

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

MARY WINSTEAD

FILE NO: 79-17067-AE

PLAINTIFF

VS-

MICHIGAN EMPLOYMENT SECURITY
COMMISSION

OPINION AND ORDER

DEFENDANT

R. WM. EGNOR
ATTORNEY FOR CLAIMANT-APPELLANT

DYKEMA, GOSSETT, SPENCER, GOODNOW
& TRIGG
ATTORNEYS FOR EMPLOYER-APPELLEE

FRANK J. KELLEY, ATTORNEY GENERAL OF
THE STATE OF MICHIGAN

BY. WILLIAM J. MULLANEY (P18059)
ASSISTANT ATTORNEY GENERAL
ATTORNEYS FOR MICHIGAN EMPLOYMENT
SECURITY COMMISSION

AT A SESSION OF SAID COURT HELD IN THE
WASHTENAW COUNTY BUILDING, CITY OF ANN ARBOR,
STATE OF MICHIGAN, ON THE 19TH DAY OF
FEBRUARY, 1980.

PRESENT: HONORABLE HENRY T. CONLIN, CIRCUIT JUDGE.

THIS MATTER COMES BEFORE THE COURT ON APPEAL BY PLAINTIFF MARY A. WINSTEAD, CLAIMANT BELOW, OF A SERIES OF DECISIONS BY THE EMPLOYMENT SECURITY COMMISSION, REFEREES, AND THE MESB BOARD OF REVIEW, ALL OF WHICH HELD HER INELIGIBLE FOR UNEMPLOYMENT BENEFITS UNDER MCLA 421.28(1) (c). SPECIFICALLY,

Ms. WINSTEAD APPEALS FROM BOARD OF REVIEW DECISIONS IN APPEAL DOCKET Nos. B77-190390-57991 (DATED MAY 4, 1979); B77-15088-57990 (DATED MAY 7, 1979); AND B76-18265-57864 (DATED MAY 7, 1979.) APPELLANT ASKS THAT THE FIRST TWO OF THE ABOVE-LISTED DECISIONS BE REVERSED AND VACATED IN THEIR ENTIRETY. SHE ASKS THAT No. B76-18265-57864 BE VACATED INsofar AS IT HELD, AS DID THE OTHER TWO DECISIONS, THAT HER INELIGIBILITY WAS DUE TO HER HAVING BEEN "UNAVAILABLE." MCLA 421.28(1)(c).

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IN EACH OF THESE DECISIONS, THE BOARD OF REVIEW AFFIRMED DECISIONS OF REFEREES WHICH HAD HELD, IN EFFECT, THAT Ms. WINSTEAD HAD NOT BEEN "AVAILABLE TO PERFORM SUITABLE FULL-TIME WORK" WITHIN THE MEANING OF THE STATUTE BY REASON OF HER INSISTENCE ON ATTENDING WEDNESDAY-NIGHT WORSHIP SERVICES HELD BY HER CHURCH. IN HIS DECISION IN DOCKET Nos. B77-15088-57990 AND B77-19039-57991, REFEREE SAMUEL D. HABER CONCLUDED THAT "CLAIMANT PLACED RESTRICTIONS AS TO THE HOURS SHE WOULD BE AVAILABLE FOR WORK." HIS FINDINGS ARE THAT Ms. WINSTEAD INSISTED ON BEING ABLE TO TAKE OFF SUNDAY AFTERNOONS AND A TWO-HOUR PERIOD ON WEDNESDAY EVENINGS. IN HER DECISION IN DOCKET No. B76-18265-57864, REFEREE LOIS H. SMITH CONCLUDED THAT UNDER THE STATUTE, Ms. WINSTEAD "MAY NOT LIMIT HER EMPLOYMENT TO CERTAIN HOURS OF THE DAY WHERE HER WORK IS NOT LIKEWISE LIMITED." REFEREE SMITH ALSO STATED THAT Ms. WINSTEAD "FAILED TO ESTABLISH SHE WAS AVAILABLE TO PERFORM SUITABLE FULL-TIME WORK . . . AS REQUIRED UNDER THE STATUTE." THE BOARD OF REVIEW SUMMARILY AFFIRMED ALL THREE DECISIONS.

THE MESC DECISIONS BELOW DO NOT SQUARE WITH SHERBERT V. VERNER, 374 U.S. 398, 83 S. CT. 1790, 10 L. ED. 2D 965 (1963), AND THEREFORE ARE VIOLATIVE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION. THE DECISIONS ARE ALSO CONTRARY TO SWENSON V. MESC, 340 MICH 430, 65 NW2D 709 (1954), WHERE THE MICHIGAN SUPREME COURT HELD THAT SEVENTH DAY ADVENTISTS WHO COULD NOT WORK FROM SUNDOWN FRIDAY TO SUNDOWN SATURDAY WERE "AVAILABLE FOR WORK" WITHIN THE MEANING OF THE STATUTE. THE DECISIONS ARE THUS CONTRARY TO THE LAW OF THIS STATE AS WELL AS THE CONSTITUTION OF THE UNITED STATES.

ALL THREE DECISIONS FROM WHICH THIS APPEAL IS TAKEN ARE VACATED AND REMANDED TO THE EMPLOYMENT SECURITY COMMISSION FOR PAYMENT TO APPELLANT MARY A. WINSTEAD OF UNEMPLOYMENT COMPENSATION BENEFITS FOR THE PERIODS COVERED BY THE DECISIONS. IT IS SO ORDERED.

/s/ HENRY T. CONLIN
HENRY T. CONLIN, CIRCUIT JUDGE