(1)

L/M

CIRCUIT COURT ORDER/OPINION
Stephine Gwin, Circuit Court Clerk

Appeal Docket No: 177909W

☒ Please enter and distribute along with Board of Review Decisions/Orders and Referee Decision/Orders.

☐ Board Member and assigned attorney to case

☐ Other:

Reversed

[Y ~~X~~ N] Potential Digest Case

28 Section of the Act

Date: 1/3/06 ~~2005~~

R. Douglas Daligga, Director
MES - Board of Review

PC _____
REP _____

Prepared by Stephine Gwin

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

TONIA CLORE,

Appellant,

vs. Case No. 2005-1138-AE

JEFFERSON NORTH ASSEMBLY, and STATE OF MICHIGAN, DEPARTMENT OF LABOR & ECONOMIC GROWTH, UNEMPLOYMENT INSURANCE AGENCY,

Appellees.
_____/

OPINION AND ORDER

Appellant appeals as of right from a January 21, 2005 decision of the Employment Security Board of Review's ("Board") decision to deny her unemployment compensation benefits for a specific time period and its March 4, 2005 order denying her request for a rehearing on the issue.

I.

By way of background, Appellant was receiving unemployment benefits due to a layoff by her employer, the Jefferson North Assembly Plant. Appellant was apparently required to report/certify her eligibility for such benefits at two-week intervals via an automated telephone system ("MARVIN"). Appellant was determined to be disqualified for unemployment benefits for the period of June 6, 2004-June 26, 2004 because she allegedly did not call within the requisite time period to receive benefits for those weeks.

Appellant timely appealed the determination and, on October 25, 2004, a telephone hearing was held before an administrative law judge. The administrative law judge issued a decision on October 27, 2004, affirming the determination and finding that Appellant was disqualified from receiving benefits for the weeks in dispute. Appellant appealed that decision to the Board and, on January 21, 2005, the Board affirmed the administrative law judge's decision. Appellant thereafter requested a rehearing, which was ultimately denied by the Board on March 4, 2005. Appellant now appeals the Board's January 21, 2005 decision as well as the March 4, 2005 order of the Board declining to reopen or review its previous decision or grant Appellant a rehearing on the same.

II.

MCL 24.306 limits a circuit court's review of an administrative agency's decision as follows:

> (1) Except when a statute or the constitution provides for a different scope of review, the court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:
> (a) In violation of the constitution or a statute.
> (b) In excess of the statutory authority or jurisdiction of the agency.
> (c) Made upon unlawful procedure resulting in material prejudice to a party.
> (d) Not supported by competent, material and substantial evidence on the whole record.
> (e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.
> (f) Affected by other substantial and material error of law.

See also, Const. 1963, art. 6, § 28; *Dignan v Michigan Public School Employees Retirement Bd*, 253 Mich App 571, 576; 659 NW2d 629 (2002). With specific reference to an order or decision by a referee or the Michigan Employment Security Commission Review Board, a circuit court may reverse such an order or decision 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. MCL 421.38; *Billups v Howell Public Schools,* 167 Mich App 407, 410; 423 NW2d 231

(1988). Courts should accord due deference to administrative expertise and not invade administrative fact finding by displacing an agency's choice between two reasonably differing views. *Dignan, supra.*

III.

On appeal, Appellant contends that she mistakenly called the MARVIN system on the wrong date and was denied benefits for a three-week period as a result. According to Appellant, her honest mistake should not have resulted in a denial of benefits, especially considering that when she did call the system, she certified for two of the weeks at issue.

Appellee responds that although Appellant made an honest mistake in calculating the date upon which she was to report, the same does not amount to "good cause" as it is defined by Rule 421.210 of the Michigan Administrative Code, so as to allow late reporting. According to Appellee, then, Appellant was properly disqualified from receiving unemployment benefits from June 6, 2004 through June 26, 2004.

IV.

