

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

GINA WOODS,

Claimant / Appellant,

-v-

Case No. 12-007632-AE

ASSOCIATED COMMUNITY SERVICES,

Hon. Patricia S. Fresard

Employer / Appellee

and

**STATE OF MICHIGAN, DEPARTMENT OF
LICENSING & REGULATORY AFFAIRS,
UNEMPLOYMENT INSURANCE AGENCY,**

Appellee.

OPINION

This civil matter is before the Court on an appeal from a decision issued by the Michigan Compensation Appellate Commission finding that MCL 421.48(1) applies to Appellant's claim and remanding the case to the Unemployment Insurance Agency for a determination of benefits consistent with the decision. For the reasons stated below, the Court will affirm in part and remand the case to the Michigan Compensation Appellate Commission for clarification consistent with this Court's opinion.

I. PROCEDURAL HISTORY

The instant appeal arises out of a decision issued by the Michigan Compensation Appellate Commission (the Commission) on May 31, 2012, Appeal Docket No. B 2011-

19349-227657. Prior to that decision, an Administrative Law Judge (the ALJ) ruled that Claimant/Appellant, Gina Woods, (Claimant) had established good cause for her failure to timely file a request for redetermination of her eligibility for unemployment benefits and that she was not disqualified from receiving benefits. Employer/Appellee, Associated Community Services, (the Employer) then appealed the ALJ's decision to the Appellate Commission. The Commission affirmed the ALJ's determination that "good cause" had been established and that Claimant was not ineligible for benefits. However, the Commission also held that Claimant was subject to the "lost remuneration" off-set provision in MCL 421.48(1) and remanded the case to the Agency for a determination of benefits based upon the off-set provision. The Commission further held that the time period at issue is between August 25, 2010 and August 16, 2011, the date upon which the hearing before the ALJ was held. Now before the Court is Claimant's appeal of the Commission's decision.

II. STANDARDS GOVERNING JUDICIAL REVIEW OF BOARD OF REVIEW DECISIONS

Judicial review of decisions made by the Board of Review are governed by the Michigan Employment Security Act, MCL 421.1, *et seq.* The scope of judicial review of a decision of the Board is limited. *Saber v Capitol Reproductions, Inc*, 28 Mich App 462, 464; 184 NW2d 518 (1970). Where there is sufficient evidence, a reviewing court may not substitute its judgment for that of the Board, even if the court might have reached a different result. *Black v Department of Social Services*, 195 Mich App 27, 30; 489 NW2d 493 (1992). Great deference must be given to the Board's choice between two reasonable

differing views as a reflection of the exercise of administrative expertise. *Traverse Oil Co v Chairman, Natural Resources Commission*, 153 Mich App 679, 691; 396 NW2d 498 (1986).

The Board's decision may be reversed only when the decision is contrary to law or is not supported by competent, material and substantial evidence. *Becotte v Gwinn Schools*, 192 Mich App 682, 685; 481 NW2d 728 (1991); MCL 421.38(1). "Substantial evidence" is that which a reasonable mind would accept as adequate to support a decision. *McBride v Pontiac School District (On Remand)*, 218 Mich App 113, 122-123; 553 NW2d 646 (1996). Under this test, it matters only whether the position adopted by the Board is supported by evidence from which legitimate and supportable inferences were drawn. *Id.* Moreover, a circuit court cannot review the Board's decisions de novo. *Grand Rapids Pub Sch v Falkenstern*, 168 Mich App 529; 425 NW2d 128 (1988). Thus, reversal of a Board of Review decision is warranted only if it is contrary to law or is unsupported by evidence that a reasonable mind would accept as adequate. *McBride, supra*.

III. THE ALJ'S FINDINGS OF FACT

The ALJ found that Claimant began employment with the Employer on July 3, 2006 and was employed there until August 25, 2010. On August 25, 2010, the Employer requested that Claimant meet to discuss her allegedly incoherent telephone behavior. She informed her supervisor, Christopher Brenner, that she had been taking medications prescribed by her physician, which apparently made her drowsy. Claimant was sent home and told to provide to the Employer some form of documentation from her physician regarding the purpose and effects of the medication. According to Claimant, her doctor told

her that, because of privacy laws, she was unable to provide such documentation, and that she should get a list of her medications from the pharmacist to provide to the Employer. She provided a list of medications to the Employer, but did not provide a note or letter from her physician as requested. During the next week or so following the August 25, 2010 meeting, Claimant attempted to return to work on several occasions, but was repeatedly sent home. She then submitted a claim for unemployment benefits with the Unemployment Insurance Agency (the Agency). The Agency denied her claim because the Employer told the Agency that she had been on a leave of absence. She neither requested a leave nor did her physician communicate any such need for one. Thus, the ALJ found that Claimant was not permitted to perform her job duties after August 25, 2010 and that, when she failed to provide a doctor's note regarding her condition and the purpose of her medications, she was terminated from her employment as of September 30, 2010. As the ALJ succinctly stated in part:

