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CIRCUIT COURT ORDER/OPINION  
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Appeal Docket No: 189963WH

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32(a), Rule 21 Section of the Act

Date: 9/5, 2007



R. Douglas Daligga, Director  
MES - Board of Review

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

EVERETT BOUIER, JR.,

Claimant-Appellant,

vs.

Case No. 2007-1505-AE

DFAS INDIANAPOLIS-ARMY  
MILITARY PAY,

Employer-Appellee,

and

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

Appellee.

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M.E.S. BOARD OF REVIEW

SEP - 4 2007

FILED:  
J. DOUGLAS DALIGGA  
CLERK

OPINION AND ORDER

**Introduction**

Claimant-Appellant Everett Bouier, Jr. ("Bouier") filed the instant claim of appeal on April 17, 2007. Bouier appeals a Michigan Employment Security Board of Review ("Board of Review") decision affirming an administrative law judge's determination that Bouier was only entitled to unemployment benefits for the two-week period immediately preceding the date Bouier filed for unemployment benefits. The issue presented in this appeal is whether, having established good cause for his late filing, Bouier should be entitled to receive unemployment benefits from the date of his separation.

### Standard of Review

A court conducting a direct review of an administrative decision must determine whether the action was authorized by law and whether the decision was supported by competent, material, and substantial record evidence. Const 1963, art 6 § 28; MCL § 421.38(1); *Motycka v General Motors Corp*, 257 Mich App 578, 580-581; 669 NW2d 292 (2003); *Boyd v Civil Service Comm*, 220 Mich App 226, 232; 559 NW2d 342 (1996). A reviewing court may reverse a decision of the Unemployment Insurance Agency "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." MCL § 421.38(1) "Substantial evidence is evidence that reasonable persons would accept as sufficient proof to support a decision." *Motycka, Supra* at 581. "It is more than a mere scintilla of evidence but may be less than a preponderance of the evidence." *Michigan Educ Ass'n Political Action Committee v Secretary of State*, 241 Mich App 432, 444; 616 NW2d 234 (2000).

### Summary of Facts

Bouier separated from the military on April 2, 2006. (Tr 4) Upon his separation, Bouier was told by his former employer to go to his local unemployment office; however, Bouier was not advised that he would be eligible to receive unemployment benefits. (Tr 4.) Bouier believed the purpose for visiting the unemployment office was to find a new job, not to file for unemployment benefits. (Tr 6.) Because he was unaware of his eligibility, Bouier did not file for unemployment benefits until June 18, 2006, almost 2 ½ months after becoming unemployed. Upon filing, Bouier requested payments backdated to his original separation date of April 2, 2006. (Tr 3.)

Appellee Unemployment Insurance Agency ("Agency") initially found Bouier's application to be untimely and denied Bouier any past unemployment benefits. The Agency's decision was affirmed in a redetermination dated September 7, 2006. In an opinion dated November 21, 2006, Administrative Law Judge Earl B. Ashford ("ALJ"), modified the Agency's decision, finding Bouier had shown good cause for filing late and was entitled to fourteen days of benefits backdated from the initial benefit application date of July 18, 2006. Bouier appealed the ALJ's opinion to the Board of Review. In a decision dated February 9, 2007, the Board of Review affirmed the ALJ's decision finding the Agency's rules limit the backdated benefits upon a finding of good cause to fourteen days and this period could not be extended. Bouier then applied for a rehearing, which was denied on March 21, 2007. Bouier now appeals to this Court.

#### Legal Analysis

The issue in this case is whether the Board of Review's determination that Bouier was not entitled to unemployment benefits backdated to the date of his separation from the military is contrary to law and the facts on the record.

The Court begins its analysis by examining and interpreting the Michigan Employment Security Act ("MESA"). "The MESA was enacted primarily for the benefit of persons involuntarily unemployed. Its purpose is to lighten the burden of economic insecurity on those who become unemployed through no fault of their own." *Empire Iron Mining Partnership v Orhanen*, 455 Mich 410, 417; 565 NW2d 844 (1997) (citing *Kalamazoo Tank & Silo Co. v Unemployment Compensation Comm.*, 324 Mich 101, 107; 36 NW2d 226 (1949)). "As the MESA is a remedial statute, it should be liberally construed to achieve its intended goal." *Id.* (citing *Dudewicz v Norris Schmid, Inc.*, 443 Mich 68, 77; 503 NW2d 645 (1993)). However, "If the expressed

language is clear, judicial construction is neither required nor permitted.” *Dana v Am. Youth Found.*, 257 Mich App 208, 212; 668 NW2d 174 (2003).

