

STATE OF MICHIGAN
IN THE THIRTIETH CIRCUIT COURT FOR THE COUNTY OF INGHAM
GENERAL TRIAL DIVISION

AMY WHITE,

Petitioner,

v

MERITAIN HEALTH, INC.,

Employer-Respondent

MICHIGAN DEPARTMENT OF
LICENSING AND REGULATORY AFFAIRS,
UNEMPLOYMENT INSURANCE AGENCY,

Agency-Respondent.

OPINION AND ORDER
REVERSING AGENCY
DECISION AND REMANDING
FOR FURTHER PROCEEDINGS

Case No. 14-1432-AA

Hon. James S. Jamo

At a session of said Court held in the City of Lansing, County of Ingham,
State of Michigan, on this 17 day of July 2015.

PRESIDING: HONORABLE JAMES S. JAMO, Circuit Court Judge

FACTS AND PROCEDURAL HISTORY

In February of 2012, Appellant obtained a Personal Protection Order (PPO) against Mr. Benjamin Taylor, alleging domestic violence and other abusive behavior. In explaining why she sought the PPO, Appellant stated that Mr. Taylor “stalked [her] non-stop,” threatened to stab her, threatened to kill her, and forced his way into her home, among other things.¹ The PPO was granted, but during the following year, Mr. Taylor violated the PPO a total of 28 times.² Mr. Taylor was prosecuted for these violations, went to jail, paid fines, and was restricted to supervised visitations with their son.³ The PPO expired on

¹ Transcript of Testimony and Proceedings Before ALJ Tavoularis on July 21, 2014, p 9, located in Certified Agency Record at Document 1.

² *Id.*

³ *Miscellaneous Media*, at p 35, located in Certified Agency Record at Document 1.

February 21, 2013, and Appellant made efforts to keep her workplace and home addresses from Mr. Taylor.⁴

Appellant worked as a full-time claims analyst at Meritain Health in Owosso, Michigan beginning in January of 2013.⁵ Despite her efforts to keep the whereabouts and identity of her workplace a secret, Appellant provided the address to Mr. Taylor's attorney when Appellant was subpoenaed as part of a child-support proceeding.⁶ Seven days after Appellant provided this information, Mr. Taylor showed up at her workplace.⁷ When Appellant arrived at work around 7:30 am on that day, she noticed Mr. Taylor in his parked vehicle in the neighboring parking lot, facing the building where Appellant worked.⁸ Appellant testified that after seeing him and becoming frightened, she locked her car doors and rolled up her windows while she waited for another employee to arrive.⁹ Approximately five minutes later, a coworker arrived and Appellant walked into the building with her.¹⁰

Later that day, Appellant brought the situation to the attention of her supervisor, Ms. Darcy Franklin.¹¹ Appellant testified that when she attempted to inform Ms. Franklin of the situation, Ms. Franklin cut her off and told her that "personal issues are not appropriate for work," that Appellant should not discuss the situation with her friends at work, and that Appellant needed to deal with her personal issues on her own time.¹² Appellant claims that Ms. Franklin was her direct supervisor, and that strict company protocol precluded Appellant from bringing the issue to any other person at the company.¹³

When asked why she did not call the police in response to Mr. Taylor's stalking behavior on August 29, Appellant stated that because of the strict guidelines at her workplace, she was afraid of

⁴ *Id.*
⁵ Transcript of Testimony and Proceedings Before ALJ Tavoularis on July 21, 2014, p 5-6, located in Certified Agency Record at Document 1.
⁶ *Id.* at p 13.
⁷ *Id.*
⁸ *Id.* at p 13-14.
⁹ *Id.* at p 14.
¹⁰ *Id.*
¹¹ *Id.*
¹² *Id.*
¹³ *Id.* at p 15.

getting fired for making a huge scene with police presence.¹⁴ Appellant stated that she needed guidance from her employer as to what steps to take, what protocol to follow, and what doors to have the police enter.¹⁵ Appellant testified that she spoke with a counselor at her abuse shelter after this incident in an attempt to renew her PPO, but was advised that she did not yet have enough evidence to get it renewed.¹⁶

