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105930

STATE OF MICHIGAN
IN THE COURT OF APPEALS

105930

WILLIAM N. COLEMAN,
Appellant,

COURT OF APPEALS No. 117120
UNPUBLISHED

v

MICHIGAN EMPLOYMENT
SECURITY COMMISSION
and GENERAL MOTORS CORPORATION

Appellees.

GEORGE VELEZ (P37257)
Attorney for Appellee

WILLIAM MAZEY (P17245)
Attorney for Appellant

FRANK J. KELLEY, Attorney General
of the State of Michigan

LOUIS J. CARUSO
Solicitor of General
Counsel of Record

By: GUNTHER C. SCHWARZE (P20147)
Assistant Attorney General
Attorneys for M.E.S.C.
7310 Woodward Ave.
Detroit, MI 48202
(313) 876-5134

OPINION

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM N. COLEMAN,
Plaintiff-Appellee,

MAR 21 1990

v

No. 117120

MICHIGAN EMPLOYMENT SECURITY
COMMISSION,

Defendant,

and

GENERAL MOTORS CORPORATION,

Defendant-Appellant.

Before: Reilly, P.J., and Gillis and Cynar, JJ.

PER CURIAM.

Defendant-appellant appeals as of right from the circuit court's order reversing the Michigan Employment Security Commission appeal board's determination that plaintiff was ineligible to receive unemployment benefits because he voluntarily left work without good cause attributable to his employer. MCL 421.29(1)(a); MSA 17.531(1)(a). We reverse.

On June 22, 1978, plaintiff began working for General Motors Corporation (GMC) at its Westland warehouse, three miles from his house. In April, 1986, GMC announced that it would be closing the Westland warehouse at the end of the year. At that time, GMC made efforts to relocate its Westland warehouse employees; however, it also distributed a booklet detailing their benefits in the event of a layoff. The booklet stated that if an employee was offered a suitable job (*i. e.*, one within twenty-five miles of his residence) after he was laid off and he accepted such a job, his benefits and rights under lay-off status would be terminated; however, if he refused such a job, he was treated as though he resigned. Because relocation opportunities in neighboring areas were limited, GMC offered to pay relocation

expenses if an employee moved more than thirty-five miles. Plaintiff claimed that he was unaware of this offer.

In September, 1986, GMC implemented a hiring freeze. In October, GMC offered a special incentive separation program whereby an employee could, in essence, resign and receive a cash payment.

Hence, plaintiff was given three options. First, he could accept employment at GMC's technical center in Warren, which was located approximately fifty miles from its Westland warehouse. As noted above, while GMC offered to pay relocation costs if plaintiff accepted this option, he testified that he was unaware of this. Moreover, plaintiff's continued employment at the Warren technical center would not be guaranteed and plaintiff had had back problems when he previously worked at that location. If plaintiff chose this option, he could still participate in the special incentive separation program until August 31, 1987, if GMC allowed him to do so. Plaintiff claimed that he was also not aware of this aspect of accepting the job at the Warren technical center and, instead, was told that he had two weeks to make up his mind.

Second, plaintiff could be laid off and receive benefits for one year. If plaintiff chose to be laid off, he could not elect the special incentive package later.

Third, plaintiff could choose to participate in the special incentive separation program and receive a \$49,552.26 cash payment.

Plaintiff chose the third alternative and signed an agreement on October 15, 1986, stating that his separation would be effective on October 31, 1986. GMC's personnel representative informed its employees who chose the third option that they could try and apply for unemployment benefits, but that GMC had not yet received a determination from the MESC as to whether they would be entitled to such benefits. Defendant's

personnel representative then provided the employees with a telephone number for a MESC contact. Plaintiff claimed that his major reason for not accepting the job at the Warren technical center was his fear that he would face lay off in the near future given GMC's desire to cut back on personnel.

Plaintiff then applied for unemployment benefits. The MESC denied plaintiff's request for benefits, finding that he had voluntarily left his employment without good cause attributable to his employer. Id. Plaintiff filed for a redetermination and the MESC's original decision was upheld.

Plaintiff again appealed. After conducting a hearing, the referee reversed the MESC's decision. The referee concluded that plaintiff's ultimate choice was reasonable, but not voluntary. The referee noted that if plaintiff had chosen to be laid off, he would have lost a substantial number of benefits and had little chance of being recalled given GMC's desire to reduce its work force. On the other hand, if he chose to work at the Warren technical center, his previous medical problems may have continued, he was not guaranteed employment given GMC's desire to reduce its work force, and his residence was fifty miles away, a distance not deemed suitable in GMC's layoff handbook.

GMC then appealed to the MESC appeal board. With one member dissenting, the board reversed the referee's decision. The board found that if plaintiff would have accepted the job at the Warren technical center his seniority and pay would not have been affected. While the location was further from plaintiff's home, plaintiff's reason for not accepting the job was the lack of job security. The board concluded that plaintiff had as much security as any other employee and, therefore, plaintiff was presented with a choice between accepting a job and signing the special incentive separation agreement. Hence, plaintiff had a choice of reasonable alternatives and chose to quit without good cause attributable to his employer.

Plaintiff then appealed to the circuit court. The circuit court concluded that plaintiff's decision was not voluntary because he testified that GMC's personnel representative told him that he could collect unemployment benefits.

GMC now appeals. While this Court may review questions of law on appeal from the MESC appeals board, it will not reverse the board's decision unless it is contrary to law or unsupported by competent, material and substantial evidence on the whole record. Clarke v North Detroit General Hospital, 179 Mich App 511, 515; ___ NW2d ___ (1989), lv pending. Where the facts are not in dispute, the question of whether an employee left work voluntarily is a matter of law. Id. See also Laya v Ceban Construction Company, 101 Mich App 26, 29; 300 NW2d 439 (1980). "Voluntary" connotes a choice between alternatives which ordinary persons would find reasonable. Clarke, supra, 515-516; Laya, supra, 32.

We agree with the board's decision that plaintiff's options presented reasonable alternatives and, therefore, made plaintiff's decision to quit a voluntary one. Compare Laya, supra, and Larson v Employment Security Comm, 2 Mich App 540; 140 NW2d 777 (1966). We note that we cannot conclude from the record that plaintiff personally believed that he was entitled to unemployment compensation based on GMC's personnel representative's statements and, in any event, we fail to see how plaintiff's personal belief that he would be eligible for unemployment compensation made his choice involuntary. Hence, the circuit court's decision is reversed and the board's decision is reinstated.

Reversed.

/s/ Maureen P. Reilly
/s/ John H. Gillis
/s/ Walter P. Cynar