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Wisconsin Worker's Compensation Update

In This Issue

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Decisions of the Wisconsin Court of Appeals

Evidence

ADS Waste Holdings, Inc. v. Labor and Industry Review Commission, 2022 WL 320243, Appeal Nos. 2020AP2168, 2021AP84 (Ct. App. 2022)(unpublished). The Applicant alleged that he sustained a work-related injury to his back while getting out of his truck on two occasions in November 2017. The Applicant had undergone a one level lumbar fusion in 2012 at L5-S1. The 2017-2018 medical records reflected an L4-5 disc injury. The treating physician opined this occurred as a result of the 2017 work-related injuries. The administrative law judge awarded benefits. The Labor and Industry Review Commission affirmed. The circuit court reversed. The Court of Appeals reinstated the Commission's decision. The respondents asserted the treating physician causation opinions were not supported by facts in the record, and specifically that the physician lacked a full understanding of the Applicant's condition related to his 2012 surgery and details of the mechanism of injuries in 2017. The Court of Appeals disagreed. The Commission's decision was supported by credible and substantial evidence and therefore must be upheld. The Court's role on appeal is to search for evidence supporting the Commission's factual determinations and not to search for evidence that would undermine the determinations. The Commission in this case determined the treating physician's opinion was credible and rejected the respondent's expert (Dr. Karr's) opinions. The treating physician's opinion was based upon knowledge of the 2012 surgery and his

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Our group of worker's compensation law attorneys has extensive experience representing employers, insurers, third-party administrators, and self-insured employers in all phases of worker's compensation litigation. Contact us today to discuss your worker's compensation needs.

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awareness of the 2017 injuries. The Commission reasonably inferred that the similarity of the two injuries led the treating physician to refer to only one of the injury dates in his records. The drawing of a permissible inference by the Commission is an act of fact finding and the inference is conclusive on the court.

Permanent Total Disability

***Conway Freight, Inc./Conway Central Express v. Labor and Industry Review Commission*, 2021 WL 5894092, Appeal No. 2020AP1100 (December 14, 2021)(final publication decision pending)**. The Applicant worked for the Employer for approximately 25 years. He alleged that his job duties were a material contributing factor to his back condition and the need for significant restrictions. His treating physician provided a supportive causation opinion and included the following statement in his WKC-16B: "knowing that the standard indicating a workplace exposure as little as 5% can be a material contributing causative factor, I make my judgement with a reasonable degree of medical probability." The vocational experts agreed that the restrictions adopted by the treating physician based on the functional capacity evaluation rendered the Applicant permanently and totally disabled. The Functional Capacity Evaluation provided restrictions as a result of the Applicant's unsafe blood pressure condition as well as because of his lower back and lower extremity symptoms. Administrative Law Judge Schneiders determined the Applicant was permanently and totally disabled. The Labor and Industry Review Commission agreed. The circuit court and court of appeals affirmed that decision. The Commission did not change the standard for causation for an occupational injury. The treating physician never concluded that the work exposure constituted *only* a 5% contributory factor to the Applicant's back condition. Further, the Commission decision indicated it considered the nature of employment, medical history and medical opinions, and determined that the employment was at least a material contributing causative factor in the progression of the degenerative condition that resulted in the need for surgery, which is the proper standard for causation. The restrictions outlined in the Functional Capacity Evaluation results were based, in part, on the lower back and lower extremity symptoms and not solely the Applicant's high blood pressure.

Subrogation

Sey v. National General Insurance Company, 2021 WL 5710063, Appeal No. 2020AP1676 (December 2, 2021) (final publication decision pending). The circuit court approved a settlement agreement pursuant to Wis. Stat. 102.29. Mr. Sey alleged that the circuit court erroneously exercised its discretion in approving the settlement. The Court of Appeals disagreed and affirmed the circuit court decision. Pursuant to well established case law, a discretionary decision by the circuit courts is upheld if that court considered the relevant facts, properly interpreted and applied the law and reached a reasonable decision. The pro se claimant's arguments were not persuasive. The court applied the appropriate discretion provided in *Adams v. Northland Equip. Co.*, 850 N.W.2d 272 to address situations under Wis. Stat. 102.29 (by "defining the dispute, taking stock of the relative positions of the parties, and considering matters that impacted the fairness of the settlement.")

