

A.D. No. B76 10412-52303
S.S. No. 363 58 9411
B.O. No. 06

STATE OF MICHIGAN
COURT OF APPEALS

JANICE N. LUTHIAN,

AUG 18 1980

CLAIMANT-APPELLEE,

V

RIFKIN, SCHULTZ & KINGSLEY, P.C.,

No. 47129

8-18-80

EMPLOYER-APPELLANT,

AND

MICHIGAN EMPLOYMENT SECURITY COMMISSION,

APPELLANT.

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BY: JAMES A. BURNS (P24215)
ASSISTANT ATTORNEY GENERAL
ATTORNEYS FOR APPELLANT
MICHIGAN EMPLOYMENT SECURITY COMMISSION

BEFORE: D. E. HOLBROOK, JR., P.J., AND V. J. BRENNAN AND EVERETT, JJ

PER CURIAM

CLAIMANT'S EMPLOYMENT AS A LEGAL SECRETARY FOR THE APPELLANT WAS TERMINATED ON OR ABOUT DECEMBER 4, 1975. THEREAFTER CLAIMANT APPLIED FOR AND RECEIVED UNEMPLOYMENT BENEFITS OF \$104 PER WEEK FROM THE WEEK BEGINNING FEBRUARY 28, 1976, THROUGH MAY 15, 1976, A PERIOD OF 12 WEEKS. DURING THAT TIME SHE SOUGHT WORK ONLY A FEW TIMES, MOSTLY BY TELEPHONE. HER TESTIMONY INDICATED THAT SHE PHYSICALLY VISITED THE OFFICES OF PROSPECTIVE EMPLOYERS ON ONLY TWO OCCASIONS. SHE DID NOT SEEK THE ASSISTANCE OF ANY EMPLOYMENT AGENCIES NOR DID SHE USE THE DETROIT LEGAL NEWS, THE SAME PUBLICATION THROUGH WHICH SHE OBTAINED EMPLOYMENT WITH APPELLANT.

ON MAY 5, 1976, THE EMPLOYER REQUESTED A REDETERMINATION OF BENEFIT ELIGIBILITY PERTINENT TO CLAIMANT'S SEARCH FOR EMPLOYMENT AND AVAILABILITY AS REQUIRED UNDER § 28(1)(A) AND § 28(1)(C) OF THE MICHIGAN EMPLOYMENT SECURITY ACT. ON JUNE 3, 1976, THE MICHIGAN EMPLOYMENT SECURITY COMMISSION (MESC) ISSUED A REDETERMINATION, FINDING THAT CLAIMANT HAD NOT ESTABLISHED AN ACTIVE SEARCH FOR EMPLOYMENT AND WAS NOT ENTITLED TO BENEFITS FOR THE 12 WEEK PERIOD.

CLAIMANT APPEALED AND THERE WAS A HEARING. THE REFEREE FOUND THAT SHE WAS ELIGIBLE FOR UNEMPLOYMENT BENEFITS AND REVERSED MESC'S REDETERMINATION.

THE EMPLOYER THEN APPEALED AND THE MESC APPEAL BOARD REVERSED THE DECISION OF THE REFEREE. IT HELD THAT CLAIMANT HAD BEEN INELIGIBLE FOR BENEFITS AS SHE HAD FAILED TO ESTABLISH THAT SHE WAS ABLE, AVAILABLE AND SEEKING WORK WITHIN THE REQUIREMENTS OF MCL 421.28; MSA 17.530.

NEXT, CLAIMANT APPEALED TO THE WAYNE COUNTY CIRCUIT COURT, WHICH REVERSED THE DECISION OF THE APPEAL BOARD.

THE MATTER IS NOW BEFORE THIS COURT UPON TIMELY APPEAL TAKEN BY THE EMPLOYER.

THE BURDEN IS UPON CLAIMANT TO ESTABLISH THAT SHE QUALIFIES FOR BENEFITS. Dwyer v Unemployment Compensation Comm, 321 Mich 178; 32 NW2D 434 (1948). THE INITIAL DETERMINATION AS TO CLAIMANT'S ELIGIBILITY FOR UNEMPLOYMENT COMPENSATION WAS MADE BY MESC UNDER AUTHORITY OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969. MCL 24.1 ET SEQ.; MSA 4.321 ET SEQ. IN LOOKING TO THIS STATUTE FOR GUIDANCE FOR PROCEDURES IN CONTESTED CASES, WE FIND MCL 24.281(3), MSA 3.560(181) (3), TO BE CONTROLLING:

"THE DECISION, WITHOUT FURTHER PROCEEDINGS, SHALL BECOME THE FINAL DECISION OF THE AGENCY IN THE ABSENCE OF THE FILING OF EXCEPTIONS OR REVIEW BY ACTION OF THE AGENCY WITHIN THE TIME PROVIDED BY RULE. ON APPEAL FROM OR REVIEW OF A PROPOSAL OF DECISION THE AGENCY, EXCEPT AS IT MAY LIMIT THE ISSUE UPON NOTICE OR BY RULE, SHALL HAVE ALL THE POWERS WHICH IT WOULD HAVE IF IT HAD PRESIDED AT THE HEARING."

