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A. D. No. B96-10527R01-142392W
Employer No. 1041756
S. S. [REDACTED]
B. O. No. 23

STATE OF MICHIGAN
IN THE 16TH JUDICIAL CIRCUIT COURT

MARIE ALLESSIO,
Claimant/Appellant,

Case No. 97-1083-AE

v

LAURA QUASARANO
and NANCY LUCIDO,
Employer/Appellee,

and MICHIGAN EMPLOYMENT
SECURITY AGENCY,
Appellee.

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NANCY LUCIDO
Employers-Appellees

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Security Agency

OPINION AND ORDER

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

MARIE ALLESSIO,

Claimant-Appellant,

vs.

File No. 97-1083-AE

LAURA QUASARANO
and NANCY LUCIDO,

Employer-Appellee,

and

MICHIGAN EMPLOYMENT
SECURITY AGENCY,

Appellee.

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OPINION AND ORDER

Claimant Marie Alessio appeals as of right from a decision of the Michigan Employment Security Commission Board of Review affirming the hearing referee's determination that she was not eligible for unemployment benefits.

I. BACKGROUND

Laura Quasarano and Nancy Lucido operate Laura's Bridal World and Fashions. Alessio was hired as a salesperson in June 1986. She quit her employment on May 4, 1996 after her weekly work hours were substantially reduced and she was denied a raise which other newer employees had received. She applied for unemployment benefits on May 21, 1996 asserting she was separated from employment due to cause attributable to her employer. Quasarano and Lucido challenged

Allessio's right to unemployment benefits. An investigation was undertaken.

In response to a Request For Information Relative To Possible Eligibility Or Disqualification, Allessio stated she was "able to work 20-25 hours per week". On July 16, 1996, a claims examiner for the MESC issued a determination Allessio was (1) disqualified from receiving benefits because she had voluntarily left her employment without good cause attributable to her employer and (2) ineligible for receiving benefits because she was only available for part-time employment. Allessio protested the determination on July 23, 1996. A redetermination dated August 12, 1996 affirmed the July 16, 1996 determination.

On September 4, 1996, Allessio appealed the detrimental determinations. A referee hearing was held September 30, 1996.

Allessio testified she began employment with Quasarano and Lucido in June 1986 as a salesperson. Her original salary was \$5.50 per hour plus a two percent sales commission. Her last day of work as a salesperson was April 27, 1996; she was earning \$6.00 per hour.

Allessio stated she voluntarily left her job because her hours had been taken away from her. When she first started her employment, she was working thirty to thirty-five hours per week. However, in January 1996, she was only scheduled for ten to fifteen hours per week and as little as four hours per week. She talked to Quasarano about her reduced hours in March and April 1996, but was told there was not enough work to give her any more hours. However,

raises were given to other employees in April 1996 and a new woman was hired in June 1996. Alessio said Lucido told her that her responsibilities and performance did not merit a raise although she had keys to the business and had trained the other employees.

Alessio related statements made by both Quasarano and Lucido about her age. She was seventy-two years old when she resigned.

Alessio maintained she is able to work and is actively seeking employment. She told the MESC she could only work twenty to twenty-five hours per week because that was what she had been working. When asked if she was looking for a forty-hour-per-week job, Alessio replied she only wanted about thirty hours per week.

On September 30, 1996, the referee issued Findings of Facts and Reasons which provided in pertinent part:

Under the circumstances, due to the fact that the claimant's hours were reduced substantially, claimant had good cause attributable to the employer for voluntarily severing the employment relationship.

Claimant gave a statement to the Michigan Employment Security Commission that stated, "I am able to work 20-25 hours per week." (Exhibit #3-2[.])

Claimant testified that is what she wants to do and does not want a job wherein she will work more than 30 hours per week.

Under the circumstances, claimant is limiting her availability which effects her eligibility under Section 28 (1) (c) of the Michigan Employment Security Act.

Consequently, the referee affirmed the redetermination dated August 12, 1996. Alessio's motion for rehearing was denied October 17, 1996.

On November 4, 1996, Alessio filed an appeal to the MESC Board of Review asserting she misunderstood the question with

respect to her desired hours and that she was available for full-time employment. On February 7, 1997, the MESC Board of Review affirmed the referee's decision. Allesio now appeals.

II. STANDARD OF REVIEW

MCL 421.38(1); MSA 17.540(1) provides in pertinent part:

The circuit court of the county in which the claimant resides or the circuit court of the county in which the claimant's place of employment is or was located...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, and may make further orders in respect thereto as justice may require, 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.

In Becotte v Gwinn Schools, 192 Mich App 682, 685; 481 NW2d 728 (1992), the court stated:

An order or decision of a MESC Board of Review may be reversed only where the Court finds that the order or decision is contrary to law or not supported by competent, material, and substantial evidence. [Cites omitted.] Substantial evidence is that which a reasonable mind would except as adequate to support a decision. [Cite omitted.] Further, substantial evidence is more than a mere scintilla but less than a preponderance of the evidence. [Cite omitted.]

In Core v Traverse City, 89 Mich App 492, 498; 280 NW2d 569 (1979), the court cautioned:

The court is not to determine whether the probabilities preponderate one way or the other but simply to determine whether the evidence is such that it will justify the finding as a legitimate inference from the facts proved, whether that inference would or would not have been drawn by the appellate tribunal.

III. ELIGIBILITY

Allesio asserts the finding that she is not available for full-time work directly contradicts her written statement that she

is available for full-time employment. Therefore, Allesio argues the MESC Board of Review erred in finding she was not eligible to receive unemployment benefits.

MCL 421.28(1); MSA 17.530(1) provides in pertinent part:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that:

* * *

(c) The individual is able and available to perform suitable full-time work of a character which the individual is qualified to perform...and for which the individual is available, full time....

Full-time work means employment for thirty-five or more hours each week. Compare MCL 207.803(e); MSA 3.540(803)(e).

In the instant matter, the decision of the MESC Board of Review is supported by competent, material and substantial evidence on the whole record. Allesio explained at the referee hearing that she had told the MESC she could only work twenty to twenty-five hours per week because that is what she had been working.¹ She also clearly testified she did not want to work forty hours per week, but would "want just about 30 hours". Therefore, the MESC Board of Review was justified in finding Allesio was ineligible to receive unemployment benefits because she was not available for full-time employment.

¹Allesio's attempt to expand the record on appeal to include her written statement is contrary to MCL 421.35, 421.36; MSA 17.537, 17.538. And, as the written statement is redundant to her testimony at the referee hearing, it need not be considered further.

IV. CONCLUSION

For the reasons set forth above, the decision of the Michigan Employment Security Commission Board of Review affirming the hearing referee's determination that Marie Alessio was not eligible to receive unemployment benefits is AFFIRMED.

IT IS SO ORDERED.

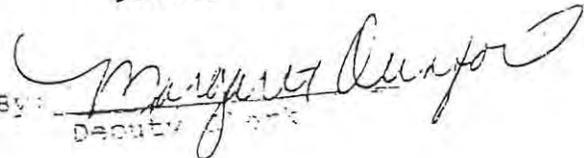
Dated: August 1, 1997

LIDO V. BUCCI, Circuit Judge

cc: Bryan Monaghan
Max E. Simon
Laura Quasarano/Nancy Lucido

A TRUE COPY

CARMELLA SABATINI
County Clerk

BY: 
Deputy Clerk