

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

CATHY JAMISON,

Claimant/Appellant,

v

File No. 04-24298-AE
HON. PHILIP E. RODGERS, JR.

GO BLUE PRETZELS, LTD,

Employer/Appellee,

and

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

Agency/Appellee.

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DECISION AND ORDER
AFFIRMING THE DECISION OF THE BOARD OF REVIEW

Claimant Cathy Jamison worked for Employer Go Blue Pretzels, Ltd from September 2001 until February 2004. Go Blue Pretzels, Ltd is located in the Grand Traverse Mall. The Claimant's last job with the Employer was as an assistant manager.

During the course of her employment, she complained that a mall employee, who had no affiliation with her Employer, was sexually harassing her. On January 9, 2004, she was advised that there was insufficient evidence to support a sexual harassment claim. She was asked by her Employer to “drop it.” Claimant testified that she then “felt alienated.” (Tr 15.) The Owner would call and discuss business with the manager, but not with her. She was asked not to talk to other employees in the mall. She was asked to stop chewing gum. The Claimant testified that she finally could not take it any longer and she quit her job.

The Claimant subsequently filed a claim with the Michigan Employment Security Commission (MESC) for unemployment compensation benefits. An Administrative Law Judge found that she was disqualified for benefits under the voluntary leaving provision of the Michigan Employment Security Act, Section 29(1)(a). Under Section 29(1)(a), an individual who voluntarily leaves his or her work is disqualified from receiving unemployment benefits unless the individual left such work with good cause attributable to the employer or employing unit. On November 12, 2004, the Board of Review affirmed the Referee’s decision. The Claimant filed a claim of appeal.

The Certified record was filed with the Court on January 10, 2005. The Appellant had the right to file a brief and request oral argument. MCR 7.101(I), (K) and (L). Her brief was due on before January 31, 2005. The Claimant has not filed a brief or requested oral argument. The Court has reviewed the record and, for the reasons stated herein, issues this written decision and order affirming the decision of the Board of Review.

STANDARD OF REVIEW

This Court reviews a decision by the MESC Board of Review to determine whether it is contrary to law or not supported by competent, material, and substantial evidence on the whole record, in which case we will reverse that decision. MCL § 421.38(1); *Vanderlaan v Tri-Co Community Hosp*, 209 Mich App 328, 331; 530 NW2d 186 (1995); *Tomei v General Motors Corp*, 194 Mich App 180, 183-184; 486 NW2d 100 (1992); *Smith v Employment Security Comm.*, 410 Mich 231, 260-261; 301 NW2d 285 (1981); *Linski v Employment Security Comm.*, 358 Mich 239; 99 NW2d 582 (1959). Substantial evidence is that evidence which reasonable minds would accept

as adequate to support a decision. It is more than a mere scintilla but less than a preponderance of the evidence. *In re Kurzyniec Estate*, 207 Mich App 531, 537; 526 NW2d 191 (1994).

I.

The standard used in determining whether a voluntary leaving was with good cause attributable to the employer is that of a reasonable individual. Under that standard, “good cause” compelling an employee to leave his employment should be found where an employer’s actions would cause a reasonable, average, and otherwise qualified worker to give up his or her employment. *Carswell v Share House, Inc*, 151 Mich App 392; 390 NW2d 252 (1986). The burden of establishing that the leaving was either involuntary or voluntary with good cause attributable to the employer is on the claimant. *Carswell, supra*; *Cooper v University of Michigan*, 100 Mich App 99; 298 NW2d 677 (1980).

In the instant case, the Board of Review found that the Claimant failed to put forth sufficient evidence to support a finding that her leaving, although voluntary, was with good cause attributable to her Employer. This Court agrees.

II.

While the Claimant apparently believed that she had a valid sexual harassment claim against a mall employee who was not affiliated with her Employer, she was unwilling to accept the Department of Civil Rights’ determination that there was insufficient evidence to pursue that claim. Her Employer requested that she “drop it” and stop talking to other mall employees because he was concerned about his business relationship with mall management. “[H]e didn’t want to deal with the phone calls from mall management.” (Tr 14.) The Claimant also testified that her Employer stopped discussing business with her, requested that the store manager watch her and threatened to fire her.

It seems evident to the Court that, even though the Claimant had been advised that there was insufficient evidence to support a sexual harassment claim, she was still interested in pursuing it and was insensitive to the problems she was causing for her Employer with mall management.

CONCLUSION

The record contains insufficient facts to support a finding that the Claimant's voluntary leaving was with good cause attributable to her Employer.

The decision of the Board of Review is affirmed.

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

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: _____