Unreasonable Refusal to Rehire

Anderson v. LIRC, 398 Wis.2d 668 (Wis. App. 2021). Mr. Anderson began working for a car dealership, Northridge Chevrolet, as a parts advisor in 2010. He was injured at work on July 31, 2014 and underwent surgery in October of 2014. Mr. Anderson was off work following the surgery, and during that time, Northridge struggled to find a temporary replacement for Mr. Anderson. Due to staffing issues, Northridge decided to hire a permanent replacement for Mr. Anderson in November of 2014. Mr. Anderson's manager at Northridge informed him of the circumstances and advised that when he felt better, he should report back to Northridge to discuss a less physically demanding position in sales. Mr. Anderson ended up reaching end-of-healing for his injury in October of 2015 and his treating physician opined that he would require permanent lifting restrictions which were inconsistent with the seventy-pound lifting requirements of the parts advisor position. Mr. Anderson did not report back to Northridge after receiving his permanent work restrictions, nor did he inform Northridge of his restrictions. Instead, Mr. Anderson contacted the Division of Vocational Rehabilitation to try to find a new job. Mr. Anderson was not able to find new employment, however, and he filed a claim against Northridge for unreasonable refusal to rehire under Wis. Stat. § 102.35(3) in January of 2016. The administrative law judge who heard the case denied Mr. Anderson's claim. The Labor and Industry Review Commission affirmed the decision, as did the Circuit Court. Mr. Anderson appealed to the Court of Appeals of Wisconsin and the Court affirmed. The Court explained that typically an employee such as Mr. Anderson must prove that he applied to be rehired in order to establish a

prima facie case for unreasonable refusal to rehire. Anderson argued that this requirement did not apply to him because Northridge terminated his employment while he was recovering from the injury. Mr. Anderson cited to *L&H Wrecking* for the proposition that it was unreasonable to require a terminated employee to report back after being terminated, as that "would have been an exercise in futility." The Court rejected this argument and explained that *L&H Wrecking* did not apply to this case because Northridge had a reasonable basis to terminate Mr. Anderson's employment given he could not perform the work required of the parts advisor position, whereas the employer in *L&H Wrecking* erroneously found that the employee could no longer perform his pre-injury job. The Court cited the *Hill* case for the proposition that an employee has an obligation to express an interest in returning to another type of work in scenarios where the employee's injury prevents him from returning to the pre-injury position. In this case, Mr. Anderson never contacted Northridge to discuss returning to a different position, such as the sales position that was discussed in November of 2014, nor did he ever advise Northridge of his permanent restrictions. ✦

Decisions of the Wisconsin Labor and Industry Review Commission

Arising Out Of

Dietschweiler v. Olameter DPG, Claim No. 2015-014316 (August 19, 2021). The Applicant alleged that he slipped off a curb and rolled his ankle while on a job site. The Applicant could not recall the name or location of the job site. His testimony at multiple hearings was inconsistent as to the time of the alleged injury and the job sites he worked at on the date of alleged injury. The Applicant's supervisor testified the Applicant called the supervisor at 9:30 a.m. to indicate he needed to leave to assist his grandmother. The Applicant did not mention anything about an ankle injury at that time. The Applicant indicated he did not mention the injury then because his pain was minimal and he assumed it would resolve on his own. He indicated it was not until he arrived at home and removed his boot, that he noticed swelling. He indicated that he took a nap and that, when he awoke, his ankle was painful to stand on and he went to the doctor. The emergency room records indicate the Applicant stepped off a curb, twisted his ankle, heard a pop and snap, and developed excruciating pain and swelling immediately. The Applicant later contacted his supervisor to report an injury. He mentioned helping his grandmother rearrange furniture. The Applicant indicated to the supervisor that he could have injured his ankle while doing so. The administrative law judge dismissed the Hearing Application. The Labor and Industry Review Commission affirmed. Numerous contradictions and inconsistencies in the Applicant's assertions left the commission with legitimate doubt that the Applicant sustained the work-related injury as he alleged. The scenario of the Applicant sustaining a serious ankle injury, which ultimately required surgery, having happened without substantial and immediate pain is incredible. The Applicant's testimony that he did not have substantial symptoms until hours after the time of injury, was suspect and inconsistent with the description he provided at the emergency room.

