CIRCUIT COURT ORDER/OPINION
Stephine Gwin, Circuit Court Clerk

Appeal Docket No: Robinson 174831-W

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29(1)(e) Section of the Act

Date: 7/20, 2005

RDD
R. Douglas Daligga, Director
MES - Board of Review

PC _____
REP _____

Prepared by Stephine Gwin

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

MAX T. DOMBECK,

Claimant-Appellant,

Case No. 2005-0001-AE

vs.

SPECIAL MOLD ENGINEERING, INC,

Employer-Appellee,

and

STATE OF MICHIGAN, DEPARTMENT OF LABOR AND ECONOMIC GROWTH, UNEMPLOYMENT INSURANCE AGENCY,

Appellee.

_____/

OPINION AND ORDER

Claimant filed this action appealing the decision of the Michigan Employment Security Board of Review (MES Board), issued September 29, 2004. The action before the MES Board was the result of an appeal from a decision by a June 29, 2004 Administrative Law Judge (Referee) decision that affirmed an April 13, 2004 Agency redetermination that found claimant unqualified for unemployment benefits under the MES Act, MCL 421.29(1)(c).

Factual Background

Claimant was employed as a metal mold builder with Special Mold Engineering (SME) from January 14, 2002 to March 24, 2003. Claimant left SME to accept employment at another company because the new job provided day shift work, it was closer to home, it paid more money and would offer a better opportunity to further his career. While at SME, claimant earned $11.00 per hour, and up to about a month before he left SME, had worked the day shift 30-35

hours per week; the last month of his employment he worked night shift. The record indicates that claimant's tenure at SME was spent in training which comprised only day shift work. SME's format required all new employees to go through training on day shift, then move into a four-month rotation schedule consisting of day and night shift work; claimant had moved into the rotation schedule shortly before he left SME's employment.

Claimant started his new employment on March 31, 2003 at $15.00 per hour working day shift, 40 hours per week. Claimant was laid off from employment on June 11, 2003 due to circumstances out of his control. Claimant applied for unemployment benefits on June 12, 2003.

On July 15, 2003, SME offered claimant his old job back, at the same rate of pay and with the same benefits. Claimant testified that he assumed it would be 40 hours a week; the operations manager testified he had informed claimant that because things were picking up, there was opportunity to work 50-55 hours a week. Claimant ultimately turned down the job offer because he felt "it was too soon for me to come back without being able to seek further employment with the, the new skill that I've learned."

Claimant was subsequently denied unemployment benefits under the refusal of suitable employment provision, MCL 421.29(1)(e).

Standard of Review

An administrative agency decision is reviewed by the circuit court to determine whether the decision was authorized by law and supported by competent, material and substantial evidence on the whole record. MCL 421.38(1); *MEAPAC v Secretary of State*, 241 Mich App 432, 444; 616 NW2d 234 (2000). Substantial evidence is any evidence that reasonable minds would accept as adequate to support the decision; it is more than a mere scintilla of evidence but may be less than a preponderance of the evidence. *Id.* On review of unemployment benefit

cases, the circuit court may reverse the appeal board's decision when and only when that decision is contrary to the great weight of the evidence. *Miller v FW Woolworth Co,* 359 Mich 342, 351; 102 NW2d 728 (1960). Because of the limited scope of review, the [Board's] action must be upheld if it is supported "by such evidence as a reasonable mind would accept as adequate to support the decision;" a preponderance of the evidence is not required. *Tenbusch v Dept of Civil Service,* 172 Mich App 282, 292-293; 431 NW2d 485 (1988).

Applicable Law

Claimant was found disqualified under MCL 421.29(1)(e), which provides, in relevant part, that an individual is disqualified from receiving benefits if he or she failed without good cause to accept suitable work offered to the individual. Disqualification depends upon two essential findings of fact: (1) that suitable work was offered; and (2) that claimant failed without good cause to accept. *Allied Bldg Service Co v MES Commission,* 93 Mich App 500, 505; 286 NW2d 895 (1979). The burden is upon the employer to show that an offer of suitable work was made and that the employee failed, without good cause, to accept. *Id.*

When determining whether work is suitable, the Board must consider several factors delineated at MCL 421.29(6), in most relevant part to the instant matter, the commission shall consider the individual's length of unemployment and prospects for securing local work in the individual's customary occupation, as well as the individual's experience and prior earnings, but an unemployed individual who refuses an offer of work determined to be suitable under this section shall be denied benefits if the pay rate for that work is at least 70% of the gross pay rate he or she received immediately before becoming unemployed.

