A.D. No. B78-54246-61954
S.S. No. [redacted]
B.O. No.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

JAMES McGEE,

APPELLANT,

-v-

CIVIL ACTION
No. 80-004405-AE
6.04.80

JERVIS B. WEBB CO., INC.
AND MICHIGAN EMPLOYMENT
SECURITY COMMISSION,

APPELLEES,
_____/

STEWART KATZ (P15751)
ATTORNEY FOR EMPLOYER-APPELLEE

DUNCAN SMYTH (P20730)
ATTORNEY FOR CLAIMANT-APPELLANT

FRANK J. KELLEY, ATTORNEY GENERAL
BY: JAMES A. BURNS (P24213)
ASSISTANT ATTORNEY GENERAL
ATTORNEYS FOR MESC

OPINION

EXCERPT OF PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE, BEFORE THE HONORABLE VICTOR J. BAUM, CIRCUIT JUDGE, THIRD JUDICIAL CIRCUIT OF MICHIGAN, AT 1701 CITY-COUNTY BUILDING, DETROIT, MICHIGAN, ON WEDNESDAY, JUNE 4, 1980.

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THE COURT: THIS IS AN APPEAL BY JAMES McGEE, AN EMPLOYEE OF JERVIS WEBB, FROM A DECISION OF THE MICHIGAN EMPLOYMENT SECURITY COMMISSION. THE COMMISSION DECIDED THAT MR. McGEE QUIT WORK WITHOUT GOOD CAUSE ATTRIBUTABLE TO THE EMPLOYER, THUS DISQUALIFYING HIM FROM EMPLOYMENT SECURITY BENEFITS UNTIL SUCH TIME AS HE WOULD REQUALIFY AS REQUIRED BY THE STATUTE.

THE COURT AFFIRMS THE MICHIGAN EMPLOYMENT SECURITY COMMISSION FOR REASONS THAT CAN BE BRIEFLY STATED.

THERE WAS MATERIAL, COMPETENT AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD TO SUPPORT THE MICHIGAN EMPLOYMENT SECURITY COMMISSION FINDING THAT, WHEN THE CLAIMANT LEFT HIS JOB, HE MANIFESTED TO HIS EMPLOYER THE INTENTION TO QUIT PERMANENTLY.

THERE WAS MATERIAL, COMPETENT AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD TO SUPPORT THE FINDING THAT HIS QUITTING WAS VOLUNTARY, DESPITE THE LONG HOURS HE HAD WORKED IN THE MONTH BEFORE HE QUIT AND DESPITE THE EMPLOYER'S REFUSAL TO ALLOW HIM TO LEAVE AT THE PRECISE MOMENT THAT HE LEFT THE JOB TO ATTEND A FAMILY HOUR FOR A DECEASED FRIEND AND TO GO HOME SO THAT HE WOULD BE THERE FOR THE INSTALLATION OF A TELEPHONE.

THERE IS A DISPUTE IN THE TESTIMONY WHETHER THE EMPLOYER GAVE THE APPELLANT PERMISSION TO LEAVE WORK AT ANY TIME DURING THE DAY IN QUESTION. ALTHOUGH THE REFEREE APPEARS NOT TO HAVE MADE A SPECIFIC FINDING ON THIS ISSUE, THERE IS MATERIAL, COMPETENT AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD THAT THE EMPLOYER GRANTED APPELLANT PERMISSION TO LEAVE FOR A TWO-HOUR PERIOD LATER IN THE DAY. THE TESTIMONY IS UNDISPUTED THAT THE APPELLANT -- THAT'S RIGHT, THAT THE APPELLANT LEFT HIS JOB BETWEEN 7 AND 7:30 A.M.

IT IS UNDISPUTED THAT LATER IN THE DAY THE APPELLANT THOUGHT BETTER OF HIS DECISION TO WALK OFF THE JOB IN A HUFF AND ATTEMPTED TO REVOKE HIS RESIGNATION. HIS EMPLOYER, HOWEVER, WOULD NOT CONCUR. NO CASE HAS BEEN CALLED TO THE ATTENTION OF THIS COURT INVOLVING A VOLUNTARY QUIT FOLLOWED SHORTLY THEREAFTER BY A CHANGE OF HEART ON THE PART OF THE EMPLOYEE COMMUNICATED PROMPTLY TO THE EMPLOYER. BASED UPON THE AUTHORITIES CALLED TO MY ATTENTION, THE DECISION INVOLVING FACTS MOST CLOSELY ANALOGOUS TO THE FACTS IN THIS CASE IS THE DECISION OF THE MICHIGAN SUPREME COURT IN JENKINS V EMPLOYMENT SECURITY COMMISSION, 364 MICHIGAN 379 (1961). IN JENKINS, THE MICHIGAN SUPREME COURT HELD THAT THE EMPLOYEE HAD LEFT WORK VOLUNTARILY WITHOUT GOOD CAUSE ATTRIBUTABLE TO THE EMPLOYER. THE EMPLOYEE LEFT WORK THE DAY BEFORE CHRISTMAS WITHOUT PERMISSION FROM HIS EMPLOYER IN ORDER TO DRIVE HIS WIFE AND CHILDREN TO THE HOME OF HIS MOTHER-IN-LAW DURING DAYLIGHT HOURS. THE EMPLOYEE IN JENKINS COULD HAVE PROPERLY TAKEN THIS TRIP AT THE END OF THE WORK DAY, BUT THIS WOULD HAVE REQUIRED HIM TO DRIVE DURING HOURS OF DARKNESS. HE WAS DENIED PERMISSION TO LEAVE AT THE TIME HE DID AND WAS INSTRUCTED BY HIS FOREMAN THAT HE WOULD FORFEIT HOLIDAY PAY FOR CHRISTMAS IF HE LEFT WITHOUT PERMISSION. THE EMPLOYEE RETURNED TO WORK THE DAY AFTER CHRISTMAS, ONLY TO FIND THAT THE EMPLOYER HAD DISCHARGED HIM ON THE GROUND THAT HE HAD QUIT VOLUNTARILY. LET ME CONCEDE THAT THE DECISION IN JENKINS WAS BY A DIVIDED -- BY AN EQUALLY DIVIDED SUPREME COURT WITH THE RESULT THAT THE DECISION BELOW WAS AFFIRMED. THE DECISION BELOW HELD THAT THE EMPLOYEE WAS DISQUALIFIED FOR LEAVING WORK WITHOUT GOOD CAUSE ATTRIBUTABLE TO THE EMPLOYER.

(OFF THE RECORD.)

THE COURT: IT WOULD SEEM TO THIS COURT THAT, ONCE AN EMPLOYEE MANIFESTS THE INTENTION TO HIS EMPLOYER TO QUIT PERMANENTLY, THAT THE EMPLOYER HAS A RIGHT TO ACCEPT SUCH MANIFESTATION AT FACE VALUE. IT SEEMS TO THIS COURT TO BE BOTH FAIR AND LOGICAL TO CONCLUDE THAT THE EMPLOYEE DOES NOT HAVE A UNILATERAL RIGHT TO RESCIND HIS RESIGNATION AT WILL.

FOR THE REASONS ADVANCED, THERE APPEARS TO BE NO ERROR OF LAW IN THE DECISION OF THE ADMINISTRATIVE AGENCY. AND, AS POINTED OUT EARLIER, THE AGENCY'S FINDINGS OF FACT ARE SUPPORTED BY MATERIAL, COMPETENT AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD.

FOR THESE REASONS, THE DECISION BELOW IS AFFIRMED.

(THE PROCEEDINGS IN THIS MATTER WERE CONCLUDED.)

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