Sime v. Aurora Health Care of Southern Lakes Memorial Hospital, Claim No. 2018-013065 (September 17, 2021). The Applicant worked as a registered nurse for about 35 years. She had extensive treatment for her neck, including anterior cervical decompression and arthrodesis from C4-7 and posterior decompression and fusion from C3-7 in 2011. She alleged that she sustained no nonwork-related injuries between the fusion surgery and the alleged work-related injury in this case. However, the medical records reflect that she fell on ice in January 2016. In January 2017, her daughter contacted her clinic to report she was concerned about the Applicant blacking out. About two weeks before the alleged injury, the Applicant underwent a general medical examination. She reported that she had a lot of crunching and grinding in her neck. In May 2017, the Applicant alleged she injured C1 when it took three tries to pull off a disposable gown. She alleged a whiplash type injury as a result of yanking hard

on her gown. She testified that she grabbed the gown by the shoulder area, in the same way as she did every other day. At the hearing, the Applicant demonstrated having pulled off the gown at the mid cervical level. The Applicant did not report the injury immediately or pursuant to reporting protocols. She had previously reported a number of work-related injuries over her course of employment. Witnesses disputed that the Applicant reported having sustained any such injury as she alleged. Dr. Maric performed an independent medical examination. He opined the imaging revealed that the fracture at C1 was old. Dr. Maric further opined that there was no mechanism of injury due to ripping off a paper gown that could cause a C1 cervical fracture. He opined the force of the action was not sufficient to have caused the fracture. The records reflected the Applicant had significant alcohol abuse problems and was hospitalized for the same. She had episodes of blacking out and falling down associated with alcohol abuse. Dr. Maric opined it was more likely the Applicant sustained a cervical injury as a result of a fall, rather than removing a paper gown. Administrative Law Judge Doody dismissed the Hearing Application. The Labor and Industry Review Commission affirmed.

Tiedeman Jr. v. County of Dane, Claim No. 2017-017989 (September 17, 2021). The Applicant sustained an admitted left shoulder injury. Additionally, two months after the end of healing was reached for the left shoulder condition, when the Applicant no longer worked for the employer, he sustained a right shoulder injury while moving tree logs at his cabin. He alleged the left shoulder injury was a substantial contributing factor in the right shoulder injury because he was not using his left shoulder to haul the logs because he was worried about a re-injury to his left shoulder. Administrative Law Judge Bero-Lehmann denied the claim that a right shoulder injury was sustained. The Labor and Industry Review Commission affirmed that determination. The Applicant's decision to use his right arm to clear branches, and the mechanism of right shoulder injury, were intervening acts that interrupted the chain of causation between the left shoulder work-related injury and the off the job rights shoulder injury. The Applicant's conduct in his activities with his right arm, when he knew he had right shoulder problems and likely needed surgery, made his conduct intentional and negligent. He did not have to perform the involved activity as part of treatment for his left shoulder condition. It was solely his decision to perform the activity, knowing he would not use the left arm and knowing he had significant problems with his right shoulder. There was no emergency or urgency that caused the need to perform the activity. The Applicant's decision was not reasonable under the circumstances and, therefore, broke the chain of causation. Further, the right shoulder injury would have occurred, to the same extent, regardless of the work-related injury.

Average Weekly Wage

Koehler v. Milwaukee Brewers Baseball Club, WC Claim No. 2019-011592 (LIRC September 17, 2021). The Applicant worked as a part-time usher and is one of 750 part-time employees that the Brewers typically employ. He sustained a conceded left knee injury. Subsequently, the Department of Workforce Development determined that he was entitled to an expansion of his wages to 40 hours per week. The employer filed a Reverse Hearing Application to dispute this finding, arguing that the Applicant should not have been entitled to an expanded wage because he was a member of a regularly scheduled class of part time employees. The administrative law judge found that the Applicant's wages were appropriately expanded to 40 hours per week. The Commission affirmed. The Commission explained there are three conditions which must be met in order to establish an employee is a part-time employee under Wis. Stat. § 102.11(am). The employee must be a member of a class of part time workers who (1) perform the same type of work at the same location, (2) the weekly hours of scheduled work for the class for the 13 weeks prior to injury must vary by no more than 5 hours, and (3) at least 10 percent of the employer's workforce must be doing the same type of work. The Commission found that the employer had failed to prove that the weekly hours of scheduled work did not vary by more than 5 hours. The Commission found that the hours "fluctuated significantly beyond the five-hour proscription." The employer argued that the five-hour requirement should not be applied to this employer because the employer has no control over the number of hours the employees work and because the employees' work schedule is largely determined by the Major League Baseball Organization when it sets how many home games will be played. The Commission characterized these arguments as "equitable arguments" and held that the Worker's Compensation statutes must be applied as they are written and that the Department and the Commission do not have authority to make equitable findings which contravene the statutes.

