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AD No. L90-08433-2113
S.S. No. N/A
B.O. No. [REDACTED]

STATE OF MICHIGAN
IN THE COURT OF APPEALS

MICHIGAN EMPLOYMENT
SECURITY COMMISSION,

UNPUBLISHED

Appellant,

v

Docket No. 162000
Lower Court No. 92-223323 AE

REGIS ASSOCIATES,

Appellee(s).

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MEMORANDUM ENTERED ON MAY 27, 1994

STATE OF MICHIGAN
COURT OF APPEALS

REGIS ASSOCIATES,

Plaintiff-Appellee,

v

MICHIGAN EMPLOYMENT SECURITY COMMISSION

Defendant-Appellant.

NOT FOR PUBLICAITON

May 27, 1994

No. 162000

LC No. 92-223323-AE

Before: Fitzgerald, P.J., and Connor and M.O. Battani,* JJ.

MEMORANDUM.

Defendant appeals as of right from the circuit court order that reversed its decision regarding plaintiff's unemployment tax contribution rate. The circuit court ruled that defendant failed to apply the proper standard for evaluating good cause when it determined that plaintiff had not shown good cause for filing a late protest to its computation of plaintiff's unemployment tax contribution rate. We reverse.

Although the case has been framed as one of negligence on the part of plaintiff's agent, the facts also show negligence by plaintiff for failing to file the late quarterly report when advised by its agent to do so within the thirty-day timeframe provided by § 18(d)(2) of the Michigan Employment Security Act, MCL 421.18(d)(2); MSA 17.519(d)(2). Had plaintiff filed the report when advised to do so by its agent, no protest would have been necessary under § 18(d)(2) of the MESA.¹ Defendant's decision that plaintiff had not demonstrated good cause for defendant to reconsider the rate determination was not contrary to law, and was supported by competent, material and substantial evidence on the whole record. MCL 421.38(1); MSA 17.540(1).

Reversed.

/s/ E. Thomas Fitzgerald
/s/ Michael J. Connor
/s/ Marianne O. Battani

¹ Plaintiff's reliance on Bennett Fuel Co (On Rehearing), decision of the Employment Security Board of Review, decided April 7, 1992 (Appeal Docket No. L85-02360-RM1-2068), aff'd by order of the Kent Circuit Court, issued December 8, 1992 (Docket No. 92-767781 AE), appeal pending (Court of Appeals Docket No. 160028), is misplaced. In that case the employer did not receive notice of the commission's rate determination because an employee had wrongfully intercepted the notice from the commission to prevent the employer from learning that he had failed to file quarterly reports.

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