THUS THE STATUTE GIVES THE MESC APPEAL BOARD FULL POWER TO MAKE A REDETERMINATION OF THE FINDINGS OF THE HEARING REFEREE. IT IS THE POLICY OF OUR SUPREME COURT TO ADHERE, IN ALL BUT EXTREMELY RARE INSTANCES, TO THE METHOD OF REVIEW OF DECISIONS OF ADMINISTRATIVE AGENCIES PROVIDED BY SPECIFIC STATUTES AND COVERED GENERALLY BY THE ADMINISTRATIVE PROCEDURES ACT. SUPER X DRUG STORE v STATE BOARD OF PHARMACY, 375 Mich 314; 134 NW2D 678 (1965).

TH CIRCUIT COURT, ON PAGE 6 OF ITS OPINION, STATED THAT:

"[C]ONSIDERABLE WEIGHT MUST NECESSARILY BE GIVEN TO THAT LEVEL OF THE ADMINISTRATIVELY ADJUDICATIVE PROCESS BEST SUITED TO OR WHICH HAS MADE THAT ASSESSMENT AND REDETERMINATION OF SUCH ITEMS AS MENTAL STATE, WILLINGNESS, ETC.

"IN THIS CASE, THE ENTIRE EVIDENTIARY RECORD WAS MADE PRIOR TO CONSIDERATION OF THE MATTER BY THE APPEAL BOARD. THE APPEAL BOARD HEARD NO FURTHER TESTIMONY AND MADE NO ADDITIONAL FINDINGS OF FACT. IN ESSENCE, IT MERELY REACHED A CONCLUSION DIFFERENT FROM THAT REACHED BY THE REFEREE UPON THE FACTS AS FOUND BY THE REFEREE."

WHILE WE AGREE THAT THE DETERMINATION MADE BY THE HEARING REFEREE IS IMPORTANT IT IS NOT THE FINAL DETERMINATION OF THE MESC. SUCH FINAL DETERMINATION IS MADE BY THE MESC APPEAL BOARD. THE ADMINISTRATIVE LAW SYSTEM IS DIFFERENT FROM OUR JUDICIAL SYSTEM. IT IS TRUE THAT IN OUR JUDICIAL SYSTEM, CONSIDERABLE WEIGHT MUST BE GIVEN TO THE ADJUDICATIVE OR TRIAL PROCESS. HOWEVER, THE STANDARD OF REVIEW IS DIFFERENT FOR AN ADMINISTRATIVE AGENCY. AS STATED IN MERC V DETROIT SYMPHONY ORCHESTRA, INC. 393 MICH 116, 124; 223 NW2D 283 (1974) :

"SUCH REVIEW MUST BE UNDERTAKEN WITH CONSIDERABLE SENSITIVITY IN ORDER THAT THE COURTS ACCORD DUE DEFERENCE TO ADMINISTRATIVE EXPERTISE AND NOT INVADE THE PROVINCE OF EXCLUSIVE ADMINISTRATIVE FACT-FINDING BY DISPLAYING AN AGENCY'S CHOICE BETWEEN TWO REASONABLE DIFFERING VIEWS. COGNIZANT OF THESE CONCERNS, THE COURTS MUST WALK THE TIGHTROPE OF DUTY WHICH REQUIRES JUDGES TO PROVIDE THE PRESCRIBED MEANINGFUL REVIEW."

THE SCOPE OF REVIEW OF AN OPINION AND ORDER OF AN ADMINISTRATIVE AGENCY IS GOVERNED BY OUR CONSTITUTION AND BY MCL 24.306; MSA 3.560 (206). THE COURTS MUST CONFINE THEIR EXAMINATION OF AN ADMINISTRATIVE AGENCY DECISION TO ASCERTAINING WHETHER OR NOT THE DECISION IS SUPPORTED BY COMPETENT, MATERIAL AND SUBSTANTIAL EVIDENCE, AND THAT IT IS NOT IN VIOLATION OF THE CONSTITUTION OR A STATUTE. LOCAL 547, IUOE V FORD HOSPITAL, 59 MICH APP 625; 229 NW2D 925 (1975). THE FINDINGS OF THE MESC APPEAL BOARD WERE SUPPORTED BY COMPETENT, MATERIAL, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD. IN LIGHT OF THE LIMITED SCOPE OF REVIEW OF ADMINISTRATIVE ORDERS, THE CIRCUIT COURT ERRED IN SUBSTITUTING ITS JUDGEMENT FOR THAT OF THE ADMINISTRATIVE AGENCY.

REVERSED AND THE FINDINGS OF THE MESC APPEAL BOARD ARE REINSTATED.