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CIRCUIT COURT ORDER/OPINION
Stephine Gwin, Circuit Court Clerk

Appeal Docket No: 176914W

☒ Please enter and distribute along with Board of Review Decisions/Orders and Referee Decision/Orders.

☐ Board Member and assigned attorney to case

☐ Other:

Reversed

[Y X N] Potential Digest Case

29 (1)(c) Section of the Act

Date: 8/30, 2005

R. Douglas Daligga, Director
MES - Board of Review

PC _____
REP _____

Prepared by Stephine Gwin

STATE OF MICHIGAN

MUSKEGON COUNTY CIRCUIT COURT

STATE OF MICHIGAN, DEPT. OF LABOR & ECONOMIC GROWTH, UNEMPLOYMENT INSURANCE AGENCY,

Agency/Appellant,

v

JDM & ASSOCIATES,

Employer/Appellant,

v

SARA B. YORDY,

Claimant/Appellee.

File No. 05-43773-AE

OPINION and ORDER

At a session of court held at the courthouse in Muskegon, Michigan, on July 28, 2005.

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

Appellants, the Michigan Unemployment Insurance Agency and JDM Associates, employer, appeal a decision of the Unemployment Insurance Agency Board of Review dated February 28, 2005, which granted unemployment benefits to Sara Yordy, appellee. The agency had originally held that the claimant, Sarah Yordy, was not disqualified from benefits for failing to accept suitable work. The employer, JDM & Associates (Manpower), appealed that determination.

At a hearing before an administrative law judge, the record established that Manpower had placed Ms. Yordy as an employee of Hilite International from August, 2002 to June, 2003, doing industrial work. When that job ended, she was offered a job on July 15, 2003, for industrial work at Whitehall Products, which was a full-time job at $7.00 per hour.

Ms. Yordy refused the offer of the first-shift position at Whitehall Products because she wanted to work second shift. Several other job offers were given to claimant by Manpower, but she declined to take them. In an opinion dated September 15, 2004, the administrative law judge held that the claimant was disqualified for benefits under Section 29(1)(e) of the statute because the employer had established that the claimant had been offered suitable work which she had declined because she wanted to work second shift.

The claimant appealed to the Board of Review, which reversed the holding of the administrative law judge because the record did not establish compliance with section 29(1)(e), i.e., "there is no evidence that the agency or Michigan Works concluded that the work was suitable and directed the claimant to accept the work." The Board held that claimant was not disqualified from receiving benefits under Section 29(1)(e).

The Michigan Unemployment Agency and the employer file the instant appeal. M.C.L. 421.29(1)(e) states that an individual is not eligible for unemployment benefits if the individual "failed without good cause to accept suitable work offered to the individual or to return to the individual's customary self-employment, if any, when directed by the employment office or the commission" [*emphasis added*].

In Health Care Fund v. Worker's Comp Dir., 265 Mich App 236, 243-244 (2005), the court stated: "The interpretation and application of a statute is a question of law that this court reviews de novo . . . If the terms of a statute are ambiguous, judicial construction is appropriate . . . The court must apply a reasonable construction that considers the purpose of the statute and the harm it is designed to remedy . . . The provisions of a statute must be read within the context of the entire statute so as to produce a harmonious and consistent enactment." In White v. Ann Arbor, 406 Mich 554, 562 (1979), the court observed: "The primary and fundamental rule of constitutional or statutory construction is that the court's duty is to ascertain the purpose and intent as expressed in the constitutional or legislative

provision in question. Also, while intent must be inferred from the language used, it is not the meaning of the particular words only in the abstract or their strictly grammatical construction alone that governs. The words are to be applied to the subject matter and to the general scope of the provision, and they are to be considered in light of the general purpose sought to be accomplished or the evil sought to be remedied by the constitution or statute."

Pursuant to M.C.L. 421.38(1), the court may reverse the Board of Review if it finds that the decision of the Board is contrary to law. In applying the aforementioned rules of statutory construction to the holding of the Board in the instant case, the court finds that the decision of the Board of Review is contrary to law. The Board determined that the clause in Section 29(1)(e) "when directed by the employment office or the commission" applies to the entire sentence, including the language "accept suitable work offered to the individual." The court holds, as a matter of law, that the phrase "when directed by the employment office or the commission" applies only to the phrase "or to return to the individual's customary self-employment, if any."

M.C.L. 421.2 notes that the purpose of the Act is to provide benefits for workers who are involuntarily unemployed through no fault of their own. The Board's construction of the Act would allow an employee who was offered suitable work to turn it down and still collect unemployment benefits because the agency would have no way of knowing that an offer of suitable work had been made until the claimant filed for benefits (which could be weeks after the work was turned down, and at a time where the substitute job was now filled by another employee, or no longer existed because the job had been completed). Or, in the alternative, the employer would have to contact the agency before the lay-off and before the claim for benefits was made, and have the agency render a decision as to whether or not the offered work was "suitable" and issue the appropriate directive to the employee. In either case, the

Board's construction of the act would require an unprecedented intervention of the agency into the employer-employee relationship every time an employer offered a substitute job to an employee to avoid a layoff of the employee. This could not have been the intent of the legislature. However, because a self-employed person has no separate employer to offer a substitute job, it is logical and sensible for the statute to provide that the agency, in the absence of any employer, make the decision as to whether or not the self-employed person should return to self-employment.

For these reasons, **IT IS ORDERED** that the decision of the Board of Review is reversed.

Dated: July 28, 2005.

James M. Graves, Jr.

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

cc: Thomas C. Johnson, Assistant Attorney General, 350 Ottawa NW, Suite 4-C, Grand Rapids, MI 49503
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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: July 28, 2005.

Bobbie Springer

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