

appeal from Siegers v DHSS,
90-0085-PC-ER, 5-14-96

STATE OF WISCONSIN CIRCUIT COURT LINCOLN COUNTY

JANICE SIEGER,

Complainant-Plaintiff

vs.

DECISION
Case No. 96-CV-120

WISCONSIN DEPT. OF HEALTH
AND SOCIAL SERVICES

RECEIVED

WISCONSIN PERSONNEL COMMISSION,

APR 09 1997

Respondent-Defendant

This is an action for judicial review of an administrative
decision of the Wisconsin Personnel Commission. The petitioner
(complainant-plaintiff), Janice Sieger appears pro se. She had,
however, been represented by an attorney at the hearing.

PERSONNEL COMMISSION

The respondent appears by Assistant Attorney General Jennifer Sloan Latis.

This case had been before this Court once before. In a decision dated April 23, 1993, the Court had upheld the previous decision of the respondent.

That decision was reversed by the Court of Appeals which remanded "for a new hearing, consistent with this opinion." This Court had subsequently ordered that the matter be remanded "for a new hearing on all issues." Another hearing was held on July 31, 1995.

It is apparent that the Personnel Commission and the hearing examiner were somewhat confused as to just what, pursuant to the Court of Appeals decision and this Court's order of remand, they were to do. That is, they were confused as to the scope of the issues and the factual findings still to be made as opposed to those which were to be considered decided. This Court is

sympathetic with that apparent confusion. This Court's order of remand for a hearing "on all issues" was overly broad and contributed to the confusion.

After reviewing the Court of Appeals decision and this Court's prior decision, this Court now holds that the Court of Appeals found that the petitioner had established that at the time she requested the leave, she had a serious health condition that rendered her unable to perform her work duties. This Court further finds that its prior decision that upheld the nonretaliation conclusion under Wis. Stat. sec. 111.322(2m) was not reversed by the Court of Appeals and therefore remains uncontroverted.

This Court finds that the only issue on remand was whether the petitioner could establish that there had been a violation of the Family Medical Leave Act by proving that the leave requested was "medically necessary" and that it had been denied to her.

The Court of Appeals at page 862 of the Wisconsin Reports states that the petitioner had presented ample evidence concerning her serious health condition and the effect it had on her ability to perform her work duties. It states "this testimony remains uncontroverted."

The Court of Appeals states at the bottom of page 863 of the Wisconsin Reports that:

"Berg's (Dr. Berg) testimony is required to resolve the issue whether Sieger's leave was medically necessary. While ample evidence existed to demonstrate that laypersons recognize that Sieger's symptoms were interfering with her ability to perform her work duties, no evidence exists to demonstrate that laypersons were capable of concluding

from these symptoms that a leave was medically necessary. Indeed, we can find no evidence in the record that directly relates to the issue of whether Sieger's leave was medically necessary. Without this evidence the broader issue of whether DHSS violated FMLA by denying Sieger's requested leave and disciplining her for taking that leave cannot be resolved."

The Court then remanded for a "new hearing consistent with this opinion." This Court now holds that the hearing "consistent" with the Court of Appeals decision required that only the question of whether the leave was medically necessary be determined and, if it was found to be and if the leave had been denied, whether there had been a further violation of the act because of that "wrongful" denial.

This Court upholds the Commission's present decision. It does so not because it finds that the petitioner has not presented evidence from which the Commission could have found in her favor, but because the Court finds there is substantial credible evidence from which the Commission could determine that the requested leave was not medically necessary.

At page 18, #18 of the Commission's proposed decision and order, it sets forth why it chose not to accept Dr. Berg's conclusions. At pages 40, 41, 42, 43 and 44 it amplifies and goes into detail regarding its analysis of Dr. Berg's testimony and the inferences to be drawn, or not drawn, therefrom.

Dr. Berg testified why she recommended this leave. She stated that she felt it was medically necessary. It is clear that, basically, she wanted Ms. Sieger to "get away" from her job situation for a period of time. It is also clear that, while she

wanted her to take this leave as soon as possible, immediately if she could, she was leaving the time open.

Dr. Robbins, a psychiatrist who supervises the work of other psychiatrists, testified that from the record and testimony he had reviewed he did not feel that the leave was medically necessary. He stated the reasons why he felt this.

The Commission, under Wisconsin case law, could reject Dr. Berg's conclusions and accept those of Dr. Robbins. As has been stated many times where two conflicting views of the evidence may each be sustained by substantial evidence, it is for the agency to determine which view of the evidence it wishes to accept. The weight and credibility of the evidence are matters for the agency and not for the reviewing Court to evaluate. When more than one inference reasonably can be drawn, the finding of the agency is conclusive. On review a Court is not to make an independent determination of the facts. See Hamilton v. ILHR Department, 94 Wis. 2d 611, 288 N.W. 2d 857(1980); Robertson Transport Co. v. Public Service Comm., 39 Wis 2d 653, 159 N.W. 636(1968); Bucyrus-Erie Co., v. ILHR Dept., 90 Wis. 2d 408, 280 N.W. 2d 142(1979); Vocation. Tech. and Adult Ed. Dist. 13 v. ILHR Dept., 76 Wis. 2d 230, 251 N.W. 2d 41(1977) and Hixon v. Public Serv. Comm., 32 Wis. 2d 608, 146 N.W.2d 577(1966).

Finally, a Court may not "second-guess" the proper exercise of the agency's fact-finding function even though, if viewing the case ab initio it would come to another result. Briggs & Stratton Corp. v. ILHR Dept., 43 Wis. 2d 398, 168 N.W. 2d 817(1969). As stated by

by the Court in this decision at page 409 of the Wisconsin Reports:

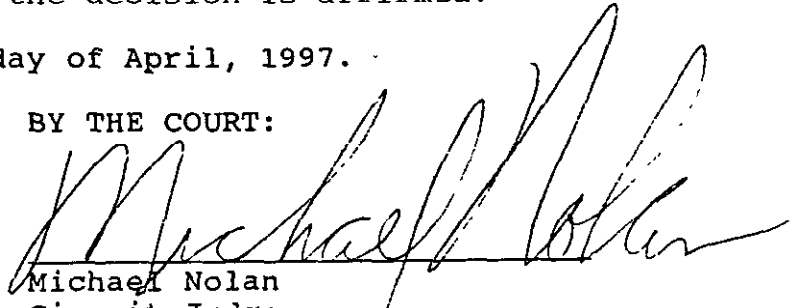
"We see no purpose in litigating questions of disputed fact in this court when such questions are not resolvable here."

There is substantial credible evidence in the record to support the Commission's decision.

The petition is denied; the decision is affirmed.

Dated this 4th day of April, 1997.

BY THE COURT:



Michael Nolan
Circuit Judge