

A.D. NO. B96-645985-AE
S.S. NO. [REDACTED]
B.O. NO. 07
EMPLOYER NO. 1218-693

139329

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

JOAN G. CORNEY,

CASE NO. 96-645985-AE

HON. SUSAN BIEKE NEILSON

Appellant.

v

AMSTAFF PEO, INC.
and MICHIGAN EMPLOYMENT
SECURITY AGENCY,

Appellees.

JULIE A. HERRIDGE (P39172)
Attorney for Appellant

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

By: ERROL R. DARGIN (P26994)
Assistant Attorney General
7310 Woodward Ave. Suite 406
Detroit, MI 48202
(313) 876-5560

OPINION AND ORDER

APR 30 1997
LEGAL DEPT.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

JOAN G. CORNEY,

Appellant,

-v-

Case No. 96-645985 AE
HON. SUSAN BIEKE NEILSON

AMSTAFF PEO, INC., and MESC,

Appellees.

OPINION AND ORDER ON APPEAL

FACTS:

Appellant, Joan Corney, was employed by a food service company (which was acquired by Appellee Amstaff Peo Inc) as a sales representative. Appellant called on prospective clients for vending machine and cafeteria food service, and maintained contacts with clients to offer special promotions (Tr. p. 4-8). For quite some time, Appellant felt that she was being excluded from pertinent information concerning changes in the business and changes in the clientele (Tr. p. 7-8). Appellant's club membership through her employer was canceled (Tr. p. 11) and her office was moved (Tr. p. 13). Appellant testified that she was the only sales representative for the company (Tr. p. 16). In September of 1995, Appellant had a prospective client coming to the company facility to tour the food preparation area, when, on the day of the tour, Appellant was informed by her manager that the company would no longer be preparing its own food (Tr. p. 7). Appellant felt that the proposal she had written for the prospective client, which stated that her company prepared the food in its own cafeteria and which was submitted to her supervisor a week before the tour, was a sham and the decision not to tell her about the change, an insult to her credibility (Tr. p. 7). Following this event, Appellant decided quit. (Tr. p. 6).

While Appellant was initially denied benefits, she appealed and requested a referee hearing. The hearing referee found that Appellant was qualified for unemployment benefits because she had left work voluntarily with good cause attributable to the employer, pursuant to MCL 421.29(1)(a). The referee found that the course of conduct which Appellant testified caused her to leave her employment was not what an employee would expect from an employer and such that would preclude her from "performing her job in an effective and efficient manner." (R. 64). The decision of the referee, however, was appealed by the employer to the MESC Board of Review, which reversed the finding of the referee. The Board of Review, in so finding, relied on the fact that Appellant had worked under the same conditions for 5 years and thus the conditions were not such that Appellant should feel compelled to leave. The Board also found that Appellant never went above her immediate supervisor with her complaints.

DISCUSSION:

Appellant raises three issues in her appeal, arguing thereby that she left her employment with good cause attributable to the employer. Appellant first argues that she met her burden of proof in establishing good cause attributable to the employer for leaving her employment. As stated above, although the hearing referee found that Appellant had established good cause, the board of review reversed. In reviewing a decision of the MESC, the court may reverse the decision only if the decision is contrary to law or if it is not supported by competent, material, and substantial evidence on the whole record. MCL 421.38(1); Butler v Newago, 115 Mich App 445 (1982). Good cause compelling an employee to terminate his employment exists where "an employer's actions would cause a reasonable, average, and otherwise qualified worker to give up his or her employment." Carswell v Share House, Inc, 151 Mich App 392, 396 (1986).

Appellant claims that her testimony about the course of conduct by the employer adequately demonstrated "good cause" for leaving her job. The Board of Review found that the course of conduct testified to had existed for five years, that Appellant was not a part of management and therefore had no capacity to make managerial decisions, and that she never took her complaints beyond her immediate supervisors. Based on those factors, the Board found that Appellant had not acted as a reasonable person in terminating her employment. Furthermore, as stated by the Appellee MESC, personal reasons for leaving do not establish the requisite good cause. McArthur v Borman's, Inc, 200 Mich App 686, 693 (1993).

When this court looks, however, at the cumulative effect of the employment environment to which Appellant testified, the court believes that the Board of Review's finding is not supported by competent, material and substantive evidence in the record. Specifically, the court finds compelling Appellant's testimony about the hostile attitude of her superiors (Tr. p. 13), the changes in her working conditions (referred to above), the lack of support from her immediate supervisor, including the failure to keep Appellant apprised of changes in the company's products which she was supposed to be selling (Tr. p. 13,9), and finally the major change in the operation of the business that precipitated Appellant's quitting, as stated above. The court does not believe that a reasonable person should be required to lie or otherwise dissemble to prospective clients as a condition of employment. Appellant's supervisor who testified at the hearing obviously did not have any such qualms, stating that he did not believe it was necessary to inform Appellant of a major change in the business operations, despite the fact that he knew Appellant would thus be making a presentation to a client based on a false proposal. (Tr. p. 27). Although some of the conditions complained of by Appellant existed for up to five years (a factor the Board of Review relied on in making its decision), clearly it was the change in the cafeteria operations that caused Appellant to feel she had to quit.

Appellant's second argument is that the findings of credibility by the Referee were improperly "disturbed" by the Board of Review necessitating reversal. Based on the court's ruling concerning good cause, the court believes that it is unnecessary to address this issue.

Appellant's final argument on appeal is that she followed the proper channels for reporting problems, therefore the fact that she did not go beyond her supervisor is irrelevant. At the hearing, Appellant testified that she did not speak to the human resource manager because she did not feel comfortable doing so (Tr. p. 23). The Board of Review held Appellant to a

reasonable person standard when it considered whether "she had left her employment voluntarily and with good cause attributable to the employer. It determined that a reasonable person would have made more of an effort to correct the problems at work before deciding to leave. However, Johnides v St Lawrence Hospital, 184 Mich App 172 (1990) found that the employment security act does not require a claimant to go through any grievance procedures before quitting and that the failure to do so does not necessarily preclude establishing good cause for leaving. In that case the court held that any resort by the claimant to supervisors or department heads would have been futile and therefore not reasonable. In the present case, Appellant testified that both her immediate supervisor, Gary Morris, and the president of the company, Ralph Krochmel, were hostile toward her (according to Appellant, Krochmel has a "grudge" against her because she testified on behalf of a plaintiff in a discrimination case against the company. Tr. p. 10, 14).

Therefore, for the reasons stated above, the determination by the Board of Review is REVERSED and the decision of the hearing referee is reinstated.

IT IS SO ORDERED.

SUSAN BIEKE NEILSON

DATE:

APR 28 1997

SUSAN BIEKE NEILSON
Wayne County Circuit Court Judge

A TRUE COPY
TECUMSA HUNTER
WAYNE COUNTY CLERK
George O. Ryan Jr.
Clerk