

A.D. No. B87-15460-107554W

S.S. No. [REDACTED]

B.O. No. 16

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

ETTORE ANULLI,

Case No. 89-3688-AE

Plaintiff-Appellant,

v

HON. FREDERICK D. BALKWILL

EASY CUT TOOL CORP.

and

MICHIGAN EMPLOYMENT SECURITY COMMISSION,

Appellees.

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ETTORE ANULLI, In Pro Per  
2805 Clayton  
Troy, Michigan 48083

EASY CUT TOOL CORPORATION  
33410 Groesbeck Highway  
Fraser, Michigan 48026

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for the State of Michigan  
By: DENNIS J. GRIFKA (P23048)  
Assistant Attorney General  
Attorneys for Michigan  
Employment Security Commission

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OPINION AND ORDER

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

ETTORE ANULLI,

Plaintiff-Appellant,

vs.

File No. 89-3688-AE

EASY CUT TOOL CORP. and MICHIGAN  
EMPLOYMENT SECURITY COMMISSION,

Appellees,

---

OPINION AND ORDER

This matter is before the Court on Ettore Anulli's ("claimant") appeal from a decision by the Michigan Employment Security Commission Board of Review ("the Board").

I.

Claimant commenced employment with Easy Cut Tool Corp. ("Easy Cut") in March, 1986 as president of the corporation. At that time, he owned fifty-one percent of the corporation's stock. Claimant's last rate of pay was \$600.00 per week and he did not receive a paycheck from Easy Cut after October, 1986, when it was decided that Easy Cut would be dissolved. He filed for unemployment benefits on October 9, 1986 and collected benefits through December 27, 1986. During the time that he was collecting benefits, he was on the premises of Vance, Inc. ("Vance") approximately twenty hours per week. Claimant had approximately \$70,000.00 invested in Vance.

By determination and redetermination, claimant was held ineligible for benefits from November 2, 1986 through December 27,

1986 under the provisions of the Michigan Employment Security Act ("the Act"). See MCL 421.1 et seq.; MSA 17.501 et seq. In addition, a penalty was imposed against claimant for his failure to reveal his ownership interest in Easy Cut. Claimant appealed, after which a referee hearing was held. In a written opinion, the referee upheld the redetermination. On further appeal, the Board upheld the referee's decision that claimant was ineligible for benefits during the period in question. However, the Board concluded that there was insufficient evidence that claimant had intentionally concealed information for the purpose of collecting benefits; therefore, the Board found that claimant was not subject to the penalty provisions under the Act.

## II.

This Court reviews an administrative agency determination pursuant to the standards set forth in Const 1963, Art VI Section 28. The proper standard of judicial review to be employed is whether the decision is supported by competent, material and substantial evidence on the whole record. King v Calumet & Hecla Corp, 43 Mich App 319; 204 NW2d 286 (1972). "Substantial evidence" has been defined as evidence which a reasoning mind would accept as sufficient to support a conclusion. While it consists of more than a mere scintilla of evidence, it may be substantially less than a preponderance of the evidence. Thompkins v Department of Social Services, 97 Mich App 218, 222; 293 NW2d 771 (1980).

The Act provides in pertinent part that:

"Sec. 28. (1) An unemployed individual shall be eligible to receive benefits with respect

to any week only if the commission finds that:  
(c) He is able and available to perform suitable full time work of a character which he is qualified to perform by past experience or training, and of a character generally similar to work for which he has previously received wages, and he is available for such work, full time, either at a locality at which he earned wages for insured work during his base period or at a locality where it is found by the commission that such work is available." MCL 421.28(1)(c); MSA 17.530(1)(c).

A claimant has the burden of proving that he meets eligibility requirements under the Act. Dwyer v Unemployment Compensation Commission, 321 Mich 178; 32 NW2d 434 (1948). The phrase "available for work" under the Act has been defined as follows:

"...To be available for work within the meaning if the act, the claimant must be genuinely attached to the labor market, i.e., he must be desirous to obtain employment, and must be willing and ready to work...

The test suggested is subjective in nature. Whether or not a claimant is in fact available for work depends to a great extent upon his mental attitude, i.e., whether he wants to go to work or is content to remain idle. Indicative of such mental attitude is evidence as to efforts which the person has made in his own behalf to obtain work. A person who is genuinely attached to the labor market and desires employment will make a reasonable attempt to find work, and will not wait for a job to seek him out. It is proper for the commission to take such evidence into consideration in determining whether or not a person is eligible for benefits." Id. at 188-189.

### III.

The Court is persuaded that the Board's decision should be affirmed since it is supported by competent, material and substantial evidence on the whole record. See Thompkins, supra.

The evidence reflects that claimant spent twenty hours per week, during the benefits period in question, on the premises of Vance, a company in which he had a financial interest. (Tr. 8-9). While claimant testified that he was not paid during this period, he did testify that he answered the telephone and gave quotations. (Tr. 38). During his testimony, claimant was unable to identify any prospective employers he had allegedly contacted during this period. (Tr. 37-38). Under these circumstances, the Court is of the opinion that claimant had not been genuinely attached to the labor market. See Dwyer, supra. Accordingly, he was not eligible for benefits under Section 28(1)(c) of the Act from November 2, 1986 through December 27, 1986 since he failed to meet his burden of proof. Id.

For the reasons set forth above, the Board's decision should be and the same hereby is AFFIRMED.

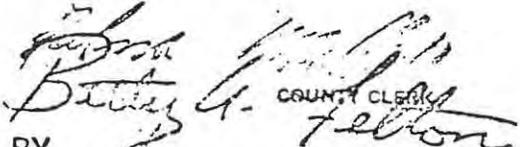
IT IS SO ORDERED.

  
FREDERICK D. BALKWILL  
Circuit Court Judge

Dated: NOV 2 1986

cc: Dennis J. Grifka  
Ettore C. Anulli  
Easy Cut Tool Corporation

A TRUE COPY

  
BY Betty G. Felton  
COUNTY CLERK  
DEPUTY CLERK