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CIRCUIT COURT ORDER/OPINION
Stephine Gwin, Circuit Court CLERK

Appeal Docket No: 181614N

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

Board Member and assigned attorney to case

Other:

Potential Digest Case

Admin

29 (5) Section of the Act

Date: 5/12, 2006

RDG
R. Douglas Daligga, Director
MES - Board of Review

PC _____
REP _____

Prepared by Stephine Gwin

STATE OF MICHIGAN
UNEMPLOYMENT AGENCY
Department of Consumer & Industry Services
Legal Division
NOTICE OF DISPOSITION OF APPEAL

Date: April 15, 2006

Appeal Docket No. B2005-

Court Docket No. 05-1219 AE

02163-R01 ~~1812614W~~

181614H

Claimant: John Dean

Employer: Thrifty Services, Inc,

Social Security No. 373-78-6461

Registration No. 1068388

MONTMORENCY CIRCUIT COURT
(Court)

Thrifty Services, Inc,

Employer/Appellant,

v

John Dean,

and UA/Appellees

DISPOSITION AND REMARKS:

The Court affirmed claimant not disqualified under MCL 421.29(1)(a), even though the employee leasing company transferred him to the client company's payroll, shortly before the client ceased operations. The court rejected arguments that claimant's employee status ceased when the client failed to renew the contract.

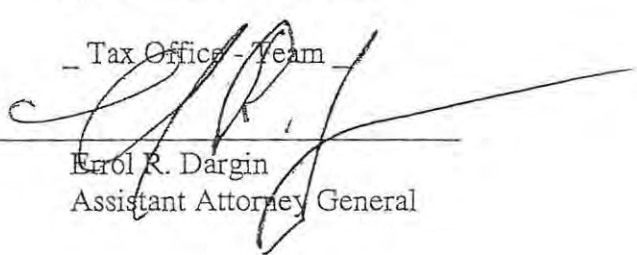
TO:

Board of Review

Branch Office No. 04

File

Tax Office - Team


Errol R. Dargin
Assistant Attorney General

STATE OF MICHIGAN
26th CIRCUIT COURT
COUNTY OF MONTMORENCY

A True Copy

Cheryl A. Nelson

JOHN DEAN,

CASE NO. 05-1219AE

HON. JOHN F. KOWALSKI

Appellant.

v

THRIFTY SERVICES, INC.
and STATE OF MICHIGAN, DLEG,
UNEMPLOYMENT INSURANCE AGENCY
(formerly known as the MESC
and Michigan Unemployment Agency),

Appellees.

At a session of said Court held in the Courthouse on
the 5th day of APRIL 2006.

Present: Hon. John F. Kowalski
Circuit Court Judge

ORDER AFFIRMING BOARD OF REVIEW

This matter having come on to be heard on an appeal filed by the
Appellant herein; and the court after having reviewed and considered the briefs and the
oral arguments of the parties herein, and being otherwise fully advised in the premises;

IT IS HEREBY ORDERED AND ADJUDGED that the decision issued by the
Board of Review on July 29, 2005 is supported by material, competent and substantial
evidence, and is in accordance with the law, and is hereby affirmed.

JSI
Circuit Court Judge

Dated: 4-5-06

STATE OF MICHIGAN
EMPLOYMENT SECURITY BOARD OF REVIEW

In the Matter of the Claim of

JOHN DEAN,

Appeal Docket No.: B2005-02163-R01-181614

Claimant

Social Security No.: 373-78-6461

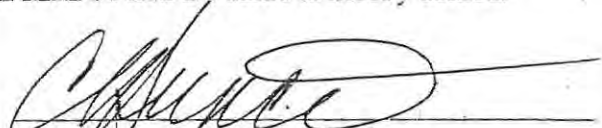
THRIFTY SERVICES INC.,

Employer

ORDER DENYING APPLICATION FOR REHEARING

This case is before the Board of Review upon application of the employer for a rehearing by the Board with respect to its decision dated July 29, 2005. The Board of Review having read and considered said application, and having reviewed the record in this matter, is of the opinion that said application should be denied.

IT IS THEREFORE ORDERED that said application shall be and the same is hereby denied.


Charlotte L. Duncil, Member


Kathleen Markman, Chair

LESTER A. OWCZARSKI, MEMBER, DISSENTING:

After a review of the request for rehearing of the Board's decision, I am of the opinion that the Board should grant rehearing and on rehearing, I would follow the course of my dissent of the July 29, 2005, decision.


Lester A. Owczarski, Member

MAILED AT LANSING, MICHIGAN SEP. 07 2005

This order will become final unless a written appeal therefrom is RECEIVED by the clerk of the appropriate circuit court on or before OCT 07 2005

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME.

