

STATE OF MICHIGAN

BARRY COUNTY TRIAL COURT – CIRCUIT DIVISION

146470
CYNTHEAL COOPER,

Claimant-Appellant,

OPINION AND ORDER REVERSING
DECISION OF BOARD OF REVIEW

v.

File No. 98-194-AE

MOUNT CLEMENS SCHOOLS,

Hon. James H. Fisher

Employer-Appellee,

and

MICHIGAN DEPARTMENT OF
CONSUMER & INDUSTRY SERVICES;
UNEMPLOYMENT AGENCY,

Appellee.

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DEPARTMENT OF
ATTORNEY GENERAL

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Appellant has appealed from a decision of the Board of Review of the Unemployment Agency of the Department of Consumer and Industry Services dated February 11, 1998, which reversed a decision of a referee dated October 24, 1997. The effect of the reversal by the Board of Review was to deny the appellant unemployment

benefits as a result her resignation from Mt. Clemens School District. The recent unpublished Michigan Court of Appeals case of Shirley Neil v. Light Corporation and Michigan Employment Security Commission, number 202007 decided December 1, 1998, provides an excellent discussion of a court's review of a decision from the Board of Review. There, the Court cited with approval MCL 421.38; MSA 17.540, which provides in pertinent part:

"(1) The Circuit Court ... may review questions of fact and law on the record made before the referee and the Board of Review involved in the final order or decision of the Board, and may make further orders in respect to that order or decision as justice may require, 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."

The Court in Neil, supra reviewed the case of MERC v. Detroit Symphony Orchestra, Inc., 393 Mich 116, 1974, and gleaned the following principles from that case as it relates to examination of the standard of competent, material and substantial evidence:

"First, as noted in Detroit Symphony supra, a review in Court is not to displace the agencies choice between two reasonably differing viewpoints. Second, substantial evidence is that which a reasonable mind would accept as adequate to support a decision. ... Third, where there is sufficient evidence to support the agencies findings, a reviewing Court must not substitute its discretion for that of the agency, even if the Court would have reached a different result." Neil, supra.

It is clear that this Court must give substantial deference to the determinations of fact made by the Board of Review, even though they are contrary to the findings of the referee. Thus, given the evidence on the record as a whole, the Court cannot conclude that the decision of the Board of Review should be reversed as it relates to the factual determinations made by the Board. The Board determined, as a matter of law, that the Claimant left voluntarily because she submitted a letter of resignation. The Board then determined that the Claimant had not proven good cause attributable to the employer for her leaving, as required by MCL 421.29(1)(a); MSA 17.531(1)(a).

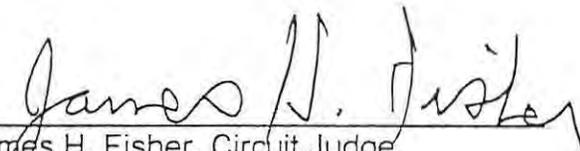
However, as pointed out in the dissenting opinion of member Hansen of the Board of Review, the Board erroneously found that the Claimant had left her position voluntarily, which this Court concludes was either an error as a matter of law, or if considered as a finding of fact, is not supported by competent, material and substantial evidence.

The facts as adduced by the Board of Review were that the Claimant received a layoff notice on April 24, 1997. Subsequently, on April 28, 1997, the Claimant submitted a letter of resignation, effective at the end of the contract year, indicating that she was leaving her position to relocate to western Michigan during the Summer. As pointed out by the dissenting member of the Board, the Claimant did not have a job she could resign from, since she had already lost it as a result of the layoff notice she received prior to the submission of her "letter of resignation". This court holds that a person who "resigns" after losing their job to a layoff has not voluntarily terminated their employment.

Apparently, the Board of Review felt that it would be reasonable for the Claimant to wait around the entire Summer to see if she would be rehired in the Fall of 1997. This conclusion does not seem reasonable to the Court, given the fact that the Claimant's layoff was motivated by the employer's financial concerns. The Court therefore agrees with the dissenting member of the Board that the Claimant cannot be disqualified under Section 29 (1)(b) of the Act.

IT IS ORDERED that the decision of the Board of Review is reversed.

Dated: December 29, 1998


James H. Fisher, Circuit Judge