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STATE OF MICHIGAN  
CIRCUIT COURT FOR THE COUNTY OF ALLEGAN

DENISE M. MITCHELL,  
Appellant,

Court No. 02-31816-AE  
HON. GEORGE R. CORSIGLIA

v

WAL-MART ASSOCIATES, et al  
Appellee.

\_\_\_\_\_  
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OPINION AND ORDER

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF ALLEGAN  
48<sup>th</sup> Judicial Circuit

DENISE M. MITCHELL,  
Appellant,

vs.

WAL-MART ASSOCIATES et al  
Appellee.

Court Address and Phone:

Allegan County Building  
113 Chestnut Street  
Allegan, MI 49010  
(616) 673-0300

Assigned to Circuit Judge  
**George R. Corsiglia**  
P12239

Case No. 02-31816-AP

**OPINION AND ORDER**

FACTS

Appellant appeals to this Court from the April 11, 2002 decision of the Michigan Employment Security Board of Review ("Board"), which upheld disqualification of her unemployment benefits pursuant to MCL 431.29(1)(a). The statute disqualifies benefits for persons who leave work without good cause.

Appellant held two jobs simultaneously. She worked for Wal-Mart ("appellee") as a part-time cashier from July 5, 2001 through August 22, 2001, putting in between 20-24 hours per week. (Respondent's Brief, p. 2). At the same time, she also worked 40 hours a week for Graff Trucking as a dispatcher. As part of her duties for Graff, appellant was required to work from home as a "fill-in" dispatcher, responding to phone calls from drivers. This part of her duties conflicted with her work schedule for Wal-Mart. (Respondent's Brief, p. 2). Thus, appellant decided to quit her job at Wal-Mart on August 23, 2001. In an unfortunate coincidence, Graff Trucking then laid appellant off the next day. The Michigan Department of Consumer and Industry Services, Bureau of Workers' & Unemployment Compensation ("Bureau") denied benefits because appellant voluntarily left her part-time job without good cause, thereby forfeiting

her entire benefit for both jobs. A hearing referee and the Board separately affirmed the denial of benefits, and appellant filed this timely claim of appeal on July 1, 2002.

### ANALYSIS

This Court reviews an order or decision of the Bureau (formerly "Michigan Employment Security Commission") to determine if it "is contrary to law or is not supported by competent, material or substantial evidence on the whole record." MCL 421.38(1).

Specifically, appellant is accused of having violated MCL 421.29(1)(a), which states,

Sec. 29. (1) An individual is disqualified from receiving benefits if he or she:

- (a) Left work voluntarily without good cause attributable to the employer or employing unit.

For purposes of interpreting the statute, "good cause" is defined as "nothing more than a good reason, a substantial reason ..." *Carswell v Share House Inc*, 151 Mich App 392, 396; 390 NW2d 252, 254 (1986). The Court of Appeals in *Carswell* went on to characterize the standard as the "reasonable man" standard, and state that it exists where "an employer's actions would cause a reasonable, average, and otherwise qualified worker to give up his or her employment." *Carswell, supra* at 396-397.

Appellant quit her part-time job to save her full-time job. Appellee Wal-Mart was likely not going to change its hours of operation so appellant could continue both jobs. Given the conflict in work schedules between the two jobs, it stands to reason that appellee Wal-Mart's actions of staffing and continuing operations at times threatening to appellant's full-time job would lead a reasonable and average person to choose between the two. In this case, appellant, who was working more than 65 hours per week, reasonably chose her full-time job. The appellee Board of Review's decision in this case is thus contrary to law. While Michigan Courts of Appeal have yet to address a case factually similar to this one, this Court's rationale and decision finds support in the non-binding decisions of cases from at least one other circuit and two other states whose facts are nearly identical. *Dickerson v Norrell Health Care Inc et al* (Kent County Case No. 95-1806-AE); *Gilbert v Hanlon*, 214 Neb 676; 335 NW2d 548 (1983); *Merkel v HIP of*

*New Jersey*, 240 NW Super 436; 573 A2d 517 (1990). In each of those cases, the courts found that technical interpretations of "work" in similar benefits statutes worked an injustice to the purpose and intentions of each state's respective law by equating one's reasonable decision to leave a part-time job with the unreasonable quest to leave employment altogether. In *Gilbert*, for instance, the Nebraska Supreme Court interpreted the intent and purpose of its unemployment law such "that one is disqualified for benefits if, by leaving work voluntarily without good cause, one thereby makes himself or herself 'unemployed.' Other courts which have examined similar provisions have reached similar conclusions." 214 Neb at 680; 335 NW2d at 551.

Appellee argues that a "review of the type presented in this case" imposes a duty on the Court to affirm the agency's judgment unless a controlling rule of law proves the decision unfounded, and cites *Peaden v Employment Security Commission*, 355 Mich 613, 629; 96 NW2d 281 (1959) as an example of a "review of the type presented in this case." *Peaden* involved a union strike resulting from a labor dispute, and an employer filing for bankruptcy. This case involves a part-time clerk at Wal-Mart trying to keep her unemployment benefits. Furthermore, the Court finds that the appellant has met the test of good cause under MCL 421.29(1)(a). Thus, the agency's decision in this matter is contrary to law.

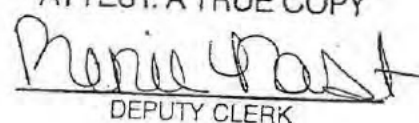
For the foregoing reasons, the Court REVERSES the April 11, 2002 decision of the Michigan Employment Security Board of Review.

**ORDER**

At a session of said Court held in the  
County Building in the City and County  
Of Allegan, State of Michigan, on the  
22 day of November 2002  
Present: The Honorable GEORGE R. CORSIGLIA  
Circuit Judge

IT IS SO ORDERED AND ADJUDGED.

  
GEORGE R. CORSIGLIA, Circuit Judge

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