went to do some other work. The insubordination was reported to the manager, who discharged the employee.

The foreman had the authority to give the employee orders. The task the employee refused to do was a part of his regular duties. There is no evidence that either the order or the manner in which it was given was designed to humiliate the employee. Even though the foreman may have given the order in an ill-considered manner, the employee was not justified in refusing to do the work.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are denied accordingly.

Affirmed, Wisconsin Industrial Commission, No. 37–C–11.

77–Wis. A

Wisconsin Industrial Commission — No. 37–A–72
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged because he refused to do the work assigned to him. The employee alleges that he made a reasonable request to be relieved temporarily from the work he was doing.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was hired as a common laborer. The last 2 weeks he worked tunneling a sewer under a street. This work was performed in a tunnel 42 inches high in which there was a foot and a half of water. The work was extremely disagreeable due to the cold weather, the cramped quarters, and the presence of the water which made it impossible to work without getting drenched.

On the day of his discharge the employee worked in the tunnel in the morning. At noon he changed into dry clothes and asked the foreman to send another man in the tunnel that afternoon because he was catching cold and did not want to get soaked again. The foreman told him that he could either work in the tunnel or go home. The employee refused to work in the tunnel and was discharged for insubordination.

The employee was willing to work and would have worked in the tunnel the next day. His request that he be relieved from working in the tunnel on that afternoon was reasonable in view of the working conditions and the state of the employee's health.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

Wisconsin Industrial Commission — No. 37–A–74
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for refusing to work overtime.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was hired to unload carloads of material for which he was paid by the ton. On the last day the employee worked, he and his partner had finished unloading a carload of spool copper wire about 4:30 p. m. when the foreman told them that they would have to continue working and unload a carload of

steel. The foreman explained that the car had to be unloaded that night because the employer was paying demurrage on it. The employee refused to unload the car and was discharged the next morning.

In his efforts to escape the payment of demurrage, the employer's request that the employee continue until the work was finished was reasonable, in view of the fact that the employee was working on a "job" basis rather than on a fixed schedule of regular hours. This was the first time the employee had been requested to work substantially beyond the normal working hours.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are denied accordingly.

79–Wis. A

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–76

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for his failure to cooperate with his superior and for his refusal to continue a telephone conversation with his superior regarding a mistake the employee had made.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was the foreman of a county highway grading crew. He was required to make a monthly report of the hours and the applicable hourly wage of each of the men on his crew. Five months prior to his discharge the employee had incorrectly reported the hourly wage of one of the men of his crew, and the mistake had been called to his attention at that time. The mistake recurred in the employee's reports for the 2 months immediately preceding his discharge but was not discovered until the day of the employee's discharge.

The employee resided about 8 miles from the office and residence of his superior, the county highway commissioner, and it was customary for the commissioner to telephone the employee after working hours to discuss matters relative to the work of the crew. On the day on which the recurrence of the mistake was discovered, the commissioner telephoned the employee about 8:30 o'clock in the evening and started to reprimand him for repeating the mistake. The employee refused to discuss the matter over the telephone and suggested that the commissioner come out to the job the next day if he wished to discuss it. The commissioner discharged him immediately.

The employee was not discharged for the mistake on his reports but was discharged for his refusal to discuss the matter with the commissioner over the telephone. Although it amounted to discourtesy and bordered on insubordination, the employee's refusal, under the circumstances, fell short of misconduct.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

The appeal tribunal further finds that the greatest number of weeks for which benefits may be paid the employee for total unemployment is four and three-quarters instead of four and two-quarters.

Decision: The deputy's initial determination is amended to show four and three-quarters as the greatest number of weeks for which benefits may be paid the employee for total unemployment and, as amended, is affirmed. Benefits are allowed accordingly.

Affirmed, Wisconsin Industrial Commission, No. 37–C–13.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–85

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for turning out defective work and for refusing to correct the defects when called to his attention. The employee admitted that the work complained of was defective but alleged that it was due to his inexperience.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked in the employer's shoe factory approximately a year and a half. He operated a bedlasting machine and a heel-seat lasting machine and was paid on a piece-work basis. On the day of his last employment he turned out several defective shoes on the bedlasting machine and was requested by the inspector, or "crowner," to make necessary corrections on them. He refused to make these corrections and was discharged.

Although the employee was paid on a piece-work basis, the duty of attempting to maintain the employer's standards of workmanship was necessarily implied in his contract of employment. It is not necessary to decide whether the employee's faulty workmanship was due to inexperience or indifference. His refusal to correct defects in work he had done, when called to his attention, in itself constituted misconduct.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

81–Wis. A

Wisconsin Industrial Commission — No. 37–A–123
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for refusing to obey orders.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked in the employer's shoe factory at various jobs including edge trimming, heel fitting, and joint tacking, being paid on a piece-work basis. While performing the two latter operations, the employee conceived the idea of inserting two awls in the machine used in wood-heel fitting and, by so doing, holes were punched for joint tacking. This device materially speeded up that operation and increased the employee's earnings, since he was doing both the wood-heel fitting and joint tacking at that time.

The volume of wood-heel fitting and joint tacking increased, and the employee was put on wood-heel fitting only. The joint tacking was done by another employee. The use of the device designed by the employee slowed up his operation of heel fitting but materially increased the speed of joint tacking. The employee asked for an increase in his piece rate, because by the use of his device he was performing part of the joint-tacking operation. The employer refused to increase his piece-work rate. In the course of punching the holes, the awls became dull and one of them broke. The foreman demanded that the employee replace the broken awl, and the employee refused to replace it unless his piece rate was increased. The employee was working on piece-work basis, and he would have had to replace the device on his own time. The foreman ordered him a second time to replace the device or be discharged; the employee again refused and was discharged.

The employer did not offer to have a machinist make and insert the awls. The employee would have continued to perform the hole-punching operation in conjunction with his work of wood-heel fitting, if someone else had made and inserted the awls. The refusal of the employee to make and insert a device which he himself had invented does not constitute misconduct, especially in view of the fact that it was not a part of his regular duties, and the employee would have to do it on his own time.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are allowed accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–127

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with her employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged after having an altercation with the superintendent.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer in the wrapping department of the employer's furniture factory for about 22 years. She also owned some shares of stock in the employer corporation. Strained relations arose between the employee and the superintendent due to the fact that the employee refused to recognize the superintendent as her superior because of her position as a stockholder.

Three days prior to her discharge, the employee was questioned by the superintendent relative to certain remarks she made to the president concerning him. This led to an altercation in which she and the superintendent exchanged blows. The superintendent was willing to overlook the incident because of the employee's long period of service, but she taunted him for his failure to discharge her. She was discharged.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with her employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are denied accordingly.

Affirmed, Wisconsin Industrial Commission, No. 37–C–20.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–129

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged because he refused to work at night during the rush season and because he left a job unfinished without permission.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee, who had been working on the day shift, was requested by the plant superintendent to work for about a week on the night shift. The employee worked on Thursday and Friday nights but did not report for work on Saturday night. He reported for the day shift the following Monday morning and, when questioned by the superintendent regarding his reason for not working on Saturday night, stated that he could not sleep during the daytime and was unable to work nights. The following day the superintendent ordered the employee to report for work on the night shift until further notice. The employee did not ask the superintendent to transfer him back to day work but merely failed to report at night. He was permitted to continue to work on the day shift until the end of the week, when he was discharged for his failure to obey instructions.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

84–Wis. A

Wisconsin Industrial Commission — No. 37–A–144
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of the employee's refusal to do work assigned to him.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked as a porter in the employer's restaurant. One of the employee's duties was to keep the lavatory in a clean and sanitary condition.

On the last day the employee worked, the manager inspected the lavatory and found it needed cleaning. He requested the employee to clean it up. The employee refused to clean it at the time because he felt he would get behind in his other duties. The manager then informed the employee that, unless he cleaned the lavatory immediately, he would be discharged. The employee continued in his refusal to do the work at that time and was discharged.

The manager had supervision over the employee, and his request that the employee clean up the lavatory was reasonable.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination of the deputy is reversed. Benefits are denied accordingly.

85–Wis. A

Wisconsin Industrial Commission — No. 37–A–148
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report alleged that the misconduct consisted of the employee's refusing to do certain work which had been assigned to him. The employee alleged that he refused to do this work because of physical inability.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee, a laborer, worked for the employer in various departments for about a year. The employees in the department in which he last worked were required to take turns doing certain work known as "shifting." This work consisted of hooking hot castings out of moulds and removing the sand from them. The operation was performed under conditions of extreme heat.

The employee was called upon to do "shifting" for the first time 3 days before his discharge. He did "shift" that day and also the following day. On the third day he was again called upon to do this work but refused on the ground that his physical condition did not permit it. He was discharged immediately.

The employee was suffering from ulcers of the stomach, and the extreme heat to which he was subjected when "shifting" and the subsequent rapid cooling caused him severe abdominal pains. In view of his physical condition the employee had good reason for refusing to do this work, and his refusal, under the circumstances, did not constitute misconduct.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

The appeal tribunal further finds that the employee made an untrue representation with reference to weeks 7 and 8 of 1937. He was not unemployed during these weeks and no benefits are payable therefor.

Decision: The deputy's initial determination is amended in accordance with the foregoing findings and as amended is affirmed. Benefits are allowed accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937 ,

No. 37–A–216

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of insubordination.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee's duties consisted of trucking supplies to the various departments of the employer's factory. Several foremen had complained that the employee often became argumentative and obstreperous when requested to perform routine tasks. On several occasions he denied the authority of the foremen to give him orders and used profane language in doing so.

On the last day the employee worked, he was told by the stockroom foreman to leave the stockroom, as the supplies he wanted had not arrived. The employee replied by telling the foreman that he did not have anything to say any more because the union was running the plant; and, as the employee left the department, he shouted a profane epithet at the foreman. He was then discharged.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–56

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged when he was discovered crawling in and around machines in such a manner as to embarrass women working at the machines.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee had worked for his employer in different departments but was last employed as a cleaner and oiler

of motors. At this job his duties required him to go from one department to another throughout the entire plant, and he was seldom under the direct supervision of a superior.

On several occasions the women employees in the establishment who tended knitting machines complained to their foremen that this employee had been lying under a machine which a woman was tending. There was no occasion for the employee to lie under these machines to oil or clean the motors. On one occasion the employee lay under a machine which a woman was tending and varied his position as the woman moved to do her work.

On the last occasion he was discovered lying under a machine that had not been in operation for some months and was covered with wrapping paper. This machine was also in the knitting department and was near where women employees were working. Furthermore, the employee was not lying near the motor on the machine but at the opposite end, some 30 feet distant. On this occasion he was discharged.

Even if the annoyance to women employees was unintentional, the employee was wasting time on the job in such a manner as to indicate a disregard of the employer's interests.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

88–Wis. A

Wisconsin Industrial Commission — No. 37–A–142
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of the employee's not being able to do the work for which he was hired.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer as a draftsman for 5 months. He had had no previous experience in this line of work. During the period of his employment he was unable to meet the standard of workmanship required by the employer.

From the beginning of his employment the employee made a practice of leaving his drafting table for as much as a half hour at a time in order to visit with other employees in the drafting room. This practice not only detracted from the quantity and quality of his

own work, but was a source of annoyance to his fellow employees. He was warned by his superiors on several occasions that he would have to devote more time to his work, but he did not do so. His poor workmanship coupled with his lack of application resulted in his discharge.

Poor workmanship resulting from an employee's inability to do the work is mere inefficiency; but poor workmanship resulting from inattention to duties evidences a disregard of the employer's interest and may constitute misconduct.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination is reversed. Benefits are denied accordingly.

89–Wis. A

Wisconsin Industrial Commission — No. 37–A–173
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report alleged that the misconduct consisted of sleeping while on duty.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked in the employer's tannery as fireman and fireman helper for 15 years. At the time of his discharge he was employed as helper. In this capacity he was not in charge of the boilers, and his duties consisted primarily of keeping the furnaces supplied with coal. He worked on a night shift from 6 p. m. to 6 a. m.

Several days prior to his discharge the night superintendent observed the employee sitting in a relaxed position with his eyes closed for several minutes. It was not improper for the employee to rest occasionally during his 12-hour shift, so long as he did the work required of him. The superintendent, however, concluded that the employee was sleeping. As a result of this incident, the employee was discharged.

Actually the employee was not asleep but was merely relieving his eyes from the strain to which they were exposed by the constant glare of the furnaces. There was no evidence that the rest taken by the employee on this occasion in any way interfered with the proper carrying out of his duties.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–187

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged because of poor workmanship due to an indifferent attitude.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked at various jobs in the employer's box factory for about 5 months. He was first assigned to take pieces of wood away from a saw, but he was so lethargic that the saw operator threatened to quit unless the employee were transferred. He was cautioned a number of times and was transferred twice because his apathetic performance of duties slowed up the men with whom he worked.

The jobs at which the employee worked were simple and he was capable of doing them satisfactorily. His failure to do the work properly was not due to inefficiency but was the result of an indifferent attitude evincing a disregard of the employer's interests.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination of the deputy is reversed. Benefits are denied accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–196

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report alleged that the misconduct consisted of unsatisfactory work.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer, a baking company, for about 4 months. His job consisted of delivering merchandise over a particular route and soliciting new customers.

At the time the employee was employed he was assigned to an established territory. The weekly sales of this route had been above the average of the other routes in the district. During the last 6 weeks of his employment his sales had fallen off to a considerable extent. When his supervisor questioned him regarding the reason for the decrease, the employee stated that he had not been soliciting new customers. The supervisor warned him that he must solicit and "build up" his route if he wished to keep his job. The employee, however, failed to solicit and in the last 2 weeks of his employment his sales had fallen far below the average of the district. He was then discharged.

The employee's failure to solicit customers, which was part of his job, was a willful disregard of his duties and constituted misconduct.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–75

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for committing an indecent act in a public place and under such circumstances as to reflect on the employer. The employee admitted the act but denied that it was in any way connected with his employment.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee, a brewery truck driver, committed an act of indecency in a public tavern located on the employer's main business property but leased to a private individual. At the time of the commission of the act the employee was off duty and was dressed in his ordinary street clothes, which in no way identified him as an employee of the employer. As a result of this incident the employee was discharged.

The appeal tribunal therefore finds that the employee was not guilty of misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination is reversed. Benefits are allowed accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–103

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged because his creditors frequently garnished the employee's wages and otherwise annoyed the employer.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was a janitor in a shoe factory. During the last 2 years of his employment, his creditors telephoned the employer frequently regarding the employee's debts and garnished his wages 5 or 6 times. The employer had warned the employee that he would be discharged if his wages were garnished again. On the occasion of the last garnishment he was discharged.

The incurring of debts by the employee and his failure to pay them were not connected with his employment. The fact that his creditors annoyed the employer by resorting to such means as the law allows in their efforts to collect the debts did not render the employee guilty of misconduct. There was no evidence that the employee encouraged his creditors to persist in annoying the employer.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

The deputy's initial determination is affirmed. Benefits are allowed accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–156

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of causing trouble among the employees during working hours.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was accused by his fellow workers of divulging matters that transpired at union meetings. This was contrary to the rules of the union. The members of the union

threatened to strike unless the employee was discharged immediately. To avert the strike the employer discharged him.

