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CIRCUIT COURT ORDER/OPINION
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Appeal Docket No: 2023704

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Reversing & Remand to Board

29(1)(a) Section of the Act

Date: 7/16, 2009

R. Douglas Daligga, Director
MES - Board of Review

STATE OF MICHIGAN
BAY COUNTY CIRCUIT COURT

BECKY MIETZ

Claimant/Appellant,

v.

File No. 09-3137-AEKS

STATE OF MICHIGAN, DEPARTMENT OF ENERGY AND ECONOMIC GROWTH, UNEMPLOYMENT INSURANCE AGENCY,

Appellee.

_____/

OPINION AND ORDER REVERSING DECISION OF EMPLOYMENT SECURITY BOARD OF REVIEW

This matter is before this Court on appeal from a decision of the Employment Security Board of Review (Board).

Facts

After leaving her employment with the Michigan Department of Human Service, Becky Mietz (Appellant) applied to State of Michigan Unemployment Agency (Agency and/or Appellee) for unemployment benefits. The Appellee issued a redetermination denying benefits and found that the Appellant was disqualified from receiving benefits under the voluntary leaving provisions set fourth in Michigan Employment Security Act, § 29(1)(a) ("Act")

Thereafter, Appellant requested a hearing. At the hearing, Appellant and Becky Weaver of the Michigan Department of Human Services testified before Administrative Law Judge Charles M. Lowther (ALJ). The ALJ issued a written opinion affirming the Agency's redetermination and deciding that "the claimant is disqualified for voluntary leaving and that the claimant is subject to the rework requirements of Subsection 29(3) of the Act".

Subsequently, the Employment Security Board of Review affirmed the ALJ's decision also finding that the Appellant was disqualified under Section 29(1)(a) of the MES Act. Appellant timely appealed to this Court pursuant to MCL 421.38(1).

Jurisdiction

An appeal of a decision of the Board must be filed within 30 days of the mailing date of the decision in the circuit court in the county where the claimant resides or where the claimant's place of employment was or is located. MCL 421.38(1). This Court finds that the Board's

decision affirming the ALJ's decision was mailed on January 29, 2009 and that the Appellee, who resides in Bay County, Michigan, filed a timely appeal on March 2, 2009. Accordingly, this Court finds that it has jurisdiction over this matter.

Standard of Review

The standard of review which applies to this appeal is set forth in subsection 38(1) of the Michigan Employment Security Act [MCL 421.38(1)], as follows:

> The circuit court in the county in which the claimant resides or the circuit court in the county in which the claimant's place of employment is or was located, or, if a claimant is not a party to the case, the circuit court in the county in which the employer's principal place of business in this state is located, may review questions of fact and law on the record made before the referee and the board of review involved in a final order or decision of the board, and may make further orders in respect to that order or decision as justice may require, but the court may reverse an order or decision only if it finds that the order or decision is contrary to law or is not supported by competent, material, and substantial evidence on the whole record. Application for review shall be made within 30 days after the mailing of a copy of the order or decision by any method permissible under the rules and practices of the circuit court of this state.

Concerning this standard, the Michigan Court of Appeals, in McArthur v Borman's Inc, 200 Mich App 686 (1993), at 689-690, stated the following:

> Judicial review of factual findings of administrative tribunals is limited. The reviewing court will not substitute its judgment for that of the fact-finding tribunal. Saber v. Capitol Reproductions, Inc., 28 Mich.App. 462, 464, 184 N.W.2d 518 (1970). The MESC Board of Review's decision may be reversed only if the decision is contrary to law or is not supported by competent, material, and substantial evidence. Becotte v. Gwinn Schools, 192 Mich.App. 682, 685, 481 N.W.2d 728 (1992). Substantial evidence is more than a mere scintilla but less than a preponderance of the evidence. Id. We accord due deference to administrative expertise and do not displace an agency's choice between two reasonably different views. MERC v. Detroit Symphony Orchestra, Inc., 393 Mich. 116, 124, 223 N.W.2d 283 (1974) (applying the competent, material, and substantial evidence standard of M.C.L. § 423.23[e]; M.S.A. § 17.454[25][e]); Senior Accountants, Analysts & Appraisers Ass'n v. Detroit, 184 Mich.App. 551, 557, 459 N.W.2d 15 (1990). Where the underlying facts are undisputed, questions presented on appeal are treated as matters of law. Grand Rapids Public Schools v. Falkenstern, 168 Mich.App. 529, 536, 425 N.W.2d 128 (1988).

