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Personnel
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A party may file with the Supreme Court
a petition to review a decision by
the Court of Appeals pursuant to 808.10
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809.62 (1).

NOTICE

This opinion is subject to further
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No. 84-1715

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

WENDELL McLESTER,

Petitioner-Appellant,

v.

PERSONNEL COMMISSION,
STATE OF WISCONSIN,

Defendant-Respondent.

APPEAL from a judgment of the circuit court for
Outagamie county: ANDREW P. COTTER, Judge. Affirmed.

Before Cane, P.J., Dean and LaRocque, JJ.

PER CURIAM. Wendell McLester appeals a judgment affirming the Personnel Commission's rejection of his race discrimination charge. McLester attempted to prove that he was fired from his position at the Upper Great Lakes Regional Commission because of his race. He presented testimony that Bruce Hendrickson, an official with the Upper Great Lakes Regional Commission, made derogatory statements about native Americans. The commission found no probable cause that McLester was fired because of race discrimination. McLester argues that the commission erroneously failed to

confine itself to the issue of whether he established probable cause, that the commission's findings are not supported by the evidence, and that the commission's decision erroneously relies on the proposition that McLester was subject to dismissal at the onset of a new political administration. Because we conclude that the commission applied the correct standard, that the commission's decision was not based on erroneous findings, and that the commission did not presume that McLester could be fired for his political affiliation, we affirm the judgment.

The commission properly weighed the evidence, including the credibility of witnesses, in deciding whether McLester established probable cause to believe that discrimination occurred. The rule set out in Wilson v. State, 59 Wis.2d 269, 294, 208 N.W.2d 134, 148 (1973), that a magistrate is merely to determine the plausibility of the proponent's story and not decide the trustworthiness of witnesses, applies only to preliminary examinations in a criminal case. The commission is entitled to review the credibility of witnesses and the weight of the evidence in determining probable cause. Probable cause exists when there is reasonable grounds for belief supported by facts or circumstances strong enough in themselves to warrant a

prudent person to believe that discrimination occurred. Wis. Admin. Code, § PC 4.03(2) (1980). The commission is not limited at the probable cause hearing to merely examining whether the petitioner has presented evidence which, if believed, would be sufficient to support his claim. Rather, the test is whether the commission believes, upon its examination of the evidence and its view of the credibility of the witnesses, that discrimination has probably occurred.

The commission found that the witnesses called in support of McLester's claim were not credible. Their testimony, that they overheard derogatory remarks about native Americans was not substantiated by other witnesses, was not consistent with their own earlier statements, and the remarks were not logically related to the subject matter of the discussion at which they were allegedly made.

The fact that the findings erroneously refer to Hendrickson's testimony when he did not in fact testify does not require reversal of the commission's findings. The mischaracterization of his theory or arguments as testimony does not cast doubt on the remaining evidence the commission heard and the findings it made. Despite this obvious error in the commission's findings, its decision does not "depend

on" any finding that is not supported by substantial evidence. See sec. 227.20(6), Stats.

The commission's finding that Hendrickson had no bias against native Americans is supported by substantial evidence. The agency's findings are conclusive if supported by substantial evidence in view of the entire record. Chicago, Milwaukee, St. Paul & Pacific Railroad Co. v. DILHR, 62 Wis.2d 392, 396, 215 N.W.2d 443, 445 (1974). It is not required that the evidence be subject to no other reasonable, equally plausible interpretations. Hamilton v. DILHR, 94 Wis.2d 611, 617, 288 N.W.2d 857, 860 (1980). In cases where two conflicting views may each be sustained by substantial evidence, it is for the agency to determine which view of the evidence it wishes to accept. Robertson Transport Company, Inc. v. Public Service Commission, 39 Wis.2d 653, 658, 159 N.W.2d 636, 638 (1968). The weight and credibility of the evidence are matters for the agency, not the reviewing court, to evaluate. Bucyrus-Erie Co. v. DILHR, 90 Wis.2d 408, 418, 280 N.W.2d 142, 147 (1979). The commission had the right to disbelieve and disregard testimony that Hendrickson made derogatory statements about native Americans.

McLester's argument that the commission erroneously assumed that he could be fired for his political affiliation is not supported by the record. The commission found that McLester was fired because of unsatisfactory work performance. Its findings do not indicate and the record does not establish that the commission misunderstood the reason for McLester's discharge.

By the Court.--Judgment affirmed.

Publication in the official reports is not recommended.