Burden of Proof

Armstrong v. Aurora Health Care, Inc., WC Claim No. 2019-023865 (LIRC September 30, 2021). On January 11, 2017, the Applicant was walking on a sidewalk on the employer's premises when she slipped on ice. She was able to avoid falling by twisting her body and grabbing onto a nearby bench. She did not experience any immediate pain and did not report any injury that day. The Applicant testified that she did not experience any symptoms until five or six days later when she had low back and right hip pain. She did not seek any treatment for the symptoms until January 25, 2017, where she was diagnosed with "recurrent muscle skeletal strain of her lumbar region with possible disc involvement." Thereafter, the Applicant underwent extensive treatment including chiropractic adjustments, injections, and radiofrequency ablation. The Applicant then began treating with Dr. Chandur Piryani in April of 2018. The Applicant denied a prior of low back and hip pain but Dr. Piryani also referred to a lumbar MRI which had been done years earlier, in 2016. Dr. Piryani referred the Applicant for an MRI which took place on May 1, 2019. The MRI reportedly showed a new L3-4 left sided disc protrusion. The Applicant attended a surgical consultation with Dr. Khan who offered an L3-4 fusion. The Applicant decided against the fusion and opted to continue conservative treatment with Dr. Piryani instead. On July 22, 2019, Dr. Piryani completed a WKC-16-B and opined that the slip on ice caused a permanent aggravation of her pre-existing low back condition, and specifically noted that the incident had caused the L3-4 disc protrusion. The respondents referred the case to Dr. Friedel. Dr. Friedel opined that the slip on ice was consistent with causing a temporary right hip strain but not a low back injury. Dr. Friedel further explained that the L3-4 disc protrusion seen on the 2019 MRI was unrelated to the alleged injury. Dr. Friedel explained that the 2016 MRI showed a degenerative lumbar spine conditions which had progressed in the intervening years, and that the L3-4 protrusion was simply a result of the normal progression of that condition. The administrative law judge adopted the findings of Dr. Friedel and denied the claim for a low back injury. The Commission affirmed the decision of the administrative law judge. The Commission explained that Dr. Piryani was the only physician who specifically opined that the slip on ice had caused the low back condition. The Commission explained that "nowhere in Dr. Piryani's clinic notes, WKC-16-B, or elsewhere in the record, is there any indication that he was aware of the five-or-six day delay between the work incident and the Applicant's symptom onset." The Commission found that this was a "significant fact that should not have been left out of the history provided to Dr. Piryani."

Smiley v. City of Milwaukee, WC Claim No. 2015-029242 (LIRC November 30, 2021). The Applicant worked as a "City Laborer." This job entailed significant manual labor, including use of hand tools, power tools, and moving materials weighing up to 100 pounds. Projects included maintenance of city streets, sewers, and bridges. The Applicant began experiencing symptoms in his legs in August of 2015, which consisted of pain in his calves and feet. He sought treatment with employee health on August 11 and 18 and reported severe pain in his legs. On August 20, he was suspended from work for refusing to take a drug test. While on suspension, the Applicant went to see Dr. Essien. He complained of calf pain which had been occurring for 3-4 months, which he said was worse when standing for long periods and at night. The Applicant returned to work from his suspension on September 4. He visited urgent care on September 24 complaining of bilateral leg pain. The nurse noted that he had similar pain back in 2010 which was treated with epidurals. The Applicant followed up with Dr. Essien on October 8, 2015 and reported persistent leg pain. He reported having to use a jackhammer at work and doing digging activities for the past week. Dr. Essien placed the Applicant on work restrictions for two weeks and referred him for a consultation with a spine surgeon, Dr. Maciolek. Dr. Maciolek said his lumbar spine MRI showed moderate to severe stenosis at L4-5 and L5-S1, degenerative disc disease, facet arthropathy, and anterolishthesis at L4 and L5. He recommended steroid injections. The Applicant allegedly first reported his injury by completing a form sometime in November. However, the City had no record of this form ever being submitted. The City's Chief Safety Officer testified that he was not notified of any alleged injury until December 8, 2015. On December 10, the Applicant failed a drug test and then resigned his employment on December 23, 2015. The Applicant underwent an L4-S1 spinal fusion surgery by Dr. Maciolek in January of 2016. Following his fusion surgery, the Applicant was referred to multiple pain management providers. The Applicant refused to provide urine or blood samples on multiple occasions which led the providers to refuse to provide him with pain medications. He also failed to bring his prescriptions into his appointments so pill counts could be performed. In May of 2017, the Applicant filed a Hearing Application alleging he had sustained a back injury on September 2, 2015 and was