A review of Section 48(3) indicates that an individual shall not be considered to be unemployed during any leave of absence granted by an Employer... The Facts established in the Claimant's case indicate that the Claimant did not request a leave of absence, nor was any leave of absence granted at the request of the Claimant's duly authorized bargaining agents... Therefore, it is found that the Claimant, in fact, was unemployed under the provisions of Section 48 of the Act, from and after August 25, 2010.

Therefore, Claimant was unemployed beginning on August 25, 2010, according to the ALJ's findings of fact which, after a complete review of the record, this Court finds are supported by competent, material and substantial evidence. *Becotte, supra*; MCL 421.38(1). The position of the ALJ is supported by evidence from which legitimate and

supportable inferences were drawn. *Id.*

IV. APPELLATE COMMISSION FINDINGS AND CONCLUSIONS

The Appellate Commission affirmed the ALJ's finding that Claimant was not ineligible for benefits and had established "good cause" for filing a late request for a redetermination of the Agency's decision to deny her benefits. Though very vague in its explanation, the Commission also held that Claimant was subject to the "loss of remuneration" offset provision in MCL 421.48(1) and remanded the case back to the Agency for calculation upon the holding for the time period between August 25, 2010 and August 16, 2011, but does not specify the reasons for offset. The Commission's decision is unclear and does not specify which period of time it refers to during this nearly year-long window, nor does it affirm or deny the findings of fact as to the ALJ's assessment that Claimant was unemployed during that entire period of time. Therefore, this Court will clarify the findings for the parties based upon the competent evidence already presented to the ALJ and based upon this Court's interpretation of the offset provision of the statute cited by the Commission.

V. ANALYSIS

Claimant has appealed the Commission's assessment that she is not ineligible for benefits but subject to an offset provision in the statute with respect to the time period between the last day she was able to perform her job duties, August 25, 2010, and the date upon which the ALJ held the hearing, August 16, 2011. She argues that the Commission's ruling, in effect, erases all benefits to which she would be entitled. Conversely, the Employer argues that during the time at issue she was not unemployed,

but was on a leave of absence when she claimed benefits. Thus, this Court's review of the Commission's decision that Claimant is subject to the offset provision in MCL 421.48(1) is a mixed question of fact and law.

MCL 421.48(1) provides in relevant part:

An individual shall be considered unemployed for any week during which he or she performs no services and for which remuneration is not payable to the individual, or for any week of less than full-time work if the remuneration payable to the individual is less than 1-1/2 times his or her weekly benefit rate, except that for payable weeks of benefits beginning after the effective date of the amendatory act that added section 15a and before October 1, 2015, an individual is considered unemployed for any week or less of full-time work if the remuneration payable to the individual is less than 1-3/5 times his or her weekly benefit rate. However, any loss of remuneration incurred by an individual during any week resulting from any cause other than the failure of the individual's employing unit to furnish full-time, regular employment shall be included as remuneration earned for purposes of this section and section 27(c). The total amount of remuneration lost shall be determined pursuant to regulations prescribed by the unemployment agency.

[Emphasis added].

MCL 421.48(3) also provides in relevant part:

An individual shall not be considered 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 the individual's duly authorized bargaining agent, or in accordance with law.

Thus, if an individual is both not provided work and not provided pay, the person is unemployed. If the person is not working, but paid, or on a leave of absence, he or she is considered employed. MCL 421.48(1) and (3). In addition, if remuneration is lost due to

something other than the Employer's failure to furnish full-time work, the person is not unemployed. . MCL 421.48(1). In the instant case, testimony indicates that from August 25, 2010 to September 30, 2010, Claimant was not provided work. The ALJ found her to be unemployed based upon this evidence. However, the Commission found her to be subject to offset for by a loss of remuneration due to something other than Employer's failure to furnish her full-time work; i.e., on a leave of absence under MCL 421.48(3).

