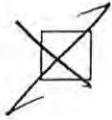


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CIRCUIT COURT ORDER/OPINION  
Stephine Gwin, Circuit Court CLERK

Appeal Docket No: 198255



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Potential Digest Case

*Reversed/ Affirm*

27 (C) Section of the Act

Date: 8/6, 2009

R. Douglas Daligga, Director  
MES - Board of Review

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STATE OF MICHIGAN  
 IN THE CIRCUIT COURT FOR THE COUNTY OF MONROE  
 THIRTY-EIGHTH JUDICIAL CIRCUIT

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FORD MOTOR COMPANY,

Circuit Court File No: 08-26479-AE

Employer/Appellant,

APPEAL

-vs-

Hon. Michael W. LaBeau

MARK A. SCHMIDT,

Claimant/Appellee,

and

STATE OF MICHIGAN, DEPARTMENT  
 OF LABOR & ECONOMIC GROWTH,  
 UNEMPLOYMENT INSURANCE AGENCY,

Appellee.

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OPINION AND ORDER OF THE COURT

This matter comes before this Court on an appeal of the decision of the State of Michigan Employment Security Board of Review ("Board"). This Court has jurisdiction to hear this appeal pursuant to MCL 421.38 (1). For the reasons set forth herein, this appeal is granted and the decision of the Board is reversed.

Facts

Appellee began working for Appellant in May 1996. His last day of work was on December 1, 2006, at which time his employment ended pursuant to a "special termination of employment" or STEP program. The program provided Appellee receives a \$100,000.00 lump sum payment, to be allocated over 23 months, in exchange for signing a termination agreement. Appellee also agreed to release any and all rights of claims against Appellant. Appellee later filed for unemployment benefits after being laid off by a subsequent employer. In November 2007 the Unemployment Insurance Agency issued a redetermination finding Appellee ineligible for benefits. Appellee appealed and the Administrative Law Judge ("ALJ") reversed the Agency's decision. In February 2008, Appellant appealed the ALJ's decision to the Board. The Board determined that because the termination agreement provided a payment allocation period of 23 months, Appellee received payment only during the week upon which the 1<sup>st</sup> day of the month fell. The Board held that Appellee did not receive payment for the remaining weeks each month and is entitled to unemployment benefits for such weeks between December 3, 2006, and November 1, 2006. Appellant now seeks this Court's review of the Board's decision.

Standard of Review

MCL §421.38 (1) provides:

The circuit court in the county in which the claimant resides...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 to that order or decision 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.

This Court may only reverse the Board's decision if it was contrary to law, or not supported by competent, material, and substantial evidence on the record. The "substantial evidence test" is defined as evidence which a reasoning 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. *Russo v. State, Dep't of Licensing & Regulation, etc.*, 119 Mich. App. 624, 631(1982).

I. THE BOARD'S DETERMINATION OF APPELLEE'S ELIGIBILITY IS CONTRARY TO  
LAW AND NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

In finding Appellee eligible for unemployment benefits three weeks each month during the period covered by the termination agreement, the Board determined the 23-month allocation period designated payment to occur only during the week on which the 1<sup>st</sup> day of the month fell. The allocation period is found on the first page of the STEP agreement, under the heading "Description of Program Benefits". This section describes the general terms and

conditions of the STEP program, but does not provide a specific allocation period of benefits such as a weekly, bi-weekly, or monthly disbursement. MCL §421.48(2) provides:

All amounts paid to a claimant by an employing unit or former employing unit for a vacation or a holiday, and amounts paid in the form of retroactive pay, pay in lieu of notice, severance payments, salary continuation, or other remuneration intended by the employing unit as continuing wages or other monetary consideration as the result of the separation...shall be considered remuneration in determining whether an individual is unemployed under this section and also in determining his or her benefit payments under section 27(c), for the period designated by the contract or agreement providing for the payment, or if there is no contractual specification of the period to which payments shall be allocated, then for the period designated by the employing unit or former employing unit.

Therefore, if a termination agreement does not provide for a specific allocation period of payments, then the period designated by the employer shall control. In this case, the STEP agreement did not provide for a specific allocation period. It only provided a general overall allocation period of 23 months. 23 months is the equivalent of 99.6 weeks. Dividing \$100,000.00 by 99.6, gives Appellee a weekly benefit of about \$1,004.00. According to MCL §421.27(c)(3):

An individual who receives or earns partial remuneration may not receive a total of benefits and earnings that exceed 1-1/2 times his or her weekly benefit amount. For each dollar of total benefits and earnings that exceeds 1-1/2 times the individual's weekly benefit amount, benefits shall be reduced by \$1.00.

Under MCL §421.27(b)(1) an individual's weekly benefit may not exceed \$362.00. Therefore under the agreement, Appellee receives remuneration more than 2-1/2 times the maximum weekly unemployment benefit. The Board's determination that payments are allocated only to the week on which the 1<sup>st</sup> day of the month falls is not supported by competent, material, and substantial evidence on the whole record because there is no evidence in the agreement or otherwise that payments be allocated in such a manner. Because Appellee receives payment under a separation agreement, which is more than 2-1/2 times the maximum weekly unemployment benefit amount, Appellee is not entitled to unemployment benefits during the period covered by the STEP agreement.

Appellant also argues that Appellee is not entitled to unemployment benefits because he voluntarily terminated his employment. This Court's review is limited only to those issues raised before the referee and the board of review. *see* MCL §421.38(1). Therefore, this Court may not address the issue as to whether Appellee voluntarily terminated his employment with Appellant.

#### ORDER

Based on the foregoing Opinion, the decision of the Employment Security Board of Review is REVERSED, and the redetermination of the Unemployment Insurance Agency is AFFIRMED.

DATED: May 7, 2009

Michael W. LaBeau

Honorable Michael W. LaBeau  
Circuit Court Judge