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A.D. No. B89-10825-113573
S.S. No. [REDACTED]
B.O. No. 03

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE L. JOHNSTON,
Petitioner-Appellant,

Date: May 26, 1993

v

No. 139979
Unpublished

HENRY SMITH,
Claimant,

and

MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Respondent-Appellee.

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OPINION

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Respondent-Appellee.

Before: Hood, P.J., and Gribbs and Brennan, JJ.

PER CURIAM.

Petitioner employer appeals as of right from the circuit court's order affirming respondent's award of unemployment benefits to claimant Henry Smith. We affirm.

Petitioner argues that the agency's decision to award claimant benefits on the grounds that he was constructively discharged is contrary to law and unsupported by the evidence. We disagree.

Petitioner's vice-president accused the claimant of stealing. The claimant denied the charge and brought in a witness to corroborate his story. The vice-president indicated that he did not believe the claimant's story and asked him to resign.

The claimant refused to resign and asked the vice-president to fire him. The vice-president declined, apparently because he had no proof that claimant was indeed stealing. The claimant failed to report for his next scheduled shift and, four days later, applied for unemployment benefits.

After an initial denial, the claimant successfully appealed to a referee who found that, "[w]hile the Employer did not technically dismiss the Claimant, it initiated the suggestion as to his separation. The Claimant, although initially refusing that suggestion, appears to have ultimately accepted it. The reason for the suggestion was the Employer's suspicion of the Claimant's wrongdoing without any proof that he engaged in wrongdoing. The Claimant denies any wrongdoing and, under the circumstances, appears to have been justified in feeling persona non grata by the Employer and in accepting its invitation to resign." The referee concluded that, "[a]bsent proof of the Claimant's involvement in wrongdoing, [the Employer's] suggestion that he resign gave the Claimant good cause attributable to the Employer for resigning and avoiding disqualification under the [Employment Security] Act."

An employee who leaves work voluntarily without good cause attributable to the employer is ineligible for unemployment benefits. MCL 421.29(1)(a); MSA 17.531(1)(a). "'Voluntary' [however,] connotes a choice between alternatives which ordinary persons would find reasonable." Clarke v North Detroit Hospital, 179 Mich App 511, 515-516; 446 NW2d 493 (1989), aff'd 437 Mich 280; 470 NW2d 393 (1991); see also Tomei v General Motors Corp., 194 Mich App 180, 187; 486 NW2d 100 (1992). It further implies an "unrestrained, volitional, freely chosen, or wilful action." *Id.* at 516. On the other hand, good cause attributable to the employer exists "where an employer's actions would cause a reasonable, average, and

otherwise qualified worker to give up his or her employment." Johnides v St Lawrence Hospital, 184 Mich App 172, 175; 457 NW2d 123 (1990) (quoting Warblow v The Kroger Co, 156 Mich App 316, 321; 401 NW2d 361 (1986)). For example, where an employer advised an employee to "do it the employer's way or punch out", this Court agreed that there was good cause attributable to the employer for the employee's resignation. Degi v Varano Glass Co, 158 Mich App 695, 697, 699; 405 NW2d 129 (1987).

After carefully reviewing the record, we conclude that the agency's decision in this case is not contrary to law and is supported by the competent material and substantial evidence on the record. As a matter of law, the claimant did not quit work voluntarily. Petitioner's actions in asking for his resignation in the absence of proof of misconduct would have induced an average, reasonable, and otherwise qualified worker to leave petitioner's employment.

Affirmed.

/s/ Harold Hood
/s/ Roman S. Gibbs
/s/ Thomas J. Brennan