

A.D. No. B90-10197-116367W
S.S. No. [REDACTED]
B.O. No. 072

STATE OF MICHIGAN
IN THE COURT OF APPEALS

116367
MICHAEL J. KIRBY,

Plaintiff-Appellee,

v

BENTON HARBOR SCREW COMPANY,

Defendant-Appellant,

and

MICHIGAN EMPLOYMENT SECURITY
COMMISSION,

Defendant-Appellee..

UNPUBLISHED

Case No. 163513

L.C. No. 92-001869-AE

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OPINION

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL J. KIRBY,

Plaintiff-Appellee,

v

BENTON HARBOR SCREW COMPANY,

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UNPUBLISHED

June 16, 1995

No. 163513

LC No. 92-001869-AE

Before: Saad, P.J., and Griffin and H.F. Tennen,* JJ.

PER CURIAM.

Appellant Benton Harbor Screw Company appeals as of right from an order of the Berrien Circuit Court which reversed a decision of the MESC Board of Review. We reverse the decision of the circuit court and reinstate the decision of the board of review.

The sole issue in this case concerns whether plaintiff quit voluntarily, or was fired from his position with defendant Benton Harbor Screw Company. Plaintiff left his employment with Benton Harbor Screw Company in February, 1990, and applied for unemployment benefits, which, initially, were granted by the MESC. Defendant employer asserted that plaintiff was not entitled to benefits because he had voluntarily quit; plaintiff asserted that he had been fired. An MESC Hearing Referee found that plaintiff had quit and so was disqualified from receiving benefits. The MESC Board of Review affirmed the decision of the hearing referee. The Berrien Circuit Court reversed the decision of the board of review, and reinstated plaintiff's unemployment benefits. Defendant employer appeals as of right from that decision of the circuit court.

We conclude that the circuit court erred because the decision of the board of review was based upon competent, material, and substantial evidence on the whole record, and was in accordance with the law. MCL 421.38(1); MSA 17.540(1); Becotte v Gwinn Schools, 192 Mich App 682, 685; 481 NW2d 728 (1992). The record demonstrates that plaintiff left work at the usual time on February 15, 1990, then returned to the plant at around 8:30 p.m. Plaintiff went to his office, reconciled his petty cash account, left documentation of his expense account, cleared his personal belongings from his desk, and left his company keys. Plaintiff asked two coworkers to witness these acts and verify that he was only taking his personal effects. Although plaintiff never specifically said "I quit," he did not say that he was not quitting when directly asked by one of his coworkers. Plaintiff mumbled an obscenity, and stated "I'm leaving." And, while the trial court and we might have reached a different conclusion, we cannot say that there was a lack of competent, material, and substantial evidence to support the referee or the

*Recorder's Court judge, sitting on the Court of Appeals by assignment.

Board's finding that plaintiff had voluntarily quit his job. MCL 421.38(1); MSA 17.540(1); Becotte,
supra at 685.

The decision of the circuit court is reversed, and the decision of the MESC Board of Review is
reinstated.

/s/ Henry William Saad
/s/ Richard Allen Griffin