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Unpublished Opinion

STATE OF MICHIGAN

COURT OF APPEALS

WAYNE WHITCOMB,
Plaintiff-Appellant,

v

MICHIGAN EMPLOYMENT SECURITY COMMISSION and STOW DAVIS FURNITURE,
Defendants-Appellees.
_____/

Court of Appeals No. 78827

May 2, 1985

Lower Court No. 83-39992-AE

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O P I N I O N

BEFORE: R.M. Maher, P.J., and R.B. Burns and G.R. Deneweth*, JJ.

PER CURIAM

In this contested case for unemployment benefits, the referee found that plaintiff was ineligible for benefits because he was discharged for work-related misconduct, MCL 421.29(1)(b); MSA 17.531(1)(b). Plaintiff failed to file a timely appeal to the Employment Security Board of Review pursuant to MCL 421.33(2); MSA 17.535(2). Plaintiff subsequently sought to obtain an order from the referee reopening the prior decision pursuant to MCL 421.33(1); MSA 17.535(1). The referee denied plaintiff's request for reopening, and the decision of the referee was affirmed by the Board of Review on appeal pursuant to MCL 421.34; MSA 17.536. The decision of the Board of Review was affirmed by the circuit court on review pursuant to MCL 421.38; MSA 17.540, and plaintiff appeals by right.

A decision of the Employment Security Commission can be reversed on appeal only if it was contrary to law or not supported by competent, material, and substantial evidence on the whole record. See, for example, Butler v Newaygo, 115 Mich App 445, 448; 320 NW2d 401 (1982). The referee is authorized by MCL 421.33(1); MSA 17.535(1) to reopen and review a prior decision of the referee after the period for taking an appeal to the Board of

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*Circuit judge, sitting on the Court of Appeals by assignment.

Review has expired "for good cause." Plaintiff made the following assertion to the referee in an effort to establish good cause:

"I didn't know the law before and I didn't know I should come up and protest repayment of the money I owe to the Commission. I know I contacted a lawyer and they advised me to come in and protest."

Ignorance of the law resulting from delay in seeking legal advice does not constitute good cause for reopening a referee's decision. Herman v Chrysler Corp, 106 Mich App 709, 718-719; 308 NW2d 616 (1981). See also First Bank of Cadillac v Benson, 81 Mich App 550, 554-555; 265 NW2d 413 (1978), in which this Court reached a similar conclusion on review of a denial of a motion to set aside a default in circuit court.

We note, moreover, that plaintiff's claim is untenable in light of the following statement by the referee on the record at the conclusion of the hearing which led to the decision plaintiff seeks to reopen:

"Okay, gentlemen, I've gotten all your testimony, and let me look into the matter and I'll get a decision out on this as soon as I can. I want to warn both of you. Don't let the terminology 'warn' scare you because I say that all the time. You notice I got out before the hearing so you couldn't say I said anything off the record. I make sure I try to put this on the record. Up till now, you've both received redets. saying you've got twenty day from this date that I'm pointing out to protest it. When my decision comes through, it will state this will become final unless an appeal is received by -- and we will put the twentieth day in. To be received by that is the key word.

"Now, Mr. Klatt -- let's see, we'll start with Mr. Whitcomb first. Now, Mr. Whitcomb, when you signed your name on Exhibit No. 6 on 5/17 here, it was received that day 5/17, the date that you signed it. Now, the employer, Exhibit No. 12, you'll notice that letter is dated June 11, but it's date stamped being received here June 15. How about that? It's dated Friday and we got it here on a Tuesday. Well, after all, it's almost two miles from here to your place, isn't it? At least two miles. It takes four days to get here. That's what counts, the date that

it's stamped received, not the date that it's postmarked or mailed. The reason I say 'warning' is this: You can have a meeting with the Lord himself and, if because of that meeting it's one day late, it's thrown out. There's no provision in the law for being late either to myself or the Board of Review. So if anyone is going to protest it, make sure it's done on time."

On appeal to the Board of Review, plaintiff shifted ground and made the following new assertion to support his claim of good cause:

"I would like to protest the referee order denying my application for reopening. I feel I had good cause for protesting late as I did not receive the decision before the 20 days were up because I had moved. I made no address changes at the time I moved."

On this record, we need not decide whether a failure to receive notice of the decision could ever constitute good cause. The record shows that plaintiff knew that a decision by the referee was imminent, and plaintiff admits that he nevertheless moved without leaving a forwarding address. A person is chargeable with constructive notice where he has the means of obtaining knowledge but does not use them. Cherry River Nat'l Bank v Wallace, 329 Mich 384, 389; 45 NW2d 332 (1951). Plaintiff has no one to blame but himself for his failure to receive notice of the decision and the failure to receive notice of the decision under these circumstances cannot constitute good cause.

Plaintiff complains of the failure of the referee and the board to make express findings of fact. Findings of fact were unnecessary here, however, because even if plaintiff's assertions are accepted as true, plaintiff has failed to show good cause as a matter of law. Plaintiff claims that courts have inherent equitable powers to forgive parties' failures to meet deadlines in administrative proceedings where equity requires such forgiveness. Even if courts have the equitable powers plaintiff

claims, we cannot see how equity requires forgiveness of plaintiff's failure to file a timely appeal here.

On this record, the circuit court did not err by declining to reverse the decision of the Board of Review.

AFFIRMED.

/s/ Richard M. Maher
/s/ Robert B. Burns
/s/ George R. Deneweth