

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

BEVERLY A. PIROZEK,

Claimant-Appellant,

v

Case No. 02-22465-AE
HON. PHILIP E. RODGERS, JR.

NORTHLAND FOOD CENTER, INC. and
STATE OF MICHIGAN, DEPARTMENT
OF CONSUMER & INDUSTRY SERVICES,
BUREAU OF WORKERS' & UNEMPLOYMENT
COMPENSATION,

Appellees.

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Attorney for Claimant-Appellant

Errol R. Dargin (P26994)
Assistant Attorney General
Attorney for Appellee Bureau

DECISION AND ORDER OF DISMISSAL

_____Beverly Pirozek ("Pirozek") worked for Northland Food Center, Inc. ("Northland") from November 12, 1998 until January 17, 2002. On January 17, 2002, she suffered an injury to her back. Pirozek was treated for her injury and eventually returned to work on March 4, 2002 with restrictions imposed by her physician. When she returned to work, she found that Northland had changed her duties from managerial responsibilities to cashier which violated the restrictions and she quit.

Pirozek filed an application for unemployment benefits. The State of Michigan, Department of Consumer & Industry Services, Bureau of Workers' & Unemployment Compensation ("Bureau") found that she voluntarily quit her employment and was not eligible

for benefits. Pirozek requested an evidentiary hearing and proceedings were convened before Referee James Sisk.

Referee Sisk found that Pirozek returned to work with medical restrictions, and that Northland changed her duties from management responsibilities to cashier. He also found that Pirozek, seeing the change in her job responsibilities, quit without making a reasonable effort to preserve her employment. Therefore, the Referee concluded that Pirozek abandoned her job and was disqualified from receiving unemployment benefits under Section 29(1)(a) of the Michigan Employment Security Act.

Pirozek appealed the Referee's decision to the Michigan Employment Security Board of Review. On September 28, 2002, the Board reversed, finding that Pirozek was not a voluntary quit and was qualified to receive benefits. On November 6, 2002, Northland filed an Application for Leave to Appeal that decision to this Court.

The Bureau filed a Motion for Summary Disposition or, in the Alternative, Motion for Affirmance, claiming that Northland's appeal was not timely filed and must be dismissed or, in the alternative, that the Court should affirm the Board's decision based on the principle of finality.

On February 18, 2003, the Court heard the oral arguments of counsel and took the matter under advisement. The Court now issues this written decision and order and for the reasons stated herein dismisses Northland's appeal.

Northland readily admits filing an untimely appeal. The question presented is whether failure file an appeal pursuant to MCL 421.38(1) "within 30 days after mailing of a copy of the [Board's] order or decision" is jurisdictional.

The Bureau argues that it is. The Bureau relies upon *Gunderson v Rose Hill Realty*, 136 Mich App 559; 357 NW2d 718 (1984) in which the Court of Appeals held that the circuit court could obtain jurisdiction only if the claimant filed her appeal within the time prescribed by MCL 421.38(1). Since she did not timely file her appeal, the circuit court did not have jurisdiction and could do nothing more than dismiss her case.

Pursuant to Administrative Order No. 1990-6, as subsequently modified, this Court is bound by *Gunderson*. Northland's appeal is dismissed.¹

IT IS SO ORDERED.

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

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: _____

¹ The Court has reviewed the complete record in this case. If the Court had jurisdiction, it would affirm the Board. The Board's decision that Pirozek was not a voluntary quit and did not engage in misconduct and is, therefore, qualified to receive benefits is supported by competent, material, and substantial evidence on the record and is not contrary to law. MCL 421.38(1); *Murphy v Oakland Cty Health Dep't*, 95 Mich App 337, 339-340; 290 NW2d 139 (1980).