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CIRCUIT COURT ORDER/OPINION
Stephine Gwin, Circuit Court Clerk

Appeal Docket No: 193133W

☒ Please enter and distribute along with Board of Review Decisions/Orders and Referee Decision/Orders.

☐ Board Member and assigned attorney to case (Individual Copies)

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Reverse/Remanded

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29 (1)(a) Section of the Act

Date: 5/2/08, 2007

R. Douglas Daligga, Director
MES - Board of Review

STATE OF MICHIGAN

THE CIRCUIT COURT FOR THE COUNTY OF CASS

JAMESON COMPANY, LTD.,

Appellant,

Case No. 07-909-AA

Date Filed: 11-21-07

vs.

35-Day Order: 5-12-08

CARLA T. THORNHILL, AND STATE OF MICHIGAN, DEPT. OF LABOR & ECONOMIC GROWTH, UNEMPLOYMENT INSURANCE COMPANY,

Defendant.

_____/

ORDER RE: FILING OF JUDGMENT OR FINAL ORDER

At a session of said court held this 7th day of April, 2008 in the Law & Courts Building, Village of Cassopolis, State of Michigan

PRESENT: Honorable Michael E. Dodge, Circuit Judge

In the above-entitled action:

On April 7, 2008 the Court issued an Opinion which resolves all matters pending in the case.

THEREFORE, IT IS HEREBY ORDERED:

A Judgment or Final Order reflecting the action or proceeding noted above shall be filed within 35 days of the issuance of this order. Failure to file said Judgment will result in the imposition of appropriate sanctions, including dismissal or default.

Dated: 4-7-08

Michael E. Dodge

MICHAEL E. DODGE
Circuit Judge

STATE OF MICHIGAN
THE CIRCUIT COURT FOR THE COUNTY OF CASS

JAMESON COMPANY, LTD,

Appellant

v

CARLA T. THORNHILL, AND STATE OF MICHIGAN, DEPARTMENT OF LABOR & ECONOMIC GROWTH, UNEMPLOYMENT INSURANCE AGENCY,

Appellees.

/

Case No. 07-909-AA

Hon. Michael E. Dodge, Circuit Judge

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/

OPINION

On October 23, 2007, the Employment Security Board of Review reversed a previous holding of an Administrative Law Judge (Referee) and reinstated appellee Carla Thornhill's unemployment benefits after disagreeing with the Referee over who had the burden of proof regarding whether or not Ms. Thornhill was disqualified from receiving unemployment benefits because she voluntarily left her job. The appellant, Jameson Company, appealed the Board's decision to this Court pursuant to MCL 421.38(1) and this Court heard oral arguments on the matter by the attorneys for both the appellant and for the State of Michigan Department of Labor & Economic Growth (the Agency) on March 24, 2008. Ms. Thornhill was not allowed to present

an oral argument to the Court because she failed to file a brief in accordance with the court rules prior to the hearing.

Upon review of the briefs and oral arguments submitted by the appellant and the Agency, it is the opinion of this Court that the decision of the Board of Review is contrary to law and is not supported by competent, material, and substantial evidence. Therefore, for the reasons stated in the opinion below, the decision of the Board of Review is **REVERSED** and the opinion of the Referee is **REINSTATED**.

I. STANDARD OF REVIEW

When reviewing a decision of the Employment Security Board of Review, this Court must affirm the Board's decision if it is supported by competent, material, and substantial evidence regardless of whether or not this Court would have personally reached the same result. MCL 421.38(1); *Carswell v Share House, Inc*, 151 Mich App 392, 294-395; 390 NW2d 252 (1986). As the Agency pointed out in their brief, this Court is not at liberty to substitute its own judgment for that of the Board of Review's if substantial evidence exists on the record as a whole to support the Board's decision. *Smith v Employment Security Comm*, 410 Mich 231, 256; 301 NW2d 285 (1981). "Substantial Evidence" is evidence that a reasonable person would accept as sufficient to support a conclusion and that is more than a mere scintilla of evidence but less than a preponderance of evidence. *Russo v Dep't of Licensing & Reg*, 119 Mich App 624, 631; 326 NW2d 583 (1982). However, this Court is not obligated to affirm the Board's decision if there is a controlling rule of law that proves the Board's decision was unfounded. *Peaden v Employment Security Comm*, 355 Mich 613, 629; 96 NW2d 281 (1959).

II. BURDEN OF PROOF UNDER MCL 421.29(1)(a)

This case involves interpretation and application of MCL 421.29(1)(a) which addresses when employees who voluntarily leave their job are disqualified from receiving unemployment benefits and who has the burden of proving disqualification. The Referee relied on the plain language of the statute along with supporting case law to explain his holding that, as the claimant, Ms. Thornhill had the burden of proof with regards to establishing that she was not disqualified from receiving benefits. The Board of Review, on the other hand, left the language of MCL 421.29(1)(a) regarding burden of proof out of their opinion when quoting the statute and

reached a conclusion contrary to that of the Referee's by relying on case law from 1984, 1955, and 1960 respectively that states the exact opposite of the language of the statute that the Board left out of its opinion. These contrary conclusions regarding who has the burden of proof now requires this Court to interpret MCL 421.29(1)(a) and determine who has the burden of proof.

