

Appeal Docket No. B2002-10112-R03-167380

S.S. No. ~~2002-10112-R03-167380~~

B.O. No. 043

Employer No. 1216861

STATE OF MICHIGAN  
THE CIRCUIT COURT FOR THE COUNTY OF KENT

EVA M. MOSELY,  
Appellant,

v

Court No. 03-05557-AE  
HON. PAUL J. SULLIVAN

ADVANTAGE HEALTH, SPECTRUM HEALTH,  
and STATE OF MICHIGAN, DEPARTMENT OF  
LABOR & ECONOMIC GROWTH, UNEMPLOYMENT  
INSURANCE AGENCY, f/k/a Bureau of Workers' &  
Unemployment Compensation,  
Appellees.

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Attorney for Claimant/Appellant

David Davidson (P49109)  
Attorney for Appellee Advantage Health

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Unemployment Insurance Agency

ORDER

STATE OF MICHIGAN  
KENT COUNTY CIRCUIT COURT

EVA MOSLEY,  
Claimant-Appellant

vs.

Case No. 03-05557-AE  
Hon. Paul J. Sullivan

SPECTRUM HEALTH,  
Employer-Appellee

ADVANTAGE HEALTH,  
Employer-Appellee

and

MICHIGAN BUREAU OF WORKERS' &  
UNEMPLOYMENT COMPENSATION  
Appellee,

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JUDGE SULLIVAN  
17TH JUDICIAL CIRCUIT

ORDER AFFIRMING DECISION OF THE BOARD OF REVIEW

At a session held in Grand Rapids, Michigan,

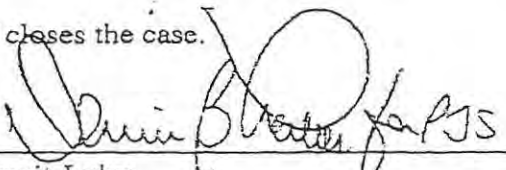
on October 27, 2003

PRESENT: HON. PAUL J. SULLIVAN

Appellant-Claimant having filed a claim of appeal from a May 22 2003, Decision of the Board of Review, briefs having been filed and arguments heard, therefore:

IT IS ORDERED that the May 22, 2003, decision of the Board of Review is AFFIRMED for the reasons stated on the record and this appeal is DISMISSED.

This resolves the last pending claim and closes the case.

  
Circuit Judge

11-12-03

no copies

STATE OF MICHIGAN  
EMPLOYMENT SECURITY BOARD OF REVIEW

In the Matter of the Claim of

EVA M. MOSLEY,

Appeal Docket No.: B 2002-10112-R03-167380

Claimant

Social Security No.: ~~000000000~~

ADVANTAGE HEALTH,

Employer

DECISION OF BOARD OF REVIEW

In this case, the Referee held, on rehearing, that the claimant was not disqualified for unemployment benefits under Section 29(1)(a) of the Michigan Employment Security Act (Act) by operation of Section 29(5) of the Act. For the reasons that follow, the Referee's decision is reversed.

The Board of Review received a timely request from the employer to present oral argument in this matter. We have read and considered the request and conclude oral hearing is not necessary for us to reach a decision. The request is hereby denied.

The claimant worked for the involved employer from September 2001 to May 15, 2002, as a medical biller. The claimant quit her job to accept a position with Spectrum Health. The claimant was required to undergo a physical exam and a drug screen prior to beginning her new employment. On May 17, 2002, the offer of employment was withdrawn.

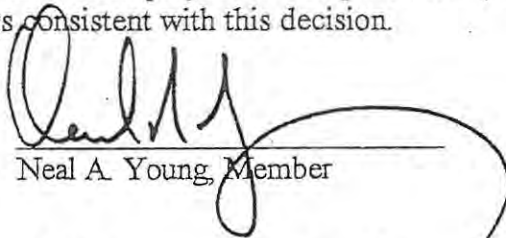
Section 29(5) of the Act provides that if an individual leaves work to accept permanent full-time work with another employer and **performs services for that employer**, the wages earned with the employer whom the individual last left are wages earned from the employer with whom the individual accepted work and benefits paid based on those wages are charged to that employer. At a hearing held in this matter on July 31, 2002, the parties entered into a stipulation that the drug test and the physical exam constituted performance of services for the purposes of Section 29(5). The Referee concluded that the stipulation was binding and required him to hold the claimant not disqualified for benefits. We disagree.

A stipulation that certain facts warranted the application of Section 29(5) to the claimant's separation from the involved employer, when such facts clearly did not support such application, is void. The phrase "performs services for that employer" plainly and obviously means services for which compensation is payable. The claimant never performed any compensable services for Spectrum Health prior to the offer of employment being withdrawn. Medical evaluations (including drug screens) of prospective employees may preclude employment for a variety of reasons, which is precisely why they occur before an individual is allowed to begin work.

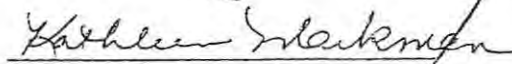
The Referee's decision on rehearing is hereby reversed.

The claimant is disqualified by reason of the separation at issue and is not entitled to unemployment benefits.

This matter is referred to the Bureau of Workers' and Unemployment Compensation (formerly the Unemployment Agency) for further proceedings consistent with this decision.



Neal A. Young, Member



Kathleen Markman, Chair

JULIE ANN PETRIK (MEMBER), DISSENTING:

I disagree with the conclusion reached by the panel majority.

In my opinion, the Referee's decision is in conformity with the facts and the law. Spectrum Health freely entered into a stipulation, along with the other parties, that the claimant did, in fact, perform services when she underwent the physical exam and drug test. Employer/employee relationships are contractual by nature. The parties contract as to what services shall be performed by one party and the consideration provided for such performance. Accordingly, a factual stipulation as to what constitutes the performance of service is competent evidence on that issue. Facts arrived at by stipulation have just as much force and effect as any other facts established through testimony and documentary evidence. I note that the phrase "performs services" has not always been interpreted to mean compensable services as the majority has asserted. See MESC v Clark, No. 82-23903 AE, Washtenaw Circuit Court (April 20, 1983).

I would affirm the Referee's decision.



Julie Ann Petrik, Member

MAILED AT LANSING, MICHIGAN

MAY 22 2003

This decision will become final unless a written request for rehearing to the Board OR appeal to the appropriate circuit court is RECEIVED on or before

JUN 23 2003

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME.