

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

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TAMMY D. ROSS,

Claimant-Appellant,

v

Case No. 05-8124-AE  
HON. PHILIP E. RODGERS, JR.

BLARNEY CASTLE OIL COMPANY,

Employer-Appellee,

and

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

Agency-Appellee.

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DECISION AND ORDER REVERSING  
THE BOARD OF REVIEW'S DECISION AND  
REINSTATING THE ADMINISTRATIVE LAW JUDGE'S DECISION

Claimant Tammy Ross worked for the Employer Blarney Castle Oil Company from May 8, 1994 until July 2, 2004. At the time of her separation, she was manager of the East Jordan Easy-Mart.

Toward the end of her employment, Ms. Ross was on medical leave for surgery. She returned to work on May 28, 2004. She quit her job on July 1, 2004, after receiving a written warning from the District Supervisor, Ms. Grabowski. Claimant applied for unemployment compensation benefits. She was found to be disqualified from receiving benefits under the voluntarily leave provision of MCL 421.29(1)(a). The Claimant insisted that her resignation was due to good cause attributable to her employer.

The Administrative Law Judge James Sisk heard this matter of November 24, 2004. He issued a comprehensive decision. He correctly noted that the issue was "whether the claimant had good cause attributable to her employer for leaving pursuant to Section 29(1)(a) of the Act." He also correctly noted that "[t]he standard is that of a reasonable individual. That is, whether the employer's actions would compel a reasonable, average or otherwise qualified worker to give up his or her employment. *Carswell v Share House, Inc*, 151 Mich App392 (1986)."

After listening to all of the testimony and reviewing the exhibits, the Administrative Law Judge made comprehensive findings of fact, including:

(1) On June 28, 2004, Grabowski criticized the claimant for her paperwork and yelled at her in front of customers.

(2) Grabowski also criticized the claimant when she found a petition lying on the counter regarding Wal-mart. The claimant had not authorized the petition to be in the store; that had been done by another manager.

(3) Grabowski also criticized the claimant for the way she did the inventory even though she did the inventory the way she had done it all the time that she had been manager.

(4) A few days later, when the claimant called Ms. Grabowski between 7:00 and 8:00 a.m. for information that Ross needed to perform the duties of her job which began at 5:00 a.m., Ms. Grabowski yelled at her for calling before 8:00 a.m..

(5) On July 1, 2004, Grabowski presented Ms. Ross with "a write-up criticizing her for a number of things related to her work performance, as well as the manner in which she addressed Grabowski."

(6) When the claimant called Gray to ask for a meeting to discuss the write-up, Gray acknowledged that he knew of the memorandum, told the claimant

that she could come and talk to him about it as much as she wanted, but he assured her that he backed Grabowski's position and would not change that position.

(7) On July 2, 2004, the claimant decided that she could no longer tolerate the working situation, and she called Gray and notified him that she was leaving her employment. At the time the claimant left, three other co-workers under her supervision left with her, one of whom was Darlene Desrochers. Desrochers, herself, quit because of the demeaning fashion in which Ms. Grabowski had treated her.

(8) Grabowski referred to claimant and other employees as "idiots" in a memorandum criticizing the employees' performance.

(9) Claimant quit her employment because she felt that she was being subjected to verbal abuse and harassment by the district supervisor, Grabowski.

The Administrative Law Judge held:

Based upon the evidence presented, the Administrative Law Judge finds that, while the claimant may have some problems relating to Grabowski and, at times, questioned the directions given to her by Grabowski, nonetheless, the manner in which Grabowski addressed the claimant, especially in front of customers and co-workers, as well as the reference to 'idiots' in the memorandum directed to the store employees demonstrated a pattern of verbal abuse and a demeaning attitude toward claimant. The claimant's decision to quit for that reason was with good cause attributable to the employer since she had attempted to resolve the matter by calling Gray to discuss the memorandum (Exhibit 1), but Gray had advised her that he would not change his mind that Grabowski's position was correct. Therefore, the claimant had exhausted all other avenues of recourse before resigning.

The Administrative Law Judge determined that the claimant was not disqualified from receiving unemployment compensation benefits because she resigned for good cause attributable to her employer.

The Employer appealed to the Board of Review. In a February 24, 2005 split decision, the Board reversed the Administrative Law Judge. The Board did not discuss the Administrative Law Judge's findings of fact. Instead, the Board apparently reviewed the record and drew its own conclusions. The Board reversed the decision of the Administrative Law Judge, stating:

The claimant failed to present any substantial, material or credible evidence that her supervisor's criticism and corrective actions were unjustified or demeaning or unduly harsh. The claimant made no effort to either comply with her supervisor's expectations or to set forth a reasoned response to those aspects of the July 1<sup>st</sup> written warning with which she disagreed. The claimant did not demonstrate that she acted reasonably by quitting or that she left with good cause attributable to the employer.

The Claimant filed this appeal.

