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B.O. No. 19  
EMP. No. 0910661

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
COUNTY OF OAKLAND

KATHLEEN A. WALSH,

Appellant,

Hon. Jessica R. Cooper

v

Case No. 97-551063 AE

MICHIGAN UNEMPLOYMENT  
AGENCY, DEPARTMENT OF  
CONSUMER & INDUSTRY SERVICES

and,

FIRST METROPOLITAN TITLE,  
Appellee(s).

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KATHLEEN A. WALSH (P46723)  
Appellant In Pro Per

FRANK J. KELLEY  
Attorney General of the State of Michigan  
By: GARY KRESS (P23001)  
Assistant Attorney General  
Attorneys for MUA

\_\_\_\_\_ /

OPINION AND ORDER ENTERED ON JANUARY 26, 1998

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

KATHLEEN A. WALSH,

Appellant,

v

97-551063-AE

Hon. Jessica R. Cooper

MICHIGAN UNEMPLOYMENT  
AGENCY DEPT. OF CONSUMER  
& INDUSTRY SERVICES, and  
FIRST METROPOLITAN TITLE CO.,

Appellees

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OPINION AND ORDER

At a session of said Court, held in the Courthouse, City of Pontiac, County of Oakland, State of Michigan, on the 26th of January, 1998.

PRESENT: Honorable Jessica R. Cooper

This matter is before the court on appellant/claimant Kathleen A. Walsh's appeal of right from a decision of the Board of Review denying her request for unemployment benefits. The parties have waived oral argument. The court, having reviewed the parties' briefs and the certified record, finds the following facts to be contained within the certified record.

Kathleen A. Walsh was employed by First Metropolitan Title Company as a title examiner from April 22, 1996, until September 17, 1996. [4, 15, 16] On Tuesday, September 17, 1996, Walsh gave written notice to her employer that she was

resigning, effective Friday, September 20, 1996. [4, 16] Walsh's resignation letter stated, in relevant part: "I have been made an offer by another title company that is more in line with my capabilities and salary requirements. I am disappointed that I received no response to my memo of last week." The claimant apparently requested a pay raise in her prior memo. [10, 16] The employer asked Walsh where she was going but she declined to disclose that information. [11] The employer dismissed Walsh that same day, September 17, 1996. [4]

Ann Davis, Sandra Brandenberg and Deborah Fitnich testified on behalf of the employer. [6-13] Ms. Fitnich testified that they were concerned that Walsh was going to a competing title company. [11] Ms. Davis testified that there tends to be a lot of "pirating" of employees from one company to another in this industry. [12] Ms. Davis testified that "if an employee seems uncooperative or unwilling to share that information [where the employee is going to work], it has been our practice to let them go and accept their resignation that same day. And that's the basis of our decision to let it go on the 17th rather than wait the additional three days that she gave us." [12-13]

Walsh filed a claim for unemployment compensation for the three day period (September 17, 18 and 19, 1996) between the day she tendered her resignation and the day her resignation was to be effective. [15] On October 24 and December 23, 1996, a determination and redetermination were mailed which, respectively, found Walsh disqualified for benefits under the voluntary leaving provisions of the Act. [21, 24] A referee hearing took place on February 19, 1997. [3] The referee's decision affirmed the redetermination. [30-32] On March 3, 1997, Walsh filed a request for

rehearing, which was denied on March 5, 1997. [33-37] On April 4, 1997, Walsh filed a timely appeal with the Board of Review. [38] On June 13, 1997, the Board of Review mailed a decision which affirmed the referee. [39-40] On July 14, 1997, Walsh filed a request for a rehearing by the Board of Review. [41] On August 8, 1997, an order was mailed denying the rehearing request. [42] Walsh filed a claim of appeal with this court on September 8, 1997.

#### STANDARD OF REVIEW

MCL 421.38; MSA 17.540(1) provides that the circuit court may:

[R]eview questions of fact and law on the record made before the referee and the board of review involved in a final order or decision of the board . . . but the court may reverse an order or decision only if it finds that the order or decision is contrary to law or is not supported by competent, material, and substantial evidence on the whole record. (emphasis added)

In *McArthur v Borman's Inc.*, 200 Mich App 686; 505 NW2d 32 (1993) the court stated:

Judicial review of factual findings of administrative tribunals is limited. The reviewing court will not substitute its judgment for that of the fact-finding tribunal. The MESC Board of Review's decision may be reversed only if the decision is contrary to law or not supported by competent, material, and substantial evidence. Substantial evidence is more than a mere scintilla but less than a preponderance of the evidence. We accord due deference to administrative expertise and do not displace an agency's choice between two reasonably different views. Where the underlying facts are undisputed, questions presented on appeal are treated as matters of law.

## DISCUSSION

Walsh cited *Stephen's Nu-Ad, Inc. v Green*, 168 Mich App 219; 423 NW2d 625 (1988) in which the court reaffirmed the circuit court's affirmance of the board of review's decision that an employee who gave two weeks notice and was then immediately discharged was not disqualified from receiving benefits for the two week notice period. The court noted that "under the limited standard of appellate review applicable, we should not disturb the decision of the board of review." *Id.* at 222. The court stated:

But for the discharge effected by his employer, claimant would have continued working until the end of the two-week period. Apparently, claimant was under no obligation to give his employer any notice of his intent to quit; such notice was provided, it seems, purely for reasons of courtesy and consideration for the employer. In return for his courtesy, claimant was fired.

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In no way was claimant's separation from his employment on February 3, 1986, the result of an unrestrained, volitional, freely chosen, or wilfull action on the part of claimant. *Id.* at 222-23.

The referee distinguished the present case from *Steven's Nu-Ad* in part because Walsh did not give her employer the benefit of the two week notice. Further, the referee noted:

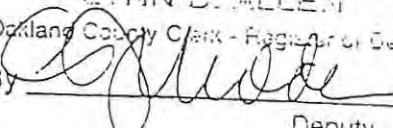
The employer questioned the lack of a two-week notice and also questioned the claimant regarding her future employment. The confrontational style of claimant led to the separation for the three days involved. The failure to give the employer the courtesy of the two week period and also the handling of the matter are sufficient reasons for the employer to accept the resignation immediately.

It appears from the record that Walsh's poor handling of her resignation, including her failure to give her employer the courtesy of a two week notice, and the fact that she appeared to be going to work for a competitor led to her termination on September 17, 1996. These facts support the conclusion that Walsh's separation was the result of "an unrestrained, volitional, freely chosen or willful action" on her part. *Id.* Thus, the board correctly ruled that Walsh voluntarily quit and was disqualified from receiving unemployment compensation.

Therefore, the decision of the board is hereby AFFIRMED.

IT IS SO ORDERED.

JESSICA R. COOPER  
CIRCUIT JUDGE  
Hon. Jessica R. Cooper

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LYNN D. ALLEN  
Oakland County Clerk - Registrar of Deeds  
By   
Deputy