

STATE OF WISCONSIN  
LABOR AND INDUSTRY REVIEW COMMISSION  
P O BOX 8126, MADISON, WI 53708-8126 (608/266-9850)

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MARJORIE P GUSTAFSON, Employee  
W8613 CTH A  
LADYSMITH WI 54848

UNEMPLOYMENT INSURANCE  
DECISION

Soc. Sec. No. \*\*\*-\*\*-9091  
Hearing No. 12202116EC

NUSSBERGER LAW OFFICE, Employer  
PO BOX 142  
LADYSMITH WI 54848-0142

**Dated and mailed:**  
**NOV 26 2012**

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**SEE ENCLOSURE AS TO TIME LIMIT AND PROCEDURES ON FURTHER APPEAL**

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An administrative law judge (ALJ) for the Division of Unemployment Insurance of the Department of Workforce Development issued a decision in this matter. A timely petition for review was filed.

The commission has considered the petition and the positions of the parties, and it has reviewed the evidence submitted to the ALJ. Based on its review, the commission agrees with the decision of the ALJ, and it adopts the findings and conclusion in that decision as its own.

**DECISION**

The decision of the administrative law judge is affirmed. Accordingly, the employee is eligible for benefits, if otherwise qualified. There is no overpayment.

BY THE COMMISSION:

  
Robert Glaser, Chairperson

  
Ann L. Crump, Commissioner

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Laurie R. McCallum, Commissioner

## MEMORANDUM OPINION

In its petition for commission review, the employer argues that the ALJ's conclusion that the employee did not voluntarily reduce her hours is not supported by the credible evidence in the record. It argues that it hired two additional part-time workers to replace her hours which demonstrates that the employer would have had hours available for her to work had she not chosen to reduce her hours. It disputes the employee's assertion that her hours were reduced in response to financial difficulties of the employer. It also argues that a different ALJ found that the employee subsequently quit her job, despite her testimony to that tribunal that she had been discharged, and maintains that this undermines her credibility in the present case.

The commission's review is limited to the record from the hearing in this matter. It does not have the other case before it. However, the circumstances of a separation from employment can often be ambiguous and a mischaracterization of that separation would not necessarily demonstrate a lack of credibility.

The hearing in this matter is a de novo review. The ALJ is not bound by the findings and conclusions in the initial determination. While the employer maintains that the employee was the moving party in her reduction in hours, the ALJ did not find this credible. The employer objects that the ALJ was not able to make credibility impressions from the employee's demeanor because the hearing was held by phone and that there is insufficient credible evidence in the record to support the ALJ's conclusion. However, credibility is not limited to demeanor. It can also be derived from the factual circumstances.

The employee denied that she requested the reduction in hours and her doctor released her to return to work full time. The employer made a number of changes in staffing and compensation around the time that the employee returned to work, including ending employee benefits and reducing the employee's wages. It offers explanations for these changes, which the commission does not find persuasive. The employer also maintains that it was required to replace all of the hours of its two full time clerical workers when they each elected work part-time. However, the employer's owner's testimony regarding the total hours worked by his staff as of the date of the hearing demonstrates that the employer had still not fully replaced all the staff hours three months after the employee left her employment. The commission accepts the ALJ's reasonable inference from these facts that the employee's hours were reduced by the employer. The employee did not quit her job by voluntarily reducing her hours. As such, the employee remains eligible for benefits if she is otherwise qualified.

cc: Attorney Danielle Schroder