There was no evidence that the employee had in fact divulged union secrets. Furthermore, the discharge by the employer was not predicated upon the employee's conduct with reference to the union, but upon the fellow workers' threat to strike.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are allowed accordingly.

95–Wis. A

Wisconsin Industrial Commission — No. 37–A–248
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of participating in a ski tournament which resulted in disabling injuries.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was injured in a ski tournament and as a result was unable to report for work for about a month. When the employee reported for work, he was informed that he had been replaced, and there was no work available.

The employee's action in participating in a ski tournament cannot be considered as being in any manner connected with his employment.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The decision of the deputy is affirmed. Benefits are allowed accordingly.

96–Wis. A

Wisconsin Industrial Commission — No. 37–A–14
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the employee, a car checker, was discharged for (a) smoking in violation of a company rule and for being absent from his place of work without permission; and (b) for permitting a freight car loaded with food products to be shipped out without making certain that a cat he had seen enter was no longer in the car. The cat died during the transportation of the freight car to its destination in Pennsylvania, and the effluvium from the decomposing body of the cat contaminated the contents of the car, causing damage to the employer. The employee denied that he violated the company rule against smoking and denied that the cat incident was the result of any negligence on his part.

Based on the record and the testimony in this case the appeal tribunal makes the following

Findings of Fact: (a) Because of fire hazard in the plant, the employer had established and posted a rule forbidding smoking on the premises. Employees were, however, permitted to smoke in the locker room during lunch hours. The employee on several occasions was seen smoking on the loading platform. He was cautioned against continuing this practice and on one occasion was penalized by being laid off for a day for violating this rule. The employee also went to the locker room at various times during working hours for the purpose of smoking, and his consequent absence from duty interfered with the efficiency of the plant.

(b) In the course of his employment as car checker it was the employee's duty to inspect all freight cars before and after loading and to certify to the good order of the car. On or about September 8 at 5:30 a. m., while the employee was inspecting a car loaded with food products, he saw a cat enter the car. He could not immediately find the cat and, having other cars to inspect, left the car door open while he went about his duties. At 7:00 a m. the shipping clerk (this employee's immediate superior) came on duty, and the employee told him that he thought a cat was in the car. The employee and shipping clerk entered the car and looked for the cat, but did not find it. The car door was then closed and sealed under the direction of the shipping clerk. On September 18, upon arrival of the car at its destination, the cat was dead. The contents of the car were unfit for human consumption and the shipment was refused. The discharge of the employee followed.

Although the employee was guilty of repeatedly violating the rule against smoking and frequently left his place of work without authorization, he was not discharged for these acts. These violations might have been considered misconduct, and discharge promptly following any of these infractions might have been sufficient to bar unemployment benefits. These acts, however, occurred prior to the cat incident, and the employee's past record is relevant only in so far as it may tend to show that a faulty or negligent act, which resulted in discharge, was an act of misconduct.

The cat incident did not constitute misconduct since the employee had reported the matter to the shipping clerk, who was his superior. The shipping clerk approved the closing and sealing of the car after he was notified of the probable presence of the cat therein. There-

fore, since no blame attaches to the employee in connection with the cat incident, and since that was the immediate cause of the employee's discharge, his past record is not relevant.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are allowed accordingly.

97–Wis. A

Wisconsin Industrial Commission — No. 37–A–70
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for entering the employer's warehouse at night with intent to steal. The employee alleged that he was laid off because the canning season was over and there was no more work.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked as a trucker in the warehouse of a canning company. On the night in question 2 men broke into the warehouse, removed several cases of canned goods, and piled them outside. The night watchman surprised the men before they could load the goods in their car and frightened them away. The employee was asked by his foreman what he knew about the incident. He confessed that it was he and another employee that had attempted to steal the canned goods.

The employee was not discharged at this time. He was retained because the superintendent did not want to break in a new man. The work the employee was doing was comparatively simple, and he could have been replaced without much trouble. Discharge in order to bar benefits must be closely related to the misconduct in point of time. Although discharge need not be instantaneous upon the discovery of the misconduct, it must be shown to be the reason for the discharge. The employee was laid off when the canning season ended, 8 weeks after the alleged misconduct took place. The employee was discharged because of lack of work and not because of the misconduct.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

Wisconsin Industrial Commission No. 37–A–106
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged because he was undesirable and inefficient. The employer, a municipality, further alleged that the employee was residing out of the city, contrary to a resolution of the common council.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for a municipal park board for about 11 years as a laborer. The employee's work was satisfactory, and there was no evidence that the employee was undesirable and inefficient.

At the hearing the employer alleged as a further ground for the discharge that the employee resided outside the city limits of the employer municipality, contrary to a resolution of the common council requiring all city employees to be residents of the city. There was no evidence that the employee was not a resident of the city. Furthermore, the park superintendent who discharged him did not even know of the council's resolution at the time of the discharge. It is therefore unnecessary to determine whether a discharge for violation of such resolution would have constituted discharge for misconduct.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The commission deputy's decision is affirmed. Benefits are allowed accordingly.

Wisconsin Industrial Commission No. 37–A–131
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was absent on several occasions without permission and without excuse.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: About 3 weeks before the employee was discharged he was absent from work for 4 days because of illness. On several previous occasions he had come to work late because of the illness of his father, whom he could not leave unattended. The first time that the employee was late for this reason he notified his foreman and also told him that he might be late again in the future. The employee was not told that he had to notify the employer each time he was late or absent.

The employer's business is seasonal. At the time of the employee's discharge the rush season was drawing to a close. Several men had to be laid off, and the employee was one of 5 or 6 employees who lost their employment at that time. Lack of work rather than the employee's absences was the reason for his discharge.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

The appeal tribunal further finds that the employee worked for the employer for the first time in week 46 of 1936 and completed his probationary service period at the close of week 49.

Decision: The deputy's initial determination is amended with respect to the number of chargeable weeks of employment and, as amended, is affirmed. Benefits are allowed accordingly.

100–Wis. A

Wisconsin Industrial Commission — No. 37–A–141
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer as a foreman for 15 years. He supervised the work of approximately forty men and throughout the period of his employment was granted a great deal of latitude in carrying out his duties.

Within the last year of his employment the employee occasionally reported for work as much as an hour late, but he made up for his conduct by doing many favors for the employer while on his own time.

In 1927 the employer established a "no smoking" rule in the factory, but the rule was never enforced until November 1936. Prior to November the employee occasionally smoked and allowed his men to smoke while on duty. On some of these occasions the employee smoked in the presence of his superior, and on at least one occasion the employee's superior offered him a cigar and they smoked together. After it was decided to enforce the rule rigidly the employee neither smoked nor allowed his men to smoke while on duty.

The employee was never reprimanded for coming late to work or for violating the no-smoking rule. He was discharged primarily because the employer suspected that he was secretly engaging in a competitive business. Actually, the employee had never been at any time engaged in competing with the employer.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The initial determination is reversed. Benefits are allowed accordingly.

Affirmed, Wisconsin Industrial Commission, No. 37–C–28.

101–Wis. A

Wisconsin Industrial Commission — No. 37–A–158
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report alleged that the discharge was for inefficiency.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked in the employer's dairy for about one year. All of the employees in the dairy were entitled to one day off per week. About 2 weeks prior to his discharge the employee was informed on a Sunday that he could take the following Monday off provided another employee who was ill would be able to work on Monday. The employee was instructed to contact this fellow employee and determine whether or not he would be able to work.

On Monday neither the employee nor the fellow worker reported for work. The employee failed to report for work on the following day because of illness. He returned to work on Wednesday, and nothing was said to him with reference to the failure of both employees to report on Monday.

About 2 weeks after this incident the employee was discharged, and he was told at the time that the reason for the termination of his employment was that he was suspected of having tuberculosis. Actually the employee did not have the disease.

At the hearing the employer alleged that the employee was discharged for his failure to report for work on the Monday above referred to and for general inefficiency.

In view of the lapse of time between the employee's failure to report for work on the Monday in question and the discharge, the employer's allegation on the benefit liability report to the effect that the employee was discharged for inefficiency, and the employer's

statement to the employee at the time of discharge, the appeal tribunal finds that the Monday incident was not the reason for the employee's discharge. The employer's other ground for discharge, namely, inefficiency, does not constitute misconduct.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

102–Wis. A

Wisconsin Industrial Commission — No. 37–A–115
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for his failure to manage a meat market satisfactorily and also for his failure to keep the market in a sanitary condition. The employer further alleged that the employee reported for work late.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked as manager of one of the employer's meat markets. His work was satisfactory until about 6 weeks before his discharge, when a new meat-market supervisor was appointed.

The supervisor criticized the employee's work, but gave no definite orders or suggestions as to what the employee should do to improve it. The employee was subject to the orders of several superiors, which in some instances resulted in conflicting orders. Some of the difficulty in the care of meats came about because the employee's requisitions of meats were subject to revision and in many instances he was sent more meat than his market could properly handle. The city and state food inspectors inspected the market and issued a certificate that it was in a clean, sanitary condition. The employee was doing his best to keep the market clean and sanitary.

There was no evidence that the employee's tardiness was habitual. He was about an hour late for work one morning due to serious illness in his family, but another employee took charge of the market during the employee's absence and no loss to the employer resulted.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 36–A–2

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liablity report and supporting letter alleged that the employee was discharged for sleeping while he was supposed to be working and for smoking a cigarette during working hours in violation of a company rule. The employee took issue with the facts as alleged by the employer and further denied that such facts constituted misconduct.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee had worked for the employer about 13 years in various departments and more recently in the pattern shop. He was a highly strung, nervous individual.

The employee's infractions of company rules and difficulties with his foremen and the shop superintendent had occurred over a long period. These difficulties and breaches of company rules had noticeably increased during the past 2 years.

In June 1936, the employee was sent by the shop superintendent to get some castings and was gone for 30 minutes. The superintendent searched for him; when he found the employee, a heated discussion ensued, in the course of which the employee seized the superintendent and raised his fist as if to strike him but did not do so. Discharge of the employee was clearly contemplated at this time, but shortly after this incident the employee, members of the employees' grievance committee, the superintendent, and the manager met in the latter's office, and as a result of this meeting the employee was retained. The employee was told at this meeting that this was his last chance, and he was given this chance on his promise of good behavior.

On July 24, 1936, the employee was missing from his work for some time. Upon his return his foreman asked him where he had been. The employee refused to answer that question, or explain his absence, saying "I don't have to answer that question." Since it was a hot day, the employee had gone outside to get some fresh air and felt he did not have to explain his absence.

The final incident which led to the employee's discharge occurred on August 10, 1936. The employee had been in the habit of sleeping during his lunch hour. On this day he requested a fellow worker to awaken him at 1:05 p. m., the time he was to start working. His fellow worker neglected to awaken the employee until 1:15. Upon awakening, the employee lit a cigarette and smoked it in violation of a company rule against smoking during working hours. The employee was on notice that this was during working hours because he

had instructed his fellow worker to awaken him at the time he was to start working.

The employee worked the balance of the day, but was told not to return to work until called by the employer. Meanwhile, the employer would decide whether or not they would retain him. He was called back to work on August 17, the next Monday. He worked that day and was notified of his discharge.

The accumulation of prior incidents, together with the fact that the employee had been given his last chance on his promise of good behavior, increase the gravity of the offenses on August 10th.

The appeal tribunal therefore finds that these acts of insubordination and violations of company rules constitute misconduct within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are denied accordingly.

104–Wis. A

Wisconsin Industrial Commission — No. 37–A–17
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for refusing to purchase and wear safety shoes as required by a company rule, and for refusing to follow instructions.

Based on the record and testimony in this case, the appeal tribunal makes the following

Findings of Fact: During the early part of June 1936, the employer posted notice urging all employees in the cleaning room of the plant to purchase and wear safety shoes in order to reduce the number of injuries to the feet and toes from falling castings.

On July 21 the company adopted a rule requiring all employees in the cleaning room where the employee worked to purchase and wear approved safety shoes by August 1. A copy of this rule was posted in a conspicuous place in the plant, and each employee was notified personally of its provisions by the foreman.

The employee's work was confined almost entirely to large castings weighing from 500 to 1000 pounds. He told the foreman that safety shoes would be inadequate to protect him from injury in the event that a casting fell upon him. The foreman agreed.

The employer did not insist that the employee wear safety shoes until the morning of September 2. On that day the foreman told the employee that he must wear safety shoes regardless of the type of work he was doing. The employee promised that he would obtain and wear them by the following morning. However, on the same

afternoon (September 2) the employee was discharged, before he had an opportunity to purchase the shoes. Under these circumstances the employee's failure to wear safety shoes does not constitute misconduct.

The foreman who discharged the employee was hired by the company on July 20. He was dissatisfied with the output of the plant and the lack of discipline that existed when he was placed in charge. He proceeded to enforce discipline more rigidly. He was particularly dissatisfied with the employee's output and would have discharged him even if he had complied with the safety shoe rule. At the time the employee was discharged the foreman stated, "I've put up with you long enough. You're no good on the welding." There was no evidence that the employee's low rate of production was due to any misconduct on his part.

The appeal tribunal therefore finds that the employee was not discharged for misconduct within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are allowed accordingly.

105–Wis. A

Wisconsin Industrial Commission — No. 37–A–20
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for violating a rule of the company requiring all truck drivers to maintain the engine oil in their trucks at a proper level and that this violation caused damage to his truck engine; and that the employee violated a rule against entering taverns during working hours for the purpose of drinking beer or liquor. The employee denied that the damage to the motor was due to any oversight or negligence on his part. He also alleged that it was common practice for truck drivers during the hot summer months to drink an occasional glass of beer and that he did not know this to be in violation of any rule.

Based on the record and the testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee had been employed as a truck driver for approximately 18 months. The company rule, known to the employee, required all truck drivers to maintain a proper engine oil level in their trucks at all times.

On Saturday, August 15, the shipping clerk called the employee's attention to a knock in the motor of his truck. The shipping clerk checked the oil level and found that there was an inadequate amount of oil in the crankcase. The crankcase was then refilled with oil.

There was no oil indicator on the instrument board of the truck. The employee had had no previous difficulty with the truck in respect to loss of oil. The oil level was checked weekly. The last check-up prior to the day on which the oil level was found to be low had disclosed that the engine had an ample supply of oil. The employee could not account for the low oil level on August 15.

The truck was not used again until Monday, August 17. On that day, after the employee had driven it a short distance, the engine broke down. The following day the employee was discharged, and the reason given him was that there was no work available due to the breakdown of the truck.

The cause of the breakdown was a broken crankshaft. Since the truck was 8 or 9 years old and was sold for junk, this was not discovered until after the employee had been discharged. No investigation was ever made to determine what caused the crankshaft to break, and specifically whether the employee's failure to maintain the engine oil at the proper level was responsible for the breakage.

The employee did stop at taverns occasionally during working hours in summer for a glass of beer. However, this was a practice engaged in by several of the company's truck drivers and was known to the shipping clerk (the employee's superior). The shipping clerk never reprimanded the employee for this practice, but merely advised him that the president of the company would disapprove if the matter came to his attention.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are allowed accordingly.

