

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

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JANIS MEINES,  
et al.,

Appellees,

Case No. 02-03823-AE

vs

Agency Docket No:  
B2001-14696-RMI-161795

PINECREST CUSTOM  
HOMES,

ORDER

Appellant.

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At a session of said Court, held in the  
Kent County Courthouse in the City of Grand Rapids,  
in said county on October 8, 2002.

PRESENT: Hon. Dennis C. Kolenda  
Circuit Judge

For the reasons stated by this Court in a written opinion being filed by it in this case simultaneously herewith:

**IT IS HEREBY ORDERED AND ADJUDGED** that the determination made in this case on March 20, 2002, by the Michigan Employment Security Board of Review that Janis Meines is entitled to unemployment benefits be, and the same hereby is, **AFFIRMED**.

Because it fully resolves this case, *this order closes this case.*

**DENNIS C. KOLENDA**  
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Dennis C. Kolenda, Circuit Judge

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OPINION

This case is an employer's appeal from a determination that a former employee is entitled to unemployment benefits. The employer contends that the employee's protest of an initial denial should not have been entertained because it was untimely, that the employee failed to sustain her burden of establishing an entitlement to benefits, and that the award to her was based on inadmissible evidence. Prevailing on either of the first two contentions would require an outright reversal of the award of benefits, while prevailing on the third contention would require a remand for reconsideration sans the inadmissible evidence. For the reasons detailed below, the award of benefits is affirmed.

*Facts and Proceedings*

Ms. Meines quit her job with Pinecrest Custom Homes (also known as NewVue Concepts) on April 26, 2001. She filed for unemployment benefits on May 25, 2001. Finding that she had not had good cause for quitting, a claims examiner denied Ms. Meines' claim; the pertinent statute disqualifies an employee from unemployment benefits when he or she voluntarily quits without good cause attributable to the employer. That denial was issued and mailed to Ms. Meines on June 13, 2001.

The notice of denial informed Ms. Meines that she had 30 days to protest. Well within that time, she telephoned the claims examiner who had denied her benefits to ask "what it would take to turn around this denial..." The examiner told Ms. Meines that she would have to prove with medical records or police reports that she had been "physically injured." Ms. Meines claims that she quit because of abusive conduct by her employer's husband. Pinecrest Custom Homes is owned and operated by Ms. Dede Geerdes. Her

husband, Paul Geerdes, is apparently an employee of that business and was often in its office and regularly interacted with its employees. The office was in the basement of the Geerdes family home. Not having the kind of evidence she was told she needed, the abuse having been verbal, Ms. Meines did not file a protest within the allotted 30 days because she thought a protest would be futile.

A couple of weeks later, Ms. Meines happened to encounter her successor at Pinecrest, an individual she had not previously known. That person, too, had quit because of Mr. Geerdes' behavior and was also seeking unemployment benefits. When she learned from her successor that others who had quit for the same reason were receiving benefits, Ms. Meines filed a protest. She did that on August 15, 2001.

The case proceeded to an evidentiary hearing before an administrative law judge. He decided, after hearing her out, that Ms. Meines had good cause for protesting late. While the statute sets a 30-day time limit on protests, it permits late protests "for good cause;" then, a protest can be filed for up to a year after the determination sought to be overturned. The ALJ found the requisite good cause. Based on her testimony, and that of Mr. and Mrs. Geerdes, he also found good cause for Ms. Meines having quit her job. Accordingly, she was awarded benefits. That award was affirmed 2-1 by the Board of Review.

### *Applicable Law Applied*

As noted earlier, Pinecrest insists that Ms. Meines' protest should have been rejected as untimely. It also contends that she failed to sustain her protest, and that it was decided using inadmissible evidence. This Court disagrees, or, more precisely, given the nature of judicial review of administrative determinations, this Court cannot agree with Pinecrest.

#### *(a)*

Reviewing courts can overturn administrative decisions regarding compliance and noncompliance with procedural deadlines only for an abuse of discretion, *Kurtz v Faygo Beverages, Inc.*, 466 Mich 186, 193 (2002), and a decision is an abuse of discretion only if it is "palpably and grossly violative of fact and logic." *Id.*, quoting *Alken-Zigler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227-228 (1999). The ALJ's and the Board of Review's decisions finding good cause for filing late were far from that.

