A. D. No. 93-15828-RM9-137646W
S. S. No. [redacted]
B. O. No. 63
Employer No. 0058215

15764b

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

CHRISTINE KERRISON,
Claimant/Appellant,

Court No. 94-33568-AE

v

HON. ARCHIE HAYMAN

FLINT MEMORIAL PARK ASSOCIATION
and MICHIGAN EMPLOYMENT SECURITY
COMMISSION,
Appellees.
_____/

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_____/

**OPINION AND ORDER AFFIRMING THE MICHIGAN EMPLOYMENT SECURITY COMMISSION'S DENIAL OF UNEMPLOYMENT COMPENSATION**

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

CHRISTINE KERRISON,

Appellant,

V.

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HON. ARCHIE L. HAYMAN

Case. No. 94-33568-AE

OPINION AND ORDER AFFIRMING THE MICHIGAN EMPLOYMENT SECURITY COMMISSION'S DENIAL OF UNEMPLOYMENT COMPENSATION

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FACTS

Appellant, Christine Kerrison, began working for Flint Memorial Park Association in August of 1984. Appellant held two separate positions at the park. During the day she held a forty hour per week, full time position as office supervisor, earning $5.00 per hour. She alternated weeks working from 9 to 5 or from 11 to 7. In the evenings she worked twenty hours per week and was paid $130.00 as a cleaning person. (MESC Board of Review, transcript of December 9, 1993, MESC T p. 5-6). Before going on maternity leave from January 17, 1993, to March 8, 1993, Appellant discussed her work schedule upon her return. (MESC T p. 21). Appellant stated she initially wished to return to work on a part-time basis. (MESC T p. 8).

Upon returning from maternity leave, Appellant's hours were from 3 to 7. (MESC T p 18). Appellant requested more hours on two occasions which she received and finally worked from 1:30ish to 7. (MESC T p. 18). The decrease in hours was from 40 hours to an average of 33 hours per week and resulted in a loss of wages from $200.00 to $150.00. (MESC T p. 11). Appellant requested to be returned to the shift she worked before taking her maternity leave. (MESC T 8, 19). The employer denied the request stating that no such position was available. (MESC T p. T 20-21). Appellant then gave two weeks notice that she was quitting the office position. (MESC T p. 9). Shortly thereafter, Appellant was terminated from the cleaning position. (MESC T p. 13).

Appellant was given unemployment benefits for the cleaning position but denied benefits for the office position. Appellant filed an appeal of the determination not to grant unemployment benefits for the cleaning position. The matter was heard before Administrative Law Judge A. Glenn Epps on December 9, 1993. Judge Epps found Appellant did not have good cause to leave her employment and therefore was not eligible for unemployment benefits pursuant to MCLA 421.29(1)(a). Judge Epps determined that Appellant's income of $130.00 for the cleaning job and $150.00 for the office job, which totals $280.00, could not be deemed to be inadequate wages which would cause a reasonable person to quit their employment.

Appellant requested a rehearing which was denied by Judge Epps and affirmed by the Board of Review. Appellant filed an appeal with the circuit court on December 29, 1994. Circuit Court Judge Washington remanded the case stating it was error for the two incomes Appellant received from two separate positions to be combined and the total used to decide whether Appellant had good cause to leave her employment. Judge Washington directed the Commission to only consider that portion of Appellant's income which she received for her office position in making their determination.

A new hearing was held on August 16, 1995 before Administrative Law Judge Robert Coon. The parties were informed that the transcript of December 9, 1993, would be a part of the record upon which a new decision would be rendered. Judge Coon found that it was Appellant who chose to limit her hours initially. Judge Coon noted Appellant's employer attempted to accommodate her requests for more hours. Judge Coon stated Appellant then was insistent upon being restored to a position which was no longer available to her as the result of her choice. Judge Coon held therefore Appellant voluntarily left her employment without good cause attributable to her employer.

## DISCUSSION

The Employment Security Act provides the standard of review for reviewing decisions of the Board of Review. The court may reverse a decision only if it concludes that the decision is contrary to law or is not supported by competent, material, and substantial evidence on the whole record. MCLA 421.38 (1). When reviewing findings of facts by the MESC the court is limited to a determination of whether the findings are supported by competent, material, and substantial evidence. Rieske v. Grand Rapids Public Schools, 144 Mich. App. 790 (1985). Substantial evidence is defined as evidence which a reasonable mind would accept as sufficient to support a conclusion. In re Kurzyniec, 207 Mich. App. 531, 537 (1994). It consists of more than a mere scintilla of evidence but less than a preponderance of the evidence. Id. A court should defer to the conclusions of an administrative hearing officer where administrative expertise effects a choice between two reasonably differing views. Traverse Oil Co. v. NRC Chairman, 153 Mich. App. 679, 691 (1986).

Appellant claims the decision of the MESC is not supported by the substantial evidence of the record. Appellant states she was told she would eventually be returning to full time employment. Appellant contends the alternating position was available at the time she gave her notice and it was her employers decision not to return her to this position. Appellant argues the employers choice not to return Appellant to her prior position or other full time employment reduced her pay by 20% and was good cause to leave employment.

Appellee maintains an employers refusal to change an employees shift does not as a matter of law constitute good cause for quitting. Appellee claims Appellant worked reduced hours at her request and never asked for "full time" employment before she quit. Appellee believes Appellant has failed to show the decision of the Board of Review is unsupported by evidence or is contrary to the law.

Upon reviewing the entire record the Court finds substantial evidence which would support the decision of Judge Coon. Appellant stated she wanted to return part time after her maternity leave. (MESC T p. 8). The employer tried to accommodate Appellant on a least two occasions with more hours. (MESC T p. 18 and MESC Board of Review, transcript of August 16, 1995, MESC T2 p. 29-30). Appellant never specifically requested 40 hours, rather she stated if she was not placed on first shift she would be giving her two weeks notice. (MESC T p. 23 and MESC T2 p. 30-31, 35).

This Court defers to Judge Coon's finding that Appellant did not leave her employment for good cause attributable to her employer as stated by the Court of Appeals in Broyles v. Aeroquip Corp., 176 Mich. App. 175, 179-180 (1989):

That is, while we are not convinced that the MESC would have erred by ruling

in plaintiff's favor, neither are we convinced that the MESC erred in ruling against plaintiff. Given the standard of review in unemployment compensation cases, we believe that this is the appropriate case to defer to the judgment of the MESC.

## CONCLUSION

The Michigan Employment Security Commission Board of Review's denial of Appellant's unemployment compensation is hereby AFFIRMED. IT IS SO ORDERED.

Archie L. Hayman

Hon. Archie L. Hayman
Circuit Judge

Dated : 8/18/97