

90342

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

ANTHONY R. CHMIELEWSKI,

Plaintiff,

OPINION OF THE COURT

vs

File No. E834-00-606AE

GENERAL DYNAMICS,

Defendant.

**FILED**  
JAN 02 1985  
JAMES O. YOUNGS  
COUNTY CLERK

This matter is before the Court on appeal from the Michigan Employment Security Commission Board of Review's decision to disallow employment benefits to claimant.

Claimant worked November 9, 1982, through February 25, 1983, for General Dynamics in Centerline, Michigan. His take home pay was approximately \$802.51 bi-weekly. Claimant made his home in Portage, Michigan, and stayed at a motel in Centerline during the week. While the claimant worked for General Dynamics, he worked overtime every week. As a result of a change in owners, the employer made a decision to cut down on overtime and claimant no longer worked overtime. There was no overtime guaranteed, but employees were expected to work overtime if it was available. As a general rule, "checkers" (claimant's title) worked overtime. In December, 1982, claimant's wife, who resides in Portage, had a heart attack. While she recovered sufficiently to return to work, claimant decided to quit because of several reasons; for his wife to be able to continue to consult the same doctor in the Kalamazoo area, the desire to use his wife's health insurance for her illness, and the reduction in pay resulting from no longer working overtime, making the cost of living away from home too prohibitive. These reasons were set out in claimant's contested claim statement and at a hearing. A determination was made by the Michigan Employment Security Commission (MESC) that claimant did not voluntarily quit, but upon redetermination, it was found that claimant voluntarily quit and did so

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without good cause attributable to the employer. The MESc Board of Review affirmed that decision and the claimant appeals.

The claimant contends he did not voluntarily leave his employment. He cites the dissenting opinion of the MESc Board of Review. This dissent is based on the case of Laya v Cobar Construction, 101 Mich. App. 26, 300 N.W. 2d 439 (1980). There, the Court of Appeals held that a Plaintiff who had a choice between working weekdays in Cincinnati, Ohio, while maintaining a home in Warren, Michigan, in terminating his employment, did not quit voluntarily. The Court adopted an earlier Supreme Court dissent, in which the justices advocated a realistic standard, which recognized the following:

...that the physical distance between home and work, as well as economic problems in maintaining two homes, could render a decision to quit as involuntary as it would be if compelled instead by law of the elements or a serious illness.

Lyons v Employment Security Commission, 363 Mich. 201, 202; 108 N.W. 2d 849 (1961).

The employer in this case, General Dynamics, contends that the claimant left work without good cause attributable to the employer. The claimant had a choice, according to the employer, to move his family or quit. Since the claimant voluntarily quit, he should not be eligible for benefits.

MESc takes the position that the claimant had personal reasons for leaving the employer, that the leaving was voluntary, and the employer cannot be held responsible for a decision to leave based on these personal reasons. Losada v Chrysler, 24 Mich. App. 656, 180 N.W. 2d 844 (1970), an employees refusal to take a new job with lower pay was not good cause to terminate his employment; Gibson v Battle Creek Day Care, No. 82-781AV (32 Judicial Circuit, April 27, 1984) pay reduction resulting from elimination of employer paid benefits does not equal good cause for voluntarily leaving, Hickson v Seven Eleven & MESc, No. 80-13551-73926 (July 16, 1982) the employees leaving because of small and infrequent raises does not equal good cause. These cases all concern whether

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voluntarily termination employment based on economic considerations disqualify the claimant from receiving unemployment benefits.

The MESc distinguishes the Laya case relied on by claimant as inapplicable to the present case. In Laya, the claimant was laid off from his job in Michigan and took a job in Ohio. The claimant quit during the first three weeks of his job, after the distance proved to be too great. Laya was decided prior to an amendment of the Employment Security Act which allows a claimant otherwise qualified to leave unsuitable work within 60 days and remain eligible for benefits. In the case at bar, the claimant had worked with the job for longer than 60 days, and quit only after his overtime was terminated.

On appeal from a decision of a board of review, a reviewing court can reverse only if the order or decision is contrary to law or is unsupported by competent, material, and substantial evidence on the record. Robinson v YMCA, 123 Mich. App. 442, 333 N.W. 2d 306 (1983). When there is no dispute as to the underlying facts relative to issues raised on appeal, the questions presented are to be treated as matters of law. Chrysler Corporation v Sellers, 105 Mich. App. 7015, 307 N.W. 2d 708 (1981).

In this case, the court must construe MCL, MSA 17.531 (1), §17.531:

Disqualification for benefits, extent: (1) An individual shall be disqualified for benefits in the following cases in which the individual:

- (1) left work voluntarily without good cause attributable to the employer or employing unit. However, if the individual has an established benefit year in effect and, during that benefit year, has left unsuitable work within 60 days after beginning of that work, such leaving shall not be disqualifying.

The basic purpose of the Michigan Employment Security Act is to provide relief to the unemployed worker and his family from the burden of involuntary unemployment. MCL 421.8 (2); MSA 17.508 (2). In this case, the court upholds the action of the MESc Board of Review and holds that the claimant's terminating his employment was voluntary. The claimant had a real choice - to move his family to Detroit as he had

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planned before his wife's heart attack, and the cut in overtime - or to quit. The claimant's decision was based on economic considerations and the decision was voluntary.

Dated: JAN 2, 1985

  
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Hon. Donald M. Goodwillie,  
Circuit Court Judge

cc: Attorney Catherine Fleming ✓  
Attorney Thomas Donohue  
Attorney Richard Stroba