STATE OF MICHIGAN
IN THE TRIAL COURT FOR THE COUNTY OF ISABELLA

Edwin Spence,
Appellant,

v

File No: 00-1666-AE

The Dakota Corporation,
and Unemployment Agency,
Michigan Department of Consumer
& Industry Services,
Appellees.

Amy L. Meilink
Attorney for Appellant

Martin J. Vittands
Attorney for Appellees

OPINION AND ORDER ON APPEAL

Appellant, Edward Spence, was twice disqualified from receiving unemployment benefits because it was determined that he voluntarily left work without good cause attributable to the employer. . . [MCL 421.29(1)(a)]. Claimant requested a referee hearing. The original fact finder found that Mr. Spence should not have been disqualified for benefits for voluntarily quitting his job. At the second rehearing, the Board reversed this decision, finding that Mr. Spence had failed to prove that "he acted as a reasonable, average and otherwise qualified worker." Claimant appeals the Board's decision to the circuit court. This Court has reviewed the briefs, transcripts, and attachments in the file.

The issue presented in this appeal is whether the Employment Security Board of Review erred in finding that Appellant did not have good cause attributable to his employer for leaving work voluntarily.

Facts

Mr. Spence began working for Appellee in 1996 as a truck driver. Over the course of his employment Mr. Spence was required to drive a minimum of seven hours between Grand Haven, Michigan and Windsor, Ontario delivering five loads of sand in four days. In addition to that seven hour commute, Mr. Spence commuted two and one-half hours one way from home to work and spent nearly four hours loading and unloading the sand. Providing that Mr. Spence was not subject to traffic and loading delays his minimum working day would be approximately twelve to fifteen hours. Because Mr. Spence was required to complete five trips in four days he would return to Grand Haven, reload his truck, and travel right back to Windsor with little or no sleep. This around-the-clock schedule not only violated Michigan Department of Transportation regulations, but also proved to be physically taxing on Mr. Spence and resulted in him being hospitalized on two occasions.

Additionally, to avoid being fined, Mr. Spence felt compelled to falsify his travel logs in order to show that he was in compliance with transportation regulations. Mr. Spence made Appellee aware that the schedule they required of him was both taxing, illegal and compromised the health and safety of the general public. Mr. Spence also informed Appellee that another colleague was falsifying his logs. Appellee refused to alter the schedules and essentially disregarded Mr. Spence's concerns. Mr. Spence attempted to terminate his employment on previous occasions, but finally terminated his employment with Appellee on December 5, 1998, after previously returning at the urging of Appellee and with the understanding that he would not be required to work the previously required hours. Mr. Spence finally left his employment after Appellee failed to alter his schedule. Mr. Spence subsequently applied for unemployment benefits and he filed a complaint against Appellee with the United States Department of Transportation. On July 6, 1999, the USDOT issued a statement of charges and fined Appellee $2100 for among other citations, five violations of false report of records of duty status.

Standard of Review

Judicial review of administrative decisions is limited to determining if the lower decision was authorized by law, and in cases where a hearing was required, whether the same are supported by competent, material and substantial evidence on the whole record. A reviewing court should reverse an administrative decision when: a) it violates the constitution or a statute; b) it exceeds statutory

authority or the jurisdiction of the agency; c) it is made upon unlawful procedures resulting in material prejudice to a party; d) it is not supported by competent, material and substantial evidence on the whole record; e) it is arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion; or f) it is affected by other substantial and material error of law. MCL 24. 306(1).

Mr. Spence challenges the Boards decision under MCL 24.306 (1)(d) and (f) arguing that the administrative decision is affected by substantial and material error of law, in addition to not being supported by competent, material and substantial evidence on the whole record.

Parties Positions

Appellant argues that he was required to work unreasonable and unlawful hours that compromised his health and public safety. Appellee did not deny that on several occasions Mr. Spence drew his attention to the fact that he was violating the law. Appellee admits that it did nothing to resolve Mr. Spence's complaints. Additionally, the Department of Transportation concurred with Mr. Spence that Appellee was in violation of the law and the agency's regulations. When eventually confronted by USDOT regarding the discrepancies in logs, Appellee Dakota Corporation responded "I can't babysit these drivers, they want to make money." Based on the DOT findings it is unquestionable that Appellee violated the law. Mr. Spence challenges the Boards decision under MCL 24.306 (1)(d) and (f) arguing that the administrative decision is affected by substantial and material error of law, in addition to not being supported by competent, material and substantial evidence on the whole record.

Appellee, Unemployment Agency, concedes that an employee whose employer knowingly requires employees to engage in unlawful activity would generally have good cause for quitting. However, the Board of Review in this case found that there was a lack of evidence that the employer knew claimant was falsifying his logs, encouraged him to do so, or otherwise expected him to drive unlawfully. The claimant conceded that he didn't know if his employer knew he was keeping logs improperly and that his employer insisted that he was driving lawfully. There is no testimony from claimant that the employer deliberately required claimant to operate unlawfully, or provided good cause for claimant's quitting. Second, the employer testified that he expected claimant to make four trips in four days, and believed that five trips in four days would still be within DOT regulations. There is no testimony by the employer that infers he expected claimant to drive unlawfully, and in fact claimant decided to do the fifth load on his own. Additionally, claimant said he had driven in violation of the law since 1996 so for over three years claimant did not feel compelled to quit. Additionally, after discovered evidence (the outcome of the DOT investigation) should not form a basis for unemployment agency decisions. Children's Hospital of Michigan v Craddock, unpublished opinion per curiam of the Court of Appeals, decided May 19, 1998.

Analysis

Upon a complete reading of the transcript this Court finds that Appellant informed his employer on numerous occasions that they were forcing him to drive illegally and that he was only able to maintain an appearance of legality by falsifying his logs. Appellant also informed the employer that he was aware that his co-employee was falsifying his logs and at times their logs if compared would show that each was driving (only one truck shared between the two). Each time the employee tried to explain the problems the employee insisted they were legal, refused to review

the documentation the employee tried to present, and told the driver that each of them was on their own if they got stopped and caught falsifying the logs. Although the employer may not have told the employee to falsify the logs they should have been aware that the 5 required trips to Canada and back could not be legally done in 3 or 4 days as they required of the employees. This Court finds that the employee acted as a "reasonable, average, and otherwise qualified worker" in trying to maintain the job to pay bills to the cost of hospitalization twice. Eventually he was able to verify that the hours he was being asked to work were illegal while at the same time the employer was praising his co-worker for making the five trips in 3 days and suggesting that the employee needed to work around the clock also. Employee eventually realized that he was harming his health working in an illegal manner and if he were to get caught he would be individually responsible for the fine - likely losing the money he was working so hard for. Thus, the employee meets his burden of demonstrating that he acted as "reasonable, average, and otherwise qualified worker." The ruling of the administrative agency is not supported by competent, material and substantial evidence on the whole record.

IT IS HEREBY ORDERED AND ADJUDGED that the decision on Rehearing should be set aside and appellant granted unemployment benefits.

October 30, 2000

Hon. Scott J. Newcombe
Sitting by Assignment as
Isabella County Trial Court Judge

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon the attorney of record of all parties to the above cause at their respective business address on Nov. 7 to 2000

- ☒ U.S. Mail
- ☐ Hand Delivered
- ☐ Federal Express
- ☐ FAX
- ☐ Overnight Courier
- ☐ Other

Signature