165903

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

DONNA M. LEWIS,

Appellant,

-v-

Case No. 02-243366-AE
Hon. Isidore B. Torres

OAKWOOD HEALTH CARE CORP., STATE OF MICHIGAN DEPT. OF CONSUMER & INDUSTRY SERVICES, BUREAU OF WORKERS' & UNEMPLOYMENT CONPENSATION,

Appellees.
_____/

ORDER AND OPINION AFFIRMING THE BOARD OF REVIEW'S ORDER AND GRANTING DEFENDANT OAKWOOD HEALTHCARE CORPORATION'S REQUEST FOR SANCTIONS

At a session of said Court,
held in the City of Detroit,
County of Wayne, State of Michigan
on APR 2 9 2003
PRESENT: Hon. Isidore B. Torres
Circuit Court Judge

Pending before the Court is the *in pro per* Appellant's appeal of a November 15, 2002 decision of the State of Michigan Employment Security Board of Review denying her application for rehearing and affirming a determination by the referee that Appellant is liable for $3,817.00 (repayment of benefits) under Section 62(a) of the Michigan Employment Security Act. The Court, having reviewed the certified record, briefs, and supporting exhibits; having heard oral argument on the matter; and otherwise being fully advised in the premises; issues the following opinion and order.

Background

On June 2, 2000, the Michigan Employment Security Board of Review reversed the decision of the Administrative Law Judge and held that the Appellant was disqualified from receiving benefits pursuant to Section 29(1)(a) of the Michigan Employment Security Act because she voluntarily terminated her employment. The Appellant timely appealed the Board of Review's decision to the Wayne County Circuit Court. On March 2, 2001, this Court affirmed the Board of Review's decision. Appellant did not appeal this Court's decision. The Unemployment Bureau then issued a decision requiring Appellant to repay benefits that she had received. The Appellant contested the amount ordered, and on August 15, 2002, a hearing on the issue was conducted by an Administrative Law Judge. The amount of repayment was held to be $3,817.00. On appeal, the Board of Review upheld the decision determining this amount. Appellant then filed the instant appeal in this Court.

Standard of Review

> The circuit court . . . may review questions of fact and law on the record made before the referee and the board of review involved in a final order or decision of the board, and may make further orders in respect to that order or decision as justice may require, *but the 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.*
>
> * * * *

MCLS 421.38(1) (emphasis supplied).

Substantial evidence is that which a reasoning mind accepts as sufficient to support a conclusion. Russo v State Dep't of Licensing & Regulation, 119 Mich App 624, 631 (1982). While it consists of more than a mere scintilla of evidence it may be

substantially less than a preponderance of the evidence. Id. Great deference is given to the findings of an administrative law judge since, as the trier of fact, the administrative law judge has the opportunity to hear testimony and view witnesses. Id. His or her decision will be upheld so long as it is supported by substantial evidence on the whole record. Id.

Discussion

In the instant case, the issue before the Court is the amount of repayment of unemployment benefits. Appellee correctly points out that Appellant is merely attempting to re-litigate the Board of Review's initial decision that she was disqualified from receiving unemployment benefits. Nowhere in her brief does Appellant discuss the amount she was ordered to repay or the general issue of repayment of benefits. In fact, Appellant has submitted a virtually identical brief as was filed in her 2000 appeal before this Court wherein she argued the merits of the Board's original decision disqualifying her from receiving benefits. Moreover, at the August 12, 2002 hearing on this matter, Appellant admitted that the amount she owes is $3,817.00. (R. at 6.) This figure was supported by a computer-generated payment list. (R. at 8.) Accordingly, the amount Appellant owes is supported by competent, material, and substantial evidence.

Furthermore, Appellant's attempt to re-litigate the merits of the underlying claim is barred by the doctrine of res judicata. For the doctrine to apply (1) the former suit must have been decided on the merits, (2) the issues in the second action were or could have been resolved in the former one, and (3) both actions must involve the same parties or their privies. Energy Reserves v Consumers Power Co, 221 Mich App 210, 215-16

(1997). In Michigan, res judicata applies broadly and to subsequent actions between the same parties "not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of the litigation, and which the parties, exercising diligence, might have brought forward at that time." Pierson Sand and Gravel, Inc v Keeler Brass Co, 460 Mich 372, 380 (1999); Sewell v Clean Cut Mgmt, Inc, 463 Mich 569, 575 (2001); Dart v Dart, 460 Mich 573, 586 (1999). It is undeniable that Appellant requests the Court reconsider the identical issues before it in the 2000 appeal. Those issues were ruled upon in this Court's March 2, 2001 order; therefore, her claim is barred by the doctrine of res judicata.

Moreover, this Court has no jurisdiction over what is clearly an appeal of the Board's June 2, 2000 decision since appeals must be filed within 30 days from the mailing of such a decision. MCL 421.38(1); See Gunderson v Rose Hill Realty, 136 Mich App 550 (1984).

Finally, Appellee Oakwood Health Care moves the Court to award sanctions under MCR 2.114. MCR 2.114 states, in pertinent part:

> (E) If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.

Permissible sanctions include payment to the opposing party of reasonable expenses incurred because of filing of pleadings and related reasonable attorney fees. Maryland Cas Co v Allen, 221 Mich App 26 (1997).

In this case, Appellant was repeatedly informed by the Administrative Law Judge conducting the hearing on the amount of Appellant's repayment that the merits of this Court's March 2, 2001 decision were final and that the only pending matter was the amount of Appellant's repayment of wages. (R. at 5-8, 11, 13.) Appellant had no reason to believe that the merits of her case were appealable; therefore, sanctions are appropriate pursuant to MCR 2.114(E).

Conclusion

Based on the foregoing, IT IS HEREBY ORDERED that the Board of Review's order is AFFIRMED.

IT IS FURTHER ORDERED that Appellee Oakwood Healthcare Corporation's request for sanctions is GRANTED. Appellee shall present a bill of costs and a proposed order for this Court's consideration.

This order resolves the last pending claim and closes the case.

ISIDORE B. TORRES

Isidore B. Torres
Circuit Court Judge

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK
BY _____ DEPUTY CLERK