

M.E.S. BOARD OF REVIEW

FILED: 6/13/95 jp STATE COURT
R. DOUGLAS DALIGGA DIRECTOR

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MICHIGAN EMPLOYMENT SECURITY COMMISSION,

UNPUBLISHED
May 30, 1995

Plaintiff-Appellant,

v

No. 160028
LC No. 92-076781-AE

BENNETT FUEL COMPANY,

Defendant-Appellee.

Before: Saad, P.J., and Bandstra and M.G. Harrison, * JJ.

PER CURIAM.

Plaintiff appeals as of right from a decision of the Kent County Circuit Court which affirmed a decision of the Michigan Employment Security Board of Review which concluded that defendant had established "good cause" for its delay in filing a quarterly report and a request for redetermination of its contribution rate. We affirm.

The relevant facts can be summarized as follows. Defendant is a small company that regularly employs four or five people. Defendant has a long history of compliance with plaintiff's procedures, and has had minimal draws on its unemployment compensation account by its employees.

Plaintiff raised defendant's contribution rate for the calendar year 1984 from 1% to the statutory maximum of 10% because plaintiff had not received from defendant a quarterly wage report for the second quarter of 1983. On April 10, 1984, plaintiff mailed defendant a notice of the increased contribution rate. However, defendant did not respond to the notice within the usual 30 day period for appeals, MCL 421.32a; MSA 17.534(1), because defendant's new bookkeeper had been derelict in his duties. In fact, defendant later learned the full extent of the new bookkeeper's dereliction when a perusal of the trunk and glove box of the bookkeeper's automobile revealed an assortment of defendant's business documents, including, inter alia, the notice of rate determination sent by plaintiff. It also appears that the employee may have lost or destroyed numerous other business documents.

When defendant's company president learned of the employee's misconduct, the employee was dismissed, and the missing report was filed with plaintiff. At that time defendant also requested a redetermination of the contribution rate.

Following a series of hearings before an MESC referee and the Michigan Employment Security Board of Review, the Board ultimately determined that defendant had established "good cause" for its delay in filing the necessary documents because of the misconduct of the new bookkeeper. The circuit court affirmed the decision of the Board of Review. Plaintiff now appeals as of right from the decision of the circuit court.

Although a number of other related issues were discussed below, the sole issue raised in this appeal is whether defendant had good cause for the delay in filing the necessary documents. At this

*Circuit judge, sitting on the Court of Appeals by assignment.

stage of the litigation, plaintiff concedes that there is an exception to the usual 30 day filing period upon a showing of "good cause." Under the applicable administrative rule, 1979 AC, R 421.270,¹ "good cause" has been defined to include, inter alia,

When an interested party has newly discovered material facts which through no fault of his own were not available to him at the time of the determination. . . .

Applying this standard to the facts of this case, we find that the decision of the Board of Review was consistent with the law, and was supported by competent, material, and substantial evidence on the whole record. MCL 421.38(1); MSA 17.540(1); Tomei v General Motors Corp, 194 Mich App 180, 183-184; 486 NW2d 100 (1992). Defendant established good cause for the delay because the gross misconduct of defendant's bookkeeper prevented defendant from filing an appeal within the usual 30 day period. In particular, defendant did not have notice of the increased contribution rate due to the bookkeeper's misconduct. Under the unusual facts of this case where the employee acted in intentional disregard of his employer's interests, the fault of the bookkeeper should not be attributed to defendant.

We affirm the decision of the circuit court. Our holding is limited to the facts of this case.

/s/ Henry William Saad
/s/ Richard A. Bandstra
/s/ Michael G. Harrison

¹ The subsequent administrative rule, 1986 AACS R 421.270, provided language almost identical to 1979 AC, R 421.270.