

A. D. NO. B93-13467-129308
S.S. NO. [REDACTED]
B.O. NO. 16

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

NANCY MACKINTOSH,

CASE NO. 95-509950-AE

Appellant.

HON. J. PHILLIP JOURDAN

v

MICHIGAN EMPLOYMENT
SECURITY COMMISSION
and FORHAM JOHNSTON REALTY, INC.,

Appellee.

THOMAS P. ROCKWELL (P19542)
Attorney for Appellant

TIMOTHY H. HOWLETT (P24030)
Attorney or Appellee

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

By: ERROL R. DARGIN (P26994)
Assistant Attorney General
Attorneys for M.E.S.C

ORDER and OPINION

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

NANCY MACKINTOSH,

Appellant

HON. J. PHILLIP JOURDAN

vs.

CASE NO. 95-509950 AE

M.E.S.C. and BOLTON-JOHNSTON,
ASSOCIATION,

Appellees.

OPINION AND ORDER OF THE COURT

Appellant worked for appellee Bolton-Johnson in a unique position which gave her computer access to the entire data base of appellee's customers. Appellant's husband also worked for the real estate firm as a salesman.

When appellant's husband resigned and went to work for a direct competitor, appellant was asked by her supervisors whether she could continue to be loyal to appellee company. Appellant said she thought she could be loyal.

Despite this affirmation (as equivocal as it was), appellee asked her to sign a letter affirming her loyalty to appellee.

Appellant ignored the request (hoping that it would "go away") and appellee gave her a deadline in which to sign the "loyalty letter." Rather than sign the letter, appellant resigned...and subsequently applied for unemployment compenstaion. The MESC denied her request; and appellant requested an evidentiary hearing.

At the hearing, a referee determined that appellant left work voluntarily - but with good cause attributable to the employer; and thus, under MCLA 421.29(1)(a) was eligible for unemployment benefits. The referee's decision was appealed to the MESC Board of Review; and the Board; in a split decision, reversed the referee and held that her decision was not in conformity with the law and the facts.

Appellant appeals this decision; and asks this Court to reverse it. This Court will affirm.

Appellant claims that the case of Smith v. Employment Security Commission, 410 Mich 231 stands for the proposition that, where substantial evidence exists to support both sides, the appeal board may not substitute its judgment for that of the referee.

Actually, this argument states the scope of review NOT of the MESC Appeal Board...but of the Circuit Court in appeals therefrom. The Appeal Board must determine whether the referee's decision was in conformity with the law and the facts. The Board of Review found that the referee's decision was NOT in conformity and reversed in a split decision.

In support of her argument, appellant cites the case of Tomei v. General Motors, 194 Mich Appeal 180, a case involving a plant closing, where the Court of Appeals ruled that, where the employer had not clearly communicated the employee's options to the employee, the resignation was not "voluntary."

Appellant claims that appellee had not clearly communicated appellant's options to her; and thus, under Tomei, her claim must prevail.

Appellee points out that it CLEARLY gave appellant the opportunity to withdraw her resignation and return to work in her former job. Further, Appellant points out that the Court of Appeals later made it clear, in McArthur v. Borman's, 200 Mich App 686, that Tomei only applied in plant closing situations.

The MESC Board of Review found that the referee's decision was not in conformity with the law and the evidence. This Court

finds that the board's decision contains no error of law and is supported by competent, material and substantial evidence on the record. (Tompkins v. Department of Social Services, 97 Mich App 218.)

Therefore, the Court will AFFIRM the decision of the Board of Review.

IT IS SO ORDERED.

SEP 11 1995

Date

J. PHILLIP JOURDAN

J. Phillip Jourdan, Circuit Court Judge

A. J. JOURDAN
TELEPHONE NUMBER
WAYNE COUNTY, MICHIGAN
J. Phillip Jourdan
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