

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON**

JENNIFER M. VOORHEES,

Claimant/Appellant,

v

ALLEGIANCE HEALTH,

Employer/Appellee

STATE OF MICHIGAN, DEPARTMENT OF
LICENSING AND REGULATORY AFFAIRS,
UNEMPLOYMENT INSURANCE AGENCY,

Appellee

Case No. 12-3123-AE

Hon. John G. McBain

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OPINION FOLLOWING APPEAL

Claimant in this case, who is a resident of Jackson County, has timely filed an appeal of the decision of the Michigan Compensation Appellate Commission dated May 25, 2012. This Court has proper jurisdiction to hear her claim of appeal under MCL 421.38.

Background

The following is a statement of facts determined by this Court after reviewing the record as a whole. The Claimant, Jennifer Voorhees, began working for Allegiance Health on January 29, 2008, as a full time cashier. On April 4, 2011, the hospital had an

internal disaster drill. Employees are not allowed to leave during these disaster drills. On this particular day Mrs. Voorhees needed to leave work at her normal time due to childcare issues. Her children were on spring break from school at this time. Her husband was at home with the children and could not leave for work until his wife came home from her job. She notified her supervisor that she had childcare issues and needed to know when she might be allowed to leave. She was informed by her supervisor, Terry Shaughnessy, that she needed to make other arrangements for childcare. Mrs. Voorhees called her husband to tell him that she didn't know what time she would be released and they needed to find someone else to care for the children. After speaking with his wife, Mr. Voorhees decided to call Mrs. Shaughnessy himself. Mrs. Voorhees was not in the room during the time of the phone call. After learning that her husband had called Mrs. Shaughnessy she apologized to her and said that she did not know why he called and that she could not control him.

On April 5, 2011, Mrs. Voorhees returned to work. She was informed by Mrs. Shaughnessy around 1pm that day that everyone in the office had been told of the phone call by her husband. She went on to further tell Mrs. Voorhees that she thought her husband was abusive and that he drinks. On April 7, 2011, Mrs. Voorhees called to set up an appointment with the human resources department to speak to someone about the comments her supervisor had made about her husband. She notified her supervisor of the appointment time. Her meeting with HR took place on April 11, 2012. She was told that the supervisor's comments were inappropriate and they would look into it.

On April 12, 2011, Mrs. Voorhees was called into the office by the department head, Jennifer Zysk, and her supervisor, Terry Shaughnessy. At this time she was given corrective action and a final written warning. She was given this final warning for not properly acknowledging a patient when she approached them; for the incident on April 4th for not being a team worker and lacking compassion; for removing her personal belongings from her work area; and for security guards talking outside her window. She was also talked to about being tardy to work on dates that occurred between November and December of 2010. Mrs. Voorhees was told to complete 3 sessions of employee assistance counseling. She was able to complete one session during the remainder of her employment.

Mrs. Voorhees states her doctor took her off work for three days due to the stress of this situation.

On May 9, 2011, Mrs. Voorhees was again called into the office and written up for lack of compassion. Her supervisor reports that she was also tardy on this day. She was told by her supervisor and department head that as homework, she needed to think of a way to better approach her supervisor to ask for help to become a better employee. On May 10, 2011, Mrs. Voorhees quit her job.

Before April 4, 2011, when the emergency disaster drill took place, Mrs. Voorhees had never been formally disciplined.

Procedural History

On May 13, 2011, Mrs. Voorhees filed for unemployment benefits. A determination was issued on May 31, 2011. On July 18, 2011, a redetermination was issued disqualifying her from benefits. Mrs. Voorhees appealed the redetermination and a hearing was conducted before Administrative Law Judge Sewell. ALJ Sewell found she had established through credible testimony that she acted as “[a] reasonable, average and otherwise qualified person in giving up her employment.” He further stated she “has established by evidence that she was harassed after the incident involving the emergency drill situation on April 4, 2011.”

Allegiance Health appealed the decision of the ALJ and the matter was heard before the Michigan Compensation Appellate Commission (MCAC). The MCAC reversed the decision of the ALJ in an opinion dated May 24, 2012, stating that “a reasonable, average, and otherwise qualified worker would not give up on employment at the first sign of disciplinary action.”

Mrs. Voorhees timely filed her claim of appeal from the decision of the MCAC on October 1, 2012.

Law

MCL 421.38(1) provides that the Circuit 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.

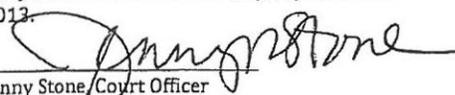
Under the Michigan Employment Security Act an individual is disqualified from receiving benefits if she left work voluntarily or without good cause attributable to the employer. MCL 421.29(1)(a). The Michigan Court of Appeals established in *Carswell v Share House Inc.* that good cause is determined when “an employer’s actions would cause a reasonable, average, and otherwise qualified worker to give up his or her employment. 151 Mich App 392, 396 (1986).

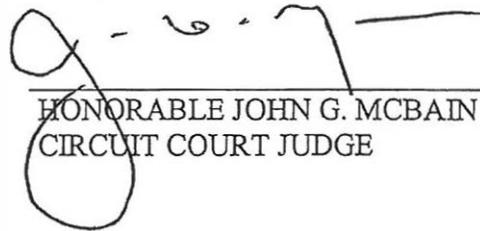
Analysis

After reviewing the record and hearing oral arguments on this matter, this Court finds the Plaintiff has established her burden of proving that she left her employment due to good cause attributable to her employer. Mrs. Voorhees had been employed by Allegiance Health for over three years prior to the incidents surrounding the emergency disaster drill without receiving any written warnings. After complaining about her supervisor’s behavior to the Human Resources Department she was given a final written notice of corrective action. She was written up for six different things, on two separate occasions after the incident occurred.

This Court finds Mrs. Voorhees has established that she was harassed after the incident occurred. She had actually been taken off work by her doctor for the amount of stress she was under due to this situation. We further find that a reasonable, average, and otherwise worker would feel compelled to leave their employment after this type of treatment. The decision of the MCAC is reversed and the claimant’s unemployment benefits are to be restored.

IT IS SO ORDERED this 29th day of March, 2013.

<p>Certificate of Service:</p> <p>I hereby certify that a copy of this order was sent to the parties via U.S. mail this <u>29th</u> day of March, 2013.</p> <p></p> <p>Jenny Stone, Court Officer</p>


HONORABLE JOHN G. MCBAIN
CIRCUIT COURT JUDGE