

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

MARGARET A. DEADMAN,
Plaintiff/Appellant,

v

File No. 94-12352-AE
HON. THOMAS G. POWER

HOSSEIN GHARAJANLOO and MICHIGAN
EMPLOYMENT SECURITY COMMISSION,
Defendants/Appellees.

Douglas J. Donaldson (P37557)-
Attorney for Plaintiff/Appellant

David A. Becker (P30090)
Attorney for Defendant/Appellee
Gharajanloo

Errol R. Dargin (P26994)
Attorney for Defendant/Appellee
MESC

DECISION ON APPEAL

Claimant Margaret Deadman appeals as of right from a decision of the Michigan Employment Security Board of Review which reversed the decision of the Board's Referee. The Board's claims examiners twice determined that the claimant was disqualified from benefits pursuant to MCL 421.29(1)(b); MSA 17.531(1)(b) for misconduct.

The scope of review before this Court is governed by MCL 421.38; MSA 17.540 which provides in pertinent part:

The circuit court . . . may review questions of fact and law on the record made before the referee and the board of review involved in a final order or decision of the board, and may make further orders in respect thereto 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.
(Emphasis added.)

In *Watson v Holt Public Schools*, 160 Mich App 218, 221-222 (1987), the court concisely summarized the law to be applied here

as follows:

The scope of review for MESC decisions is well established. An order of the MESC referee or appeal board will be reversed only if it is contrary to law or unsupported by competent, material, and substantial evidence on the whole record. MCL 421.38; MSA 17.540.

An individual is disqualified from benefits if he or she was discharged for misconduct connected with his or her work. MCL 421.29(1)(b); MSA 17.531(1)(b). The Supreme Court has adopted the following definition of misconduct:

The term "misconduct" . . . is limited to conduct evincing such wilful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not to be deemed "misconduct" within the meaning of the statute. [Parks v Employment Security Comm, 427 Mich 224, 237; 398 NW2d 275 (1986), quoting Carter v MESC, 365 Mich 538, 541; 111 NW2d 817 (1961)].

In Parks the Court also uses the term "intentional" when describing wilful disregard. 427 Mich 240.

A finding of "misconduct" under the statute may be based on a series of infractions, even though no one by itself would rise to the level of "misconduct".

Christophersen v Menominee, 137 Mich App 776, 780; 359 NW2d 563 (1984) lv den 422 Mich 876 (1985); Giddens v Employment Security Comm, 4 Mich App 526, 534-535; 145 NW2d 294 {1966}.

The record before this Court establishes that the claimant was the "key employee." The employer was a small specialty jacket manufacturer who was a hands-on sole proprietor. The claimant taught the employer the business. The claimant was a working supervisor who had access to all the employer's business records, including customer and supplier files. The employer's business operations were dependent upon the claimant's commitment to his business.

Although the claimant was the "key employee", the evidence clearly establishes that the employer/employee relationship was not good. There is no dispute that the claimant frequently argued with and disobeyed the employer. The claimant, who taught the employer the business, also taught the business to her husband and supported him in establishing a competing business. The employer lost substantial business from long-time customers to the claimant's husband's competing business. There is evidence that the claimant participated with the husband in the business in direct competition with the employer.

This Court finds, upon review of the entire record, that the decision of the Board of Review, that the claimant wilfully disregarded the interest of her employer, was discharged for misconduct and disqualified to receive benefits is supported by competent, material and substantial evidence. The employee's cumulative misconduct as evidenced by the record and as found by the Board of Review reaches the standard of misconduct for disqualification from receiving benefits.

This Court finds no error in the Board of Review's reversal of the hearing Referee and, accordingly, the Board of Review' decision is affirmed.

HONORABLE THOMAS G. POWER
Circuit Court Judge

Dated: 5/17/95