

STATE OF MICHIGAN
COURT OF APPEALS

SHARON SUE REEVES,

JUL 5 1985

Plaintiff-Appellant,

v

No. 77532

MIKE'S FAMOUS HAM PLACE AND MICHIGAN
EMPLOYMENT SECURITY COMMISSION,

Defendants-Appellees.

BEFORE: V. J. Brennan, P.J., and D. E. Holbrook, Jr. and
C. W. Simon*, JJ.

PER CURIAM

This action arises from plaintiff's assertion that sexual harassment forced her to leave her employment with defendant, Mike's Famous Ham Place. The Michigan Employment Security Commission (MESC) held a hearing and denied her unemployment benefits holding that her quitting was voluntary and without good cause. MESC's decision has been appealed at each level and has been affirmed. Plaintiff now appeals as of right to us. She contends that the MESC determination must be reversed as it is not supported by competent, material and substantial evidence. She also alleges that the burden of proof was impermissibly shifted.

It is undisputed that this action falls under MCL 421.29(1); MSA 17.531(1) which provides in pertinent part that:

"An individual shall be disqualified for benefits in the following cases in which the individual:

"(a) Left work voluntarily without good cause attributable to the employer or employing unit."

We have said that potential disqualification under the above statute requires inquiry into plaintiff's reasons for terminating employment and placed the burden of

*Circuit Judge sitting by assignment on the Court of Appeals.

proof onto the claimant with certain exceptions. Cooper v University of Michigan, 100 Mich App 99, 103; 298 NW2d 677 (1980), and Blom v Thermotron Corp, 139 Mich App 50, 56; ___ NW2d ___ (1984). We find no error in having the burden of proof on plaintiff.

Plaintiff argues that the finding that she left her position voluntarily is not supported by competent, material and substantial evidence. A review of the record reveals that plaintiff was frequently the target of sexual jokes. However, the MESC referee found that these jokes did not rise to the level of sexual harassment. Even if we were to assume, arguendo, that the referee erred and plaintiff had been sexually harassed, we would still affirm.

On the day plaintiff quit, it was undisputed that she left due to criticism of her work and not due to any sexual statements. We find this conclusion to be supported by competent, material and substantial evidence. Blom, supra. That this was the reason she left and not because of any past sexual statements is a matter of credibility of the witnesses. We find it significant that plaintiff worked for defendant for five years, twice returning after beginning other jobs, alleging that sexual harassment had occurred the entire time, yet she did not quit until her work performance was criticized.

We can only reverse if the decision was contrary to law or is not supported by competent, material and substantial evidence on the whole record. MCL 421.28; MSA 17.540. Accordingly, as we have thoroughly reviewed the whole record and find that the referee's decision was proper, we affirm.

Affirmed. Costs to appellees.

/s/ V. J. Brennan
/s/ D. E. Holbrook, Jr.
/s/ C. W. Simon

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

SHARON SUE REEVES,

Appellant,

v.

CIVIL ACTION NO.:
83-324-013-AE

MIKE'S FAMOUS HAM PLACE and
MICHIGAN EMPLOYMENT SECURITY
COMMISSION, Jointly and Severally,

HON. IRWIN H. BURDICK

Appellees.

DEBORAH LA BELLE (P 31595)
Attorney for Claimant-Appellant

DAVID B. GRANT (P 14269)
Attorney for Employer-Appellee

FRANK J. KELLEY, Attorney General
of the State of Michigan
By: MORRIS J. KLAU (P 34415)
Assistant Attorney General
Attorney for Appellee, Michigan
Employment Security Commission

ORDER

At a session of said Court, held in the City-
County Building, City of Detroit, County of
Wayne, State of Michigan, on MAR 16 1984

PRESENT: HONORABLE

IRWIN H. BURDICK

CIRCUIT COURT JUDGE

Plaintiff's appeal of the decision of the Michigan
Employment Security Commission having been heard on January 20, 1984,
and the Court having reviewed the Briefs of both parties and having
entertained oral argument in the matter and being duly advised in
the premises;

48207 • (313) 259-4900

HURWITZ, LABELLE & STACEY • 975 E. JEFFERSON AVENUE • DETROIT, MICHIGAN

IT IS HEREBY ORDERED that the decision of the Board of Review, affirming the decision of the Michigan Employment Security Commission Referee denying unemployment benefits to Claimant-Appellant SHARON SUE REEVES, is hereby affirmed.

IT IS FURTHER ORDERED that this constituted a Final Order in this matter.

IRWIN H. BURDICK

CIRCUIT COURT JUDGE