Appeal Docket No. B79-05208-67059
Branch Office No. 05

67059

STATE OF MICHIGAN

COURT OF APPEALS

COURT ORDERED THIS OPINION IS NOT TO BE PUBLISHED

JOHNNIE STREETER and the Michigan Employment Security Commission,

Plaintiffs-Appellees,

Filed OCT 12 1981

-v- No. 54997

RIVER ROUGE BOARD OF EDUCATION,

Defendant-Appellant.

/

BEFORE: D.C. Riley, P.J., W.P. Cynar and H.R. Gage*, JJ.

PER CURIAM

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JOHNNIE STREETER, In Pro Per
Claimant-Appellee

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Appellant, River Rouge Board of Education, appeals as of right from the circuit court's affirmance of the Michigan Employment Security Commission's (MESC) award of unemployment benefits to appellee. Appellee a teacher in appellant's school district, was discharged b appellant for an incident which occurred on May 5, 1978. Appellee was terminated because, after receiving verbal threats over the phone from an irate parent, she left the

*Circuit court judge sitting on Court of Appeals by assignment.

school, went home, and returned with a handgun. The anticipated confrontation never occurred, and the gun was not used. Appellee sought and eventually was awarded unemployment benefits pursuant to the Michigan Employment Security Act, MCLA 421.1 et seq; MSA 17.501 et seq. The referee's award of benefits was affirmed by the MESC board of review and the circuit court.

The referee found that appellee's actions did not constitute "misconduct" within the meaning of section 29 of the Michigan Employment Security Act (MESA), MCLA 421.29(1); MSA 17.531(1)(b). Judicial review of the referee's decision is limited to the inquiry of whether the decision is 'contrary to law or is not supported by competent, material, and substantial evidence on the whole record." MCLA 421.38; MSA 17.540; Const. 1963, art. 6, § 28.

Section 29(1)(b) provides for disqualification for unemployment benefits as follows:

"(1) An individual shall be disqualified for benefits in all cases in which he:

* * *

"(b) Has been discharged for misconduct connected with his work, whether or not the discharge has subsequently been reduced to a disciplinary layoff or suspension, or for intoxication while at work."

It is well established that the disqualification provisions of section 29 are to be read narrowly because of the remedial purposes of the MESA. This Court has held:

"The Michigan Employment Security Act is intended to provide relief from the hardship caused by involuntary unemployment. As the purpose of the act is remedial, it is to be liberally construed. MCLA 421.1; MSA 17.502, Noblit v The Marmon Group, 386 Mich 652; 194 NW2d 324 (1972), Salenius v Employment Security Commission, 33 Mich App 228; 189 NW2d 764 (1971). Conversely, the disqualification provisions of §29 are to be read narrowly. Salenius v Employment Security Commission, supra." Baker v General Motors Corp, 74 Mich App 237, 247 (1977).

Appellant contends that, as a matter of law, appellee's actions constituted misconduct under the act. Appellant cites Carter v Employment Security Commission, 364 Mich 538 (1961); 111 NW2d 817, where the Supreme Court held:

"The term 'misconduct' . . . is limited to conduct evincing such wilful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not to be deemed 'misconduct' within the meaning of the statute." 364 Mich at 541.

Applying this definition of misconduct the referee found:

"The Referee believes that these facts establish that the claimant made what was probably a grave error in judgment in what she did, but under all the circumstances, the Referee does not believe that there was an intent on the part of the claimant to harm the employer's interests, but only a misguided intent at self-protection. The Referee is not convinced that these facts demonstrate 'misconduct' on the part of the claimant within the meaning of the above provision of the Employment Security Act, and a benefit disqualification is not appropriate."

We first note, as did the referee, that it is irrelevant to our application of the term "misconduct" in section 29 whether appellee's conduct may have been sufficient cause for her dismissal by appellant. Appellee's qualification for unemployment benefits under the UESA must be viewed within the confines of the definition of the statutory term. With this in mind, we find that the referee's conclusion is not contrary to law and that it is supported by competent and substantial evidence on the record. The referee noted the following facts:

> "[T]he over-riding consideration of these facts is that there was a genuine, direct, and immediate concern of the claimant as to her physical safety. The claimant was acquainted with the reputation of the parent and was immediately faced with a situation in which there seemed little provision for her safety and protection by the lack of supervisory or security personnel. The claimant made a judgment of 'self help' which, with 20/20 hindsight, might appear to be excessive. However, judgments of that nature are frequently clouded by subjective fears and apprehensions which do not ever materialize."

The record reveals that the first thing that appellee did when threatened by the angry parent was to report it to the acting principal. Only upon his failure to take what appellee believed to be definitive measures to divert the anticipated confrontation did she seek her own protection. Although her reaction to the situation constituted a grave error in judgment, there is competent evidence to support the referee's conclusion that appellee's actions did not constitute a "wilful or wanton disregard of [her] employer's interests". Appellee's actions were motivated by personal fear, and she attempted in good faith to perform her duty properly

distinguishable from cases cited by appellant. See, Carter, supra (employee refused an order and threatened to punch his foreman in the nose); Bell v Employment Security Commission, 359 Mich 649; 101 NW2d 584 (1960) (boiler tender fell asleep on the job). Wickey v Employment Security Commission, 369 Mich 487; 120 NW2d 181 (1963) (seaman missed his ship because he was watching a movie that ran longer than he expected).

Appellant also argues that since appellee's act constituted a violation of MCLA 750.227; MSA 28.424, the provision which makes it a felony to carry a concealed weapon without a license, appellee's conduct should be considered misconduct per se under the MESA. We first note that appellant did not present evidence which would establish all of the elements of this offense. However, even if appellant had presented such evidence, it is not the position of the referee to determine whether a claimant has committed a felony, and section 29 does not make the commission of acts which might be the subject of criminal prosecution a reason for disqualification for benefits. On the contrary, section 29(1)(f) provides that an individual is disqualified for benefits if she has lost her job by reason of being absent from work as a result of a violation of the law for which she was convicted and sentenced to jail or prison. See, MCLA 421(1)(f); MSA 17.431(1)(f).

Consequently, the MESC ruling that appellant is entitled to unemployment compensation benefits is affirmed.