Appellant testified that Mr. Taylor showed up again On September 11, 2013, this time smirking with his window rolled down.¹⁷ Appellant testified that she was overwhelmed with fear of what Mr. Taylor might do, and that as she had no one to turn to at her workplace she emailed Ms. Franklin immediately to give her two week's notice of quitting.¹⁸

Appellant received a Request for Information Relative to Possible Ineligibility or Disqualification from Michigan's Unemployment Insurance Agency (UIA) dated October 3, 2013.¹⁹ Appellant returned the form explaining that she quit due to concerns for her personal safety at work.²⁰ On December 12, 2013, the UIA issued a Notice of Determination stating that Appellant was disqualified from receiving benefits because her leaving was voluntary and not attributable to the employer.²¹ Appellant submitted a timely protest of this determination.²² On April 10, 2014, the UIA issued a Notice of Redetermination that again asserted that Appellant was disqualified from receiving benefits.²³ On April 16, 2014, Appellant timely appealed the April 10 agency adjudication, and an administrative hearing was held on July 21, 2014 via telephone.²⁴ Appellant was represented by counsel at the hearing.²⁵ Appellee Meritain Health, Inc. did not appear at the hearing, nor have they contested Appellant's eligibility for benefits at any time or filed a response in the instant appeal.

¹⁴ *Id.* at p 18.

¹⁵ *Id.* at p 15, 18.

¹⁶ *Id.* at p 16.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Request for Information Relative to Possible Ineligibility or Disqualification, p 42, located in Certified Agency Record at Document 1.

²⁰ *Id.* at p 43.

²¹ Notice of Determination, p 51, located in Certified Agency Record at Document 1.

²² *Miscellaneous Media*, at p 40, located in Certified Agency Record at Document 1.

²³ Notice of Determination, p 53, located in Certified Agency Record at Document 1.

²⁴ Administrative Law Judge's Decision Rendered July 21, 2014, p 54, located in Certified Agency Record at Document 2.

²⁵ Transcript of Testimony and Proceedings Before ALJ Tavoularis on July 21, 2014, located in Certified Agency Record at Document 1.

At the hearing, Appellant discussed her history with Mr. Taylor and exhibits regarding his history of abusive conduct were admitted into evidence.²⁶ Appellant's counsel argued that Appellee Meritain Health was not only unsupportive in creating a safe work environment, but "fully unwilling to even acknowledge the issue existed."²⁷

ALJ Tavoularis affirmed the April 10 adjudication disqualifying Appellant from receiving benefits.²⁸ In his decision, the ALJ reasoned that Appellant may "very well have had personal and compelling reasons to leave her position, however, [these] reasons [were] in no way attributable to the employer."²⁹ ALJ Tavoularis did not comment on whether Appellant's leaving was voluntary or involuntary. Based on this issue, Appellant requested a rehearing in the matter on August 18, 2014.³⁰ The following day, ALJ Tavoularis issued an Order Denying Application for Rehearing.³¹ Appellant appealed to the Michigan Compensation Appellate Commission (MCAC) on September 18, 2014, asserting that she left her job involuntarily and with good cause attributable to the employer.³² On November 19, 2014, the MCAC affirmed the ALJ's order denying a rehearing and affirming his July 21 decision.³³ Appellant then filed a Claim of Appeal with this Court on December 12, 2014, asserting that the final and appealable order by MCAC is contrary to law and not supported by competent, material, and substantial evidence.³⁴

Appellant now requests this Court reverse the decision of the MCAC and any other equitable relief found to be just by this Court.

²⁶ *Id.*

²⁷ *Id.* at p 19.

²⁸ Administrative Law Judge's Decision Rendered July 21, 2014, p 57, located in Certified Agency Record at Document 2.

²⁹ *Id.*

³⁰ Request for Rehearing for UJ Claimant Amy (Spencer) White, p 29, located in Certified Agency Record at Document 1.

³¹ Administrative Law Judge's Order Denying Application for Rehearing rendered August 19, 2014, p 58-59, located in Certified Agency Record at Document 3.

