

A.D. NO. B92-02016-RO1-122380W
S.S. [REDACTED]
B.O. 08

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JERI L. GALLANT,
Appellant,

CASE NO. 94-476350-AE
HON. STEVEN N. ANDREWS

v

W.B. DONER CO.
and MICHIGAN EMPLOYMENT
SECURITY COMMISSION,

Appellees.

JEFFREY S. BURG (P38381)
Attorney for Appellant

FRANK J. KELLEY, Attorney General
of the State of Michigan

By: ERROL R. DARGIN (P26994)
Assistant Attorney General
Attorneys for M.E.S.C.

ORDER and OPINION

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

JERI L. GALLANT,

RECEIVED
OAKLAND COUNTY

Claimant/Appellant,

95 JAN -4 A8:28

-v-

Case No: 94-476350-AE
Hon. Steven N. Andrews

W.B. DONER COMPANY and
MICHIGAN EMPLOYMENT SECURITY
COMMISSION,

Employer/Appellees.

JEFFREY BURG (P38381)
Attorney for Appellant
4917 Schaefer Road
Suite 204
Dearborn, Michigan 48126

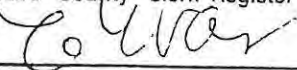
ERROL DARGIN (P26994)
Attorney for Appellee MESC
7310 Woodward Avenue
Suite 606
Detroit, Michigan 48202

A TRUE COPY

LYNN D. ALLEN

Oakland County Clerk-Register of Deeds

By



Deputy

OPINION AND ORDER

At a session of said Court, held in the Court
House, in the City of Pontiac, Oakland County,
Michigan, this 4th day of January, 1995.

PRESENT: THE HONORABLE STEVEN N. ANDREWS, Circuit Judge

This matter came before the Court on appellant's claim of appeal from an MESC Board of Review decision affirming a referee's finding that she is not eligible for unemployment benefits. The MESC did not file a timely brief or appear for oral argument.

Petitioner Gallant worked in advertising full time from April 1980 until February or March 1987. Her last job was with respondent Doner, where she had worked since January 1986. After being discharged from Doner, Gallant filed for unemployment benefits. Gallant claimed that due to agoraphobia, she could not travel beyond certain geographical areas to seek or accept employment. The MESD determined that she did not meet the eligibility requirements because she had "not established that she is available for or able to work without undue restrictions." Petitioner appealed to a referee, who held a hearing on March 18, 1992.

Gallant testified that she had worked as a sales clerk at different stores during high school and college. After college, she began working in advertising and remained in that field until losing her job with Doner. She immediately began looking for work, calling people she knew, answering newspaper ads and going to certain businesses to submit her résumé or fill out an application. The businesses she visited were all retail stores in southeastern Oakland County, where she resides. She did not look for work beyond that general area because she was not comfortable driving beyond it due to her agoraphobia. She stated that she was "comfortable" traveling within 10 to 15 miles from her home, but might nonetheless exclude a city within that area if she was not familiar with it. Thus, she did not seek work in Rochester, Pontiac, Walled Lake, Novi, South Lyon or Plymouth. She testified that had she received a job offer from a business beyond her "comfort zone," she would have considered it and implied that she might try it out, but did not say that she would have accepted it. Gallant was not sure if she had sought work at any advertising agencies; she basically limited her search to retail management because she

"decided to make a career change." In June 1988, she found a job with a Birmingham retailer.

Based on the record, the referee found that Gallant's "preference for going to areas that she was familiar with rather than to areas that would generally be considered within the Detroit Metropolitan work place is a substantial limitation on her availability for work," and given that plus her meager effort to seek employment in advertising, he concluded that Gallant failed to prove that she was available for full-time work during the period for which benefits were sought. On appeal, a majority of the Board of Review concluded that the referee's decision was "in conformity with the law and facts and should be affirmed." One member dissented on the ground that Gallant "had been making a consistent effort to find employment within her restriction."¹

On appeal from a decision of the MESC Board of Review, the court may review questions of law or fact. It can reverse the decision only if it is contrary to law or is not supported by competent, material and substantial evidence on the whole record. *Grand Rapids Public Schools v Falkenstern*, 168 Mich App 529, 536; 425 NW2d 128 (1988), lv den 431 Mich 911 (1988); *Bonnette v West Ottawa Public Schools*, 165 Mich App 460, 470; 419 NW2d 593 (1987), lv den 430 Mich 870 (1988). The "substantial evidence test" has been defined as evidence which a reasonable mind would accept as sufficient to support a conclusion. While it consists of more than a mere scintilla of evidence, it may be substantially less than a preponderance of the evidence. *Russ v Dep't of Licensing & Regulation*, 119 Mich App 624, 631; 326 NW2d 583 (1982). Where there is no dispute

¹The dissent also noted that petitioner "is no longer able to perform her last job" due to her phobia. Gallant, however, had testified that her separation from Doner had nothing at all to do with her emotional condition.

as to the underlying facts, questions presented on appeal are to be treated as matters of law. *Bonnette, supra*, pp 470-471.

An unemployed person is eligible to receive benefits only if the commission finds that:

The individual is able and available to perform suitable full-time work of a character which the individual is qualified to perform by past experience or training, which is of a character generally similar to work for which the individual has previously received wages, and for which the individual is available, full time, either at a locality at which the individual earned wages for insured work during his or her base period or at a locality where it is found by the commission that such work is available. MCL 421.28(1)(c); MSA 17.530(1)(c).

To be available for work within the meaning of the act, the claimant must be genuinely attached to the labor market, *i.e.*, she must be desirous to obtain employment, and must be willing and ready to work. *Bingham v American Screw Products Co*, 398 Mich 546, 558; 248 NW2d 537 (1976).

The evidence shows that petitioner was desirous of obtaining employment but unduly restricted her availability for work. She purposely did not seek out advertising work for which she was qualified because she wanted to make a career change, even though she had not worked in the retail field for over eight years and did not have any retail management experience. Moreover, she limited her search for employment to Birmingham, Bloomfield, Southfield and Troy, excluding many other cities within her self-imposed travel limitations simply because she was not familiar with them. Given that the claimant "made herself unavailable for work of [a] character she was qualified to perform," *Ford Motor Co v Unemployment Compensation Comm*, 316 Mich 468, 473; 25 NW2d 586 (1947), by limiting the type of work she sought and the places in which she looked for

work, the Court finds that the referee's decision was not contrary to law and was supported by competent, material and substantial evidence on the whole record and thus the Board of Review did not err in affirming that decision.

Now, therefore,

IT IS ORDERED that the decision of the Board of Review be, and the same hereby is, affirmed.

STEVEN N. ANDREWS

STEVEN N. ANDREWS, Circuit Judge