106–Wis. A

Wisconsin Industrial Commission — No. 37–A–88
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for insubordination in that he failed to comply with the safety regulations of the company.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked in a bakery on a machine known as a "dough-breaker." This machine consisted of a frame with two large rollers through which the dough was passed and flattened.

Some dough adhered to the rollers, and at the close of the day it was necessary to clean them. This was done by holding a large

wooden scraper against the rollers while they were in motion. The employee performed this task 2 or 3 times a week.

The framework of the machine included a horizontal bar in front of each of the rollers. The employee had been instructed to place the scraper on the rollers below the bar when cleaning the machine, in order to guard against injury. On the machine was a sign, clearly visible, reading, "Always clean machine from bottom."

The employee had, on several occasions, been seen cleaning the machine by holding the scraper above the bar in violation of those instructions. He was cautioned against continuing this practice and was shown the proper manner of cleaning the machine. On the last day of his employment the employee's hand was drawn into the rollers and was injured, due to the fact that he held the scraper above the bar while cleaning the machine. He was discharged because of his failure to follow instructions regarding this safety measure.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are denied accordingly.[8]

107–Wis. A

Wisconsin Industrial Commission — No. 37–A–139
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of the employee's taking a piece of meat from the restaurant refrigerator in violation of a company rule.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer as a common laborer for approximately eight and one-half years. He had been entirely satisfactory to the employer during this period, and the personnel department had no record of any previous offense by him. He was on the night shift which customarily began work at 6:00 p. m. and worked until 2:30 a. m. His duties included the cleaning up of the plant restaurant.

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[8] On employee's petition for commission review, the commission set aside the appeal tribunal's decision and directed that additional testimony be taken. The commission then reviewed the testimony given before the appeal tribunal, together with the testimony given at the further hearing (not reported), and found that it supported the appeal tribunal's findings of fact. The decision of the appeal tribunal was reinstated and affirmed. (Wisconsin Industrial Commission, No. 37–C–23.)

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On the night of last employment the employer had given a dinner for the employees. As a result, the night shift started work at 8 p. m. and worked until 4:30 a. m. At about 2:30 a. m. the employee, being hungry, took a small piece of ham from the restaurant refrigerator and ate it in the presence of 2 other employees. This ham had been left over from the dinner given that evening.

The employer learned of this incident and discharged the employee on the ground that he had violated a rule prohibiting the taking of company property from the premises.

The employer's rule is undoubtedly reasonable when considered with reference to certain conditions and situations that might well arise, but under all the circumstances it has no proper application to this case. Considered independently of the rule, the employee's conduct was not such as to amount to misconduct.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

108–Wis. A

Wisconsin Industrial Commission — No. 37–A–145
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the misconduct consisted of failing to appear for work due to drunkenness, and of smoking while on duty in willful violation of a company rule.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was employed as a driver of passenger buses. Two or three days prior to the discharge, he had been unable to report for work because of drunkenness. He was absent an entire day.

The employee frequently smoked while driving with passengers in his bus. A number of passengers complained about this continued smoking. He had been warned on at least two occasions and told that if he did not stop smoking while driving with passengers, he would be discharged. There was a company rule prohibiting drivers from smoking while driving, and this rule was well known to the employee. He was discharged because of his absence from work and his violation of this reasonable rule.

The appeal tribunal therefore finds that the employee was discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are denied accordingly.

109–Wis. A

Wisconsin Industrial Commission — No. 37–A–100
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee, aged 19, drove a bakery truck for the employer for approximately 2 months. He started his work at 3:30 in the morning. The truck which the employee was required to drive had a defect in the lighting system that caused the head lights to flicker and occasionally go out for several minutes at a time. The employee repeatedly called this defect to the attention of the delivery manager, but the lights were never fixed.

On the last day of his employment, while making his early morning deliveries, the lights on the truck went out. He purchased a box of fuses, fixed the lights temporarily, and returned to the bakery, where he informed the delivery manager of what had happened. He was instructed to continue with his deliveries and use the fuses that he had purchased, if necessary. He warned the delivery manager that the new fuses would probably be inadequate to keep the headlights lighted, but his warning was disregarded. He continued with his deliveries and while doing so used up all of the fuses, with the result that the lights again were out. On his return to the bakery he was arrested for driving without lights. He told the delivery manager of the arrest and was immediately discharged.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

110–Wis. R

Wisconsin Industrial Commission — No. 37–C–39
Decision of the Commission
1937

The employer denied unemployment benefits, claiming that the employee was physically unable to work. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report alleged that the employee was discharged because he was subject to epileptic seizures.

Before formal decision had been rendered by the appeal tribunal, the commission on its own motion transferred the proceedings to itself, pursuant to section 108.09 (6) of the statutes.

Based on the record and testimony in this case the commission makes the following

Findings of Fact: The employee worked in the employer's commission house for about 3 months. He had an epileptic seizure while on duty and was discharged.

The commission therefore finds that the employee was discharged but not for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is amended in conformity with the foregoing facts and as amended is affirmed. Benefits are allowed accordingly.

Comment: As a condition precedent to denying benefits for any given week on the ground that the employee was physically unable to work, the employer must have with due notice called upon the employee to report for work actually available in that week. Such an offer of work cannot be implied where the employment relationship has been definitely terminated by a discharge. Section 108.04 (1) of the statutes of 1935, therefore, is not relevant and it is not necessary to decide whether a person subject to epileptic seizures is thereby rendered physically unable to work. The employee was discharged and the only statutory basis for denying benefits under such circumstance is for misconduct connected with the employment.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–50

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged because of his discourteous treatment of customers.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer about 6 months as a butcher in a retail meat market. He had 16 years of experience in the butcher business. The employee's work as a butcher was satisfactory to the employer, and he was one of the highest paid men in the shop.

The employee was given a 5-day notice that he would be discharged, the notice being in accordance with union requirements. On the day

of his last employment, the employer informed him that the reason for his discharge was his discourteous treatment of customers.

The employer alleged that two particular incidents showed discourteous treatment of customers by the employee. As to the first of these, the discourteous remark was made not by the employee but by a fellow workman. As to the second, the only remark by the employee which might be considered discourteous was made to another employee after the customer had left the store.

The employment had been terminated on a Monday. However, the employee was given work by the employer on the following Thursday, Friday, and Saturday to help with the week-end trade. The fact that he was rehired, even temporarily, indicates that the employer did not consider the employee's treatment of customers seriously detrimental to his business.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

112–Wis. A

Wisconsin Industrial Commission No. 37–A–107
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming the employee was discharged for misconduct connected with his employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged for having failed to make prompt delivery of a load of perishable bakery goods and for having been involved in an accident while using one of the employer's trucks without permission.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee, aged 17, drove a bakery truck for the employer for approximately 2 months. About 3 weeks before the termination of his employment, while making an extra trip at the employer's request, he was arrested for speeding. Three days later he started his deliveries a half hour early so that he could attend court without inconvenience to the employer. The trial lasted longer than he had anticipated, however, and as a result he was a half hour late in making some of his deliveries that morning. He was reprimanded by the delivery manager but was allowed to continue with his work.

On the last day of his employment the employee finished his work at 11:30 a. m. As he was leaving, the delivery manager asked him to take a new truck to a designated garage for a final check-up. It

was understood that he would return the truck to the employer's establishment at about 5 p. m. that day. While on his way to the garage, the employee stopped at the home of a friend and as a result did not deliver the truck until approximately 2 hours later than he had originally anticipated. Later in the afternoon he called for the truck and while driving back to the bakery was involved in a minor traffic accident due to an icy condition of the street. The truck was slightly damaged. He returned it to the employer at about 6 p. m., and when the delivery manager learned of the damage, he was discharged.

On the afternoon of the employee's last day of work he was on his own time and was performing a gratuitous service for the employer. Although the employee was not entirely without fault in failing to deliver the truck to the garage promptly, his action was excusable in view of the lack of definite instructions from the employer. He was not using the truck without permission. The accident was unavoidable. Under the circumstances the employee was not guilty of misconduct in connection with this incident. The previous incident was not sufficiently related to the incident for which the employee was discharged to make it relevant.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with his employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

The employer denied unemployment benefits, claiming that the employee was discharged for misconduct connected with her employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged because of an indifferent attitude toward her work resulting in poor workmanship.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer as a seamstress for 3 years. Throughout the period of her employment the superintendent frequently expressed dissatisfaction with the quality of her work. However, there was insufficient evidence to establish that the employee's attitude toward her work was one of indifference, or that she was not doing her work as carefully as she could on the piece-work basis on which she was employed.

The incident which caused the employee's discharge was in no way the fault of the employee. The superintendent discharged her for us-

ing too wide a stitch on certain garments, but she had been expressly instructed by her forelady to use such a stitch and was properly following instructions.

The appeal tribunal therefore finds that the employee was not discharged for misconduct connected with her employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

Affirmed, Wisconsin Industrial Commission, No. 37–C–18.

114–Wis. A

Wisconsin Industrial Commission — No. 37–A–228
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was not allowed to continue at her work by a labor organization, and that she refused to accept other employment offered her. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked in the employer's hotel as inspectress. Her duties consisted of inspecting rooms and supervising the work of maids. The maids informed the employer that, unless the employee were discharged, they would strike. In order to avert a strike, the employer told the employee to leave her employment.

At no time thereafter was the employee notified by the employer to report for work.

The appeal tribunal therefore finds that the employee was discharged, but not for misconduct connected with her employment, within the meaning of section 108.04 (4m) (a) of the statutes.

The appeal tribunal further finds that no offer of suitable employment was made to the employee after her discharge.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

Affirmed, Wisconsin Industrial Commission, No. 37–C–54.

APPEALED BENEFIT DECISIONS

PHYSICALLY UNABLE TO WORK

Wisconsin Industrial Commission No. 37–A–4
Decision of Appeal Tribunal
1937

The employee had been laid off and had claimed benefits from the employer's account. In giving notice of total unemployment, the employee certified that he had been offered employment by the employer which was not accepted due to doctor's advice. The commission deputy's decision held that the work offered was suitable employment, but that the employee had good cause for his refusal to accept it. The employer appealed, claiming that the employee was unavailable for work under the provision of section 108.04 (1).

Confusion was introduced in this case by the deputy of the commission through the form of his decision. The decision of the deputy was made under the mistaken impression that section 108.04 (6) providing for termination of benefits was applicable and accordingly the decision was stated in terms of good cause for failure to accept suitable employment. However, as will be later evidenced, the employment relationship here had not been terminated, and this was properly a case of the application of section 108.04 (1) providing for suspension of eligibility for given weeks in case of unavailability or physical inability to do work actually offered.

Having taken jurisdiction the appeal tribunal proceeded to clarify the situation and provide for the correct determination.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was employed as a cushion maker by the employer. On Tuesday, August 18 (34th week), the employee applied for and received sick leave in order to undergo a tonsilectomy. It was understood that the employee was to return to his job as cushion maker as soon as he was physically able to do so.

On Monday, August 24 (35th week), the employer notified the employee to register for work at the local employment office. The initial registration for work, notice of total unemployment, and claim for benefits (form UC–260) were made on Wednesday, September 2 (36th week), and thereafter the necessary weekly renewals were made (form UC–261) in each week of unemployment under consideration.

On Tuesday, August 25 (35th week), the employer discontinued production operations in order to make certain repairs and installations. The plant remained closed for these reasons until Wednesday, September 30 (40th week). On September 11 (37th week), the employer through the local employment office contacted the employee and asked that he report for a construction job. On reporting for this job the employee was examined by the company doctor

and pronounced unfit to work due to the condition of his throat. It was the opinion of the doctor that the nature of the work, involving as it did heavy lifting and exposure to cement dust, might well induce throat hemorrhages, and it was the further opinion of the doctor that the health interest of the employee required about 2 more weeks of convalescence. The job for which the employee reported on September 11 required immediate filling, and another worker was, in fact, secured. The employer did not contact the employee further with regard to other construction jobs or any other work.

The employee took up his regular work of cushion maker with the resumption of plant production on Wednesday, September 30 (40th week). There was no conflict of testimony with respect to the above findings.

In accordance with these findings the appeal tribunal further finds that since the employee performed services for the employer in week 34, such week counted neither as a waiting-period week nor compensable week for total unemployment purposes.

While it is not necessary for a determination of this issue to indicate the status of the week for partial unemployment benefit purposes, it appears advisable to do so in order to clarify the entire situation. Accordingly, it is found that the employee was either physically unable for work or unavailable for work as cushion maker, such work being open to him by reason of the understanding of the parties at the time of the grant of sick leave. Such understanding constituted a continuing offer and is to be deemed "due notice" to report for work within the meaning of section 108.04 (1). Employee was, therefore, ineligible for benefits for week 34 by reason of this cited section with a consequence that the week is not to be counted either as a waiting-period week or a compensable week for partial unemployment benefit purposes.

Work was likewise available and open to the employee for such part of week 35 as the employer's plant was in operation. Employee's inability to undertake such work rendered him ineligible for benefits for the week for reasons set out above.

No work that related to the continuing offer was available in week 36 on account of the plant shut-down and employee had an eligible status during this week with respect to total unemployment benefits.

The employee was called on in week 37 to report for construction work actually available in the week but was either physically unable to work or unavailable for such work, his health interest considered. Therefore, the employee was ineligible for benefits in week 37 by reason of section 108.04 (1).

The employer had no work actually available for the employee in weeks 38 and 39 that could be related to an offer of work or notice to report for work. Hence, employee had an eligible status during these weeks. The employee's return to work on September 30 (week 40) removed this week from any consideration as regards eligibility for benefits for total unemployment, since wages were received with respect to services performed in this week. (See section 108.04 (r).) However, it may later appear that partial unemployment existed in week 40, thereby affecting the employee's partial benefit rights.

Decision: The deputy's decision as to refusal of suitable employment is set aside, and the case is remanded to the deputy with directions to enter decisions in the record in accordance with the findings herein.

116–Wis. A

Wisconsin Industrial Commission — No. 37–A–23
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was not available for work in any of the weeks following his discharge. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letters alleged that the employee was discharged at the insistence of the employer's workmen's compensation insurance carrier because the employee had contracted tuberculosis. The employee denied that he had contracted tuberculosis but alleged that he had contracted silicosis. He further alleged that he was both physically able to work and available for work.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The insurance company carrying the employer's workmen's compensation insurance for a period ending on July 31, 1936, refused to carry it beyond that date. The Wisconsin Workmen's Compensation Rating and Inspection Bureau appointed another insurance company to carry the risk. This latter insurance company required that all of the employer's workmen be examined by the insurance company's physicians. Such medical examination of the employee disclosed a silicotic condition and suspective tuberculosis. The insurance company, therefore, prescribed as a condition precedent to its assumption of the risk that the employee be discharged; and the employer discharged him on July 31, 1936.

At the time of his discharge the employee did not have an active tubercular infection or other contagious disease. He was physically able to work and available for work during the weeks following his discharge.

The question of whether the employee was with due notice called on by his employer to report for work actually available in the weeks following his discharge might well be raised. However, since the foregoing findings preclude the possibility of the employee's eligibility being suspended under section 108.04 (1) of the statutes, the question of whether he was called to report for work need not be decided in this case.

