

STATE OF MICHIGAN
CIRCUIT COURT FOR THE COUNTY OF WAYNE

BRINDA J. POOL

Appellant,

vs

Case No. 01-138871 AE
Hon. Pamela R. Harwood

R S LEASING, INC and
STATE OF MICHIGAN, UNEMPLOYMENT
AGENCY, DEPARTMENT OF CONSUMER &
INDUSTRY SERVICES, formerly known as
MESC

Appellees.

OPINION GRANTING CLAIMANT'S APPEAL

This case comes to the court on appeal from a decision of the Michigan Employment Security Board of Review. The parties have not requested oral argument, and the following facts are not disputed.

On December 20, 2000 Appellant Brinda Pool filed an application for unemployment benefits after her employment with Appellee RS Leasing was terminated. On January 2, 2001 Appellee Michigan Unemployment Agency mailed to Appellant a notice of denial of benefits, based on a finding that Appellant had made improper use of an employer-owned room, contrary to company policy,¹ and was therefore ineligible for benefits under misconduct provisions of the Michigan Employment Security Act, section 29(1)(B). The Unemployment Agency received

¹In protesting the Agency's initial determination, Appellant stated that a misunderstanding regarding use of her employer's room should not have resulted in her termination. However, that issue is not before this court, whose review is limited to the Agency's decision to affirm the Administrative Law Judge's disposition of the case on grounds regarding timeliness of the appeal.

Appellant's request for redetermination on March 12, 2001. In response to the Agency's request for an explanation as to why the request for redetermination was filed late, Appellant wrote that she had been out of town because her mother is very sick and her father has cancer. The agency denied the request, stating that it was untimely filed and good cause for the delay had not been shown.

Appellant then requested a hearing before an administrative law judge; the hearing was held on July 2, 2001. Appellant was the only witness at the hearing, where she stated that she received and read the Unemployment Agency's notice of denial of benefits and 30-day period for protest or appeal. Appellant stated that after receiving the notice, she left town in the second week of January 2001 to provide care for her ill parents -- for whom she is the only child -- and returned on February 28, 2001. The administrative law judge noted that the back of the notice of denial of benefits directed that appeals or protests must be filed within 30 days, either in person or by mail.² Appellant asserted that she wrote a letter to the Unemployment Agency, and that it apparently did not reach the Agency; however, she admitted that she did not mail the letter until after the 30-day appeal period had expired. Appellant also stated she did not mail a protest before leaving town because her main concern was about her parents' health, and that she thought she would return home within the 30-day period. She did not explain why she did not come back within that time, although she noted that her father's birthday was on February 7. Finding that Appellant had not shown good cause for filing a late appeal, the administrative law judge upheld the Unemployment Agency decision.

Appellant appealed from the administrative law judge's decision. On August 27, 2001 the Michigan Employment Security Board of Review mailed a decision -- reflecting a two-to-one majority -- affirming the decision of the administrative law judge. On

²A paragraph on the front of the form refers to directions regarding "protest/appeal rights" on the back of the form, in the event that a claimant disagrees with the Agency's determination.

October 12, 2001 the Board of Review mailed a decision denying Appellant's application for rehearing.³

The standard of review is established by MCL 421.38(1), which provides in relevant part that,

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.

In Russo v Dep't of Licensing and Regulation, Board of Osteopathic Medicine and Surgery, the court explained that "[t]he 'substantial evidence test' has been defined as evidence which a reasoning mind would accept as sufficient to support a conclusion. While it consists of more than a mere scintilla of evidence it may be substantially less than a preponderance of the evidence." 119 Mich App 624, 631 (1982). In addition, the Russo court observed that "[g]reat deference is given to findings of an administrative law judge. Since the administrative law judge, as the trier of fact, has the opportunity to hear the testimony and view the witnesses, his or her decision will be upheld so long as it is supported by substantial evidence on the whole record." Id at 631. Similarly, the court in Smith v Michigan Employment Security Commission noted that in determining an issue of credibility, "[s]uch 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." 410 Mich 231, 260-61 (1981) (citations omitted). Moreover, "[t]he reviewing court should not substitute its opinion for that of the administrative agency where there is the requisite evidence to support the administrative decision, notwithstanding that the court might have reached a different result had it been sitting as the agency." Murphy v Oakland County Dept of Health, 95 Mich App 337, 339-40 (1980).

³In a document apparently requesting rehearing, Appellant referenced her mother's sugar imbalance and high blood pressure, as well as her father's cancer.

