

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

SHARON WALLS, )  
 )  
 Claimant-Appellant, )  
 )  
 v )  
 )  
 CAREER CONSULTANTS, )  
 )  
 Employer-Appellee, )  
 )  
 and )  
 )  
 MICHIGAN EMPLOYMENT SECURITY )  
 COMMISSION, )  
 )  
 Appellee. )

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OPINION AND ORDER

**FILED**  
APR 5 1978  
PHILIP HASSING  
COUNTY CLERK

This is an appeal from an order of the Appeal Board of the Michigan Employment Security Commission refusing a rehearing on appeal.

Plaintiff was originally granted benefits, but the defendant employer asked for a hearing before an MESC referee. That referee found:

1. That Plaintiff Walls had quit work without justification (and she was, therefore, disqualified for six weeks).
2. That Plaintiff, although she had clearly made efforts to seek work, was still "unavailable for work" because she didn't really want a job and wouldn't accept one.

The referee denied a rehearing. At the original hearing, Ms. Walls, her employer Mr. Schuur, and a third party Ms. Denny testified. Ms. Walls filed with the Appeal Board and the appeal was denied. A request for reconsideration was also denied. She now comes to circuit court, appealing only the second finding of the referee.

The facts are these: Plaintiff Walls worked for Career Consultants on a commission. She was a placement counselor, finding work for others. She became pregnant, and although she said that had nothing to do with it, (and her doctor said she could work), she began missing work. When she quit she told her employer she wanted to stay home and get "fat and sassy." She also told a friend (Ms. Denny, who was not a fellow

employee) that she was trying to get her boss to fire her so she could stay home and have the baby and not work.

Although her quitting work was unjustified, she claims that she was truly available for a new job. She was still unemployed several months later at the time of the referee's hearing. Testimony shows that she had taken several civil service exams and had registered for work at a number of places--among them, some temporary agencies like Manpower, and at least one placement agency.

The law: The unemployment statute requires: (MSA 17.530 (1)(a)) that the person must actively seek work; (MSA 17.530 (1)(c)) that she must be "able and available" to perform similar work.

The referee found that although she sought work, she was not "able and available" under (c).

Appellant's claims on appeal:

1. That the referee did not distinguish between subsections (a) seeking work, and (c) available for work, and that he somehow confused the two.
2. That the whole record does not support the referee's decision.
3. That Walls did not get due process because the whole proceeding was unfair (it was a bad decision) and the referee cut off the testimony, and at the end he said that it would be pointless to apply for a rehearing because he would just probably deny it.

Dwyer v Unemployment Compensation Commission, 321 Mich 178 (1948), is cited by both parties. That case shows that the applicant must be really anxious to work. "It (the Act) is intended to benefit persons who are genuinely attached to the labor market, and who are unemployed because of conditions therein over which they have no control. The test suggested is subjective in nature. Whether or not a claimant is in fact available for work depends to a great extent upon his mental attitude, i.e. whether he wants to go to work or is content to remain idle. . ." at 189.

The standard for review of administrative agencies is found in MSA 17.540. (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, . . .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."

Opinion:

This court is unable to see the distinction the appellant claims between (a) seeking work and (c) available for work. Certainly they are two separate requirements under the statute and if there was a waiver in effect, as the appellant claims, she probably did not have to seek work under 28 (1)(a) but the waiver would not excuse her being available under 28(1)(c). Since her mental attitude was in issue, this court feels the referee properly considered her seeking work to determine her credibility in saying she was available for work. We cannot look into her mind to see her mental attitude, but her conduct throws some light on her mental attitude. In doing this, the court does not believe the referee was failing to distinguish between (a) seeking work and (c) available for work.

The record could support either side. It could be construed as temporary peevishness or anger caused by the dispute over the new commission rates, accompanied by rash statements and a good faith effort to seek other employment as soon as the anger died down. On the other hand, it could be construed as indicating a desire to "go through the motions" but not really have her heart in seeking employment. The referee saw the witnesses in person, had an opportunity to weigh their credibility and denied benefits.

The legislature has limited the scope of review of an administrative agency. This court may have decided the facts contrary to the referee but cannot say that his decision is not supported by competent, material, and substantial evidence.

The claim of lack of due process is without merit. Appellant-claimant completed her case in chief on P. 53 of the transcript with

no limitation by the referee. When the appellant-claimant in redirect examination by her own attorney was reciting the details of the dispute on the new commission, the referee (p. 87) expressed his desire to keep the record reasonably short but did not cut off the parties. Attorney Sauer then ended his redirect and cross examined the employer, Mr. Schuur. This court finds that the claimant was not denied due process.

The decision of the Appeal Board is affirmed.

  
Robert L. Borsos, Circuit Judge

ORDER

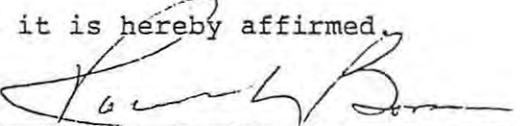
ORDER AFFIRMING APPEAL BOARD

At a session of said court held in the  
City and County of Kalamazoo, State of  
Michigan, on the 5<sup>th</sup> day of April, 1978;

PRESENT: Honorable Robert L. Borsos  
Circuit Judge

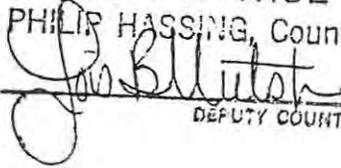
For the reasons set forth in the foregoing opinion,

IT IS HEREBY ORDERED that the decision of the Appeal Board affirming the hearing referee be and it is hereby affirmed.

  
Robert L. Borsos, Circuit Judge

RLB/mh

cc: Attorney Patrick Priest  
Attorney Jon M. DeHorn

ATTEST: A TRUE COPY  
PHILIP HASSING, County Clerk  
  
DEPUTY COUNTY CLERK