A.D. No.B82-03503-RO1-85873W
S.S. No. [redacted]
B.O. No.56

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

WILLIAM P. GOLDEN,

Appellant Claimant,

v

Case No. 83-258818-AE
4-25-84

HURON VALLEY SCHOOLS,

Appellee Employer,

MICHIGAN EMPLOYMENT SECURITY COMMISSION,

Appellee Commission.
_____/

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OPINION

This is before the Court on William P. Golden's appeal from the Michigan Employment Security Commission's decisions finding the appellant ineligible for unemployment benefits under Section 48 of the Michigan Employment Security Act, M.C.L. 421.48. As the parties are familiar with the factual background leading to this appeal it will not be discussed herein.

Although the appellant has failed to state the specific grounds for this appeal, it is assumed from his total reliance on American T. & T. Co. v Employment Security Commission, 376 Mich 271 (1965), and its asserted significance in defining "leave of absence" as provided in M.C.L. 421.48 that appellant claims the commission's decision is contrary to law.

Appellant contends that because he did not have an absolute right to return to work the commission was in error in finding his termination of employment to be a "leave of absence" and thereby disqualifying appellant from receiving unemployment benefits.

M.C.L. 421.48 provides, in pertinent part:

> An individual shall not be deemed to be unemployed during any leave of absence from work, granted by an employer, either at the request of the individual or pursuant to an agreement with his duly authorized bargaining agent, or in accordance with law.

The phrase "leave of absence" is not defined in the statute. Appellant's suggested strict limitation of its meaning to only those leaves of absence where the employee has an "absolute right" to return to work apparently arises from his understanding of American T. & T. Co. v Employment Security Commission, 376 Mich 271 (1965), and a now repealed provision of the Act, former Section 29(1)(d) which provides:

> (d) For the duration of her unemployment where it is found by the commission that total or partial unemployment is due to pregnancy: Provided, That this provision shall not apply to an individual who has received a leave of absence, due to pregnancy, from her employment unit and applies for reinstatement at the termination of such leave but is not reemployed by such employing unit. Leave of absence as used in this section shall mean an authorized absence from employment with an assurance of reemployment by the employing unit. (Emphasis added.)

American T. & T. Co. v Employment Security Commission, supra at 277-78.

The scope of this Court's review of a commission's decision is set out in M.C.L. 421.38 which provides, in pertinent part:

> Sec. 38. (1) The circuit court of the county in which the claimant resides or the circuit court of the county in which the claimant's place of employment is or was located, or, if a claimant is not a party to the case, the circuit court of the county in which the employer's principal place of business in this state is located, 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 thereto 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. (Emphasis added.)

After a review of the record and briefs submitted by the parties this Court finds the commission's decisions in full accordance with the law.

M.C.L. 421.48 is plain and unambiguous on its face, thus, a bare reading of this section suffices and makes unnecessary determination of legislative intent. Mercy Hospital v State of Michigan, 340 Mich 404, 408 (1954). Appellant's attempt to define "leave of absence" as only those leaves where the employee has an absolute right to return to work is invalid. A plain reading of the statute does not justify such a limited definition.

Appellant's reliance on American T. & T. Co. v Employment Security Commission, supra, is misplaced. This Michigan Supreme Court decision was controlled by a now repealed section of the Act providing for pregnancy leaves. Even assuming the provision was presently in effect, its definition of "leave of absence" is clearly confined to pregnancy leaves:

> Leaves of absence as used in this section . shall mean an authorized absence from employment with an assurance of reemployment by the employing unit. (Emphasis added.)

Former Section 29(1)(d).

Accordingly, as it is undisputed that appellant was granted a leave of absence by his employer pursuant to an agreement entered into between the appellant and his employers, pursuant to M.C.L. 421.48 appellant cannot be considered to be unemployed during said leave of absence.

Wherefore, in accordance with the foregoing the commission's decisions are hereby affirmed.

DATED: April 25, 1984

Robert C. Anderson

ROBERT C. ANDERSON, CIRCUIT JUDGE
Sixth Judicial Circuit Court