The Referee's (ALJ's) [1] Decision

The ALJ issued a written opinion with Findings of Fact and Conclusions of Law.

The ALJ's made the following Findings of Fact:

> The claimant worked for the Michigan Department of Human Services from July 2006 to March 2008. She worked as a protective service worker in Bay City and found the job to be very stressful. She felt the job caused her to lose sleep, she suffered loss of concentration and she felt expectations were unreasonable. There was significant fluctuation in the case load which added to the claimant's frustration. As a result, after being denied an opportunity to transfer out on a promotional basis, claimant resigned on March 21, 2008

The ALJ's Conclusions of Law are as follows:

> The claimant left her job voluntarily. She was not directed to do so by her doctor and she was under no disciplinary cloud for having failed to perform up to acceptable levels. She was performing up to her employer's expectations. Her concern is that the employer did not expect her to perform at the high level that she set for herself. She found this very frustrating..... Her personal frustrations are clear and justifiable, but her decision not to participate in the employer's limited efforts to address over overwhelming social ills is based on her conclusion that the task had become futile and not on the employer's ill treatment of her as an employee.

The ALJ made his Findings of Fact and Conclusions of Law, upon review of the testimony and demeanor of the parties, and concluded that the Appellant failed to meet her burden of proof in establishing she had good cause attributable to the employer for leaving her employment. Ultimately, the ALJ affirmed the redetermination, and held that the Appellant was disqualified under the voluntary leaving provision of MCL 421.29(1)(a).

The Board's Decision

The Employment Security Board of Review ("Board") affirmed the ALJ's ruling and found that the Appellant was disqualified under Section 29(1)(a) of the MES Act. After reviewing the record and briefly summarizing applicable law, the Board found that the Appellant failed to put forth sufficient evidence to support a finding that she quit with good cause attributable to the employer.

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[1] The statute quoted above identifies as "referees" the presiding officers who hear and initially decide appeals from MESC redeterminations. See also, MCL 421.33. These officers are also commonly and properly called "administrative law judges." This opinion uses "ALJ" as an abbreviation for "administrative law judge."

Discussion and Analysis

As noted, this Court may reverse the decision of the Employment Security Board of Review only if it finds that the Board's decision is "contrary to law or is not supported by competent, material, and substantial evidence on the whole record." MCL 421.38(1). This Court finds that Board's decision was not supported by competent, material and substantial evidence on the whole record.

Under subsection 29(1)(a) of the Michigan Employment Security Act [MCL 421.29(1)(a)], an individual is disqualified from receiving benefits if he left work voluntarily without good cause attributable to the employer. The term "voluntary" connotes a choice between alternatives which ordinary persons would find reasonable, Clarke v North Detroit General Hospital, 179 Mich App 511 (1989), aff'd 437 Mich 280 (1991), and a voluntary leaving is one which is unrestrained, volitional, and freely chosen. Tomei v General Motors, 194 Mich App 180 (1992). The standard used in determining whether a voluntary leaving was with good cause attributable to the employer is that of a reasonable individual. Under that standard, "good cause" compelling an employee to terminate his employment should be found where an employer's actions would cause a reasonable, average, and otherwise qualified worker to give up his or her employment. Carswell v Share House, Inc, 151 Mich App 392 (1986). The burden of establishing that the leaving was either involuntary or voluntary with good cause attributable to the employer is on the claimant. Carswell, supra; Cooper v University of Michigan, 100 Mich App 99 (1980).

After a review of the record, and the arguments and authorities presented by all parties, this Court finds that Appellant did voluntary leave her employment. However, the Court further finds that the Appellant's voluntary leaving was with good cause attributable to her employer. Specifically, this Court finds that the employer's unilateral decision to substantially increase Appellant's caseload, up to 50% or 100% at times, caused the Appellant extreme stress, which manifested itself in both physical and mental symptoms. Given the nature of Appellant's responsibility (i.e. investigating child abuse and protecting children), this Court finds the Appellant established that her employer's actions would have caused a reasonably average and otherwise qualified worker to give up her or his employment.

Accordingly, this Court holds that the Board's decision affirming the denial of benefits for Appellant's was not supported by competent, material, and substantial evidence on the whole record. The Board's decision must, therefore, be reversed.

ORDER

IT IS HEREBY ORDERED that the decision of the Employment Security Board of Review is REVERSED and this matter is REMANDED to the Board for action that is consistent with this Opinion.

This order resolves the last pending claim and closes the case.

July 13th, 2009

KENNETH W. SCHMIDT, CIRCUIT JUDGE
(P25211)