#### STANDARD OF REVIEW

On appeal from decisions of the Board of Review, this Court may review questions of law or fact, Const 1963, art 6, ' 28, MCL 421.38, but can reverse only if the order or decision is contrary to law or is unsupported by competent, material and substantial evidence on the record. MCL ' 421.38(1); *Tomei v General Motors Corp*, 194 Mich App 180, 183-184; 486 NW2d 100 (1992). See also, *Chrysler Corp v Sellers*, 105 Mich App 715, 720; 307 NW2d 708 (1981).

The Court of Appeals summarized the applicable standard of review in *Widdoes v Detroit Public Schools*, 242 Mich App 403; 619 NW2d 12 (2000), stating:

The function of the reviewing court is to determine whether the record contained competent, material, and substantial evidence to support the commission's findings. *Ferrario v Escanaba Bd of Ed*, 426 Mich 353, 367; 395 NW2d 195 (1986). 'Substantial evidence is that which a reasonable mind would accept as adequate to support a decision; it is more than a scintilla but may be substantially less than a preponderance.' *Parker v Byron Center Public Schools Bd of Ed*, 229 Mich App 565, 578; 582 NW2d 859 (1998). Further, although 'deference must be given to the commission's determination of the credibility of witnesses who appeared before it,' courts must 'conduct an independent assessment of whether the commission's determination of the credibility of the parties is supported by the evidence.' *Id.* Our review is not de novo; however, it does involve a degree of qualitative and quantitative evaluation of all the evidence that the commission considered, rather than just those portions of the record supporting the commission's decision. *Ferrario, supra* at 367; 395 NW2d 195; *MERC v Detroit Symphony Orchestra, Inc*, 393 Mich 116, 124; 223 NW2d 283 (1974).

In short, reviewing courts should examine the reasoning and analysis of the decisions of the magistrate and the agency, the evidence considered or ignored in those decisions, the care taken, and the nature of the issues involved (particularly when there are issues of credibility to be determined by the magistrate), in order to determine whether the agency acted in a manner

consistent with the concept of administrative appellate review that is less than review de novo. *Holden v Ford Motor Co*, 439 Mich 257, 267-269; 484 NW2d 227 (1992).

In *Connaway v Welded Const Co*, 233 Mich App 150,169-170; 592 NW2d 414 (1999), the Court said:

The tendency will be to affirm if the [agency] (1) carefully examined the record, (2) was duly cognizant of the deference to be given to the decision of the magistrate, (3) did not misapprehend or grossly misapply the substantial evidence standard, and (4) gave an adequate reason grounded in the record for reversing the decision of the magistrate. While we will not automatically affirm in an appeal from a [agency] decision if there was any competent evidence in the record to support the [agency's] findings, we should examine (1) the reasoning and analysis of the decisions of the magistrate and the [agency], (2) the evidence considered or ignored in those decisions, and (3) the care taken, and the nature of the issues involved, in order to determine whether the [agency] acted in a manner consistent with the concept of administrative appellate review.

In short, the proper exercise of the statutory responsibilities of the reviewing agency or court. . . requires considerable discipline. On the one hand, the reviewing agency or court must not intrude upon the legislatively mandated fact finding that is to occur at each lower level. On the other hand, the [agency] must assure that the magistrate based such fact finding upon competent, material, and substantial evidence on the whole record and this Court must assure that the [agency], if it reverses the decision of the magistrate, has done so according to a reasoned, careful, and thorough process. Indeed, one could say that while the [agency's] administrative review is substantive in nature, our judicial review is procedural: Our task is not to ascertain whether the [agency] arrived at the 'right' decision but rather to assure that the process that the [agency] used was the correct one.

#### ANALYSIS

In the instant case, the Administrative Law Judge heard the testimony of the witnesses which included: the claimant, her supervisor Julie Grabowski, the Director of Operations Shawn Gray, and a co-worker Darlene Desrochers. The Administrative Law Judge made determinations regarding the credibility of these witnesses and, based upon all of the evidence, made findings of fact. There is substantial, material and competent evidence in the record for every one of the Administrative Law Judge's findings. From those findings, he reached the reasonable conclusion that "the manner in which Grabowski addressed the claimant, especially in front of customers and co-workers, as well as the reference to 'idiots' in the memorandum directed to the store employees demonstrated a pattern of verbal abuse and a demeaning attitude toward

claimant.” In addition, he reached the reasonable conclusion that “[t]he claimant’s decision to quit for that reason was with good cause attributable to the employer since she had attempted to resolve the matter by calling Gray to discuss the memorandum (Exhibit 1), but Gray had advised her that he would not change his mind that Grabowski’s position was correct. Therefore, the claimant had exhausted all other avenues of recourse before resigning.”

