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A. D. No. B90-16245-117532W
S. S. No. [REDACTED]
B. O. No. 37

STATE OF MICHIGAN
IN THE COURT OF APPEALS

LAWRENCE C. BIS,
Claimant/Appellant,

Court No. 156482

v

Lower Court No.
92-48046-AE-3

ELECTRONIC DATA SYSTEMS and
MICHIGAN EMPLOYMENT SECURITY
COMMISSION,
Defendants/Appellees.

UNPUBLISHED

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O P I N I O N

STATE OF MICHIGAN
COURT OF APPEALS

LAWRENCE C. BIS,

Plaintiff-Appellant,

v

ELECTRONIC DATA SYSTEMS CORPORATION and
MICHIGAN EMPLOYMENT SECURITY COMMISSION,

Defendants-Appellees.

UNPUBLISHED
March 8, 1995

No. 156482
LC No. 92-48046-AE-3

Before: Michael J. Kelly, P.J., and Connor and J. M. Graves Jr.,* JJ.

PER CURIAM.

Plaintiff appeals of right an order of the circuit court affirming the decision of the Michigan Employment Security Commission (MESC) to deny plaintiff's claim for unemployment compensation benefits. We affirm.

Plaintiff was hired by defendant Electronic Data Systems Corporation (EDS) as an Assistant Engineer. As a condition of his employment, he was required to complete a three-phase engineering systems development program. If he was unsuccessful in completing any of the three phases, plaintiff would be discharged immediately. Plaintiff completed the first phase but resigned before finishing the second.

The second phase of the program tested the physical and mental stamina of the participants. Each participant was expected to work fifteen to sixteen hours a day, seven days a week, for ten weeks. When plaintiff began to experience physical and emotional problems during this phase, he spoke with his supervisor, Robert Allen McDonald, to see if he could be returned to the first phase and then resume the second phase at a later date. Plaintiff was visibly upset and expressed doubts about his ability to finish the second phase, but he did not tell McDonald about his specific physical and emotional problems. McDonald testified that he did not think that plaintiff had fallen behind in the program nor had he received any such indication from other supervisors. McDonald advised plaintiff that he had to continue and complete the second phase or face termination. However, McDonald added, "Think about it over the weekend and either talk with me on Monday morning or if I don't see you, I'm assuming that you're still in the program." After reviewing his own performance and concluding that he had no choice but to resign or face termination, plaintiff resigned. He had completed only two weeks of the second phase.

Plaintiff sought unemployment compensation benefits through defendant MESC pursuant to MCL 421.28; MSA 17.530. However, the MESC found that plaintiff had quit work without good cause attributable to his employer. Pursuant to MCL 421.29(10)(a); MSA 17.531(1)(a), the MESC denied plaintiff's application for benefits. The circuit court affirmed.

In reviewing the decision of the MESC, this Court determines whether its findings are supported by substantial, competent, and material evidence on the whole record. MCL 421.38; MSA 17.540; Michigan United Conservation Clubs v Lansing Twp, 423 Mich 661, 661-662; 378 NW2d 737 (1985).

*Circuit judge, sitting on the Court of Appeals by assignment.

However, where the facts are undisputed, the issue of whether a claimant's motivation for resigning fulfills the requirement that he quit with "good cause attributable to the employer," MCL 421.29(1)(a); MSA 17.531(1)(a), is a question of law, Cooper v University of Michigan, 100 Mich App 99, 103-104; 298 NW2d 677 (1980), and is, therefore, subject to de novo review, Cardinal Mooney High School v MHSAA, 437 Mich 75, 80; 467 NW2d 21 (1991).

Plaintiff contends that the MESC erred in determining that he resigned without good cause attributable to his employer, EDS. We disagree.

The "good cause" standard of MCL 421.29(1)(a); MSA 17.531(1)(a) essentially asks whether an employee left work with "'cause of a necessitous and compelling nature.'" Cooper, supra at 105, quoting 43 Pa Stat Ann 802(b)(1). "'Good cause' compelling an employee to terminate his employment should be found where an employer's actions would cause a reasonable, average and otherwise qualified worker to give up his or her employment." Carswell v Share House, Inc, 151 Mich App 392, 396-397; 390 NW2d 252 (1986). Personal reasons for quitting, even if compelling, do not constitute "good cause." Leeseberg v Smith-Jamieson, Inc, 149 Mich App 463, 466; 386 NW2d 218 (1986).

The conduct of EDS toward plaintiff shows that, at all times prior to plaintiff's resignation, EDS supervisors believed plaintiff could successfully complete the program and that EDS gave plaintiff the opportunity to do so. It was plaintiff's self-doubts that led him first to initiate discussions with EDS and, ultimately, to resign. Plaintiff was aware, for example, that he was entitled to three warnings regarding his performance in the second phase before his employment could be terminated. Yet, at the time of his resignation, plaintiff had not received any warnings. When plaintiff inquired about the possibility of returning to the first phase and resuming the second phase at a later date, EDS supervisors merely reiterated the rule regarding successful completion of all three phases and then told plaintiff to think about it over the weekend. Nothing indicated that plaintiff was incapable of completing the second phase successfully. The record supports the finding of the MESC that the conduct of EDS did not make working conditions so unpleasant that a reasonable person in plaintiff's shoes would have felt compelled to resign for reasons attributable to EDS. Cf. Cooper, supra (holding that voluntary termination of employment due to claimant's own determination that the quantity of work assigned to her was insufficient was not "good cause" attributable to her employer). See also Rizzitano v Unemployment Compensation Bd of Review, 32 Pa Comwth 59; 377 A2d 1060, 1061-1062 (1977) (holding that the mere possibility of discharge sometime in the future is insufficient to show termination for a "cause of necessitous and compelling nature").

Affirmed.

/s/ Michael J. Kelly
/s/ Michael J. Connor
/s/ James M. Graves, Jr.