The appeal tribunal therefore finds that during the weeks following July 31, 1936, the employee was physically able to work and available for work within the meaning of section 108.04 (1) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are allowed accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–24

The employer denied unemployment benefits, claiming that the employee was physically unable to work in any of the weeks following his discharge. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee was discharged on September 27, 1936, after a medical examination had revealed that the employee's heart was in a weakened condition due largely to advanced age. The employee denied that he was physically unable to work.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee had worked for the employer about 16 years, first as a common laborer and later as a watchman. On September 17, 1936, the employee was given a medical examination at the suggestion of his foreman. On September 27, 1936, the employee was discharged on the ground that the medical examination had revealed that he was physically unable to work. In no week thereafter was the employee called on by the employer to report for work. The employee was nearly 70 years old. His general health and nourishment were very good. His heart was in a tired, weakened condition, but the condition was no worse than that of other men of his age who had worked at common labor.

The work of a watchman was the lightest work in the employer's plant. It required walking through the wood yard, a distance of about one mile, once each hour for 6 hours per day. One complete round could be made in 35 to 40 minutes, thus permitting the watchman to sit down and rest for 15 to 20 minutes before making the next round. There was no climbing or other strenuous exercise required in the ordinary course of events on this job. In case of fire a watchman was expected to put in the alarm and attempt to extinguish the fire. There have been no fires in the employer's yard during the 6 years that the employee worked as watchman.

The employee was physically able and willing to work as watchman. The physical exertion required by that work would not overtax his heart. The employee's heart condition was not of such a nature that it was likely to result in sudden death.

The question of whether the employee was with due notice called on by his employer to report for work actually available in the weeks following his discharge might well be raised. However, since the foregoing findings preclude the possibility of the employee's eligibility being suspended under section 108.04 (1) of the statutes, the question of whether he was called to report for work need not be decided in this case.

The appeal tribunal therefore finds that during the weeks following July 31, 1936, the employee was physically able to work and available for work within the meaning of section 108.04 (1) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

Affirmed, Wisconsin Industrial Commission, No. 37–C–3.

118–Wis. A

Wisconsin Industrial Commission — No. 37–A–62
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was unavailable for work in the weeks in which he was unemployed. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the employer had work actually available, but that the employee was unavailable for such work because of his physical incapacity to perform it satisfactorily and safely.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer 17 years laying gas mains. At the commencement of his employment the method used to join the sections of pipe was a cast-lead joint. The employee became extremely proficient in making this type of joint, and for about 10 years he did this work exclusively. Thereafter, the employer discontinued the use of this type of joint and used a clamp or mechanical joint instead.

The employee never became as proficient in the use of the mechanical joint. On several occasions the clamps put on by the employee were insufficiently tightened, so that a leak subsequently developed at the joint. The employer conceded that the employee was doing the work to the best of his ability and ascribed the employee's failure to tighten the clamps merely to the employee's lack of weight and strength. On the last such occasion the employee was discharged and in no week thereafter did the employer call on him to report for work.

The fact that an employee is unable to do a particular type of work satisfactorily does not necessarily mean that he is either physically unable to work or unavailable for such work. In this case, the employee was eminently able to do the work for which he was originally hired, and available for such work. The obsolescence of the kind of work at which he was proficient does not operate to deny or suspend unemployment benefits.

The appeal tribunal therefore finds that the employee was not called on by his employer to report for work during any of the weeks of his unemployment, and further finds that he was physically able to work and available for work in each of such weeks, within the meaning of section 108.04 (1) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are allowed accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–89

The employer denied unemployment benefits, claiming that the employee was physically unable to work. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the employee was physically unable to work because she was pregnant. The employee denied that she was physically unable to work.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee had worked for the employer for 2 years prior to her marriage. She quit at the time of her marriage, but 3 months thereafter she requested part-time employment and was re-employed in the grill room as waitress during lunch hours.

She was first assigned to wait on tables, but she appeared at times physically unable to carry trays and was therefore transferred to work at the lunch counter. The employee was physically unable to do even this lighter work properly and at times appeared to be ill. When the forelady questioned her about her health, the employee revealed that she was two and a half or three months pregnant. The employee was informed that the employer would not permit her to continue working until after her confinement because of her physical inability to do the work properly, and because of the increased hazard arising out of her physical condition.

The employer had work actually available in each of the weeks following the employee's lay-off, and the employee understood that she could return to work as soon as she was again physically able to work.

The appeal tribunal therefore finds that the employee was with due notice called on by her employer to report for work actually available in each of the weeks following her lay-off, and that she was physically unable to work, within the meaning of section 108.04 (1) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are suspended accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–96

The employer denied unemployment benefits, claiming that the employee was physically unable to work because she was pregnant.

The commission deputy's initial determination overruled the employer's denial. The employer appealed.

Findings of Fact: The employee had worked for the employer for several years prior to her last week of employment. She was an expert shoe vamper and so skillful that she was one of the most valuable employees working in the employer's factory. Her duties required her to operate a machine while sitting down and involved pressing a pedal for the purpose of starting and stopping the machine. This operation necessitated very little muscular effort. The only unusual exertion involved in the performance of her work was a certain amount of eye-strain.

During the entire period of her employment she frequently stayed away from work for periods of 1, 2, or more days. Due to her great value to the employer, these irregularities were countenanced. On several occasions after she had quit, the employer had rehired her. The employee's record of absences during the 4 months prior to the layoff was not essentially different from her previous record, and such absences were not attributable to her condition.

During her period of pregnancy her work was performed in her usual skillful manner. Her physical condition in no way impaired the high standard of her production in spite of the fact that she was engaged in making sample shoes, which require the highest type of workmanship.

When the employer learned that she was pregnant, he laid her off. It was understood that she would be rehired after her confinement. The employer was afraid that her condition so increased the hazard of injury that he would have increased liability under the workmen's compensation act if he permitted her to continue working. The employer caused no examination to be made by a physician or the registered nurse in the factory.

On a previous occasion the employee had had a still birth one hour and a half after leaving the factory, when she had been pregnant a little over 6 months. This accident was the result of an automobile trip of 400 miles and not because of working in the employer's factory.

The employee had worked to within 3 days of the birth of a previous child who was born normal and healthy. She also had 2 other children and had worked up to within a few days of their birth without unfortunate effect. In the present instance the employee was only 4 or 5 months pregnant at the time of the lay-off and was in normal condition, with nothing to indicate that her continued employment would cause injury to herself or her child.

The appeal tribunal therefore finds that the employee was not physically unable to work, within the meaning of section 108.04 (1) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

121–Wis. A

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–135

The employer denied unemployment benefits, claiming that the employee voluntarily left his employment without good cause attributable to the employer. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked in the casting department of the employer's foundry. He became ill and told the foreman that he would be unable to work. He went home and did not report for work during the following 3 weeks because of his illness. On several occasions during this period the employee's foreman attempted to contact him through a fellow worker in order to determine when the employee would be able to report for work. During the third week the foreman told the fellow worker to notify the employee to return to work by Thursday of that week or his job would no longer be open. The fellow worker so informed the employee but the latter was unable to return to work at that time.

The employee reported for work as soon as he had recovered from his illness, but another man had been hired to replace him, and there was no work available. There was no evidence that the employee was physically able to work prior to the time he actually reported for work.

The appeal tribunal therefore finds that the employee did not voluntarily leave his employment, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are allowed accordingly.[1]

122–Wis. A

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–256

The employer denied unemployment benefits, claiming that the employee was physically unable to work. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report alleged that the employee was discharged because he was subject to epileptic seizures.

Findings of Fact: The employee worked as laborer in the street construction department of the employer city for about 2 years.

[1] The initial determination suspended the employee's eligibility for benefits in the 3 weeks of his illness, pursuant to section 108.04 (1) of the statutes.

On the last day of his employment he had an epileptic seizure while at work and was discharged.

The employer had no knowledge that the employee was subject to epileptic seizures prior to the last day of his employment. The reason advanced for his discharge was that the possibility of injury was increased by this condition.

The discharge of this employee occurred prior to the passage of Chapter 343, Laws of 1937. At the time of discharge it was necessary, as a condition precedent to the denial of benefits for any given week, on the grounds that the employee was physically unable to work or unavailable for work, that the employee be with due notice called on by his employer to report for work actually available in that week. Such an offer cannot be implied where the employment relationship has been definitely terminated by a discharge. (See Wisconsin Industrial Commission Decision No. 37–C–39.)

Nor does the operation of section 108.04 (1), as amended, suspend the employee's eligibility status for weeks subsequent to his discharge. Epilepsy is not ordinarily such a disabling disease as to render an employee physically unable to work, except for the duration of a seizure. When the work is of such nature that the employment of an epileptic is an appreciable hazard to himself or others, his condition may render him unavailable for such work. However, it was not established that the employee's condition, considered with reference to the nature of his work, necessarily subjected him or others to undue risks.

The appeal tribunal therefore finds that in each of the weeks subsequent to his discharge the employee was not with due notice called on by the employer to report for work actually available, although the employee was both physically able to work and available for work, within the meaning of section 108.04 (1) of the statutes of 1935.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

Affirmed, Wisconsin Industrial Commission, No. 37–C–58.

Wisconsin Industrial Commission — No. 37–A–258
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee left his employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was injured in the course of his employment in week 10 in 1937. He was totally disabled and unable to do any work in week 11. In week 12 he worked two and one-half hours but was unable to continue. On Friday of week 13 he

reported for work and was given 4 hours of light bench work, which he performed satisfactorily.

He reported again on Monday morning in week 14, and the assistant shipping clerk, who was the employee's superior, told him that he was "all washed up." The employee understood this to mean that he was discharged and went home. He called at the employer's office several times subsequently, but no work was offered to him. The employer hired a substitute to perform the duties of the employee.

The appeal tribunal therefore finds that the employee did not leave his employment voluntarily, within the meaning of section 108.04 (4m) (b) of the statutes. However, the employee did not have an eligible status in weeks 11, 12, and 13 by reason of the operation of section 108.04 (1) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are allowed accordingly.

Affirmed, Wisconsin Industrial Commission, No. 37–C–57.

124–Wis. R

Wisconsin Industrial Commission — No. 37–C–12
Decision of the Commission
1937

The employer denied unemployment benefits, claiming that the employee left his employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

Prior to the issuance of any decision herein by the appeal tribunal, the commission transferred the proceedings to itself, pursuant to section 108.09 (6) of the statutes.

On the basis of the record and testimony in this case the commission makes the following

Findings of Fact: The employee worked for the employer as a laborer. In week 45 of 1936 the employee reported to the company nurse for treatment of his eye and was taken by the personnel manager to a doctor specializing in treatment of the eyes. This doctor diagnosed his condition as facial paralysis, preventing the closing of the eye. During the course of the examination, the employee stated that he had had a venereal disease several months previous. The doctor did not definitely ascertain the cause of the facial paralysis but stated that it might be of venereal origin. He referred the employee to a general physician for more complete diagnosis and treatment. The personnel manager then told the employee that he would be permitted to return to work when he presented a doctor's certificate stating that he was free from any contagious disease.

The employer had work actually available in each of the weeks following week 45. The employee did not report for work again until week 4 of 1937. He then presented a doctor's certificate which

stated that he was physically able to work. The personnel manager refused to permit the employee to return to work on the basis of this certificate, because it did not state that he was free from any contagious disease. The employee made no further attempt to obtain the kind of statement the employer demanded.

Because of the employee's history and symptoms the employer had reasonable grounds to suspect that the employee was infected with a contagious disease. In order to protect his other employees it was not unreasonable for the employer, before permitting the employee to return to work, to demand that he furnish a doctor's certification that he was free from such disease. The certificate that the employee presented did not certify to the employee's freedom from such disease.

The commission therefore finds that the employee was with due notice called on by his employer to report for work actually available in each of the weeks following week 45, and that he was unavailable for work, within the meaning of section 108.04 (1) of the statutes.

Decision: The deputy's initial determination is affirmed. No quitting has been established. However, the employee's eligibility for benefits is suspended beginning with week 45 of 1936. The employee's eligibility for benefits may be established if he obtains the doctor's certificate demanded by the employer.

APPEALED BENEFIT DECISIONS

SUITABLE EMPLOYMENT

125–Wis. A

Wisconsin Industrial Commission — No. 37–A–71
Decision of Appeal Tribunal
1937

The commission deputy's decision held that the employee's eligibility for unemployment benefits was not terminated by his failure to apply for work when notified by the district public employment office on the ground that the employment was not suitable. The employer appealed.

The commission records disclose that the employee was notified by the district public employment office to apply at the employer's office for work in a sawmill in Michigan. The employee did not apply.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee failed to apply for work of which he was notified by the district public employment office. This work was located more than 100 miles distant from the place of his residence and the place of his last employment and therefore was not in the vicinity of either place.

The appeal tribunal therefore finds that the employment of which the employee was notified by the district public employment office was not suitable, within the meaning of section 108.04 (6) of the statutes.

Decision: The decision of the deputy is affirmed. Accordingly, the employee's eligibility for benefits is not terminated.

Comment: Section 108.04 (6) provides that an employee's benefit rights are terminated if he has without good cause failed to apply for suitable employment when notified by the district public employment office. It follows that the question of good cause is only relevant when the employment offered was suitable within the meaning of the cited section.

126–Wis. A

Wisconsin Industrial Commission — No. 37–A–102
Decision of Appeal Tribunal
1937

The commission deputy's decision terminated the employee's eligibility for unemployment benefits on the ground that he had without good cause failed to apply for suitable employment when notified by the district public employment office. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for this employer as an arc-welder for several years. Shortly after being laid off, he registered for work and filed claim for unemployment benefits.

In the week of his first registration, the district public employment office referred him to another employer who was seeking the services of an arc-welder. The new work offered wages in excess of the employee's weekly benefit rate, but he refused to apply for the job on the grounds that the place of employment was not in the vicinity of his residence, and that he was not reasonably fitted to do the work.

Although the place of the work offered was 6 miles from the employee's residence, there were adequate transportation facilities to and from his home, and the distance would have caused him only a slight inconvenience.

As to the employee's second objection, the new work consisted of light gauge steel welding, which is a specialized type of work, in which he had had no experience. Approximately a year before he had taken a test with the same employer and had not been hired. However, at the time he took the test he had been complimented on his work. Also, in 1935, he had passed a rigid government test in general arc-welding.

The appeal tribunal therefore finds that the work to which the employee was referred was suitable employment, within the meaning of section 108.04 (6) of the statutes, and that the employee did not have good cause for refusing to apply for it.

Decision: The deputy's decision is affirmed. The employee's eligibility for benefits is terminated accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–243

The commission deputy's decision terminated the employee's eligibility for unemployment benefits on the ground that she had without good cause refused to accept suitable employment when offered to her. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee had worked as a hat trimmer in the employer's factory. After her lay-off she registered for work and filed a claim for unemployment benefits.

In week 22 the employee was referred by the district public employment office to another employer who sought someone to sew bands on men's hats in a hat cleaning establishment. The employee called on this employer but refused the job because of the distance from her home and because she felt she would be unable to handle the work.

At the time of the hearing the employee alleged, as a further ground for refusing the work offered, that the wages offered were

substantially below those prevailing for similar work in the locality. However, the employee was unable to present any evidence whatsoever as to what wages were paid for this type of work in the locality.

