

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

Michelle H. Cross,

Claimant/Appellant,

Case No. 12-98465-AE

vs

Judge Richard B. Yuille

Tri-Fecta, Inc.,

Employer/Appellee,

and

State of Michigan Department of
Licensing & Regulatory Affairs,
Unemployment Insurance Agency

Appellee.



**OPINION AND ORDER REVERSING DECISION OF
MICHIGAN COMPENSATION APPELLATE COMMISSION**

At a session of said Court held in Flint, Michigan,
June 27, 2013.

PRESENT: Honorable Richard B. Yuille, Circuit Judge.

Pending before this Court is claimant's appeal from a decision of the Michigan Compensation Appellate Commission (MCAC) affirming the determination of the Administrative Law Judge that claimant was disqualified from receiving unemployment benefits because she left work voluntarily without good cause attributable to the employer.

Claimant began working for Quality Roofing, Inc., in February 2007. Her salary was \$43,000 per year and she worked approximately forty five

hours per week. In January, 2009 claimant took on an additional job at Tri-Fecta, Inc., working as a part time waitress, making \$2.50 per hour plus tips.

On April 10, 2009, claimant left work at Tri-Fecta to focus on her full time employment with Quality Roofing. Shortly thereafter, claimant was terminated from her job with Quality Roofing. The conditions of her termination would not disqualify her from receiving unemployment.

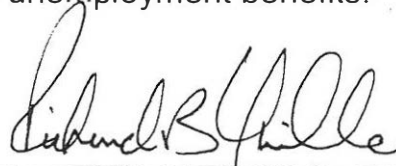
Tri-Fecta protested the determination in claimant's favor with respect to unemployment benefits. A hearing was held before an Administrative Law Judge on June 1, 2011. It is conceded by all that the ALJ decided the case based on an erroneous interpretation of the facts. The ALJ's ruling was based on the assumption that Tri-Fecta was claimant's last employer.

On appeal to the MCAC, the mistaken facts were noted. However, in a 2-1 decision the MCAC affirmed the disqualification from benefits as a result of claimant voluntarily leaving her employment with Tri-Fecta. MCL 421.29 (1) (a).

Judicial review of administrative decisions is limited. The factual findings of the ALJ are to "be deemed conclusive if supported by competent, material, and substantial evidence on the record considered as a whole and that due deference be given to administrative expertise. MCL 423.216 (E). Substantial evidence is that which a reasonable mind would accept as adequate to support a decision, being more than a mere scintilla, but less than a preponderance of the evidence. "*St. Clair Intermediate School District v Michigan Education Association*, 218 Mich App 734, 736 (1996).

In this case the factual findings of the ALJ cannot be determined to be conclusive. They were clearly in error. The Court further finds that the MCAC decision is in error. The MCAC reviews the findings and decisions of the ALJ. The decisions of the ALJ are to be accorded deference. Who can tell what the decision of the ALJ would have been had the ALJ known the facts as they really were? The Court finds that the review process in this case is entirely flawed. This Court has not been made aware of any appellate decision in the State of Michigan that upholds the results before me. The Court further finds the rationale and reasoning of the Kent County Circuit Court case cited by claimant to be persuasive.

The decision of the Michigan Compensation Appellant Commission is **REVERSED**. Claimant is entitled to unemployment benefits.

A handwritten signature in black ink, appearing to read "Richard B. Yuille". The signature is written in a cursive style with a large initial "R".

Richard B. Yuille, Circuit Judge
June 27, 2013