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CIRCUIT COURT ORDER/OPINION
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Appeal Docket No: 1897304

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29 (1)(m) Section of the Act

Date: 1/9, 2007

R. Douglas Daligga, Director
MES - Board of Review

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

ROBERT CIARAVINO,

Claimant/
Appellant,

vs. Case No. 2007-2858-AE

FORD MOTOR COMPANY,

Employer/
Appellee,

and

STATE OF MICHIGAN,
DEPARTMENT OF LABOR
& ECONOMIC GROWTH,
UNEMPLOYMENT INSURANCE
AGENCY,

Appellee.
_____/

OPINION AND ORDER

This matter is before the Court on an in pro per appeal from a June 5, 2007 decision rendered by the State of Michigan, Department of Labor & Economic Growth, Unemployment Insurance Agency's ("the Agency") Board of Review ("the Board").

I.

Claimant/appellant Robert Ciaravino ("Ciaravino") was employed by Ford Motor Company ("Ford") from October 1994 until October 7, 2005 when he was discharged for a positive marijuana result during a random urinalysis. He was disqualified from receiving unemployment benefits under the Michigan Unemployment Security Act due to said drug use.

On November 6, 2006, a hearing was conducted before an Administrative Law Judge ("ALJ"), who concluded that Ciaravino was not disqualified from receiving benefits. In this regard, the ALJ found that Ciaravino denied using marijuana in any form and that Ford failed call as a witness the nurse who had received Ciaravino's urine specimen and forwarded it to the laboratory in North Carolina. Instead, Ford produced the Laboratory Manager who had not received the specimen and had not been involved in testing it. Under these circumstances, the ALJ determined that Ford failed to establish an adequate chain of custody from which a positive specimen result could be inferred.

However, on March 25, 2007, the Board reversed the ALJ's decision on the ground that Ford's evidence satisfied the requirements of Section 75 of the Administrative Procedures Act, MCL 24.275. Ciaravino's application for rehearing was denied in a June 5, 2007 written order. He then filed the instant appeal.

On appeal, Ciaravino argues that the Board should not have reversed the ALJ's decision without a hearing and the presentation of additional evidence. However, it is Ford's position that Ciaravino was correctly disqualified from receiving benefits due to his positive drug test. Ford also maintains that the Board's decision was not contrary to law, but was instead supported by competent, material, and substantial evidence on the whole record. Likewise, the Agency contends that the Board's decision conforms to the law and facts.

II.

At the outset, the standard of review is governed by MCL 421.38, which provides in pertinent part that:

> (1) The circuit court...may review questions of fact and law on the record made before the referee and board of review involved in a final order or decision of the board, 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...

The reviewing court cannot substitute its judgment for that of the administrative agency if there is substantial evidence which supports the agency. *Smith v MESC*, 410 Mich 231, 256; 301 NW2d 285 (1981). In this regard, "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. *Russo v Dept of Licensing & Regulation*, 119 Mich App 624, 631; 326 NW2d 583 (1982).

III.

After careful consideration, the Court is persuaded that Ciaravino's request for relief should be denied.

In relevant part, MCL 421.29 states that:

> (1) An individual is disqualified from receiving benefits if he or she:
>
> * * *
>
> (m) Was discharged for (i) Illegally ingesting, injecting, inhaling, or possessing a controlled substance on the premises of the employer, (ii) Refusing to submit to a drug test that was required to be administered in a nondiscriminatory manner, or (iii) Testing positive on a drug test, if the test was administered in a nondiscriminatory manner. If the worker disputes the result of the testing, a generally accepted confirmatory test shall be administered and shall also indicate a positive result for the presence of a controlled substance before a disqualification of the worker under this subdivision. As used in this subdivision:
>
> (A) "Controlled substance" means that term as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.
>
> (B) "Drug test" means a test designed to detect the illegal use of a controlled substance.
>
> (C) "Nondiscriminatory manner" means administered impartially and objectively in accordance with a collective bargaining agreement, rule, policy, a verbal or written notice, or a labor-management contract.

The Court notes that marijuana is a "controlled substance" pursuant to MCL 333.7104, 7201, and 7212. Further, the Court points out that on April 4, 2005, Ciaravino signed a Reinstatement Waiver in which he agreed to submit to random drug and alcohol testing as a condition of employment. This waiver was in settlement of a union grievance.

While the Agency was required to apply the rules of evidence as far as practicable, it was also allowed "to admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs." MCL 24.275. In other words, the Agency was permitted to rely on evidence that may not be admissible in court proceedings. The evidence shows that the specimen was actually taken by Beverly Tukis ("Tukis"), who was employed by Ford as a full-time nurse. 11-6-06 Tr. at 18. However, Tukis did not testify. The drug screen results were received from LabCorp by Sally Gruca, a senior Ford nurse, who testified that Ciaravino tested positive for marijuana. *Id.* at 14-15.

Ciaravino testified that he had been taking Vicodin for a knee injury when he had been tested. *Id.* at 42. However, the ALJ found such evidence to be irrelevant since there was no testimony establishing that Vicodin would produce a positive result for marijuana. *Id.* at 51. Indeed, Phyllis Chandler, the laboratory manager, testified that Vicodin would not cross-react and show up positive on a marijuana test. *Id.* at 27, 55.

Absent any evidence that the test was somehow erroneous, the Court is satisfied that a "reasonably prudent" person would rely thereon. MCL 24.275. Moreover, the Court cannot conclude that the Board's decision was contrary to law, or was not supported by competent, material, and substantial evidence on the whole record. MCL 421.38(1).

IV.

For the reasons set forth above, Ciaravino's appeal is DENIED.

This decision resolves the last pending issue and closes the case.

IT IS SO ORDERED.

MATTHEW S. SWITALSKI
Circuit Court Judge

Date: December 19, 2007

cc: Robert Ciaravino
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MATTHEW S. SWITALSKI
CIRCUIT JUDGE

DEC 19 2007

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