The MESA delegates benefit administration to the Agency, providing that “[c]laims for benefits shall be made pursuant to regulations prescribed by the unemployment agency.” MCL § 421.32(a). Rule 421.210, which sets the deadlines for applying and receiving benefits, states as follows:

(1) An individual shall receive benefits for any week of unemployment for which the individual filed a claim and reported in accordance with this rule and with the direction of the agency and for which the individual is otherwise eligible and qualified for benefits.

\* \* \*

(2)(e) “Good cause for late filing of a new . . . claim” . . . means that there is a justifiable reason, determined in accordance with a standard of conduct expected of an individual acting as a reasonable person in the light of all the circumstances, that prevented a timely filing or reporting to file as required by this rule.

\* \* \*

(3) An individual shall file a new . . . claim . . . as directed by the agency.

(4) To be filed on time and effective as of the beginning of the individual's first week of unemployment, a new . . . claim shall be received by the agency . . . not later than the Friday after the end of the week containing the individual's last day of work.

\* \* \*

(6) If an individual does not file a new . . . claim as prescribed in subrules (4) and (5) of this rule, but files the new . . . claim not later than the fourteenth calendar day after the time limits prescribed in subrules (4) and (5) of this rule, then the new . . . claim is considered filed on time if the claimant has good cause for the lateness of the filing. If the claimant does not have good cause for the lateness of the filing, then the new . . . claim is effective beginning with the week in which it is filed.

2007 MR 7, R 421.210

Bouier argues that a claimant who has shown good cause for late filing is entitled to all past benefits for which he was entitled as though the application for unemployment benefits had been timely filed. Bouier contends that the good cause exception to late filing would entitle him

to the benefits he was eligible to receive from April 2, 2006, the date of his separation from the military, to June 18, 2006 and all future benefits for which he is entitled.<sup>1</sup>

Bouier cites *Long v General Motors Corp.*, Wayne Circuit Court, No. 98-82160 (January 29, 1999), which involved a related legal issue but is factually distinguishable. In *Long*, the issue was whether a claimant who was misinformed by her employer as to the date of her layoff established good cause for her late filing. However, the claimant in *Long* filed for benefits within the fourteen-day grace period created by Rule 421.210(6). The court in *Long* concluded that because the claimant filed for benefits within the fourteen-day grace period, her benefits should be backdated to the original date of her layoff.

In this case, it is undisputed that Bouier failed to file his application for benefits within the fourteen-day grace period. On its face, Rule 421.210 only allows benefits to be backdated to the applicant's separation date if the benefit application is timely filed. Rule 421.210(4) defines a timely filing as a claim that is filed not later than the Friday after the end of the week in which an individual becomes unemployed. Rule 421.210(6) provides a fourteen-day grace period for claimants that show good cause for filing late. However, a late application will only be considered timely if it is filed within fourteen days of the Friday after the end of the week in which the claimant became unemployed. *Id.* Bouier filed for benefits over 2 ½ months after becoming unemployed -- well outside the fourteen-day grace period allowed by the Agency's rules.

As noted above, Rule 421.210 provides for the backdating of benefits only if the application is filed by the Friday of the week following an applicant's separation date, or within

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<sup>1</sup> To the extent that Bouier is challenging the validity of Rule 421.210, no legal authority has been presented in this regard. Absent such authority, the Court declines to address this issue. See *Lee v Robinson*, 261 Mich App 406, 411; 681 NW2d 676 (2004).

two weeks thereafter upon a showing of good cause.<sup>2</sup> In this case, the Board of Review determined that Bouier was ineligible to receive benefits backdated to his initial separation because he did not file timely. The plain language of the Agency's rules supports the Board of Review's determination; therefore, the determination is not contrary to law and is supported by the evidence on the record.

For the foregoing reasons the decision of the Board of Review is AFFIRMED. Appellant's appeal is DISMISSED.

Pursuant to MCR 2.602(A)(3), this *Opinion and Order* resolves the last pending claim and CLOSES this case.

IT IS SO ORDERED.

DATED:

~~DAVID F. VIVIANO~~  
~~CIRCUIT JUDGE~~

AUG 8 9 2007

cc: Everett Bouier Jr  
Shannon N. Wood

David F. Viviano  
Circuit Judge  
MELLA SABAUGH COUNTY CLERK  
Court Clerk

<sup>2</sup> The ALJ's decision to allow fourteen days of backdated benefits for Bouier appears to conflict with the plain language of Rule 421.210(6), which provides that an untimely claim is effective beginning the week in which it is filed. However, the Agency has not challenged this portion of the decision, so the Court will not address it.