Good cause to refuse work cannot be based upon purely personal reasons, since the underlying policy of the employment security act is to provide benefits for persons unemployed

through no fault of their own. *Id* at 506. In the context of MCL 421.29(1)(e), "good cause" has been defined as nothing more than a good reason, a substantial reason; a cause personal to the employee can be "good cause" when it would be deemed by reasonable men valid and not indicative of an unwillingness to work. *Carswell v Share House, Inc,* 151 Mich App 392, 396; 390 NW2d 252 (1986).

Analysis

At the outset, the Court notes that for examples of "suitable work", claimant relies almost exclusively on opinions of other circuit courts, none of which is binding on this Court. See, e.g., *Forgach v George Koch & Sons Co,* 167 Mich App 50, 56; 421 NW2d 568 (1988). Claimant argues that the record establishes that the work offered by SME was unsuitable on the basis that based on 35 hours a week at $11 an hour or $385 gross pay at SME, his gross pay would be substantially less compared to what he had been making at his new job, $15 an hour for a 40 hour workweek, or gross pay of $600.00. Contrary to the operations manager's testimony, claimant testified he was never informed that he could work 50-55 hours a week back at SME, rather, he presumed the workweek would comprise 40 hours. In this instance, the referee was called upon to determine an issue of credibility, a type of situation this Court must defer to the factfinder. Such review must be undertaken with considerable sensitivity in order that the courts accord due deference to administrative expertise and not invade the province of exclusive administrative fact-finding by displacing an agency's choice between two reasonably differing views. *Smith v MES Commission,* 410 Mich 231, 260-261; 301 NW2d 285 (1981).

The MES Board determined that were claimant to work 50 to 55 hours a week at the $11 rate, he would earn within a substantial range of what he had previously earned. Furthermore, the offer of employment was for full-time work for which claimant was qualified to perform

based on his past experience and training. In addition, while claimant preferred day shift work, the record indicates that the work for which he was qualified can be categorized as factory work or general labor, both of which are typically not limited to day shift work, and as testified, day shift and night shift work at SME worked on a rotational basis. Finally, testimony indicated that SME offered opportunities for growth and advancement, but this was not a topic of discussion during claimant's interview.

In sum, this Court agrees with the MES Board's decision that claimant was offered suitable employment: a full-time job for which he was qualified at the same rate of pay he had been earning when he had left employment some 7 months prior, vacation pay and health benefits. Further, this Court agrees that good cause for refusing to accept the proffered employment has not been demonstrated. Although claimant stated he had not had enough time to find other employment, there is nothing to say that he could not have sought other employment while being employed, or if the new company finally got back up and running, he could not have accepted another position if they contacted him. Claimant expressed some doubt about SME's stability insofar as it had laid off some 20 employees and had cut hours in January shortly before he quit in March, but it is reasonable to assume that because they wanted to rehire him in July, the economic climate had changed for the better for SME, whereas, the new company had to lay off claimant due to an economic downturn, and there was no guarantee that claimant would be rehired.

In conclusion, the Court is convinced that the MES Board's decision was not contrary to the great weight of the evidence finding that claimant was disqualified for unemployment benefits under MCL 421.29(1)(e).

For the reasons set forth above, Appellee's decision is AFFIRMED. Under MCR 2.602(A)(3), the Court states this Opinion and Order resolves the last pending claim and closes the case.

EDWARD A SERVITTO

CIRCUIT JUDGE

IT IS SO ORDERED.

APR 14 2005

A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK

BY: Faye Edwards, Court Clerk

EDWARD A. SERVITTO, JR., Circuit Court Judge

Date:

Cc: Kelly Boone, Attorney for Max Dombeck

Robert Sosin, Attorney for Special Mold Engineering, Inc.

Megan Brennan, Attorney for Unemployment

M.E.S. BOARD OF REVIEW

APR 14 2005

FILED:
R. DOUGLAS DALIEGE
DIRECTOR