This Court finds that the Commission's decision that Claimant is not ineligible for benefits is supported by competent, material and substantial evidence. *Becotte, supra*.

The Court also finds that there is insufficient evidence to find her not ineligible for benefits from August 25, 2010 when she was sent home from work until September 30, 2010, the date upon which Claimant was formally terminated from employment. Thus, for this time period, there is competent, material and substantial evidence that Claimant's benefits are subject to a loss of remuneration due to something other than the Employer's refusal to supply full-time work to her. Finally, there is competent, material and substantial evidence to support a finding that Claimant's benefits are not subject to the offset provision in MCL 421.48(1) for the time period between September 30, 2010 and August 16, 2011.

Employer also argues that the Court has no jurisdiction to decide the instant appeal on the basis that the Commission's decision is not ripe for review. Appeals from decisions made by ALJ's and by the appellate commission are governed by MCL 421.38, which provides in pertinent part:

The circuit court in the county in which the claimant resides or the circuit court in 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 in 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 administrative law judge and the Michigan compensation appellate commission involved in a final order or decision of the Michigan compensation appellate commission, and may make further orders in respect to that order or decision 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]

MCL 421.38(1).

Thus review in circuit court is appropriate following a decision by an ALJ or by the Commission. The Employer argues that the Commission's decision to remand the case to the Agency to calculate benefits based upon its determination that Claimant's weekly benefits are subject to the "lost remuneration" offset provision of section 48 is not ripe for review. The Employer contends that the Commission's decision was not a final decision or judgment.

According to the Commission's Opinion and Order, the "decision shall be final unless... (2) the appropriate circuit court RECEIVES an appeal on or before the deadline. The deadline is JUL 02 2012." Thus, the Commission's form indicates that the decision is a final one and the case was remanded only for recalculation. Although the decision may theoretically not be final case law suggests that the circuit court may review the case and treat the appeal as an application for superintending control.

As in the circuit court, defendant-appellant alleges that the circuit court lacked jurisdiction to entertain plaintiff's appeal

from a remand order of the MESAC Appeal Board. Defendant-appellant contends that under M.C.L.A. s 421.38; M.S.A. s 17.540, an appeal may be entertained by the circuit court only from a 'final order or decision of said appeal board,' and that the remand order was not a 'final order or decision' but an order of an interlocutory nature and, thus, not appealable.

Upon inspection, we find that the Genesee County Circuit Court could not properly entertain an appeal pursuant to M.C.L.A. s 421.38; M.S.A. s 17.540. But, even if the Appeal Board's remand order is not a final order appealable under statute, if appropriate, we may view an appeal to circuit court as an application for an order of superintending control.

Radke v Nelson Mill Co, 37 Mich App 104, 107-08; 194 NW2d 395, 397 (1971)

Superintending control is an extraordinary power, unencumbered by usual procedural limitations. Const.1963, art. 6, s 13, grants to the circuit courts, 'supervisory and general control over inferior courts and tribunals...' This constitutional power of superintending control is confined by the following statute:

'The circuit courts have a general superintending control over all inferior courts and tribunals, subject to the rules of the supreme court.' M.C.L.A. s 600.615; M.S.A. s 27A.615.

Further, court rule regulates the procedures by which such power is to be exercised:

'An order of superintending control may be used in any fashion necessary to implement the superintending or supervisory control power of the court over inferior tribunals.' GCR 1963, 711.1.

In addition, because the MESAC Appeal Board is subject to judicial review, M.C.L.A. s 421.38; M.S.A. s 17.540, it must be considered an 'inferior tribunal' and therefore subject to the superintending control of the courts.

Id at 108-109.

As the *Radke* court explained, the Commission's decision is more of an interlocutory nature and, therefore, is not final. *Id* at 108. However, in the context of judicial review of an

