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STATE OF MICHIGAN
COURT OF APPEALS

BARBARA R. RUTHERFORD,
Plaintiff-Appellant,

JUL 15 1986

v

No. 87265

ARDESHIR MOFAHKAM PAYAN,
PAYAN ENTERPRISES, INC.,
and MICHIGAN EMPLOYMENT
SECURITY COMMISSION,

NOT FOR PUBLICATION

Defendants-Appellees.

BEFORE: R. B. Burns, P.J., and Gribbs and R. I. Cooper*, JJ.
PER CURIAM

Plaintiff appeals from the Marquette County Circuit Court's order affirming the decision of the Michigan Employment Security Commission (MESC) Board of Review that plaintiff was ineligible for unemployment compensation benefits. We affirm.

Plaintiff was employed by Payan Enterprises as a secretary from December 10, 1979, through July 29, 1982. At that time plaintiff left her job.

Plaintiff filed a claim for unemployment compensation benefits with the MESC. The MESC issued a determination finding plaintiff was ineligible for unemployment compensation benefits since she had voluntarily left her employment without good cause attributable to the employer.

The MESC issued a redetermination which affirmed its prior determination. Plaintiff filed an appeal requesting a hearing before a hearing referee. The request was granted and hearings were conducted.

The testimony indicated that plaintiff began having problems in her marriage; plaintiff claimed that the problems were related to stress caused by her working conditions. Plaintiff's husband began to get suspicious that plaintiff was having an affair with her employer and became increasingly angry and resentful about the job demands on his wife.

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

There was testimony that on Thursday, July 29, 1981, plaintiff notified Mr. Payan that she had made plans for Saturday, July 31, 1982. Payan then made plans to be away for that weekend and expected plaintiff to work. Plaintiff notified her husband that their weekend plans would have to be changed and her husband became extremely upset. Her husband threatened to kill her if she did not quit her job. However, plaintiff's husband testified that he did not really mean what he had said and plaintiff admitted that she did not think her husband was serious.

Plaintiff left her employment. Plaintiff testified that she decided not to return to work after July 29, 1982, due to her marital and domestic problems. She told Mr. Payan, on her last day of work, that she was leaving her job because she had some personal problems to take care of. The employer testified that the only reason given by plaintiff for leaving was that she was having problems with her husband.

The referee held that plaintiff had voluntarily left work without good cause attributable to the employer. The MESC board of review affirmed the referee's decision. Plaintiff's request for a rehearing was denied.

Plaintiff appealed the decision to the Marquette County Circuit Court. On August 14, 1985, the circuit court affirmed the MESC board of review's decision.

This Court may only reverse a determination of the MESC Board of Review if it finds that the order or decision is not supported by competent, material, and substantial evidence on the record, or is contrary to law. MCL 421.38; MSA 17.540; Lucas v Mich Employment Security Comm, 132 Mich App 232; 347 NW2d 25 (1984).

The MESC's findings that plaintiff left work without good cause attributable to her employer is supported by competent, material and substantial evidence on the record.

Affirmed.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MARQUETTE

BARBARA R. RUTHERFORD,
Plaintiff-Appellant,

v

FILE NO. 84-16711-AE

ARDESHIR MOFAHKAM PAYAN,
PAYAN ENTERPRISES, INC. and
MICHIGAN EMPLOYMENT SECURITY
COMMISSION,

OPINION AND ORDER
ON APPEAL

Defendants-Appellees.

At a session of the said
Court held in the City of
Marquette on this 14th day
of August, 1985.

PRESENT: THE HONORABLE EDWARD A. QUINNELL, CIRCUIT JUDGE.

Plaintiff appeals a decision of the Michigan Employment Security Commission Board of Review finding that she voluntarily terminated her employment with defendant Payan Enterprises on July 29, 1982 without just cause attributable to the employer, and therefore is ineligible for unemployment compensation benefits.

The scope and standard of review in such cases is governed by MCL 421.38; MSA 17.540, which provides in substance that the circuit court 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, 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.

The phrase "just cause attributable to the employer" has not been precisely defined in any reported Michigan appellate

decision. In his opinion, the Referee used the following from an unreported Michigan Court of Appeals decision:

"We find that the 'average employee' standard properly effectuates the legislative intention behind MCL 421.29(1)(a); MSA 17.531(1)(a). Under that standard, 'good cause' compelling an employee to terminate his employment should be found where an employer's action would cause a reasonable, average and otherwise qualified worker to give up his or her employment."

I conclude that the Referee's working definition of "just cause attributable to the employer" is appropriate.

Reasonable minds can differ as to which employer actions would cause a reasonable, average and otherwise qualified worker to give up his or her employment. The Referee found that the immediate reason for claimant terminating her employment was a threat by her former husband to kill her and harm their children if she did not do so. To be sure, the Referee found that the impetus for Mr. Rutherford's reaction was the news from his wife that her employer had switched her Saturday working schedule such that the Rutherfords could not go on a planned outing. However, his determination that the threat from the husband was the compelling reason for the quit is supported by the fact that Mrs. Rutherford thereafter arranged for police protection so that she could gather her children and some belongings from the marital home and that she thereafter sought protection in the Spouse Abuse Shelter in Marquette. Further support for the Referee's conclusion can be found in her letter written to her employer on August 6, 1982, found at page 356 of volume 1 of the transcript of testimony and exhibits. That conclusion reached by the Referee is one of fact.

Mrs. Rutherford's reasons for quitting her employment which she stated during the testimonial hearings in November of 1982 differed markedly from those given in her letter. I have carefully examined the testimonial record with regard to each of her present claims, and conclude that her present claims fall in

either or both of two categories: (1) there is a factual dispute between Mrs. Rutherford and Mr. Payan regarding the conditions of her employment; or (2) the conditions and incidents of employment, even accepting Mrs. Rutherford's version as being accurate, bore only a coincidental connection with the termination of that employment.

Of course, the record made before the Referee would also have justified a contrary result. The Referee could have found as a matter of fact that good cause for Mrs. Rutherford's terminating her employment existed by virtue of the employer's demeaning comments regarding her hair and dress, refusal to grant agreed vacation time, failure to provide adequate and separate restroom facilities, a claimed expectation on the part of the employer that the employee work extra hours without pay, the claimed arbitrary denial of previously agreed time off, claimed employer insistence that she provide customers with a warranty from a company that had gone bankrupt, claimed mistreatment of other employees who then imposed on Mrs. Rutherford as a wailing wall, claimed employer refusal to allow her a lunch hour, claimed harassment and "nit-picking" of Mrs. Rutherford by Mr. Payan regarding record keeping and the like, failure to pay her bonuses for customers brought into the shop when the other employees were given bonuses for providing such business, and a claimed reduction in her general level of authority. Finders of fact frequently are faced with cases in which factual support can be for either of two opposing sides. This is such a case. The Referee found in favor of the defendant. His decision is not contrary to law and is supported by competent, material and substantial evidence on the whole record.

It is therefore ORDERED that the decision of the Referee as affirmed by the Michigan Employment Security Commission Board

of Review, is hereby affirmed and the appeal of Barbara R.
Rutherford is hereby DISMISSED.


Edward A. Quinnell
Circuit Judge

xc: Barbara R. Rutherford, in pro per
Douglas K. Fisher
Gunther C. Schwarze, Ass't. Attorney General

Date of mailing: 8/4/85