

AD No. B99-13378-154400
S.S. No. [REDACTED]
B.O. No. 025
EMP. No. 0411669

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 14th JUDICIAL CIRCUIT
MUSKEGON COUNTY

TRACY L. DUSHANE,

Case No. 00-40206-AE
Hon. James R. Graves

Claimant/Appellant,

v

BAILEY T L DDS and STATE OF
MICHIGAN UNEMPLOYMENT
AGENCY, DEPARTMENT OF
CONSUMER & INDUSTRY SERVICES,

Employer/Agency/Appellee.

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ORDER ENTERED ON 02/06/01

STATE OF MICHIGAN
MUSKEGON COUNTY CIRCUIT COURT

TRACEY L. DUSHANE,
Claimant-Appellant,

File No. 00-40206-AE

OPINION and ORDER

v

BAILEY T.L., D.D.S., and STATE OF MICHIGAN,
UNEMPLOYMENT AGENCY, DEPARTMENT OF
CONSUMER & INDUSTRY SERVICES, f/k/a
Michigan Employment Security Agency &
Michigan Employment Security Commission,

Employer-Agency-Appellees,

At a session of court held at the courthouse in
Muskegon, Michigan, on -
February 6, 2001.

PRESENT: Honorable James M. Graves, Jr., Circuit Judge

Tracey L. Dushane, claimant-appellant, appeals a decision of the Michigan Security Board of Review ("Board") which held that appellant was disqualified for unemployment benefits pursuant to MCL 421.29(1)(a), MSA 17.531(1)(a) for voluntarily leaving her employment without good cause attributable to the employer. The Board's decision reversed the holding of the administrative law judge who had held that claimant was on an indefinite layoff so she could look for work elsewhere. Appellant presents a single issue on appeal: whether the Board erred in finding that claimant voluntarily left her employment when the employer agreed to lay her off.

The Court may reverse an order or decision of the Board "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." MCL 421.38(1), MSA 17.540(1). The Board's decision dated April 7, 2000 indicated that the Board found that claimant had voluntarily quit her job even

though she asserted that she had received a voluntary layoff. The Board held that claimant had asked to be laid off and that there was work available for her to do. The court finds no error in the Board's conclusions.

There was evidence on the record to establish that when claimant stated to her employer that she wanted to be laid off, her employer agreed. Nevertheless, the Board is not required to accept the character or nature of the separation as described by the employer and employee, or accept any agreement of the employer and employee that the employee is entitled to benefits. The Board alone has the "duty and authority to decide for or against the claimant's qualification for benefits 'on the basis of evidence' before it." Miller v F.W. Woolworth, Co., 359 Mich 342, 350-351 (1960). Neither is the Board bound by the words used by the employer and employee to describe the separation; rather, the Board is entitled to look at the facts. I.M. Dach Co. v Employ. Sec. Comm., 347 Mich 465, 489 (1956).

The question which must be resolved is whether or not the facts of this case demonstrate an actual "layoff" of claimant as "layoff" has been defined by Michigan courts. In MESC v General Motors Corp., 32 Mich App 642, 647 (1971), the Court noted that:

"A 'layoff' is a termination of employment at the will of the employer, without prejudice to the worker. Layoffs may be due to lack of orders, technical changes, or the failure of flow of parts or materials to the job, as needed."

At page 648:

"A 'layoff', as distinguished from a discharge, contemplates a period during which a working man is temporarily dismissed ...".

In Chrysler Corp v Washington, 52 Mich App 229, 234-235 (1974), the court defined "layoff" as:


"To cease to employ (a worker) usually temporarily because of slack in production and without prejudice to the worker usually distinguished from a fire."

Thus, a "layoff" is a separation of an employee from employment (a) at the will of the employer, (b) due to a lack of work, and (c) which is at least initially understood by the employer and employee to be temporary.

In the case at bar, claimant admitted that she asked for the "layoff" and said that she would leave and not come back. She admitted that she knew that she could have come back to work the next day. Other witnesses testified that claimant could have returned to work and performed her job. Thus, the record establishes that claimant did not leave because of a lack of work. The record also establishes that even though claimant used the term "layoff" to her employer, she had no intention of returning to work and was in effect permanently quitting her job even though work was available for her to do. Thus, the Board's decision denying claimant benefits was not contrary to law, and the Board's decision that claimant was disqualified from benefits because she "left work voluntarily without good cause attributable to the employer or employing unit" as provided by MCL 421.29(1)(a), MSA 17.531(1)(a) was supported by competent, material, and substantial evidence on the whole record.

Affirmed.

Dated: February 6, 2001.

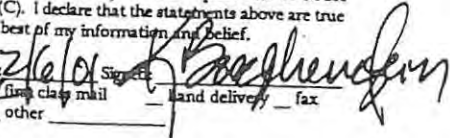


Hon. James M. Graves, Jr., (P24233)
14th Circuit Judge

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PROOF OF SERVICE

Service of a copy of this document was made this date upon all parties who have appeared or their attorneys of record by delivery or mail pursuant to MCR 2.107(C). I declare that the statements above are true to the best of my information and belief.

Dated: 2/6/01 Signed: 
via: first class mail hand delivery fax
 other _____