The work offered was an hour's distance from the employee's residence by street car and was, therefore, in the vicinity of her residence. (See Wisconsin Appeal Tribunal Decision 37–A–7.)[1] The employee's usual occupation was that of a hat trimmer, and the work offered, namely, sewing hat bands on men's hats, was so similar that the employee was reasonably fitted for it. The work would have given the employee wages in excess of her weekly benefit rate. There was no basis upon which to find that the wages, hours, or other conditions of work were substantially less favorable to the employee than those prevailing for similar work in the locality.

The appeal tribunal therefore finds that the employment was suitable, and that good cause did not exist for the employee's refusal to accept it, within the meaning of section 108.04 (6) of the statutes.

The initial decision of the deputy is affirmed. The employee's eligibility for benefits is terminated accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–164

The commission deputy's decision held that the employee's eligibility for unemployment benefits was not terminated by her refusal to accept work offered her by the employer on the ground that the employment was not suitable. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee, a stenographer, had worked for the employer for 9 months doing general stenographic work. Her services had been terminated by the employer and she had claimed total unemployment benefits. In the fifth week of her unemployment the employer offered her work as laboratory assistant in his medical clinic. The hours of the job were to be 40 and the pay $15 per week. The work was to consist of making examinations of excreta as to character, consistency, color, and the presence of foreign bodies.

The employee had never done any laboratory work or had any previous experience that would in any way qualify her as a laboratory technician. Further, the employer had terminated her employment in the first instance because she was a person of delicate health.

The appeal tribunal therefore finds that the work offered was not suitable employment, within the meaning of section 108.04 (6) of the statutes for the reason that it was neither in the employee's usual employment nor in an employment for which she was reasonably fitted.

Decision: The deputy's decision is affirmed. Benefits are allowed accordingly.

[1] See 13–Wis. A.

Wisconsin Industrial Commission — No. 37–A–190
Decision of Appeal Tribunal
1937

The commission deputy's decision terminated the employee's eligibility for unemployment benefits on the ground that she had failed without good cause to apply for suitable employment when notified by the district public employment office. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked in the employer's cafeteria for 5 years as cashier and food checker. A year before she received this employment she had been employed as a waitress for about 2 months.

After her lay-off the employee registered for work at the district public employment office and filed claim for unemployment benefits. The following week she was referred by a representative of the employment office to another employer who was seeking a waitress experienced in tray service. The employee refused to apply for the job on the ground that she was inexperienced in tray service and was therefore not reasonably fitted for this work.

The fact that an employee had had no experience in the work offered will not preclude a finding that it was suitable. Here the employee had had sufficient related experience to make it not only possible but quite probable that she would have been acceptable to the employer offering the work. Any doubt as to her ability to qualify for the work could easily have been resolved by her having made application for it.

The work was in the vicinity of her residence and offered wages in excess of her benefit rate.

The appeal tribunal therefore finds that the work was suitable, within the meaning of section 108.04 (6) of the statutes, and that the employee's refusal to apply for it was without good cause.

Decision: The deputy's decision is affirmed. The employee's eligibility for benefits is terminated accordingly.

Affirmed, Wisconsin Industrial Commission, No. 37–C–35.

Wisconsin Industrial Commission — No. 37–A–7
Decision of Appeal Tribunal
1937

The commission deputy's decision terminated the employee's eligibility for unemployment benefits on the ground that she had without good cause failed to apply for suitable employment when notified by the district public employment office. The employee appealed.

The commission records disclose that the employee's weekly benefit rate as to this employer is $7.40. On November 5, 1936, she was notified by the district public employment office of the following 2 jobs, and she failed to apply for either of them, namely:

A. Chambermaid at a private day school at a wage of $10.00 per week.

B. Housekeeper for 3 priests at a wage of $8.00 per week plus room and board.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee resided with her aged parents and a dependent son. Her duties at home required considerable attention each day, including the preparation of some of the meals.

Her last employment had been as nursemaid in a general hospital, and previous to that she had done practical nursing. At her last employment she had worked 7 days a week, part of the time on a shift from 2:30 p. m. to 11 p. m., and part of the time on a shift from 7 a. m. to 3 p. m. The place of her last employment had been several miles from her residence, requiring an hour's travel by street car each way.

The work at the day school, of which the employee was notified by the district public employment office, consisted of taking care of 5 boys in a dormitory and on one day of the week cooking meals for them. The hours of work were from 9 a. m. to 7 p. m. with 2 hours off at noon, and with one day off each week. The day school was approximately the same distance from the employee's residence as was the place of her last employment, and likewise it would have required about an hour's travel by street car each way.

The employee refused to apply for this work because she wanted to remain available for work as an institutional nursemaid or attendant and because the hours of work at the day school would not have afforded her sufficient time for her duties at home. Particularly, she would not have been able to come home during the 2 hours at noon and would, therefore, have to be away from home from 8 a. m. to 8 p. m.

Although the work at the day school was not in the employee's usual employment, it was work for which she was reasonably fitted. The day school was only one hour's distance from the employee's residence by street car and was, therefore, in the vicinity of her residence. The work would have given her wages at least equal to her weekly benefit for total unemployment. The fact that the hours of work at the day school together with the time required going to and from work would have interfered with the employee's household duties does not excuse her failure to apply for such work. There is no indication that the wages, hours, or other conditions of work at the day school were less favorable to the employee than those prevailing for similar work in the locality.

The foregoing findings regarding the work offered at the day school obviate the necessity of any findings regarding the second position (as housekeeper) of which the employee was notified.

The appeal tribunal therefore finds that the employment at the day school was suitable employment and that good cause did not exist for employee's failure to apply therefor within the meaning of section 108.04 (6) of the statutes.

Decision: The initial decision of the deputy is affirmed. Eligibility for benefits is terminated accordingly.

131–Wis. A

Wisconsin Industrial Commission — No. 37–A–8
Decision of Appeal Tribunal
1937

The commission deputy's decision terminated the employee's eligibility for unemployment benefits on the ground that he had without good cause refused to accept suitable employment when offered to him. The employee appealed.

The commission records disclose that the employee's weekly benefit rate as to this employer is $12.50. On October 5, 1936, the employee reported in connection with the weekly renewal of his claim for benefits that he had been offered a job as bellhop in a hotel and that he had refused to accept it.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was laid off by the employer in the week ending September 26, 1936. His last employment had been as bottle washer in a brewery and had allowed him one day's rest in 7.

On October 4, 1936, the same employer offered this employee a job as bellhop in a hotel. The job offered called for 9 hours of work a day for 7 days a week. The wages offered were $30 a month plus tips. The employee was informed that the tips averaged at least $5 a week. He refused to accept this employment because it would not have allowed him one day's rest in 7.

The employee was reasonably fitted for the job as bellhop. Although the wages, exclusive of tips, were less than his weekly benefit rate, the job would have provided him work for at least half the number of hours normally worked as full time in that occupation. There is no indication that the wages, hours, or other conditions of employment would have been less favorable to the employee than those prevailing for similar work in the locality. The work offered did, therefore, constitute suitable employment.

However, since his previous employment for the same employer had allowed him one day's rest in 7, the employee was justified in refusing to accept employment which would have required him to work 7 full days a week.

The appeal tribunal therefore finds that the employment offered the employee was suitable but that he had good cause for refusing to accept it, within the meaning of section 108.04 (6) of the statutes.

Decision: The decision of the deputy is reversed. Accordingly, the employee's eligibility for benefits is not terminated.

Wisconsin Industrial Commission — No. 37–C–38
Decision of the Commission
1937

The commission deputy's decision terminated the employee's eligibility for unemployment benefits on the ground that he had without good cause refused to accept suitable employment when offered to him. The employee appealed.

Prior to the issuance of any formal decision by the appeal tribunal the commission on its own motion transferred the proceedings to itself, pursuant to section 108.09 (6) of the statutes.

Based on the record and testimony in this case the commission makes the following

Findings of Fact: Shortly after his lay-off by this employer the employee was offered a job in the shipping department of another employer's factory. The new work was in the vicinity of the employee's residence, was employment for which he was reasonably fitted, and offered wages in excess of his benefit rate.

The normal hours of the job were 44. However, at the time of the offer the employer was in a rush season and the employee would have been required to work 13 hours per day, 6 days per week for at least the first 2 weeks of this employment. Shortly before the offer the employee had been seriously ill and had been advised by his doctor not to work long hours. The employee refused the work primarily because of the temporary excessive hours.

The commission therefore finds that the employment was suitable, within the meaning of section 108.04 (6) of the statutes but that the employee had good cause for refusing to accept it.

Decision: The deputy's decision is reversed. Accordingly the employee's eligibility for benefits is not terminated.

Wisconsin Industrial Commission — No. 37–A–58
Decision of Appeal Tribunal
1937

The commission deputy's decision terminated the employee's eligibility for unemployment benefits on the ground that he had without good cause refused to accept suitable employment when offered to him. The employee appealed.

The commission's records disclose that the employee's weekly benefit rate as to this employer is $12.50. The employee reported in connection with a weekly renewal of his claim for benefits that he had been offered a job as porter in a tavern and that he refused to accept it.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: In the week following the employee's lay-off he was offered a job as porter in a tavern at a wage of $10 for 56

hours of work per week. He refused to accept this employment because he felt the wage was insufficient.

The employee was reasonably fitted for the job. Although the wages were less than his weekly benefit rate, the job would have provided him work for at least half the number of hours normally worked at full-time in that occupation. Further, the work offered was in the vicinity of his last employment. Therefore, these criteria of suitable employment were met by the work offered.

However, at the time of the offer the prevailing hours for similar work in the locality were 48 per week, and the prevailing rate of pay per week was $15.

The appeal tribunal finds that the hours and wages of the work offered were substantially less favorable to the employee than those prevailing for similar work in the locality, and therefore that the employment offered was not suitable employment, within the meaning of section 108.04 (6) and section 108.04 (7) (b) of the statutes.

Decision: The initial determination is reversed. Benefits are allowed accordingly.

134–Wis. A

Wisconsin Industrial Commission — No. 37–A–122
Decision of Appeal Tribunal
1937

The commission deputy's decision terminated the employee's eligibility for unemployment benefits, on the ground that he had without good cause refused to accept suitable employment when offered to him. The employee appealed.

The commission records disclose that the employee's weekly benefit rate is $8.20. The employee reported that he had been offered a job as a butcher and had refused to accept it.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: No employment was offered the employee. The person alleged to have offered the job was jesting at the time of the purported offer. He could not and would not have hired the employee if the employee had tried to accept the alleged offer.

Since there was no offer of employment, the question of whether it was suitable is not material.

The appeal tribunal therefore finds that suitable employment was not offered the employee.

Decision: The commission deputy's decision is reversed. Accordingly, the employee's eligibility for benefits is not terminated.

135–Wis. A

Wisconsin Industrial Commission — No. 37–A–203
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that in week 10 of 1937 the employee was with due notice called upon to

report for work actually available within said week but was unavailable for such work. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was partially unemployed in week 10 of 1937. Immediately prior to this week in question the employer's business had entered a slack season and the employee had been placed on an occasional work basis. It became customary for the employee to report for work at the establishment each morning and he was at that time notified of any work that might be available on the day. When none of the officers of the employer could be present to advise the employee, word as to work available was left with a fellow employee. In case work became available after the employee had reported, the employee gave the employer 2 phone numbers to call.

On each of the first 4 work days of week 10 the employee reported for work in accordance with the custom but was not offered any work. On one occasion during the week the employer attempted to reach the employee by phone but no one answered. On the last 2 work days of said week the employee received work from the employer but was unable to earn an amount equal to his benefit rate.

The appeal tribunal therefore finds that the employee's partial unemployment in week 10 was occasioned by the employer's having failed to with due notice call upon the employee to report for work, within the meaning of section 108.04 (1) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

136–Wis. A

Wisconsin Industrial Commission — No. 36–A–3
Decision of Appeal Tribunal
1937

The commission deputy denied unemployment benefits, holding that the employee's eligibility was terminated because she failed to apply for suitable employment when notified by the district public employment office. The employee appealed.

The commission records disclose that the employee's employment terminated on September 19, 1936. She registered for work at the district public employment office on September 21 and renewed her registration during the following week, on September 29. On that date she was notified by the district public employment office to apply for employment as a stenographer and switchboard operator at a salary of $15 per week. She failed to apply for this employment and gave as her reason "salary too small". She had previously received a salary of $32 per week and her weekly benefit rate was $15.

The employee conceded that the employment was suitable, but alleged that her failure to apply was with good cause.

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Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: On September 29, the employee was notified by the district public employment office to apply for employment as a stenographer and switchboard operator at a salary of $15 per week. At that time the employee had a broken finger which was in a splint. The finger had been broken during her previous employment, which was of a stenographic and secretarial nature, but she continued to work for some time thereafter with the aid of a small splint. At the time she was notified to apply for the position the splint had been replaced by one of greater length which would have hindered her work as stenographer, but would not have greatly interfered with her work as switchboard operator. The employee made no attempt whatever to secure this employment.

An employee who is notified to apply for suitable employment by the district public employment office must make a reasonable attempt to secure this employment. The existence of a temporary physical disability which would not interfere with the ability of an employee to make application for employment of which he is thus notified does not justify failure to make application therefor. Since the disability was temporary, it is possible that this employee might have been acceptable to the employer for the position.

The position for which the employee was notified to apply was conceded by the employee to be suitable employment within the meaning of section 108.04 (6) of the statutes. It was employment for which the employee was reasonably fitted, was in the vicinity of her residence or last employment, and paid wages equal to her weekly benefit rate. The employee did not claim that the new work was in any way inconsistent with the provision of section 108.04 (7) of the statutes.

The appeal tribunal therefore finds that the work for which this employee was notified to apply was suitable employment and that her failure to apply was without good cause, within the meaning of section 108.04 (6) of the statutes.

Decision: The deputy's initial decision is affirmed. Benefits are denied accordingly.

137–Wis. A

Wisconsin Industrial Commission — No. 37–A–9
Decision of Appeal Tribunal
1937

The commission deputy's decision terminated the employee's eligibility for unemployment benefits on the ground that he had without good cause failed to apply for suitable employment when notified by the district public employment office. The employee appealed.

The commission records disclose that the employee was notified by the district public employment office of a job as laborer for a construction company. The job required that the employee report for work the same day. The employee refused to apply for the job

stating that he had other plans for the afternoon and that he could not report for work until the following morning.

Based on the record and testimony in this case, the appeal tribunal makes the following

Findings of Fact: The job of which the employee was notified by the district public employment office was in his usual employment; it was in the vicinity of his residence; and it would have given him wages in excess of his weekly benefit for total unemployment. There is no indication that the wages, hours, or other conditions of employment were less favorable to the employee than those prevailing for similar work in the locality. The job offered was therefore suitable employment.

The employee was in the employment office when he was notified of the job. This notification occurred between 10:30 and 10:45 o'clock in the morning. He was informed that the job would require him to report for work at 1:00 o'clock that afternoon. The office of the construction company where he was instructed to apply was less than a city block from the employment office. The place where the work was to be performed was less than a mile away. Furthermore, the employee had driven his automobile to the employment office. He would, therefore, have had ample time to apply for the job and report for work by 1:00 o'clock that afternoon.