³² Appeal to Michigan Compensation Appellate Commission from Administrative Law Judge's decision filed September 18, 2014, p 60-64, located in Certified Agency Record at Document 4.

³³ Decision of Michigan Compensation Appellate Commission rendered November 19, 2014, p 65, located in Certified Agency Record at Document 5.

³⁴ Claim of Appeal and Proof of Service.

ANALYSIS

Standard of Review

“Questions of statutory interpretation are reviewed de novo.”³⁵ “The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature.”³⁶ The Court is to look at the statute’s objectives and apply a “reasonable construction that best accomplishes the statute’s purpose.”³⁷ In the context of reviewing agency decisions and statutory interpretations, “the judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent.”³⁸

The circuit court in the county in which the claimant’s place of employment is located may review questions of fact and law on the record made before the ALJ and the MCAC involved in a final order.³⁹ The Court has discretion to reverse a decision of the MCAC if that decision is contrary to law or is not supported by substantial evidence on the record.⁴⁰ The Court is not bound to affirm any finding of fact by the MCAC that is not supported by “competent, material, and substantial evidence.”⁴¹

Discussion

i. Administrative Law Judge’s Ruling

In his Order of Dismissal, the ALJ noted that the burden of proof is on the appellant to show that her leaving was involuntary or to show good cause attributable to the employer.⁴² This appropriate burden is reflected in the statute.⁴³ The Order of Dismissal goes on to discuss the nature of the word “voluntary” in this context, stating that the term “connotes a choice between alternatives which ordinary

³⁵ *Petersen v. Magna Corp.*, 484 Mich. 300, 351 (2009).

³⁶ *Frankenmuth Mut Ins Co v Marlette Homes, Inc.*, 456 Mich 511, 515 (1998).

³⁷ *Ronan v Michigan Pub Sch Employees Ret Sys*, 245 Mich App 645, 648 (2001).

³⁸ *Chevron, Inc. v. Natural Res Def Council, Inc.*, 467 U.S. 837, 843 n. 9 (1984).

³⁹ MCL 421.38(1).

⁴⁰ *Id.*

⁴¹ *Mikolaiczak v. MESC*, 40 Mich. App. 61, 68 (1972).

⁴² Order of Dismissal, p 56, located in Certified Agency Record at Document 2.

⁴³ MCL 421.29(1)(a). See also *Carswell v Share House, Inc.*, 151 Mich App 392, 397 (1986).

persons would find reasonable.”⁴⁴ This reasonableness standard is echoed in the ALJ’s assessment of the standard for good cause attributable to the employer, stating that good cause would be found “where the employer’s actions would cause a reasonable, average, or otherwise qualified worker to give up his or her employment.”⁴⁵ The order further notes that “[a] good personal reason does not equate with good cause under the statute.”⁴⁶

In his findings of fact, the ALJ stated that upon Mr. Taylor’s second visit to Appellant’s workplace, Appellant “felt he was smirking at her” and that she “felt threatened” [sic].⁴⁷ That Mr. Taylor smirked at Appellant from his vehicle and that this behavior threatened Appellant were not contested at any point in the proceedings.

In his reasoning and conclusions of law the ALJ summarily stated that “[c]laimant might very well have had personal and compelling reasons to leave her position, however, claimant’s reasons are in no way attributable to the employer.”⁴⁸ The ALJ’s Order offers no conclusions as to the voluntariness or involuntariness of the Appellant’s departure from her job.

ii. Appellant’s Argument

Appellant argues that the decision by the ALJ is contrary to law because of its misapplication of MCL 421.29(1)(a) and its failure to apply both the voluntariness and the good cause attributable to the employer parts of inquiry properly.⁴⁹ Appellant contends that the “left work voluntarily” language of the statute is qualified by the phrase “without good cause attributable to the employer,” and that, as such, these are two separate inquiries.⁵⁰ Appellant asserts that if it is found that an individual left her job involuntarily, then the inquiry ends there and the claimant is entitled to unemployment insurance

⁴⁴ Order of Dismissal, p 56; quoting *Clark v North Detroit General Hospital*, 179 Mich App 511, 515-16 (1989) *aff’d* 437 Mich 280 (1991).

