

Appeal Docket No. B82-02335-82671
Social Security No. ~~233333333~~
Branch Office No. 16-9
DIPG 9.04

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

GLORIA J. HEATH,

Claimant-Appellant,

-v-

Civil Action No. 83-3950-AE

CPG PRODUCTS - FUNDIMENSIONS,

Decided: February 25, 1985

Employer-Appellee,

Before: Honorable George R. Deneweth

and

MICHIGAN EMPLOYMENT
SECURITY COMMISSION,

Appellee.

GLORIA J. HEATH, IN PRO PER
Claimant-Appellant

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Attorneys for Appellee M.E.S.C.

OPINION and ORDER

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

GLORIA J. HEATH,

Claimant-Appellant,

-vs-

CPG PRODUCTS - FUNDIMENSIONS,

Employer-Appellee,

Case No. 83-3950 AE

and

MICHIGAN EMPLOYMENT SECURITY
COMMISSION,

Appellee.

OPINION AND ORDER

This is an appeal pursuant to MCL 421.38 from the decision of the Michigan Employment Security Commission Board of Review affirming a referee finding that claimant, Gloria J. Heath, is ineligible for benefits because she had insufficient credit weeks in order to establish a claim to unemployment benefits.

This court reviews the agency determination pursuant to the standards set forth in MCL 421.38 and Const, art VI, §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. Tompkins v Dept of Social Services, 97 Mich App 218, 222; 293 NW2d 771 (1980).

The administrative record in this case is brief and

is limited to claimant's assertion that the company should have made a greater effort to get her back to work since there were one-handed jobs available. Claimant referred to being on "workman's comp", but there was no evidence as to the extent or nature of her disability.

On appeal, counsel for claimant argues that the decision should be reversed because she was disabled for approximately nine (9) months during the year prior to her application for benefits, and did not know she was required to preserve her credit weeks pursuant to MCL 421.28(a) within 45 days of the end of her disability or lay-off, that the failure of the MESC information booklet given to her at the time of her application for benefits to contain information regarding preservation of credit weeks requires reversal of the decision, and that there is an inherent conflict between the definition of unemployed individuals in two sections of the applicable act. L

On this record, the court is satisfied that the decision of the MESC is supported by competent, material and substantial evidence on the whole record. The record is clear that claimant had insufficient credit weeks to obtain benefits and failed to apply for preservation of the credit weeks as required by the act. The court cannot say the MESC erred when it merely applied the plain and unambiguous language of the statute in effect at the time of claimant's application for benefits. The excuse for her failure to act that claimant advances on appeal are raised for the first time on appeal and do not state legally sufficient excuses for not complying with the act. The MESC had no duty to inform claimant of the requirement that she preserve her credit weeks. Further, the public is charged with constructive knowledge of the provisions of statutes of the State of Michigan. The failure of the MESC to insert this information in the booklet given to claimant

during the time in question does not relieve claimant from constructive notice of the provisions. Finally, the court does not find the reasoning advanced from Jackson v Anderson Sales, Oakland County Circuit Court Case No. 82-245970-AE to be applicable to the case at bar.

The decision of the MESB Board of Review therefore should be and the same hereby is AFFIRMED.

IT IS SO ORDERED.

GEORGE R. DENEWETH

GEORGE R. DENEWETH
Circuit Judge

DATED: February 25, 1985