As indicated by Appellee, MCL 421.28 provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that "the individual has registered for work at and thereafter has continued to report at an employment office in accordance with such rules as the commission may prescribe and is seeking work." MCL 421.32(a) additionally provides that claims for benefits shall be made pursuant to regulations prescribed by the unemployment agency.

Pursuant to the above, the unemployment agency has, in fact, established regulations governing the procedures to be followed in reporting to the agency for purposes of receiving benefits. Relevant to the instant matter, 1979 AC, R 421.210 provides, in part, as follows:

(1) An individual shall receive benefits for any week of unemployment for which the individual filed a claim and reported in accordance with this rule and with the direction of the agency and for which the individual is otherwise eligible and qualified for benefits.
(2) As used in this rule:

. . .

(e) 'Good cause for late filing of a new, additional, or reopened claim' and 'good cause for late reporting to file a continued claim' means that there is a justifiable reason, determined in accordance with a standard of conduct expected of an individual acting as a reasonable person in the light of all the circumstances, that prevented a timely filing or reporting to file as required by this rule. Examples of justifiable reasons that the agency may consider as constituting good cause include any of the following:

(i) Acts of God.
(ii) Working or reliance on a promise of work that did not materialize.
(iii) Closing of agency offices, or the failure of the agency's telephonic or electronic equipment, during scheduled hours of operation.
(iv) Delay or interruption in the delivery of mail or the delay or interruption of information by telephonic or other means by a business or governmental agency entrusted with the delivery of mail or of messages by telephonic or other means.
(v) Personal physical incapacity or the physical incapacity or death of a relative or ward of either the individual or the individual's spouse or of any person living in the same household as the individual claiming benefits.
(vi) Attendance at a funeral.
(vii) Incarceration.
(viii) Jury duty.

Appellant's claim of honest mistake in calculating the date upon which she was required to report (a claim Appellee does not dispute) is not specifically included in the examples of justifiable reasons that the agency may consider as constituting good cause. However, the examples provided are just that—examples. A fair reading of the rule indicates that the examples are by no means intended as an exclusive or exhaustive list and a single instance of inadvertence could reasonably be construed as good cause.

Moreover, it cannot be forgotten that the Michigan Employment Security Act (MESA) is a remedial act that was designed to safeguard the general welfare through the dispensation of benefits intended to ameliorate the disastrous effects of involuntary unemployment. *Bureau of Workers' & Unemployment Comp v Detroit Medical Center*, 267 Mich App 500; ___ NW2d

____ (2005). As such, the MESA should be liberally construed to afford coverage and strictly construed to effect disqualification. *Id.* Here, Appellant undisputedly made a single, honest mistake which resulted in her reporting on a date one week later than when she was required to report. As indicated by Appellee, Appellant was familiar with the unemployment reporting requirements and had previously reported when required, receiving benefits both before the weeks at issue as well as for subsequent weeks of unemployment. To disqualify Appellant for three weeks of benefits, then, due to an acknowledged one-time, honest error is inconsistent with the purposes of the MESA and, indeed, appears to penalize Appellant for her honesty. As such, the Court finds that the Board's decision in denying Appellant unemployment benefits for the period of June 6, 2004 through June 26, 2004 was unsupported by substantial evidence on the whole record to justify sustaining its conclusion.

V.

Based on the foregoing, it is hereby

ORDERED that the decision of the Employment Security Board of Review in denying Appellant unemployment compensation for the weeks of June 6, 2004 through June 26, 2004 is REVERSED.

Pursuant to MCR 2.602(A)(3), the Court states that this Opinion and Order resolves the last pending claim and closes the case.

SO ORDERED.

PETER J. MACERONI
CIRCUIT JUDGE

DATED: NOV 23 2005

A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK

Peter J. Maceroni
Circuit Judge

BY: _____ Court Clerk

cc: Tonia Clore, pro per
Peter Kotula