

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

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TERRY J. FRANKENSTEIN,

Plaintiff-Appellant,

File No. 88-8956-AE

6-16-89

v

INDEPENDANT ROOFING & SIDING and MICHIGAN
EMPLOYMENT SECURITY COMMISSION,

Defendant-Appellees

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OPINION

This is an appeal from a decision of the Michigan Employment Security Board of Review (hereinafter, "Board") dated April 28, 1988.

The Board held that the Claimant-appellant was disqualified for unemployment benefits for the week ending August 22, 1987, because she voluntarily terminated employment without good cause attributable to the employer. MCLA 421.29(1)(a); MSA 17.531 (1)(e).

Initially, it will be noted that the Board must be affirmed unless the Court finds the Order or Decision contrary to law, or not supported by competent, material and substantial evidence on the whole record.

MCLA 421.38; MSA 17.540; MCLA 24.306; MSA 3.560 (206); MCR 7.105.

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"Substantial evidence" has been defined as evidence which a reasoning mind would accept as sufficient to support a conclusion. While it consists of more than a mere scintilla of evidence, it may be substantially less than a perponderance of the evidence. Thompkins v Department of Social Services, 96 Mich App 218, 222 (1980); Ron's Last Chance, Inc. v Liquor Control Commission, 124 Mich App 179 (1983). The burden of proof in these matters is on the claimant. Cooper v University of Michigan, 100 Mich App 99 (1980).

In a review, such as this, we will accept the finding of fact of the appeal board if there is evidence in the record to support it. The findings of referee Daniel J. Holdwick of November 13, 1987 and adopted by the Board of Review on April 28, 1988 were as follows:

"The claimant worked for the involved employer from July 1982 until on or about August 21, 1987. She resigned at that time because of what she considered the Employer's "extremely foul language". The language itself did not substantively change during the period of the claimant's employment, although she perceived it as worse near the end because of what she felt was an increased frequency."

A review of the entire record of proceedings reveals that, indeed, the claimant listened to foul, vulgar and sexually oriented outbursts from her employer over a period of five year. The record also reveals that this language was not directed at her personally. Neither did she feel fear or the offer of sexual involvement. In the course of the five years she complained only once, in writing, of this conduct on the part of her employer. The record clearly supports the finds of the referee as adopted by the Board of Review.

The Michigan Employment Security Act at section 29 (1)(a), sets forth the provisions which operate to disqualify the claimant from receiving unemployment benefits:

"(1) An individual shall be disqualified for benefits in the following cases in which the individual;
(a) left work voluntarily without good cause attributable to the employer or employing unit..."

The Courts of Michigan have adopted a "reasonable man" standard in defining "good cause". See Carswell v Share House, Inc. & M.E.S.C., 151 Mich App 392 (1986). In a concurring opinion in Cooper, supra, the Court held that under current law, "good personal reasons" do not equate with good cause.

Claimant is asking this Court to hold, as a matter of law, that an employer's foul, vulgar and sexually oriented outbursts, not directed at her, constitutes good cause attributable to the employer for the employee to quit their job. Additionally, it must be noted that this conduct went on from the date of hire over a five year period. Based on the record before me, this Court is not prepared to hold, as a matter of law, that this conduct is good cause to terminate employment. There is no doubt that it may be a good personal reason to so do, but that that does not equate with good cause.

The decision of the Board in this matter is supported by competent, material and substantial evidence on the whole record, and is not contrary to law.

Affirmed.

Dated: June 16, 1989



Dean J. Shipman
47th Circuit Court Judge