STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

DEBORAH RAE OTTO,

Claimant/Appellant,

v

File No. 04-24148-AE
HON. PHILIP E. RODGERS, JR.

NORTHWEST AIRLINES,

Employer/Appellee,

and

STATE OF MICHIGAN, DEPARTMENT OF LABOR & ECONOMIC GROWTH; UNEMPLOYMENT INSURANCE AGENCY, f/k/a BUREAU OF WORKERS & UNEMPLOYMENT COMPENSATION,

Agency/Appellee.

Deborah Rae Otto
In pro per

Julie M. Jensen (P47331)
Attorney for Appellee Agency

Northwest Airlines
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DECISION & ORDER GRANTING
CLAIMANT/APPELLANT'S MOTION TO REOPEN CASE
AND AFFIRMING THE DECISION OF THE BOARD OF REVIEW

This appeal from an administrative decision was dismissed by order of the Court dated January 31, 2005 because the Appellant failed to timely file a brief as required by MCR 7.101(J).

On February 18, 2005, the Claimant/Appellant filed a Motion to Reopen the Case. The Court issued a pre-hearing order on March 4, 2005 giving any opposing party 14 days from the date of the order to file and serve a response and giving the moving party 21 days from the date of the order to file and serve a reply. These time limits have now expired.

Along with her Motion, the Claimant/Appellant filed her appellate brief. Pursuant to MCR 7.101(J), "Compliance . . . does not preclude dismissal of the appeal unless the appellant shows a reasonable excuse for the late filing."

The Claimant/Appellant cites the fact that she moved in December of 2004 and that a dear friend's daughter committed suicide in January of 2005 as her "reasonable excuse "for the late filing." The Court finds that the Claimant/Appellant has a reasonable excuse for the late filing. Therefore, this case should be and hereby is reopened.

This Court has now received and reviewed the certified record and briefs from the parties. Neither party requested oral argument. Pursuant to MCR 7.101(L)(2), the file has been submitted for decision. [1]

STANDARD OF REVIEW

Generally, an administrative agency decision is reviewed by the circuit court to determine whether the decision was authorized by law and supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; *Barak v Oakland Co Drain Comm'r*, 246 Mich App 591, 597; 633 NW2d 489 (2001), quoting *Michigan Ed Ass'n Political Action Committee (MEAPAC) v Secretary of State*, 241 Mich App 432, 443-444; 616 NW2d 234 (2000). "Substantial evidence" is defined as "any evidence that reasonable minds would accept as adequate to support the decision; it is more than a mere scintilla of evidence but may be less than a preponderance of the evidence." *Barak, supra* at 597, quoting *MEAPAC, supra* at 444.

Findings of fact made or adopted by the administrative agency are conclusive on appeal, absent fraud, if there is any competent supporting evidence in the record, but a decision of the administrative agency is subject to reversal if the administrative agency operated within the wrong legal framework or if its decision was based on erroneous legal reasoning. MCL §

[1] While the Agency complains that the Claimant's appeal is untimely because she erroneously filed a request for the Board of Review to reopen her case when she should have filed an appeal in this Court, the Court is not going to be hyper-technical. The Claimant is unrepresented and has been sufficiently compliant.

418.861a(14); *DiBenedetto v West Shore Hosp*, 461 Mich 394, 605 NW2d 300 (2000); *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 701; 614 NW2d 607 (2000). Questions of law arising in any final order of the administrative agency are reviewed by this Court under a de novo standard of review. *Mudel, supra*. Unless clearly erroneous, the Courts are to give great weight to the interpretation of a statute placed upon it by the administrative body whose job it is to apply the statute. *Hoste v Shanty Creek Mgmt, Inc*, 459 Mich 561; 592 NW2d 360 (1999).

I.

The Court has reviewed the record and finds that there was substantial, competent and material evidence in this case to establish that the Claimant/Appellant was not "unemployed" within the meaning of Section 48(3) of the Michigan Employment Security Act. It appears, however, that the Claimant/Appellant was confused about her employment status.

The Claimant/Appellant's confusion is understandable. It is undisputed that her employer, Northwest Airlines, forecast an excess headcount in November of 2002 for November 2003 through March 2003 and offered certain employees the option of taking a voluntary leave of absence. The number of employees electing to take a voluntary leave would inversely affect the number of junior employees who would have to be laid off. On March 30, 2003, the Claimant/Appellant took a 30-day leave of absence pursuant to the option offered by her employer. The Claimant/Appellant applied for unemployment benefits which were initially approved and paid.

The employer contested the payment of benefits and, upon further review, the Administrative Law Judge ("ALJ") found that the Claimant/Appellant was not eligible for benefits because she was not "unemployed" within the meaning of Section 48(3) of the Michigan Employment Security Act, MCL 421.21, et seq. The Claimant/Appellant was ordered to repay the benefits she had received. The Board of Review affirmed because the ALJ's decision was supported by the Employer's testimony that there were no temporary layoffs due to lack of work in effect at the time Claimant requested her leave of absence.

This Court agrees and affirms that decision of the Board of Review.

There is no evidence, however, that the Claimant/Appellant engaged in "an intentional false statement, misrepresentation, or concealment of material information." Therefore, pursuant

to Section 62(a) of the Act, the Agency should and is hereby ordered to waive recovery of the improperly paid benefits because repayment would be "contrary to equity and good conscience."

IT IS SO ORDERED.

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HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: s/ 04/08/05