⁴⁵ Order of Dismissal, p 56, quoting *Carswell*, 396-97.

⁴⁶ Order of Dismissal, p 56, quoting *Leeseberg v Smith-Jamieson Nursing, Inc.*, 149 Mich App 463, 466 (1986).

⁴⁷ Order of Dismissal, p 57.

⁴⁸ *Id.*

⁴⁹ Appellant’s Brief on Appeal, p 10.

⁵⁰ *Id.*

benefits.⁵¹ If it is found that the claimant left voluntarily, the court can then consider whether they left with good cause attributable to the employer as the second prong of the inquiry.⁵² Appellant's argument is that the ALJ erred by not even considering whether the quit was voluntary or involuntary and by conflating the two prongs, thus misapplying the statutory provision.⁵³ Appellant draws on the Michigan Supreme Court case of *Warren v Caro Community Hospital*, 457 Mich 361 (1998), to support her proposed application of the statute as a two-prong test.⁵⁴

Appellant then goes on to apply each prong of the test, beginning with the determination of voluntariness. Appellant contends that she did not quit voluntarily because she feared for her life and did not have any other reasonable options.⁵⁵ Appellant notes that the standard for involuntariness does not require a showing of a total lack of any other options, and that Appellant here did not have another alternative that the ordinary person would find to be reasonable.⁵⁶ Appellant offers some supplementary background information about domestic violence in order to illustrate why Mr. Taylor's presence in the parking lot alone was enough to deprive Appellant of a reasonable alternative to quitting her job without any support from her employer, and why Mr. Taylor did not need to leave his vehicle in order to place Appellant in fear for her life.⁵⁷

Appellant discusses similar cases where domestic violence has been held to be a justification to miss or leave work and not be disqualified from unemployment benefits.⁵⁸ Additionally, Appellant draws the Court's attention to other cases where claimants in similar situations were not disqualified from unemployment insurance benefits.⁵⁹ Courts in other states such as New York and Missouri have held that

⁵¹ *Id.* at 10-11.

⁵² *Id.*

⁵³ *Id.* at 11.

⁵⁴ *Id.* at 10.

⁵⁵ *Id.* at 11.

⁵⁶ *Id.* at 12.

⁵⁷ *Id.* at 12-13.

⁵⁸ *Id.* at 13, citing *Resetz v. Gratiot Community Hosp*, unpublished opinion of the Michigan Court of Appeals, issued May 17, 2004 (Docket No. 252901).

⁵⁹ *Id.* at 14, citing, for example, *Scott v. Butler*, 327 Ga App 457 (2014).

if a claimant must relocate due to domestic violence, she will not be denied benefits as long as she acted reasonably.⁶⁰

Appellant next argues that regardless of whether it is found that she left her job voluntarily, the ALJ was incorrect in holding that she left her job without good cause attributable to the employer.⁶¹ Appellant states that the standard for determining good cause is a reasonableness standard, and that good cause is found when a reasonable worker would give up his employment based on the employer's actions.⁶² Appellant argues that this standard was satisfied in this case.⁶³ Because of Appellant's supervisor's refusal to discuss the matter, the failure of the employer to provide a safe workplace, and the complete lack of support she received at work, in addition to the fact that Appellant believed that she would be risking her job if she called the police, Appellant contends that her quitting was a reasonable action.⁶⁴ Appellant offers several possible efforts that could have been made to create a safe workplace, such as increased security and providing Appellant with a special parking space, but notes that Appellee Meritain Health was not even willing to discuss these potential safety measures.⁶⁵

Appellant asserts that because the ALJ misinterpreted the statute and misapplied the two-part analysis for voluntary quit cases from *Warren v. Caro Community Hospital*, and because Appellant left involuntarily with good cause attributable to the employer, Appellant is not disqualified from receiving benefits.⁶⁶

iii. Appellee's Response

Appellee Meritain Health, Inc. failed to submit a brief in response and Appellee State of Michigan, Department of Licensing and Regulatory Affairs, Unemployment Insurance Agency notified the Court that it did not intend to contest the appeal. Additionally, Appellee Meritain Health has not contested any

⁶⁰ See *Brown v. Div of Employment Security*, 320 S.W.3d 748 (Mo. Ct. App. 2010); *In re Loney*, 287 A.D.2d 846 (N.Y. App. Div. 2001).