Administrative Rule 421.270(1) of the Michigan Unemployment Agency provides that,

In determining if good cause exists . . . after the 30-day protest or appeal period has expired, for reconsideration fo any prior determination or redetermination or for reopening and review, good cause shall include, but not [be] limited to, any of the following situations:

(a) If an interested party has newly discovered material facts which, through no fault of the party, were not available to the party at the time of the determination, redetermination, order, or decision. However, a request for reconsideration of a determination or redetermination or for reopening a decision or order made after the expiration of the statutory 30-day period solely for the purpose of evading or avoiding such statutory period is not for good cause.

(b) If the agency has additional or corrected information.

(c) If an administrative clerical error is discovered in connection with a determination, redetermination, order, or decision.

(d) If an interested party has a legitimate inability to act sooner.

(e) If an interested party fails to receive a reasonable and timely notice, order, or decision.

(f) If an interested party is prevented from acting sooner due to an untimely delivery of a protest, appeal, or agency document by a business or governmental agency entrusted with delivery of mail.

(g) If an interested party has been misled by incorrect information from the agency, the office of appeals, or the board of review.

The decision of the administrative law judge, to deny redetermination or reconsideration, referenced only subsections (a), (b), and (c). There is no contention that subsections (a), (b), (c), (e), (f), or (g) apply to the facts of this case. Given that Appellant received the Unemployment Agency's notice of denial of benefits the week before she left town to provide care for her parents, and that the notice provided that protest or appeal could be filed in person or by mail within 30 days of the Agency's decision, subsection (d) also does not appear to apply.

However, as noted by the dissenting member of the Employment Security Commission panel, the plain language of Administrative Rule 421.270(1) provides that

the Rule's list of grounds for finding good cause is not exclusive, and Administrative Rule 421.210(2)(e)(v) provides that "[g]ood cause for late filing of a new, additional, or reopened claim" includes "[p]ersonal physical incapacity or the physical incapacity or death of a relative" Appellant provided evidence of her parents' incapacity; therefore, using Rule 421.210(2)(e)(v) by analogy in reading Rule 421.270(1), Appellant presented good cause justifying the late filing of her appeal of the Unemployment Agency's decision.

Therefore, the decision of the Board of Review is reversed. This matter is remanded to the Michigan Unemployment Agency for proceedings consistent with this opinion.

DATE: MAY 03 2002

PAMELA R. HARWOOD

Circuit Court Judge

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK

BY



DEPUTY CLERK

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 3RD JUDICIAL CIRCUIT
WAYNE COUNTY

BRINDA J. POOL,

Appellant,

v

01-138871-AE 11/13/2001
JDG: PAMELA R HARWOOD
POOL BRINDA J
vs
R S LEASING INC

R S LEASING, INC. and STATE OF
MICHIGAN, UNEMPLOYMENT AGENCY,
DEPARTMENT OF CONSUMER &
INDUSTRY SERVICES, now known as the
STATE OF MICHIGAN, DEPARTMENT OF
CONSUMER & INDUSTRY SERVICES,
BUREAU OF WORKERS' &
UNEMPLOYMENT COMPENSATION,

Appellees.

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ORDER REVERSING DECISION AND ORDER OF THE BOARD OF REVIEW, AND
REMANDING FOR PROCEEDINGS IN ACCORDANCE WITH THE COURT'S
MAY 3, 2002 OPINION

At a session held in Detroit,
Michigan on MAY 22 2002

PRESENT: HON. **PAMELA R. HARWOOD**
Circuit Judge

Appellant filed a claim of appeal of an October 12, 2001 Board of Review order, briefs have been filed and a May 3, 2002 Opinion has been issued.

IT IS ORDERED that:

(1) The October 12, 2001 Board of Review order and the August 27, 2001 Board of Review decision are reversed, for the reasons set forth in the Court's May 3, 2002 Opinion.

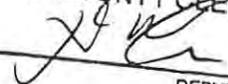
(2) This matter is returned to the Unemployment Bureau for disposition of the application for unemployment benefits in accordance with law, and the Court's May 3, 2002 opinion. Specifically, the unemployment Bureau shall set aside the May 17, 2001 Notice of Denial of Request For Reconsideration as the Court found good cause for appellant's late appeal of the January 2, 2001 determination. The Unemployment Bureau shall issue a redetermination, of the January 2, 2001 determination, and shall mail it to appellant Brinda Pool at 4470 East Outer Drive, Apt. 14, Detroit, MI 48234, and to R S Leasing, Inc. at 31960 Little Mack, Suite A, Roseville, MI 48066-4539.

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

PAMELA R. HARWOOD

Circuit Judge

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK

BY 
DEPUTY CLERK