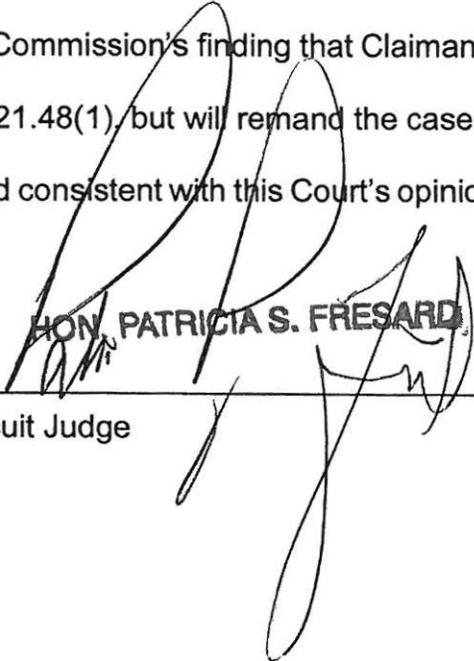
employment security commission remand order, the Court has jurisdiction to exercise supervisory control over the Commission's decision because the Commission is an inferior tribunal. Therefore, this Court will exercise its supervisory control to clarify the Commission's decision in order to aid the Agency in its calculation of Claimant's benefits. *Id.*

VI. CONCLUSION

Therefore, the Court will affirm the Commission's decision to remand the case for calculation based upon the offset provision. But, this Court will take supervisory control to clarify that decision as to the findings of fact and its interpretation of the MCL 421.38, MCL 421.48(1), and MCL 421(48)(3).

As explained above, this Court finds that the Commission's decision that Claimant is not ineligible for benefits is supported by competent, material and substantial evidence. *Becotte, supra*. The Court also finds that there is insufficient evidence to find Claimant not ineligible for benefits from August 25, 2010 when she was sent home from work until September 30, 2010 when she was formally terminated from employment. Thus, for this timeperiod, there is competent, material and substantial evidence that Claimant's benefits are subject to a loss of remuneration due to something other than the Employer's refusal to supply full-time work to her. Finally, there is competent, material and substantial evidence to support a finding that Claimant's benefits are not subject to the offset provision in MCL 421.48(1) for the time period between September 30, 2010 and August 16, 2011. Accordingly, the Court will affirm the Commission's decision that Claimant had established "good cause" for failure to timely file her request for redetermination and that she was not

ineligible for benefits. The Court will also affirm the Commission's finding that Claimant's benefits are subject to the offset provision in MCL 421.48(1), but will remand the case to the Commission to clarify its decision based upon and consistent with this Court's opinion.


HON. PATRICIA S. FRESARD

Circuit Judge

DATED:

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK
BY  DEPUTY CLERK

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ORDER

At a session of said Court held in the Coleman
A. Young Municipal Center, Detroit, Wayne
County, Michigan, **OCT 30 2012**

on this: _____

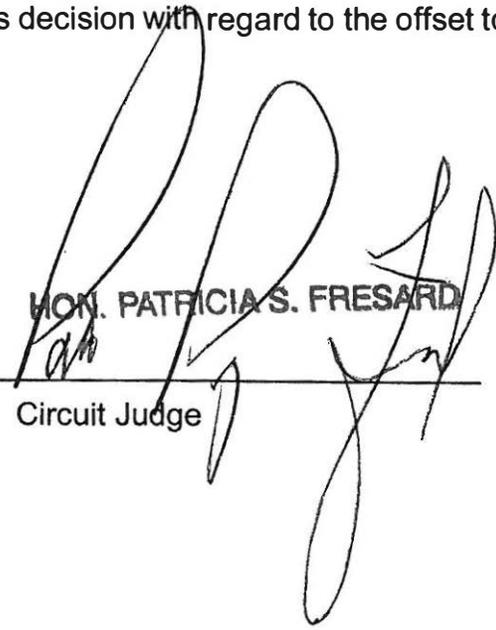
PRESENT: HON. PATRICIA S. FRESARD

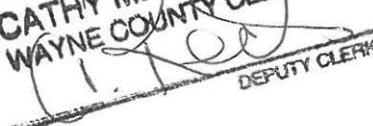
Circuit Judge

The Court being advised in the premises and for the reasons stated in the foregoing
Opinion,

IT IS ORDERED that the decision of the Michigan Compensation Appellate Commission finding that Claimant had established "good cause" for failure to timely file her request for redetermination and that she was not ineligible for benefits, is hereby **AFFIRMED**.

IT IS FURTHER ORDERED that the Michigan Compensation Appellate Commission's finding that Claimant's benefits are subject to the offset provision in MCL 421.48(1) is hereby **AFFIRMED**, but the case is **REMANDED** to the Michigan Compensation Appellate Commission to clarify its decision with regard to the offset to be consistent with the foregoing opinion.


HON. PATRICIA S. FRESARD
Circuit Judge

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK
BY:  DEPUTY CLERK