Interpreting the language of a statute requires that the established principles of statutory construction be applied. These principles require that the specific language of the statute must be consulted and given effect as intended by the Legislature. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 458; 733 NW2d 766 (2006). The intent of the Legislature is given effect by applying the plain and ordinary meanings of the words in the statute. *McManamon v Redford Charter Twp*, 273 Mich App 131, 135; 730 NW2d 757 (2006). If the words of the statute are unambiguous, then a court does not need to look outside the language of the statute or construe the statute, but instead need only enforce the statute as written. *Id.* at 136.

Prior to 2002, MCL 421.29(1)(a) did not address who had the burden of proof in regards to establishing disqualification and merely stated that, an individual was disqualified from receiving benefits if he or she "[l]eft work voluntarily without good cause attributable to the employer or employing unit. However, if the individual has an established benefit year in effect and during that benefit year leaves unsuitable work within 60 days after the beginning of that work, the leaving does not disqualify the individual." However, the legislature amended MCL 421.29(1)(a) in 2002 so that it now addresses who has the burden of proof in regards to disqualification. MCL 421.29(1)(a) as currently amended specifically states in relevant part that an employee is disqualified from receiving unemployment benefits if he or she:

> Left work voluntarily without good cause attributable to the employer or employing unit. An individual who left work is presumed to have left work voluntarily without good cause attributable to the employer or employing unit. *An individual claiming benefits under this act has the burden of proof to establish that he or she left work involuntarily or for good cause that was attributable to the employer* or employing unit. . . .

MCL 421.29(1)(a)(emphasis added). The current language of MCL 421.29(1)(a) is very plain and clearly states that Ms. Thornhill, as the claimant seeking benefits under the act, has the burden of proof in regards to establishing that she is not disqualified from receiving benefits

because either (1) she left involuntarily or (2) she left voluntarily for good cause attributable to her employer.

Because the legislature has amended MCL 421.29(1)(a) to now specifically include that the claimant bears the burden of proof, the Board's reliance on the prior version of MCL 421.29(1)(a) and outdated case law that placed the burden of proof on the appellant was unfounded and contrary to law. Therefore, the appellant did not have to prove that Ms. Thornhill's leaving was "unrestrained, volitional, and freely chosen." Rather, as the Referee correctly concluded, Ms. Thornhill had the burden of overcoming the presumption that her leaving was voluntary and without good cause attributable to the appellant.

Because the Board applied the wrong burden of proof, the next question becomes whether there is still competent, material, and substantial evidence on the record as a whole to support the Board's holding that Ms. Thornhill was not disqualified because her leaving was involuntary. It is the opinion of this Court that the record does not contain competent, material, and substantial evidence to support this conclusion once the burden of proof is appropriately placed on Ms. Thornhill.

Ms. Thornhill by her own testimony admits she was told she was not being fired when she confronted her employer. Her testimony further reveals she was told to leave her employer's office, not to leave her job permanently. She made the personal decision to leave her job freely and voluntarily – not because she was implicitly or explicitly forced to leave by her employer. Ms. Thornhill's testimony further establishes that she knew her employer was upset over loosing a valued employee and yet she continued to confront him and pursue an argument – in fact she specifically sought him out to continue the confrontation after he had left her office. This isolated argument, which was pursued and continued intentionally by Ms. Thornhill with her long-time employer whom she knew was upset, is not compelling enough that it would have caused a reasonable person in the same circumstances to give up his or her employment. Therefore, when the correct burden of proof is applied to the evidence presented by Ms. Thornhill, there is not substantial evidence on the record as a whole to support the Board's holding that Ms. Thornhill's leaving was involuntary because she has failed to overcome the presumption that her leaving was voluntary and without good cause attributable to the appellant.

III. CONCLUSION

As amended, MCL 421.29(1)(a) now requires claimants such as Ms. Thornhill to overcome the presumption that they are disqualified from unemployment benefits because their leaving was voluntary and without good cause attributable to their employer. The Referee correctly applied this burden to Ms. Thornhill and concluded that she was disqualified from unemployment benefits because she had not overcome the presumption that her leaving was voluntary and without good cause. The Board's conclusion that the appellant was required to show that Ms. Thornhill's leaving was not involuntary is contrary to the plain and unambiguous language of MCL 421.29(1)(a). Because the Board improperly concluded that Ms. Thornhill was qualified for unemployment benefits by applying the wrong burden of proof, the opinion of the Board is **REVERSED** and the opinion of the Referee is **REINSTATED**.

Michael E. Dodge

Dated: 4-7-08

Michael E. Dodge, Circuit Court Judge