As noted earlier, a protest from an award or denial of benefits may be filed late, i.e., after 30 days, "for good cause." MCL 421.32a(2); MSA 17.534(1)(2). Unfortunately, the statute does not define what it means by "good cause," nor have the parties brought to this Court's attention any pertinent administrative rule which defines that term for purposes of

late protests. There is an administrative definition of good cause for purposes of other late filings, but not for purposes of late protests like that at issue in this case. However, while not dispositive, that other definition provides some guidance here because the same policy considerations are implicated. What justifies considering the late filing of a new, additional or reopened claim seems intuitively to justify considering the late protest of the initial determination of a claim.

That other definition of good cause is “a justifiable reason, determined in accordance with the standard of conduct expected of an individual acting as a reasonable person in light of all the circumstances, that prevented a timely filing or reporting to file...” Being told by a representative of the Unemployment Agency that a protest could succeed only with evidence that one does not have compels the conclusion that there is no point to a protest; reasonable people do not do the futile. When that advice is plainly wrong, giving it constituted government interference with taking timely action; it is not reasonable to expect lay-people to ignore whom the government holds out to be an expert. This case proves that the statement to Ms. Meines was wrong; while physical abuse by an employer surely is a reasonable basis to quit, it is not the only reasonable basis. Therefore, Ms. Meines had good cause for not protesting until she learned that she had been misled.

Furthermore, bad advice qualifies, as a matter of common sense, as good cause apart from any analogy to comparable rules. For example, in *Adams v Perry Furniture Co (on rem)*, 198 Mich App 1, 9 (1993), the Court of Appeals allowed an appellant to pursue claims that would otherwise have been barred because the loss of the ability to pursue those claims followed from incorrect directions from the clerk of the Court of Appeals. Had Ms. Meines misunderstood correct information given her by an agency representative, she would not have had good cause to have filed late, *Huggins v MIC General Ins Corp*, 228 Mich App 84, 87 (1998), but, just as in *Adams*, she got incorrect advice. Similarly, had she not gotten bad advice until after the 30-day protest period, she could not now complain about that advice; it would not explain her tardiness, *Herman v Chrysler Corp*, 106 Mich App 709, 717-718 (1981). That was not the situation in this case, however; just as in *Adams*, she relied to her detriment on bad advice from the agency.

Although this case involves administrative proceedings, while *Adams* involved traditional judicial proceedings, there is, for purposes of the issue at hand, no meaningful difference between the cases. Accordingly, *Adams* applies equally here. Courts must look beyond the particular facts of appellate decisions to the underlying principles and be guided by them. *Detroit v Detroit & Howell Plank Road Co*, 43 Mich 140, 149 (1880). “The [lodestar] rule of *stare decisis* has reference to the principles or points of law [which underlie a decision] and not [the] factual situations existed in cases where such principles applied.” *In re Sprenger’s Estate*, 337 Mich 514, 523 (1953). Besides, even if *Adams* is not binding

precedent dictating the ALJ's finding of good cause, it is enough support for that finding to preclude determining it to be an abuse of discretion. Cf., *Riley v 36th District Court Judge*, 194 Mich App 649, 651 (1992).<sup>1</sup>

At best, the dissenting member's contrary opinion simply supports the conclusion that a different decision by the ALJ would have been appropriate, in other words, that a decision either way was within his discretion. Furthermore, and more significantly, the dissenting member's contrary conclusion was based upon an incorrect statement of the facts. Ms. Meines was not simply told, as reported by the dissenting member, that "she needed some evidence in order to turn a negative determination into a positive redetermination." That would have been the kind of correct statement which would not justify reliance on her part. *Woods v State Employees' Retirement System*, 440 Mich 77, 81-82, fn 9 (1992). The ALJ found, however, that Ms. Meines had been told that she needed corroborating medical or police evidence of actual physical injury. She testified to being told that, and he believed her. That credibility assessment is sacrosanct. Therefore, all analysis of the good-cause issue must accept the premise that Ms. Meines was misled.