⁶¹ Appellant's Brief on Appeal, p 14.

⁶² *Id.* at 15, citing *Carswell*, 396-97.

⁶³ *Id.* at 15.

⁶⁴ *Id.*

⁶⁵ *Id.* at 16.

⁶⁶ *Id.* at 17.

of Appellant's claims during any proceeding, nor did they appear for the telephone hearing in front of the ALJ on July 21, 2014.

iv. The Court's Analysis

a) *Whether Appellant's Proposed Application of MCL 421.29(1)(a) is Correct*

On its face, the textual reading of the pertinent parts of MCL 421.29(1)(a) is quite clear. The statute states that "an individual is disqualified from receiving benefits if he or she . . . left work voluntarily without good cause attributable to the employer" and that "[a]n individual claiming benefits under this act has the burden of proof to establish that he or she left work involuntarily or for good cause that was attributable to the employer."⁶⁷ The Court finds it clear that there are indeed two factors to analyze – whether an individual left work voluntarily and, if so, whether the voluntary leaving was with good cause attributable to the employer. Accordingly, the Court finds that the ALJ did indeed err when he failed to come to any conclusion about whether Appellant's departure from her job was voluntary.

Any question over the statutory construction is effectively resolved by the Michigan Supreme Court's holding in *Warren v. Caro Community Hospital*. The Court held that "whether a person is entitled to unemployment benefits is a two-part inquiry."⁶⁸ It continued to elucidate this two-prong test as follows:

Under the first prong, we must determine whether plaintiff voluntarily left her position. If we find that she left her position involuntarily, the inquiry ends and she is entitled to unemployment compensation. Whether a person left voluntarily will depend on the particular facts and circumstances of the case. However, if the court finds that plaintiff left her position voluntarily, we must advance to prong two to determine whether her leaving was "without good cause attributable to the employer."⁶⁹

The Court accepts this approach to the issue set forth in this case. Additionally, it seems that despite the ALJ's decision to forgo analysis of the first prong, the Agency has accepted the two-part approach in the past as use of the two-part test is reflected in the April 10, 2014 adjudication stating that Appellant's

⁶⁷ MCL 421.29(1)(a).

⁶⁸ *Warren*, p 366.

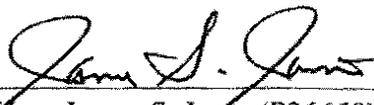
⁶⁹ *Id.* at p 366-67.

“leaving was voluntary *and* not attributable to the employer.”⁷⁰ Following the mandate of the language of the statute and the clarification in *Warren*, the Court finds that the ALJ acted contrary to law when he failed to address whether Appellant’s departure from her job was voluntary. Accordingly, the Court holds that this case be remanded for further proceedings, and that the ALJ address on remand whether Appellant’s leave from work was voluntary.

ORDER

IT IS HEREBY ORDERED that the ALJ’s Order of Dismissal and the MCAC’s affirmation of this order are **REVERSED**, and that this action is **REMANDED** for further proceedings in compliance with the Court’s opinion.

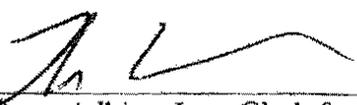
This order resolves the last pending claim and closes this case.



Hon. James S. Jamo (P36650)
30th Circuit Court Judge

PROOF OF MAILING

This certifies that a copy of the above Order has been served upon all attorneys/parties of record by ordinary first class mail on this D day of July, 2015.



Ryan Adkins, Law Clerk for the
Hon. James S. Jamo

⁷⁰ Notice of Determination, p 53, located in Certified Agency Record at Document 1.