entitled to permanent disability and medical expense reimbursement. The Applicant was then evaluated by Dr. Maric at the respondents' request. The Applicant told Dr. Maric that he was injured on September 2, 2015 when he placed a piece of equipment in the back of a truck and then began to experience pain in his low back and down into both legs the following day. Dr. Maric found that the Applicant's low back complaints were not in any way related to his work for the City. He explained that the diagnostic scans did not reveal any acute injuries. Dr. Maric opined that the symptoms began spontaneously without any specific trauma or relationship to work activities. Dr. Maric noted that the Applicant had not even worked on September 2, 2015. Moreover, Dr. Maric explained that the medical records did not contain any evidence that work activities were responsible for causing the Applicant's pain to begin with and found that the Applicant was not a reliable historian. The case was tried before an administrative law judge on March 22, 2021. The administrative law judge found the claim compensable and the respondents appealed to the Labor and Industry Review Commission. The respondents argued that the Applicant had failed to prove his claim beyond a legitimate doubt. The respondents explained that the Applicant was not working on the date of alleged injury, the injury was not timely reported, and that the medical records did not describe the occurrence of any work injury between October 2015 and April 2017. The Commission rejected the respondents' arguments and affirmed the decision of the administrative law judge. The Commission credited the Applicant's testimony that he had simply been mistaken about the date of injury and had confused it with the date he first sought treatment with Dr. Essien. The Commission acknowledged there was a delay in reporting as well, but found that this delay was not determinative because the Applicant had gone to employee health in August to complain of leg symptoms. Finally, the Commission acknowledged that it was "somewhat problematic" that the medical records never attributed the Applicant's back condition to his work activities but ultimately credited the Applicant's testimony that he had explained his job duties to his doctors and found that Dr. Maciolek had an accurate understanding of those job duties.

Occupational / Repetitive Injuries

Ziebell v. SE Cleaners, LLC, Claim No. 2020-007398 (LIRC November 30, 2021). The Applicant was hired by SE Cleaners in May of 2018. His work duties included cleaning flooring and air ducts. In September of 2019, he experienced left knee pain while kneeling on a hardwood floor. He called the owner that evening and reported the pain. He sought medical treatment on September 13, 2019 and complained of knee pain which occurred after "kneeling extensively while working last week." He followed up on October 18, 2019 and reported that he had been working 60 hour weeks for a cleaning company and developed left knee pain one month ago which had worsened since then with development of a knee effusion and sensations of locking and giving away. In early January 2020, the Applicant formally reported a work injury to his left knee and the claim was reported to the insurance carrier. The insurance carrier took a recorded statement wherein the Applicant alleged that the left knee problems began months earlier, in September or October. The insurance carrier then denied the claim for delayed reporting and the Applicant appealed, claiming entitlement to temporary disability benefits and a prospective order for an MRI and potential surgery. The administrative law judge denied the claim. The administrative law judge found that there were inconsistencies with respect to when the knee pain began and that the Applicant had exaggerated the amount of hours he worked. The Labor and Industry Review Commission reversed. The Commission acknowledged there were inconsistencies with regard to when the knee pain first occurred, but found these inconsistencies to be a "minor discrepancy that did not undercut the Applicant's credibility." The Commission also acknowledged that the Applicant had, in fact, never worked a 60-hour week for SE Cleaners. However, the Commission cited to payroll records which showed that he often worked in excess of 40 hours each week. The Commission inferred that the treating physician understood the nature of the Applicant's work duties and explained that neither the independent medical examiner nor the treating physician based their opinion upon the Applicant having worked a specific number of hours each week. The Commission credited the treating physician's opinion that the Applicant's work activities over time were a material contributory causative factor in the onset or progression of the left knee condition and awarded benefits.