(b)

Section 29(1)(a) of the statute disqualifies from benefits any individual who "[l]eft work voluntarily without good cause attributable to the employer or employing unit." MCL 421.29(1)(a); MSA 17.531(1)(a). Just like Section 32a, Section 29(1)(a) does not define what it means by the required "good cause," but, unlike that term in the later section, the term in the earlier section has been judicially defined. In *Carswell v Share House, Inc*, 151 Mich App 392, 396-397 (1986), the Court of Appeals held that such good cause "should be found where an employer's actions would cause a reasonable, average and otherwise qualified worker to give up his or her employment." That remains the standard. See *McArthur v Borman's, Inc*, 200 Mich App 686, 693 (1993).

This Court can upset the ALJ's finding of the requisite good cause only if that finding "is not supported by competent, material and substantial evidence on the whole record." MCL 421.38; MSA 17.540. Not only can this Court not make that finding, it agrees with the ALJ's finding. He found believable Ms. Meines' testimony that repeated verbal abuse by employer's husband adversely affected her health, resulting in severe headaches (migraines) and persistent indigestion. That behavior by the husband was certainly attributable to the employer. He was a co-employee, he was regularly at the company offices, and his wife was

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<sup>1</sup>The pertinent section of the governing statute uses both the word "appeal" and the word "protest" to describe what Ms. Meines filed late. This opinion has used the word "protest" to keep clear the distinction between what she filed with the Unemployment Agency and what she filed with this Court.

aware of his ill temper. By not acting to insulate her employees from him, his anticipated misconduct became attributable to her. Furthermore, the statute says that the conduct must be attributable to the employee or the employing unit. Even if the employer had been unaware of her husband's bad temper, the latter test was met.

It certainly was not unreasonable to conclude that a reasonable employee would conclude that her health was more important than a job. In all likelihood, it would have been unreasonable to find otherwise. Had the ALJ found otherwise, in other words, his finding would likely have been reversible, even given the very limited review available in courts of factual determinations. He did not find to the contrary, however. Therefore, he made a plainly reasonable finding, and that finding was certainly supported by the evidence. The claimant testified to it, and other witnesses confirmed much of what she said. The ALJ's belief of her testimony is amply grounded in the record. The conclusion which he drew from that testimony is also reasonable and grounded in the record. As such, it must stand.

(c)

The employer's final complaint is that the ALJ improperly asked some questions at the hearing about testimony given in an earlier hearing by another former employee and made some reference in his opinion to difficulties endured earlier by other employees. The claim is that all information about earlier problems was hearsay, so that any reliance on that information was improper. Assuming that the complained-of evidence was hearsay inadmissible here, *Miller v FW Woolworth Co*, 359 Mich 342 (1960), and further assuming that the prohibition on hearsay applies in unemployment hearings with the same vigor it is enforced here,<sup>2</sup> no reversible error occurred.

A review of the full record establishes that what the ALJ knew about prior employees' difficulties did not affect the outcome of this case. The other evidence presented to him, including admissions by Mr. Geerdes' wife and the ability to assess Mr. Geerdes himself, who testified live, was so substantial that there is no basis for concluding that the other evidence affected the outcome, rendering it harmless, even if considered in error. Cf., *People v Warinner*, 461 Mich 884, 886 (1999). Furthermore, the ALJ's opinion was not based at all on that knowledge or any supposedly hearsay information. All he did was make an oblique

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<sup>2</sup>While *Miller* is routinely cited for the proposition that the Hearsay Rule applies at unemployment hearings, a careful reading of that opinion calls into question whether it really so held, and adhering to that rule also seems at odds with the quick compensation which is the object of the law. See *Storey v Meijer, Inc*, 431 Mich 368, 377 (1988). Therefore, it is far from clear that hearsay cannot be considered at unemployment hearings. Furthermore, referring to other files may be properly taking judicial notice, *Knowlton v Port Huron*, 355 Mich 448, 452 (1959), not relying on hearsay. This Court is assuming, however, that *Miller* still prohibits hearsay at unemployment hearings.

reference to it in support of the conclusion that Mr. Geerdes may also have been responsible for other employees leaving. That is not any statement which supports the conclusion that the opinion in this case was a function of that information, even in part. In sum, the opinion establishes that it was not considered, rendering it harmless for another reason. *Wilson v Potter*, 339 Mich 247, 254 (1954). Accordingly:

Affirmed.<sup>3</sup>

Dated: October 8, 2002.

**DENNIS C. KOLENDA**  
Dennis C. Kolenda, Circuit Judge

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<sup>3</sup>An effectuating order accompanies this opinion.