STATE OF MICHIGAN
EMPLOYMENT SECURITY BOARD OF REVIEW

In the Matter of the Claim of

JOHN DEAN,

Appeal Docket No. B2005-02163-R01-181614

Claimant

Social Security No. 373-78-6461

THRIFTY SERVICES INC.,

Employer

DECISION OF BOARD OF REVIEW

This matter is before the Board of Review on the employer's appeal from a May 26, 2005, Administrative Law Judge (Referee) order denying a request for rehearing. Under Section 33(1) of the Michigan Employment Security Act, rehearings are granted or denied at the discretion of the Referee. See Rule 211 of the Rules of Practice before Referees and MES Board of Review.

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 concluded oral hearing is not necessary for us to reach a decision. The request is hereby denied.

In Spalding v Spalding, 355 Mich 382, 384-85 (1959), the Michigan Supreme Court announced a standard to be applied when deciding whether there has been an abuse of discretion. The court stated:


Where, as here, the exercise of discretion turns upon a factual determination made by the trier of the facts, an abuse of discretion involves far more than a difference in judicial opinion between the trial and appellate courts. The term discretion itself involves the idea of choice, of an exercise of the will, of a determination made between competing considerations. In order to have an "abuse" in reaching such determination, the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but the perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias.

After reviewing the record, the Board finds that there has not been an abuse of discretion. Therefore, the Referee's order, a copy of which is attached and incorporated by this reference, should be affirmed.

The Board has reviewed the Referee's decision in the light of the evidence appearing in the record made prior to the employer's request for rehearing. The decision is in conformity with the law and facts and should be affirmed. A copy of the decision is attached and incorporated by this reference.

The Referee's order denying the employer's request for rehearing is hereby affirmed.

The Referee's decision is hereby affirmed.



Charlotte L. Dunell, Member



Kathleen Markman, Chair

LESTER A. OWCZARSKI, MEMBER, CONCURRING IN PART, DISSENTING IN PART:

I agree with the majority that the Referee's denial of rehearing was not an abuse of discretion and should be affirmed.

However, I have reviewed the Referee's decision in the light of the evidence appearing in the record. I disagree with the Board majority. It is my opinion that the decision is not in conformity with the law and facts and should be reversed.

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

In this matter the Referee found the claimant was not disqualified under Section 29(1)(a) of the Act and found that Section 29(5) of the Act did not apply. The employer's request for rehearing was denied. The employer then appealed to the Board.

The claimant initially worked for Automobile First. On May 30, 2001, Automobile First contracted with the employer here, Thrifty Services Inc., to provide personnel and employee leasing services. The claimant worked for Thrifty Services Inc. from May 30, 2001, until June 20, 2004, as a mechanic/manager. On June 30, 2004, Automobile First sold the facility to SAD Inc. which did not continue the contract with Thrifty Services Inc. The personnel, payroll and personnel functions were then offered by SAD Inc. and the claimant became an employee of SAD Inc.

Section 29(1)(a) of the Michigan Employment Security Act reads as follows:

- (a) An individual is disqualified from receiving benefits if he or she:
 - (1) Left work voluntarily without good cause attributable to the employer or employing unit. An individual who left work is presumed to have left work voluntarily without good cause attributable to the employer or employing unit. An individual claiming benefits under this act has the burden of proof to establish the he or she left work involuntarily or with good cause attributable to the employer or employing unit. However, if the individual has an established benefit year in effect and during that benefit year leaves unsuitable work within 60 days after the beginning of that work, the leaving does not be disqualify the individual.

Section 29(5) of the Michigan Employment Security Act reads as follows:

- (5) If an individual leaves work to accept permanent full-time work with another employer and performs services for that employer, or if an individual leaves work to accept a recall from a former employer:

- (a) Subsection (1) does not apply.

- (b) Wages earned with the employer whom the individual last left, including wages previously transferred under this subsection to the last employer, for the purpose of computing and charging benefits, are wages earned from the employer with whom the individual accepted work or recall, and benefits paid based upon those wages shall be charged to that employer.

- (c) When issuing a determination covering the period of employment with a new or former employer described in this subsection, the commission shall advise the chargeable employer of the name and address of the other employer, the period covered by the employment, and the extent of the benefits that may be charged to the account of the chargeable employer.

The evidence established the claimant quit working for Thrifty Services Inc. on June 30, 2004. As such, the burden of proof is on the claimant to prove he should not be disqualified and the exception in Section 29(5)(a) of the Act applies.

Contrary to the Referee's findings the record is clear that the claimant left Thrifty Services Inc. to begin employment with SAD Inc. and, as such, the exception in Section 29(5) of the Act would apply. I would find the claimant not disqualified under Section 29(1)(a) of the Act because Section 29(5) of the Act applied. Since the claimant left Thrifty Services Inc. to begin employment with SAD Inc., under Section 29(5) of the Act the earnings the claimant made with Thrifty Services Inc. should be transferred to SAD Inc. Since the majority found otherwise, I must disagree.



Lester A. Owczarski, Member

MAILED AT LANSING, MICHIGAN JUL 29 2005

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 AUG 29 2005

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME.