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CIRCUIT COURT ORDER/OPINION
Stephine Gwin, Circuit Court Clerk

Appeal Docket No: 206231W



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Reverse

290(a) Section of the Act

Date: 7/1, 2011

R. Douglas Daligga, Director
MES - Board of Review

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

DAIMLERCHRYSLER CORP,
Appellant,

v

Case Number: 10-115874-AE
Hon. Denise Langford Morris

MICHIGAN UNEMPLOYMENT
INSURANCE AGENCY,
Appellee,

And

KAREN DIROCCO,
Claimant.

APPEAL OPINION AND ORDER

This matter is before the Court on an appeal from a Michigan Employment Security Board of Review decision issued on November 24, 2010. The Court heard oral arguments and took the matter under advisement. Claimant voluntarily left her employment in the fall of 2008 after accepting a Voluntary Termination Incentive Program (VTIP) Offer Letter. Claimant signed the Offer Letter, which certified that no Chrysler representative made any statement contrary to the VTIP brochure and provided that she would not be eligible for rehire. Her last day of work was November 26, 2008. Claimant collected her VTIP payment of \$50,000 and a \$25,000 car voucher. In January of 2009 Claimant applied for unemployment benefits and was found ineligible.

In a Decision dated July 28, 2009, the ALJ reasoned that Claimant substantially compromised her credibility by giving inconsistent testimony. The ALJ found that Claimant failed to establish that the reasons for leaving were attributable to any unfair or arbitrary actions on the part of the employer and was therefore disqualified under Section

29 (1)(a). Claimant appealed and the Board of Review reversed the disqualification. In a Decision dated November 24, 2010, the Board determined that Claimant had good cause attributable to the employer for leaving, as the employer's actions would have caused a reasonable, average and otherwise qualified worker to give up her employment. The Michigan Employment Security Act requires that a claimant be disqualified from benefits if she leaves work voluntarily without good cause attributable to the employer. The claimant must demonstrate that she had good cause to voluntarily abandon her employment. Good cause exists where an employer's actions would cause a reasonable, average and otherwise qualified worker to give up her employment. *Carswell v Share House*, 151 Mich App 392 (1986).

The controlling legal principle in this case is that unemployment benefits are not designed to protect those who receive large cash settlements following voluntary separations. *McArthur v Borman's*, 200 Mich App 686 (1993). The Board decided that *McArthur* should not be followed because of the 2002 MES amendment that allowed employers to allocate separation payments. The Board's decision misstated a material part of the Official Record and considered evidence not in the Official Record. The Board rejected the ALJ's credibility determination without taking additional testimony. The findings of the ALJ are part of the record and reviewing courts are to consider the determinations as to credibility of the only decision-maker to hear testimony first hand as well as to consider the consistency and inherent probability of testimony. *Helm v University of Michigan*, 147 Mich App 135 (1986). The Court, having reviewed the applicable law and being fully advised in the premises finds that the Board's decision is not supported by competent, material and substantial evidence and is contrary to

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controlling law. Therefore, the Court finds that the Board erred when it reversed the ALJ.
Accordingly,

IT IS HEREBY ORDERED that the November 24, 2010 Decision of the Board of Review is REVERSED IN PART. The part of the Decision finding that the Claimant is not disqualified for benefits under the voluntary leaving provision of Section 29 (1)(a) of the Act is reversed.

This disposes of the last pending claim and closes the case.

IT IS SO ORDERED.

JUN 09 2011
Date

/s/Denise Langford Morris
DENISE LANGFORD MORRIS
Circuit Court Judge DC