Safety Violation

Natera v. City of Madison, Claim No. 2014-004948 (LIRC January 27, 2022). The Applicant sustained a left knee injury as a result of slipping on ice outside of the door the employer's building, on his way to his vehicle. The sidewalk had a diagonal crack in the slab adjacent to the door. Other sidewalk slabs had begun to sink along the lines of the expansion joints. The area where the sidewalk meets the curb was sunk approximately one full inch below the curb. Water would pool in the area. The employer was aware that the sidewalk became icy and slippery during inclement weather. Buckets of salt or sand were routinely placed just outside the doorway, as they were before this injury occurred. The sidewalk had not been salted or sanded the morning of the date of injury involved in this case. There are lights in the parking lot which shed some light on the sidewalk. There are no lights directly outside the building door. The sidewalk was replaced about 18 months after the injury occurred. The employer testified this was to comply with handicap access. The Applicant alleged entitlement to 15 percent increased compensation as a result of an alleged employer safety violation pursuant to Wis. Stat. §102.57 and Wis. Stat. §101.11. The administrative law judge denied the Applicant's claim because the Applicant had never complained to the employer, the employer regularly cautioned employees about the condition of the sidewalk, the employer provided salt/sand containers and encouraged use, employers are not guarantors of safety, and the employer was diligent in its efforts to ensure the safety of the employees. The Labor and industry Review Commission reversed, and determined the Applicant fell as a result of the unsafe condition of the sidewalk on the employer's premises. The commission determined the employer was aware of the unsafe condition of the sidewalk and had been aware of it for an extended period of time. The Commission determined the employer had not sufficiently taken measures to address that unsafe condition. The employer failed to replace the sidewalk to eliminate the hazard and failed to ensure the sidewalk was regularly monitored for sanding/salting.

Unreasonable Refusal to Rehire

Lawson v. G4S Secure Solutions, Claim No. 2006-017930 (September 17, 2021). The Applicant sustained a work-related injury on May 16, 2006. The case was compromised on a full and final basis. The Order approving the compromise was dated March 18, 2009. The language in the compromise indicated that there was a full, complete and final release of liability the respondents may have under the Worker's Compensation. A number of different types of claims were listed, and statutory provisions enumerated. Wis. Stat. 102.35(3) was included in the list. The Applicant was discharged by the employer on September 20, 2019. The Applicant filed a Hearing Application just before 12 years had passed from the date of the Department's Order. Administrative Law Judge Parman dismissed the Hearing Application. The Labor and Industry Review Commission affirmed. The claim under Wis. Stat. §102.35(3) was compromised in the full and final compromise agreement, which was approved by the Department in 2009. The compromise agreement included any claims that arose in the future and not only those disputes existing at the time of the compromise. The relevant language in the compromise was unambiguous and the intent was clear. Liability for all potential claims, including any under Wis. Stat. §102.35(3), was compromised on a full and final basis.

Mullikin v. James Cisneros (d/b/a Jim's Roofing and Siding), Claim No. 2017-025663 (LIRC December 29, 2021). The Applicant slipped on a ladder at work and tore his left hamstring on June 13, 2017. His employer, Cisneros, had no worker's compensation insurance and initially offered to pay the Applicant $200.00 per week while he was off work and recovering. On July 7, 2017, Cisneros sent a text message to the Applicant asking when the Applicant would be returning to work. The Applicant responded, "I'm in fucking pain James [you] aren't paying me for doing nothing [you are] paying what workman's comp would pay only at a lesser rate. [Because] I've already looked into it and I don't think [you] want me to make that call. Waiting to see what [you] have to offer [because] I ain't gonna take this anymore." In response to this text, Cisneros replied, "Your done don't call at all." The Applicant then replied, "Your choice." Twelve days later, on July 19, Cisneros sent another text asking, "So you think ready to work or not?" The Applicant did not reply to this message and testified that he believed he had been fired on July 7. The Applicant did not return to work and was unemployed for over one year afterward. He brought a claim seeking benefits for unreasonable refusal to rehire under Wis. Stat. § 102.35(3), arguing that Cisneros unreasonably terminated his employment by text message. The administrative law judge agreed and awarded benefits for one year of lost wages totaling $31,200.00. The Labor and Industry Review Commission affirmed. The Commission found that the "Your done don't call at all" text message constituted a termination of employment for which no reasonable explanation was offered. The Commission rejected the respondent's contention that the text message sent by Cisneros on July 19 represented a new bona fide offer of employment. The Commission explained that the alleged offer did not identify a specific position, a specific start date, or a specific rate of pay or work hours. The Commission further explained that a "discharged worker [is] under no obligation to return to the employer to seek rehire." ✦

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