

93994W  
A.D. NO. B83-17556-93994W  
S.S. NO. [REDACTED]  
B.O. NO. 66'

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF ST. CLAIR

MARY L. PAYNE,  
Claimant-Appellant,

Civil Action No. C-84-1-11-AE

v

Honorable James T. Corden

COLONY BAR,  
Employer-Appellee,

and

MICHIGAN EMPLOYMENT  
SECURITY COMMISSION,  
Appellee.

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Assistant Attorney General  
Attorneys for Michigan Employment  
Security Commission

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O P I N I O N

Claimant voluntarily left her employment with the Colony Bar after approximately nineteen years. Her claim for benefits, founded on the assertion that a substantial change in working conditions, i.e., the introduction of loud, rock-type music which changed the very nature of the establishment and its clientele, was denied by the Referee on the basis that her reason for leaving was not a cause attributable to the employer. The Board of Review affirmed.

After the MESC Board of Review has made a determination as to whether the employee is entitled to benefits, the Circuit Court may reverse only if it finds the decision is contrary to law or not supported by competent, material and substantial evidence on the whole record. MCLA 421.38.

It appears to this Court that the Referee and the Board of Review failed to address the issues of physical and emotional compulsion that caused the Claimant to leave her employment and whether that compulsion can be attributable to the employer.

Although the Michigan courts have not delineated the extent to which changed working conditions can be attributable to the employer in this context, it is recognized, as the MESC points out, that "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

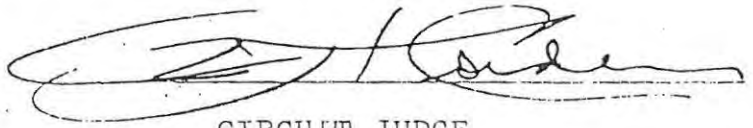
give up his or her employment. Schultz v. Grede Foundries, Inc. and Michigan Employment Security Commission, No. 78-301, Michigan Court of Appeals (unpublished).

The separation from employment here was not considered in the light of the foregoing standard. An aging, long-time employee (who might also be reasonable, average and otherwise qualified per Schultz) was entitled to a careful assessment of the physical and emotional impact of the employer's substantial change of musical format, clientele and the general ambience of the place of employment. An appropriate standard in this regard is set forth in McGinnis v. Moreau, 149 So2d 188:

"Mere dissatisfaction with working conditions does not constitute 'good cause' for quitting the employment unless the dissatisfaction is based upon discriminatory or unfair or arbitrary treatment, or is based upon a substantial change in working conditions from those in force at the time the claimant's employment in his position commenced, so as to render the work unsuitable to the claimant, considering the worker's physical fitness, qualifications, earning ability, and the like."

In short, it was incumbent upon the Referee and the Board of Review to examine the changed working conditions and determine their effect on this claimant, considering the peculiar susceptibilities of the average employee who grows old with the establishment.

The Board of Review is reversed.

A handwritten signature in black ink, appearing to read "J. H. ...", written over a horizontal line.

CIRCUIT JUDGE  
31st Judicial Circuit

Dated: September 27, 1984  
Port Huron, Michigan