The employee refused to apply for this job because he had planned to drive his aged mother to a neighboring city some 12 miles distant that afternoon to visit a sister who was ill. However, no great importance attached to this trip because the illness of the sister was admittedly not of serious nature; and the employee's mother, in fact, changed her plans and did not make the trip.

(Comment: Unless reasonable advance notice has been given an employee to apply for suitable employment, his failure to apply does not terminate his eligibility for unemployment benefits. How much time constitutes reasonable notice depends on the circumstances of the particular case. A minimum of several days' advance notice might well be necessary in some instances. In the present case, however, the notice actually given was adequate under the circumstances.)

The appeal tribunal therefore finds that the employment of which the employee was notified by the district public employment office was suitable employment, and that good cause did not exist for employee's failure to apply for it, within the meaning of section 108.04 (6) of the statutes.

Decision: The decision of the deputy is affirmed. The employee's eligibility for benefits is terminated accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–170

The employer denied unemployment benefits, claiming that the employee, without good cause, refused to accept suitable employment.

The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the employee refused to do work to which he was transferred. The employee claimed that he was ill and unable to do the work at the time of the transfer.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee, a railroad section hand, had been temporarily assigned to work as a flagman at an intersection. He was engaged at this work in week 10 of 1937, when he became ill. He reported his illness to his foreman and remained away from work until Wednesday of week 11. When he returned on Wednesday, he was told that he had been transferred back to his regular job on the section and that he would have to be examined by the company's doctor before he could return to work. He was examined by the company's doctor during that week, and, on the doctor's assumption that he was to continue as flagman, was pronounced fit to work. However, he had not recovered sufficiently from his illness to do the lifting required on the section gang. He therefore remained away from work until week 13.

In week 13 the employee reported to his foreman for work but was told that he would have to see the roadmaster. He reported at the job for several successive days thereafter, and, when near the end of the week he did see the roadmaster, the latter told him that there was no work available and gave him a notice to register for work at the public employment office.

The physical inability of the employee to do the work offered him in weeks 11 and 12 did not constitute a refusal of employment.

The appeal tribunal therefore finds that the employee was laid off in week 13 after having been ineligible for benefits in weeks 11 and 12 under the provisions of section 108.04 (1) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are allowed in accordance with the facts as found herein.

139–Wis. A

Wisconsin Industrial Commission — No. 37–A–229
Decision of Appeal Tribunal
1937

The commission deputy's decision terminated the employee's eligibility for unemployment benefits on the ground that he had without good cause failed to apply for suitable employment when notified by the district public employment office. The employee appealed.

The employee conceded that the employment was suitable, but alleged that his failure to apply was with good cause.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was laid off in week 21 of 1937. At that time he was told that he would probably be called back to work in 2 weeks. The employee registered for work at the public employment office and filed claim for unemployment benefits.

In week 23 the employee was notified by the district public employment office to apply for a job as laborer. This job was employment for which he was reasonably fitted, was in the vicinity of his residence or last employment, and paid wages in excess of his benefit rate. The employee refused to apply because he expected to be re-employed at his former job in the following week. Actually the employee had no definite assurance when he would be called back to work by his former employer.

Although under certain circumstances, arrangements to take other work may afford good cause for refusing suitable employment, in the instant case the employee had made no arrangements with his former employer nor did he have any definite assurance that he would shortly be returned to his former job.

The appeal tribunal therefore finds that the employee failed without good cause to apply for suitable employment when notified by the district public employment office, within the meaning of section 108.04 (6) of the statutes.

Decision: The deputy's decision is affirmed. The employee's eligibility for benefits is terminated accordingly.

140—Wis. A

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–239

The commission deputy's decision held that the employee's eligibility for benefits was not terminated by his refusal to accept suitable employment when offered to him, on the ground that his refusal was with good cause. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was laid off because of lack of work. Several weeks later the employer notified him to return to his former work. The employee refused this employment because he had accepted a job with another employer. His employment on this new job, however, was not to begin until the following week. No showing was made why the employee could not have returned to his former work until his new work was to start.

The appeal tribunal therefore finds that the employee refused without good cause to accept suitable employment when offered to him, within the meaning of section 108.04 (6) of the statutes.

Decision: The deputy's decision is reversed. The employee's eligibility for benefits is terminated accordingly.

Wisconsin Industrial Commission No. 37–A–41
Decision of Appeal Tribunal
1937

The commission deputy's decision terminated the employee's eligibility for unemployment benefits on the ground that he had without good cause refused to accept suitable employment when offered to him. The employee appealed.

The commission records disclose that the employee was offered work as laborer for 40 hours per week at 50 cents per hour. The employee refused to accept this employment on the ground that the rate of pay was too low.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee had worked for the employer as a laborer in the construction division. His rate of pay was 84 cents per hour. After his lay-off the employee was offered employment elsewhere as a common laborer for 40 hours per week at 50 cents per hour. The employee refused this work.

The employee was a member of a labor union and the minimum union rate for common labor was 65 cents per hour. The employment offered was in a non-union shop. Fifty cents per hour was not below the prevailing wage rate for common labor in non-union shops in the locality. The union had no restrictions against a member accepting common labor in a non-union shop at a wage rate below the union minimum.

The work offered was employment for which the employee was reasonably fitted. It was in the vicinity of his residence and gave him wages which exceeded his benefit rate. Although the wage rate was less than the union rate for similar work, the wages offered were not substantially less favorable to the employee than those prevailing for similar work in the locality. The conditions of the work offered were in no way inconsistent with section 108.04 (7) of the statutes.

The appeal tribunal therefore finds that the employee without good cause refused to accept suitable employment when offered to him, within the meaning of section 108.04 (6) of the statutes.

Decision: The deputy's initial decision is affirmed. Benefits are denied accordingly.

Wisconsin Industrial Commission No. 37–C–42
Decision of the Commission
1937

The employer denied unemployment benefits, claiming that the employee left his employment voluntarily without good cause attributable to the employer. The commission deputy's decision, however,

held that the employee refused without good cause to accept suitable employment when offered to him. The employee appealed.

Subsequent to the hearing and before formal decision had been rendered by the appeal tribunal, the commission on its own motion transferred the proceedings to itself, pursuant to section 108.09 (6) of the statutes.

Based on the record and testimony in this case the commission makes the following

Findings of Fact: (1) The employee had worked for the employer 6 months, when he was laid off temporarily because of lack of work. Three weeks later he was called back to work and the superintendent assigned him to a certain foreman. The employee reported to his foreman for instructions. The foreman received him uncivilly and gave insult by calling him vulgar names and swearing at him. The employee reported this matter to the superintendent who said, "That's all I can do about it," and walked away. The employee then left the shop.

(2) Two weeks later the employee applied for work with the employer and the superintendent offered him a job with the same foreman. The employee refused this job because of his previous experience with this foreman.

(1) The commission therefore finds that the employee left his employment voluntarily but with good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.

(2) The commission further finds that the employee had good cause for refusing to accept suitable employment when offered to him, within the meaning of section 108.04 (6) of the statutes.

Decision: The deputy's decision is reversed. Benefits are allowed accordingly.

APPEALED BENEFIT DECISIONS

UNAVAILABLE FOR WORK

Wisconsin Industrial Commission No. 37–A–44
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee was unavailable for work in the weeks in which he was unemployed. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer's benefit liability report and supporting letter alleged that the employer had work actually available but that the employee was unavailable for such work because the union had revoked the employee's permit card. The employee admitted the facts alleged but denied that he was unavailable for such work.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employer had entered into a "closed shop" agreement with a union representing his employees, by which he agreed to employ only members in good standing with the union or persons having a permit card from the union. The employee was not a member of the union but held a permit card.

The union revoked the employee's permit card and notified the employer of its action. Thereupon the employer laid the employee off but informed him that he could return to work as soon as his permit card was reinstated by the union. The employer had work actually available for the employee in each of the weeks following his lay-off.

The appeal tribunal therefore finds that the employee was with due notice called on by his employer to report for work actually available in each of the weeks following the lay-off, and that he was unavailable for such work, within the meaning of section 108.04(1) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are suspended accordingly.

Affirmed, Wisconsin Industrial Commission, No. 37–C–4.

Wisconsin Industrial Commission No. 37–A–259
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that in weeks 18, 19, 20, and 21 of 1937 the employee was with due notice called on by the employer to report for work actually available but

was unavailable for such work. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee reported for work on Thursday of week 17 and stayed until noon, when he was told there was no work for him that day. The same thing occurred on Friday. He then asked the employer to notify him when there would be work as he had some odd jobs to do at home.

The employee received no offer of work in week 18. In week 19 the employer's foreman told the employee's brother to tell the employee to report for work. The employee and his brother both lived at home with their mother. The brother forgot to transmit the message, and the employee did not hear of it until week 22. In week 20 the employee asked the employer's foreman whether there was any work available and was told that work was very slack, and it would do him no good to report for work. No further communication occurred between the employer and employee until Wednesday of week 22, when the employer told the employee's mother to tell the employee to return to work, The employee did not report until Friday. He was steadily employed thereafter.

The appeal tribunal therefore finds that the employee was not with due notice called upon to report for work actually available in weeks 17, 18, 20, and 21, within the meaning of section 108.04(1) of the statutes.

The appeal tribunal further finds that the employee was with due notice called on by the employer to report for work actually available in weeks 19 and 22 but was unavailable for such work, within the meaning of section 108.04(1) of the statutes.

Decision: The deputy's initial determination is amended in conformity with the foregoing findings of fact. Accordingly, the employee had an eligible status in weeks 17, 18, 20, and 21 and an ineligible status in weeks 19 and 22.

APPEALED BENEFIT DECISIONS

VOLUNTARY LEAVING

Wisconsin Industrial Commission No. 37–A–31
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee voluntarily left his employment without good cause attributable to the employer. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer in the capacity of shipping clerk from August first until September fifteenth, 1936. During this time he had from 12 to 14 men working under him, and he was responsible for the painting, assembling, crating, and shipping of freight. He had had approximately 12 years of experience as a shipping clerk with other employers prior to the time he was hired.

Because of lack of knowledge of the employer's methods and because of his own lack of planning, the employee had failed to get out several orders on schedule and on these occasions had been warned by his superintendent that it would be necessary for him to increase production.

On September fifteenth an order for 100 pieces of merchandise was required to go out, but the pieces did not reach the shipping room floor in sufficient time to allow the employee to complete the shipment on that day. He was asked by the superintendent whether the order would go out on time, and he replied that he did not receive the order in time to complete it. The superintendent then said, "If you can't handle it, we will have to get someone that can." The employee immediately told the superintendent that he was quitting, and he left his employment the same day.

There was no evidence that the superintendent's remarks were designed to force the employee to quit. The employee quit because he felt that he was unjustly being held responsible for his inability to complete the order on that day. Although the employee's resentment of the superintendent's remarks may have been warranted, the criticism did not constitute good cause for quitting.[1]

The appeal tribunal therefore finds that the employee voluntarily left his employment without good cause attributable to his employer within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The initial determination is affirmed. Benefits are denied accordingly.

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[1] See 147–Wis. A (37–A–55).

146–Wis. A

Wisconsin Industrial Commission — No. 37–A–33
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee left his employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee left his employment when his piece-work rate of pay was reduced. The employee alleged that his rate of pay was lowered in order to force him to quit.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee had worked for the employer for 14 years. He performed various kinds of work, being paid a definite hourly rate for some jobs and a piece-work rate for others.

The employer had been attempting to adjust the piece-work rates of various operations and arrived at a new rate by timing the employees. The employee was the only person employed at a particular operation and he was timed on this job. As a result of the timing, his piece-work rate on this job was reduced from 84¢ to 77¢ per hundred pieces. On other jobs his piece-work rate was not reduced. Upon being notified of this reduction on July 20, 1936, the employee quit.

The employee worked only a small percentage of his total hours on this particular job. The hourly rate of pay applicable to jobs which were not on a piece-work basis was 70¢ and the employee was guaranteed that his average rate, including piece work, would not be less than 70¢ per hour. The reduction would not materially have reduced his earnings. The employee was replaced by a new employee who has averaged, up to the date of the hearing, well over 70¢ per hour in spite of his inexperience at this kind of work.

The appeal tribunal therefore finds that the reduction in the piece-work rate was not made with the intention of forcing the employee to quit, and that he left his employment voluntarily without good cause attributable to the employer within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

147–Wis. A

Wisconsin Industrial Commission — No. 37–A–55
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee left his employment voluntarily without good cause at-

tributable to the employer. The commission deputy's initial determination overruled the employer's denial.

The employee alleged that the employer made it unbearable for him to continue working, and that the quitting was therefore with good cause attributable to the employer.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer for 12 years. He was in charge of a fur storage room, and his chief duty was to clean the coats stored there. He was very conscientious about his work and no complaint was made about his lack of industry.

Prior to 1935 the employee had been instructed to use a cheap cleaning method and not to glaze the coats. This policy of the employer was attributable to the fact that the cleaning service was gratis and not compensated for in the storage charges. In 1935 the employer adopted the policy of making a separate and additional cleaning charge, which presumably entitled patrons to a more thorough cleaning service. The employee was never notified that he was to afford the coats any different treatment by reason of the change in the employer's price policy.

In 1935 and 1936 a number of customers registered complaints and the coats were returned for further cleaning. The coats returned required a different treatment to clean them thoroughly, and most of them required glazing. Because of the large number of coats stored there the employee could not have originally given all of them this more thorough treatment with the limited help afforded him.

On several occasions during the period immediately preceding the employee's quitting the employer reprimanded him for his failure to clean certain coats properly. On the day on which the employee quit the employer had reprimanded him severely and had accused him of deliberately trying to ruin the employer's business by his faulty workmanship.

Not every reprimand or criticism by an employer, even though the employee may consider it to be unjustified, constitutes good cause for quitting attributable to the employer. (See Wisconsin Appeal Tribunal Decision No. 37–A–31.)[2] However, the fact that the employer did not accompany his reprimand with instructions regarding the new cleaning policy and did not make provisions for putting new cleaning methods into effect indicates such an unreasonable attitude as to justify the employee in quitting.

The appeal tribunal therefore finds that the employee left his employment with good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

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[2] See 145–Wis. A.

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Wisconsin Industrial Commission No. 37–A–80
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee voluntarily left his employment without good cause attributable to the employer. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee, after working 4 years for the employer, was transferred from his regular job to that of a fellow workman who was on vacation. On Thursday morning, when the employee reported for work, he was told that the man he was replacing had returned temporarily and that there would be no work for him during that day's shift. He was told, however, that there might be work for him that same evening on the night shift and was instructed to report and find out.

This occurred during a slack period. The employee knew that his employer was spreading the available work among all employees to make sure that they would earn enough wages to equal their respective weekly benefit rates. The employee had already earned enough wages that week to exceed his own benefit rate and was not sure whether he would be given further work that evening.

Some weeks previously the employee had received an offer of a job from another company and had asked his employer whether or not he could accept this job and return when it was over. He was told that his being rehired at a future date would depend upon circumstances then prevailing. Instead of reporting to his current employer for the night shift on Thursday evening, the employee on that same day took the other job previously offered him. This new job lasted 7 weeks. At its close the employee was told by his former employer that he no longer had work available.

At the time when the employee left the employer to accept the other work, he had no reason to think that the employer intended to terminate his employment.