In its decision reversing the Administrative Law Judge, the Board of Review did not specifically address the Administrative Law Judge’s findings of fact. It briefly recited the bare facts and then concluded:

The claimant failed to present any substantial, material or credible evidence that her supervisor’s criticism and corrective actions were unjustified or demeaning or unduly harsh. The claimant made no effort to either comply with her supervisor’s expectations or to set forth a reasoned response to those aspects of the July 1<sup>st</sup> written warning with which she disagreed. The claimant did not demonstrate that she acted reasonably by quitting or that she left with good cause attributable to the employer.

While the Board of Review may not be bound by the Administrative Law Judge’s assessment, its disagreement with his findings must be predicated on evidence substantial enough to overcome the weight that this Court must ascribe to the Administrative Law Judge’s unique opportunity to view the witnesses. *MERC v Detroit Symphony Orchestra, supra* at 127.

After a thorough review of the record, it is evident to this Court that the findings and conclusions of the Administrative Law Judge are more plausible than the conclusions of the Board.

With respect to the Board’s conclusions that “[t]he claimant failed to present any substantial, material or credible evidence that her supervisor’s criticism and corrective actions were unjustified or demeaning or unduly harsh” and that “[t]he claimant did not demonstrate that she acted reasonably by quitting or that she left with good cause attributable to the employer,” the Board ignored the claimant’s uncontroverted testimony that: “Julie [Grabowski] was harassing me. I felt like she was harassing me all week, and I - - I had enough.” “Julie being on my butt for everything.” “[I]t was just non-stop from Julie.” “[S]he was yelling at me.” “She didn’t have to be snotty or yell at me like she did; she could have talked to me like a human beings [sic].” “One time she sent us a letter calling us a bunch of idiots.”

The Board also ignored the witness Darlene Desrochers' testimony which corroborated Ms. Ross' testimony about the way Ms. Grabowski treated her. Ms. Desrochers testified that: "[I]t seemed like Tammy was being harassed every time Julie was around." "It seemed like Julie said that Tammy couldn't do anything right, or she wasn't doing write-ups right, or she wasn't doing anything - - she wasn't doing her job right." Ms. Desrochers further testified that she quit the same day as Ms. Ross because of stress associated with the way Ms. Grabowski treated her. She testified: "[S]ometimes when you asked [Ms. Grabowski ] a question, she would turn her head and roll her eyes up like she really didn't want to answer your question." "[S]ometimes when you asked her a question, she'd get - - she would get a smirk on her face like you were an idiot." She called us "a bunch of idiots."

Even more compelling is that fact that Ms. Grabowski did not deny that she treated the employees the way they testified that she did. The only thing Ms. Grabowski denied was authoring a memo in which she called the employees "a bunch of idiots."

Therefore, the Board's conclusion that "[t]he claimant failed to present any substantial, material or credible evidence that her supervisor's criticism and corrective actions were unjustified or demeaning or unduly harsh" is not supported by substantial evidence. In addition, the Board's conclusion that "[t]he claimant did not demonstrate that she acted reasonably by quitting or that she left with good cause attributable to the employer," is not supported by substantial evidence.

With respect to the Board's conclusion that "[t]he claimant made no effort to either comply with her supervisor's expectations or to set forth a reasoned response to those aspects of the July 1<sup>st</sup> written warning with which she disagreed," the Board ignored the claimant's testimony that she "called Shawn [the Director of Operations] and told him I want to discuss this matter of my write-up, and he said there's no discussing about it; that he's backing Julie up one-hundred percent. He says I can come to Petoskey office and talk all I want, but he's not changing his mind on anything." "[H]e didn't want to listen to me; he didn't even want to hear what I had to say."

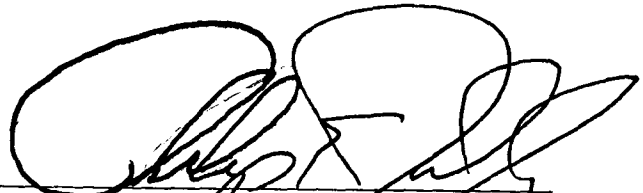
Mr. Gray did not refute Ms. Ross' testimony. In fact, he testified: "I said, 'Tammy, you're welcome to come up to Petoskey office; I'd be happy to talk to you, but I do stand behind the write-up of what Julie wrote.'"

Therefore, the Board's conclusion that "[t]he claimant made no effort to either comply with her supervisor's expectations or to set forth a reasoned response to those aspects of the July 1<sup>st</sup> written warning with which she disagreed" is not supported by substantial evidence.

The Board's conclusions are not predicated on evidence substantial enough to overcome the weight that this Court must ascribe to the Administrative Law Judge's unique opportunity to view the witnesses. Furthermore, the Board's conclusions are not supported by competent, material and substantial evidence on the whole record. Therefore, the decision of the Board of Review is reversed and the decision of the Administrative Law Judge is reinstated. The claimant is eligible for benefits.

IT IS SO ORDERED.

This decision and order resolves the last pending claim and closes the case.



HONORABLE PHILIP E. RODGERS, JR.  
Circuit Court Judge

Dated: \_\_\_\_\_

8/15/05