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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

ROBERT RASHID,

Claimant-Appellant,

-vs-

Case No: 84-284496 AE

MICHIGAN EMPLOYMENT SECURITY
COMMISSION and R.G.R., INC.,

Appellees.

OPINION AND ORDER

This is an appeal from MESC Board of Review decision which denied claimant unemployment benefits.

Claimant Robert Rashid owned and operated a car wash. He sold the business to a competitor on January 12, 1984 and subsequently filed for unemployment benefits.

MESC ruled claimant disqualified for unemployment benefits because his sale of the business was voluntary. Claimant argues that he was forced out of business by his competitor; that the sale was not voluntary and he is eligible for unemployment benefits. The statutory basis is E29(1)(a) of the Michigan Employment Security Act.

The standard of review in an MESC hearing is MCL 421.38 which states that a review of the records below may be made by the Circuit Court. The court can reverse the decision only if it is contrary to law or not supported by competent, material and substantial evidence.

Claimant Rashid argued to the review board that his competitor utilized a concerted campaign to force him out of business. He said that he really had no desire to sell the business, but he was afraid that the competitor would eventually force him to shut down. His competitor offered him what he considered a reasonable price for the car wash, so he sold it. Claimant relies on Laya v. Ceban Construction, 101 Mich App 26 (1980), which sets out the definition of voluntary leaving originally stated in Lyons v. Emp. Security Comm, 363 Mich 201

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(1961). The applicable definition states:

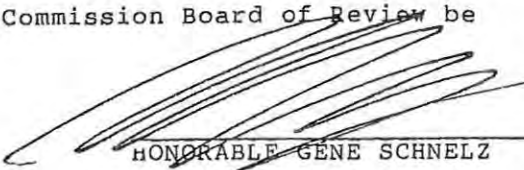
"We noted that the word voluntary as used in §29(1)(a)(1) must connote a decision based upon a choice between alternatives which ordinary men would find reasonable--not mere acquiescence to a result imposed by physical and economic facts utterly beyond the individual's control."

Laya is currently good law and the above definition is controlling. Claimant Rashid argues that he had no reasonable alternative but to sell his business. He should therefore be entitled to unemployment benefits under 29 (1)(a).

MESC found that claimant voluntarily left his employment and that finding is supported by the record. His last week of employment claimant drew a salary of \$700 --this is not indicative of a business "going under". In fact, claimant himself stated that he only feared that sometime in the future his competitor may force him out of business. Also contained in the review board transcript, claimant stated that selling his car wash for a reasonable price was purely a business decision. He felt it would be more profitable to sell for the proffered price than to compete for the available business. I find that there was sufficient evidence offered below to sustain a finding that the sale was voluntary and claimant did not qualify for unemployment benefits. Claimant had a choice either to sell his business for a fair price or engage in competition for the available customers. He chose the former.

ORDER

WHEREFORE, and for the foregoing reasons, it is hereby ordered that this appeal be denied and the decision of the Michigan Employment Security Commission Board of Review be affirmed.


HONORABLE GENE SCHNELZ

Dated: April 3, 1986