The appeal tribunal therefore finds that the employee left his employment voluntarily without good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The initial determination is reversed. Benefits are denied accordingly.

149–Wis. A

Wisconsin Industrial Commission No. 37–A–124
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee voluntarily left his employment without good cause attributa-

ble to the employer. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer for about 7 years. On the last day he worked the spindles of his machine kept shifting, and, as a result, the work the employee was turning out was not uniform. The employee attempted to fix the machine but could not do so. He asked the foreman to have the millwright fix the machine. The foreman replied by cursing the employee and addressing him in obscene and abusive language. This was in the hearing of fellow workmen. The employee immediately left his employment.

Although criticism of an employee is frequently justified and considerable latitude in the choice of words is permissible, an employee is not required to remain and accept obscene verbal abuse. The employee's request that the millwright fix the machine was reasonable, and the foreman's language and attitude was unjustified, especially in view of the fact that it humiliated the employee before his fellow workers.

The appeal tribunal therefore finds that the employee voluntarily left his employment with good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are allowed accordingly.

150–Wis. A

Wisconsin Industrial Commission — No. 37–A–132
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee left his employment voluntarily without good cause attributable to the employer. The employee denied that he quit and alleged that he was laid off. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was employed on a bridge construction job. On the last day of his employment he and 2 other employees reported for work late. The superintendent saw them coming to work, reprimanded them for being late, and told them to report to their foreman for work.

The employees did go to work and remained on the job for about 5 minutes. They discussed among themselves the meaning of the superintendent's reprimand and decided that it amounted to a discharge. They reported to the timekeeper and asked for their time.

The employees' actions constituted a quitting. Although the quitting was due to misunderstanding, the misunderstanding in this case was not attributable to the employer.

The appeal tribunal therefore finds that the employee left his employment voluntarily without good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

151–Wis. A

Wisconsin Industrial Commission — No. 37–A–146
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee left his employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

The employer alleged that the employee quit his job when not permitted to do the work he wanted to do. The employee alleged that he was transferred to a job which he was physically unable to perform and that he was therefore compelled to quit.

Based on the record and the testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked in the employer's sawmill as a "slab puller" and "hooker." The duties of a "slab puller" and "hooker" are similar and consist of separating the slabs after they have been sawed. They both require about the same amount of physical exertion.

On the morning of his last day of employment the employee wanted to work as a "hooker," but the foreman told him to "get up on the table" and pull slabs. The employee refused to do this and went home.

The foreman's order was not designed to secure the employee's quitting.

The appeal tribunal therefore finds that the employee left his employment voluntarily without good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are denied accordingly.

152–Wis. A

Wisconsin Industrial Commission — No. 37–A–150
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee left his employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer for four and one-half years. During the last 5 months of his employment he was employed as a filling-station attendant on a part-time basis.

A vacancy occurred at the filling station and the employee applied for this full-time job. The employer, however, saw fit to promote another employee. The employee was told by the service station captain that another employee had been selected to fill the vacancy, and that he was to continue to work part time and should report for work the following day. The employee did not report for work thereafter.

The appeal tribunal therefore finds that the employee left his employment voluntarily without good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are denied accordingly.

Affirmed, Wisconsin Industrial Commission, No. 37–C–27.

153–Wis. A

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–152

The employer denied unemployment benefits, claiming that the employee left his employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer alleged that the employee quit his job because he disagreed with the employer as to certain conditions under which he was working. The employee alleged that he quit because the paint room in which he was required to work was not sufficiently ventilated.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer for approximately 2 years. During the last month of his employment he was engaged in painting tractor wheels by the spray method. He was an expert sprayer, having had 12 years' experience in this line of work.

The process of spraying the wheels was carried on in a booth about 6 feet high and 5 feet square. There was a ventilating fan in the booth which complied with the industrial commission's requirements. The wheels were placed on a stand which enabled the employee to place them in different positions. The employee disagreed with the employer's superintendent as to the position in which the stand should be placed within the booth.

While spraying with the stand in the position desired by the employee, the spray gun was pointed away from the booth and ven-

tilating fan for about half the time. This made it much more difficult for the ventilating system to operate efficiently. The employer insisted on placing the stand in such a position that the spray gun would be pointed towards the booth and ventilating fan at all times. The employee refused to work with the stand in this position; and when the employer insisted on so placing it, the employee quit.

On the day of last employment the employer attempted to dissuade the employee from quitting. The employee, however, refused to make any further attempt to adjust the disagreement as to the manner in which the work should be done.

The appeal tribunal therefore finds that the employee left his employment voluntarily without good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

154–Wis. A

Wisconsin Industrial Commission — No. 37–A–160
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee left her employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employer operates a chain of cigar stands in various hotels in the State. The employee was employed as attendant at one of these stands for 13 years.

On the evening before the employee's last day of employment, the employer made a routine visit to her stand. The employee had previously requested an increase in salary, and at this time the employer spoke to her at some length about the possibility of increasing her earnings by increasing her sales. The employee became irritated by this conversation and finally stated, "It seems that you are dissatisfied with my services; and, if you are, you are privileged to get someone else in my place." The employer gave no indication at the time that he considered the employee's statement a quitting.

The following morning the employee reported for work as usual. Later that morning the employer told her that he was getting another girl in her place and that she would have to leave in a week or 10 days. The employee stated that as long as she was through, she might as well leave at once. She thereupon left her employment.

Although the employee was dissatisfied with her salary, she did not in the first instance intend to leave her employment, and no quitting can be implied from her statement to the employer. The first breach in the employer-employee relationship took place, therefore, when the employer notified the employee that she was dis-

charged, even though the discharge was not to become operative until a week to 10 days thereafter. Since the employee had not been guilty of any misconduct connected with her employment, the notice of discharge constituted good cause for quitting.

The appeal tribunal therefore finds that the employee left her employment voluntarily but with good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.[3]

Decision: The deputy's initial determination is reversed. Benefits are allowed accordingly.

155–Wis. A

Wisconsin Industrial Commission — No. 37–A–161
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee left his employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer on a marine construction job for 6 months. A short time before he quit he had received an offer of employment elsewhere and had voiced the intention of accepting it.

Throughout the period of his employment the foreman used strong language in addressing both the employee and the other members of the crew. The language was not used, however, in a malicious manner, and no offense had been taken to it by any employee. On the employee's last day of work the foreman had occasion to criticize the manner in which he was performing a certain task and in doing so called him a vulgar name. The employee then quit.

Although the criticism of the employee may have been unjustified, neither the criticism nor the strong manner in which it was stated was designed to secure the employee's quitting, since the language used by the foreman on that occasion was no different from that generally used by him when speaking to any employee.

The employee quit because he was expecting to receive other employment and not because of the criticism by the foreman or the language used in connection therewith.

The appeal tribunal therefore finds that the employee left his employment voluntarily without good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

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[3] See 162–Wis. A (37–A–237).

Wisconsin Industrial Commission — No. 37–A–162
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee left his employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer as laborer on a construction job for about 3 months. He was not a regular employee but reported on the job daily and was given work when work was available. On various occasions he had reported for work but was not given any work.

On Thursday and Friday in the last week of his employment the employee reported on the job but was told that there was no work for him on those days. He was not, however, told that he had been laid off. He did not report for work thereafter, although the employer had work available for him in the weeks following.

The appeal tribunal therefore finds that the employee left his employment voluntarily without good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

Wisconsin Industrial Commission — No. 37–A–165
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee left his employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report alleged that the employee quit. The employee denied that he quit and alleged that he was displaced by a senior member of the union in accordance with the union's seniority rule.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked as a fireman on a power shovel in the employer's quarry. He was a member of a union in which a rule of seniority was in effect. This rule provided that an unemployed member of the union had the privilege of "bumping" (taking the job of or displacing) a member with lesser seniority rights.

The employee was notified by the union that he was going to be "bumped," and he left the job when the new man reported for work. The employer was not informed of the employee's leaving and was unaware of the change until several days after it had taken place.

The appeal tribunal therefore finds that the employee left his employment voluntarily without good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The initial determination of the deputy is reversed. Benefits are denied accordingly.

158–Wis. A

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–191

The employer denied unemployment benefits, claiming that the employee left her employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee's duties required that she handle food products immersed in cold water. She became ill and remained away from work for approximately a month. Upon her return she requested a change in work because of an instruction from her doctor that she should keep her hands out of cold water. There was no other work available at the time. The employee refused to continue with her former work and left her employment.

The appeal tribunal therefore finds that the employee left her employment voluntarily without good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are denied accordingly.

159–Wis. A

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–201

The employer denied unemployment benefits, claiming that the employee left his employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked in the employer's chair factory for 31 years, during 26 of which he had been employed as

foreman. In the spring of 1936 he quit his job but was re-employed in July. When he returned to work, he was employed as a laborer at a laborer's rate of pay. In 2 weeks he was given his former job as foreman but did not receive an increase in pay.

The employee continued to work at the same rate of pay for about 9 months. He made several requests for a pay increase but was refused. On the morning of the last day of his employment he again asked the superintendent for a raise. The superintendent refused and stated, "Maybe you aren't worth any more." The employee then stated that he would quit at noon. The superintendent told him that since he was leaving he might as well leave at once. The employee reported at the office for his wages and left his employment. He was paid in full for the morning in question.

The employee alleged as a further cause for leaving that the superintendent called him rude and vulgar names. This allegation, however, was not substantiated by the evidence.

The appeal tribunal therefore finds that the employee left his employment voluntarily without good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are denied accordingly.

Wisconsin Industrial Commission — No. 37–A–208
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee left his employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer about 2 years. Six weeks prior to the termination of his employment, he was offered night work, which he accepted. His mother became ill and the employee quit this job in order to be with her at night.

The illness of his mother may have given the employee good cause for quitting; but such good cause, if any, was not attributable to the employer.

The appeal tribunal therefore finds that the employee left his employment voluntarily without good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are denied accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–211

The employer denied unemployment benefits, claiming that the employee left her employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: It was the policy of the employer to grant vacations to employees during the months of June, July, and August. Vacations at any other time could be taken only with the express consent of the president of the company.

The employee's immediate superior resigned his position on February 26 and did not work for the company after that date. On March 1 the employee notified the treasurer of the company that she was leaving that afternoon on her vacation, and stated that she had received permission from her former superior to do so. The treasurer informed her that she would have to obtain the approval of the president in order to take her vacation at that time. The employee refused to see the president and left her employment at noon. Before leaving she remarked to another employee that she was quitting her job. Several days later the employer notified the employee by mail that he considered her actions as constituting a quitting.

The appeal tribunal therefore finds that the employee left her employment voluntarily without good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–237

The employer denied unemployment benefits, claiming that the employee left his employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked as mechanic in the employer's garage for 15 months. On the last day of his employment, a Monday, he was notified that he would be discharged at the end of the week. The employee completed his work that day but did not report for work thereafter.

The reason for the employee's discharge was that his work was not satisfactory. There was, however, no course of conduct by the employer which might have given the employee good cause for leaving prior to the effective date of the discharge; nor was any satisfactory reason given by the employee why he could not have worked until the end of the week.

The appeal tribunal therefore finds that the employee left his employment voluntarily without good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.[4]

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

163–Wis. A

Wisconsin Industrial Commission — No. 37–A–251
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee left his employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: About one month prior to the last day the employee worked he asked the employer for an increase in wages. An understanding was reached by which the employee was to receive a raise on June first and October first.

Through some misunderstanding the employee received one check in June which included the amount of the raise, but the next check was for the old amount with the amount of the raise subtracted as an overpayment. The employee asked for an explanation and was told that a mistake had been made and the raise was to become effective as of July first. The employee pointed out that the understanding was that the raise was to be effective as of June first and offered to quit unless the raise was given as promised. The employer accepted the employee's offer to quit. The employee then apologized and offered to return, but the employer refused to take him back.

Such misunderstanding as existed was attributable to the employer.

The appeal tribunal therefore finds that the employee left his employment voluntarily, but with good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The initial determination of the deputy is reversed. Benefits are allowed accordingly.

Affirmed, Wisconsin Industrial Commission, No. 37–C–55.

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[4] See 154–Wis. A (37–A–160).

Wisconsin Industrial Commission No. 37–C–9
Decision of the Commission
1937

The employer denied unemployment benefits, claiming that the employee left his employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination overruled the employer's denial. The employer appealed. The appeal tribunal found that the employee quit with good cause attributable to the employer and affirmed the deputy's initial determination (Wisconsin Appeal Tribunal Decision No. 37–A–29). The employer petitioned for commission review.

The commission set aside the appeal tribunal's decision and directed that additional testimony be taken.

Based on the record and testimony herein the commission makes the following

Findings of Fact: The employee was 64 years old. He was employed as a watchman and elevator man for over 3 years. Ten days prior to the employee's quitting the employer transferred him to a sweeping job to take the place of a worker who had been injured. The sweeping job paid the employee the same hourly rate as his former job and gave him work for more hours per week. His former job permitted the employee to sit down about half the time, but the sweeping job required him to be on his feet continuously and involved considerable stooping.

At the time of the transfer and on several occasions thereafter the employee complained to a superior that the sweeping job was too difficult for him because of his rheumatism. His requests to be transferred back to his former job were refused because that job had been filled by an employee who had seniority rights. After he had been on the sweeping job 10 days, the employee quit voluntarily.

The employee had never complained of rheumatism while on his former job, and the employer did not know of the employee's rheumatic condition at the time the transfer was ordered. The employer's action in transferring the employee to the sweeping job was a reasonable exercise of the privilege to transfer employees in accordance with the requirements of the employer's business, and it was not designed to secure the employee's quitting. Although the employee may have had good cause for quitting, it was not attributable to the employer.

The commission therefore finds that the employee left his employment voluntarily without good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

Wisconsin Industrial Commission — No. 37–A–53
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee left her employment voluntarily without good cause attributable to the employer. The employee denied that she quit her employment and alleged that she was discharged. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employer is engaged in the retail fruit and vegetable business. The employee had worked for the employer three and one-half years. At the time of the termination of her employment her duties consisted of taking orders for merchandise over the telephone, filling these orders, and preparing them for delivery. Her work had been satisfactory.

On the day of last employment the manager of the store gave the employee an order and directed her to fill it carefully with the best merchandise. The order called for 10 pounds of onions for 25 cents. There were no onions in the store at that price, but there were some selling at 8 pounds for 25 cents and others selling at 10 pounds for 17 cents. The employee packaged 10 pounds of the onions priced at 8 pounds for 25 cents and charged the customer 25 cents. The manager was not in the store at the time the order was filled and could not be questioned regarding the kind of onions the customer wanted.

The customer returned these onions because they were not the kind ordered. The manager reprimanded the employee for sending out 10 pounds of onions for 25 cents when the price was 8 pounds for 25 cents. The employee then said, "Why don't you fire me instead of raising an uproar over 2 pounds of onions?" The manager replied, "You're fired."

The appeal tribunal therefore finds that the employee did not leave her employment voluntarily, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

Affirmed, Wisconsin Industrial Commission, No. 37–C–6.

Wisconsin Industrial Commission — No. 37–A–61
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee voluntarily left his employment without good cause attributable to the employer. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employer's benefit liability report and supporting letter alleged that the employee quit to take other work. The employee denied that he quit and alleged that his employment was terminated because he had applied for other work.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer as a stenographer for approximately 3 months. During this period his work had been at all times satisfactory to the employer.

On a Friday evening the employee called his superior by phone to ascertain when the latter would return from his vacation. In the conversation that followed, the employee told his superior that he had applied for another position, and that he would leave if said position were offered to him. He further stated that the new position would not be offered for several days. The next morning a similar conversation took place between the parties. On no occasion did the employee indicate that he would leave if the new position was not offered to him. On the following Tuesday the employee's duties were taken over by a new employee, and he was discharged.

The appeal tribunal therefore finds that the employee did not leave his employment voluntarily, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The initial determination is sustained. Benefits are allowed accordingly.

167–Wis. A

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–78

The employer denied unemployment benefits, claiming that the employee either left her employment voluntarily without good cause attributable to the employer, or was discharged for misconduct connected with her employment. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer as hotel housekeeper for approximately 11 years. It was her duty to superintend the work of the maids and see that the hotel was kept in a clean and orderly condition. About 3 months before her employment terminated, the employee heard a rumor that a new manager was to be appointed. She asked the employer's wife if the rumor was true, and, upon being told that it was, she stated that she would leave if her duties would be made more onerous. Nothing further was said on the subject, and the employee continued with her work until she was called in by the employer and told that she was discharged.

At the time of her discharge the employee was told that her employment was being terminated because she had been complaining that she did not have enough help. The employee had asked for additional help approximately 8 different times during the course of the last year of her employment. However, she was motivated only by a desire to do more and better work for the employer. On several occasions her request for additional help had been granted.

The appeal tribunal therefore finds that the employee did not voluntarily leave her employment but was discharged.

The appeal tribunal further finds that the employee was not discharged for misconduct connected with her employment, within the meaning of section 108.04 (4m) (a) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

168–Wis. A

Wisconsin Industrial Commission — No. 37–A–83
Decision of Appeal Tribunal
1937

The commission deputy's decision terminated the employee's eligibility for unemployment benefits on the ground that the employee voluntarily left her employment with a subsequent employer without good cause attributable to him, and that she did not leave to take other employment. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee had worked in the shoe factory of the employer from whose account she is claiming unemployment benefits. She was laid off and her employer conceded benefit liability. However, after her lay-off and before she had exhausted her benefit rights from her employer's account she obtained a job with another employer. This new job was also in a shoe factory. The subsequent employer alleged that she quit this job.

In her first week at this new job she failed to report for work on Saturday. The factory where the employee was previously employed did not operate on Saturday, and in the absence of specific instructions, she assumed that this same practice prevailed in the subsequent employer's factory. The subsequent employer telephoned her on a Saturday morning and informed her that he regarded her failure to report as a quitting.

The employee did not intend to quit when she failed to report on Saturday morning but lost her employment because of a misunderstanding.

The appeal tribunal therefore finds that the employee did not leave her employment voluntarily, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are allowed accordingly.

169–Wis. A

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–84

The employer denied unemployment benefits, claiming that the employee voluntarily left her employment without good cause attributable to the employer. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

The employee alleged that she was to be married and quit only because of a company rule prohibiting the employment of married women.

Based on the record and the testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer about 7 years. About 3 weeks prior to her marriage the employee notified the foreman of her plans and stated that she intended to work only 2 weeks longer because she wished to have one week to make preparations for her wedding. This was understood by both the employee and the employer as a notice of quitting. On the date of her last employment the employee signed a termination slip stating marriage as the reason for the termination of her employment.

It is unnecessary for the decision of this case to consider the employer's rule against the employment of married women, since the employee quit, to suit her own convenience, before she was married and before the rule actually affected her.

The appeal tribunal therefore finds that the employee voluntarily left her employment without good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The deputy's initial determination is reversed. Benefits are denied accordingly.

170–Wis. A

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–91

The employer denied unemployment benefits, claiming that the employee voluntarily left his employment without good cause attributable to the employer. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked in a retail lumber yard handling lumber and unloading cars. The employee last worked on a Saturday. On that day the foreman informed the employee and the other men working in the yard that, because of the hot

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weather, work would be suspended for a few days and that they were to report back for work when the heat had subsided.

The employee did not report back for work, but on the following Thursday he came to the employer's office and asked if his employment had been terminated. The bookkeeper told the employee he knew nothing about it and that he had not known of the temporary lay-off. The employee made no attempt to see his foreman but demanded that the bookkeeper pay him his wages. This was not the regular pay day and he could not be paid immediately because the pay roll had not been computed, but he returned later in the day and was paid his wages in full. The employer did not attempt to contact the employee thereafter because he considered that the employee had quit, nor did the employee return for work.

A quitting is not to be presumed from an employee's actions unless it appears that his course of conduct was inconsistent with a continuation of the employer-employee relationship. In this case, the employee's action in demanding his wages in advance of the regular pay day, without ascertaining whether the employer had terminated his employment, indicates a voluntary leaving, and his failure to return supports that conclusion.

The appeal tribunal therefore finds that the employee voluntarily left his employment without good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The commission deputy's initial determination is reversed. Benefits are denied accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–126

The employer denied unemployment benefits, claiming the employee voluntarily left her employment without good cause attributable to the employer. The commission deputy's initial determination overruled the employer's denial.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked in the employer's shoe factory. The last few weeks before the termination of her employment the employee had been working part time on account of illness. In week 42 the employee became too ill to report for work. The employer was notified of that fact.

During the employee's illness her mother went to the employer's office, obtained some articles of clothing the employee had left there, got the employee's check, and signed a termination slip. The employee's mother was not authorized to terminate the employee's employment, nor did she understand the meaning or purpose of the slip that she signed.

The employee reported for work in week 43 and was informed that another employee had replaced her and there was no work

available. The employee had no intention of quitting her job but had intended to return to work as soon as she recovered from her illness.

The appeal tribunal therefore finds that the employee did not voluntarily leave her employment, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are payable accordingly.

172–Wis. A

Wisconsin Industrial Commission — No. 37–A–133
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee voluntarily left his employment without good cause attributable to the employer. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: In accordance with a union agreement the employer operated a closed shop. About 2 weeks prior to the last day the employee worked, the union notified the employer that this employee and certain other employees were in arrears with their union dues and that unless these dues were paid, the other union members would refuse to work with them. Since the agreement with the union required that only members in good standing be employed, the employer warned the employee that he could offer employment only in accordance with this agreement, to which the employee was a party.

During the two weeks following the warning, the employee was absent from work due to illness. As soon as he was able to work, he went to the employer's office and inquired if the other men who had failed to pay their union dues had been laid off. Upon being informed that they had been laid off, he stated, "Well, I'm all through," and left the office.

The appeal tribunal therefore finds that the employee left his employment voluntarily without good cause attributable to the employer within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are denied accordingly.

173–Wis. A

Wisconsin Industrial Commission — No. 37–A–138
Decision of Appeal Tribunal
1937

The employer denied unemployement benefits, claiming that the employee left his employment voluntarily without good cause at-

tributable to the employer. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee worked for the employer for approximately 3 months. His duties required him to attend to 3 machines which served to separate steel chips from oil so that the oil could be used again. In the performance of this work the employee's hands were frequently covered with oil, causing the fine steel chips to adhere to them. This was the direct cause of a series of infections which compelled the employee to lay off work on several different occasions for periods of 1, 2, or 3 days. Other employees also became infected while doing similar work.

On the date of last employment the employee informed his superior that he would be compelled to lay off for 2 or 3 days because he had again been infected. Upon this occasion another man was put to work on the employee's job, and a termination slip indicating that the employment had been ended was made out by the foreman and sent to the employer's office. On his return, the employee was told that his job had been filled and that there was no other work for him. He was not thereafter called upon to report for work.

The appeal tribunal therefore finds that the employee did not voluntarily leave his employment, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The deputy's initial determination is sustained. Benefits are allowed accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–199

The employer denied unemployment benefits, claiming that the employee left his employment voluntarily without good cause attributable to the employer. The commission deputy overruled the employer's denial. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The last day the employee worked he was called into the employer's office and asked to resign. At that time the employee had not considered quitting and asked that he be permitted to work 2 weeks longer so that he would have a chance to find another job. The employer insisted upon an immediate resignation and offered the employee a week's pay and a recommendation if he would resign at once. Thereupon the employee signed a written resignation because he was certain that if he did not resign he would be discharged.

The employer's reason for demanding the employee's resignation was not disclosed.

The appeal tribunal therefore finds that the employee did not leave his employment voluntarily without good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

175–Wis. A

Wisconsin Industrial Commission — No. 37–A–200
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee left his employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee became ill shortly after the last day he worked and was unable to report for work for about 2 months. He was absent from work for more than 2 weeks before he notified the employer of his inability to report for work. Prior to this notification the employer had replaced the employee on the assumption that he had quit. The employee had quit without notice on 3 previous occasions. There was no showing that the employee could not have informed the employer earlier of his reasons for not reporting for work.

The failure on the part of an employee to inform his employer of such reasons as he may have for absenting himself from work for an appreciable period of time, where there is nothing in the circumstances that prevents the communication of such information, constitutes a course of conduct inconsistent with a continuance of the employer-employee relationship.

The appeal tribunal therefore finds that the employee left his employment voluntarily without good cause attributable to the employer, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are denied accordingly.

176–Wis. A

Wisconsin Industrial Commission — No. 37–A–232
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee left her employment voluntarily without good cause attributable to the employer. The commission deputy's initial deter-

mination overruled the employer's denial. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee was laid off indefinitely because of lack of work. Two weeks later the employer had work available for her. He telephoned her home and was informed that she was employed elsewhere.

The employer-employee relationship had been terminated at the time of her lay-off. The acceptance of other employment under such circumstances cannot be considered a quitting.

The appeal tribunal therefore finds that the employee did not leave her employment voluntarily, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

177–Wis. A

Wisconsin Industrial Commission — No. 37–A–240
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee left his employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee had operated a bread-wrapping machine in the employer's bakery for about 3 years. The employer was dissatisfied with the employee's work because of the relatively large amount of bread he improperly wrapped. The employee was calld into the office about 4 weeks prior to the termination of his employment and was told that his work was so unsatisfactory that the employer was going to lay him off. After some discussion the employee was given a chance to work until he found another job, provided he could do so within 6 weeks. About a month after this understanding the employee found other work, and his employment with this employer terminated.

The termination of employment was initiated by the employer, and the employee had no intention of quitting prior to the time that the understanding was reached. The understanding was, in effect, a discharge, and the fact that the employee was permited to work until he found another job, provided he did so within a limited period, does not alter the nature of the termination.

The appeal tribunal therefore finds that the employee did not leave his employment voluntarily, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are allowed accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–244

The employer denied unemployment benefits, claiming that the employee left her employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: One of the employee's duties was to trim the windows in the employer's bakery. On the last day of her employment she partially trimmed the windows with the intention of completing the work as soon as the cakes were baked. The employer asked her why they were not completely trimmed, and the employee told him that she planned to display some cakes. He insisted that she finish trimming the windows immediately. The employee attempted to complete the windows with a display of cookies but the employer would not allow her to do so. The employee then said, "Can't I suit you?" The employer said, "No. You had better quit." He then immediately put his daughter to work in the employee's place.

The appeal tribunal therefore finds that the employee did not leave her employment voluntarily, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The deputy's initial determination is affirmed. Benefits are allowed accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–254

The employer denied unemployment benefits claiming (1) that the employee's eligibility for benefits should be suspended for the 9 weeks following the last week of employment on the ground that she was with due notice called upon by her employer to report for work actually available, but was physically unable to work. (2) The employer entered a further denial of benefits alleging that the employee voluntarily left her employment without good cause attributable to the employer; or (3), if the employee did not quit, she had without good cause refused to accept suitable employment when offered to her. The commission deputy's initial determination overruled the several denials of the employer. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee had been ill 2 months prior to the last day she worked. Several weeks after the employee had returned

to work the employer insisted that she take additional time off in order to regain her health. No showing was made that the employee's health was impaired to such an extent that she was unable to perform her duties. At the time of the termination the employee desired to continue working but by reason of the employer's continued insistence the employee left, believing that she had been laid off. Because of this insistence the employee cannot be said to have voluntarily left her employment.

The employee was physically able to work and was available for work during weeks 5 to 13 inclusive, but she was not called on by the employer to report for work actually available during that time.

In week 14 the employer offered the employee suitable employment. The employee refused to accept it because she had another job at that time.

The appeal tribunal therefore finds that the employee did not leave her employment voluntarily, within the meaning of section 108.04 (4m) (b) of the statutes.

The appeal tribunal further finds that the employment offered the employee was suitable but that she had good cause for refusing to accept it, within the meaning of section 108.04 (6) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are allowed accordingly.

Wisconsin Industrial Commission No. 37–A–260
Decision of Appeal Tribunal
1937

The employer denied unemployment benefits, claiming that the employee left her employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination sustained the employer's denial. The employee appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee planned on getting married and disclosed this fact to her foreman. The employer had a rule in effect requiring female employees to leave their employment when married. The employee knew of this rule and planned to leave her employment in accordance with it. Although she did not tell the employer that she was quitting, both parties understood that the employer-employee relationship would be terminated because of the rule.

At the time of her marriage, the employee was indebted to the plant credit union and requested permission to continue working after her marriage in order to pay off this debt. Permission was granted, and the debt was amortized in about 4 weeks. The employee then asked and received permission to work the balance of her last week. At the close of the week she told the employer that

she had no intention of leaving and wanted to continue working. The employee was told not to come back to work.

The employee's leaving under the circumstances was not voluntary. She wanted to continue working but was forced to leave because of the operation of the rule.

The rule in question was not disciplinary or of such nature that it would operate to sustain a charge of misconduct. There may be circumstances in which the marital status of an employee is so intimately connected with her employment that by bringing herself within the operation of such a rule she may become ineligible for benefits. However, there were no such circumstances in this case.

The appeal tribunal therefore finds that the employee did not leave her employment voluntarily but was discharged, and that the discharge did not affect the employee's eligibility for benefits.

Decision: The initial determination of the deputy is reversed. Benefits are allowed accordingly.

Wisconsin Industrial Commission
Decision of Appeal Tribunal
1937

No. 37–A–268

The employer denied unemployment benefits, claiming that the employee left his employment voluntarily without good cause attributable to the employer. The commission deputy's initial determination overruled the employer's denial. The employer appealed.

Based on the record and testimony in this case the appeal tribunal makes the following

Findings of Fact: The employee became ill on the last day he worked and asked the cashier if he could go home. The cashier told the employee that he had no authority to grant the permission. However, the employee left his work anyway and went to see a doctor who advised him not to work for 2 or 3 days.

The employee notified the employer of this fact the same day. When the employee reported for work 3 days later, he was told that his services were no longer needed.

The employee in no manner indicated an intention to leave his employment. He was, in fact, ill, and his visit to a doctor and subsequent remaining away from work upon the doctor's advice cannot be construed as a voluntary leaving of employment.

The appeal tribunal therefore finds that the employee did not leave his employment voluntarily, within the meaning of section 108.04 (4m) (b) of the statutes.

Decision: The initial determination of the deputy is affirmed. Benefits are allowed accordingly.

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