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CIRCUIT COURT ORDER/OPINION
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Date: 2/14, 2009

R. Douglas Daligga, Director
MES - Board of Review

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CHARTER SCHOOL ADMINISTRATION SERVICES,

Employer-Appellant,

-v-

AUDRENIA THOMAS,

Claimant-Appellee,

and

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

Appellee.
_____/

08-118314-AE 7/22/2008
JDG: ISIDORE B TORRES
THOMAS AUDRENIA
VS
CHARTER SCHOOL ADMINISTRATION

OPINION AND ORDER

At a session of said Court,
held in the City of Detroit,
County of Wayne, State of Michigan
on MAR 30 2009
PRESENT: Hon. Isidore B. Torres
Circuit Court Judge

Pending before the Court is Employer-Appellant's appeal of an adverse decision of the State of Michigan Employment Security Board of Review. The Court, having heard oral argument, and having reviewed the certified record and the briefs submitted by the parties, issues the following opinion and order.

Background

Claimant-Appellee Audrenia Thomas has been employed by Employer-Appellant Charter School Administration Services ("CSAS") since August, 2006. R 24. CSAS, a for-profit entity, manages charter schools. R 32, 37-38. In this case, CSAS hired Thomas and placed her at the Academy of Detroit West–Redford Campus, where she worked as a latchkey coordinator for the 2006-2007 school year. R 14-15. As latchkey coordinator, Thomas supervised children before and after school and during lunch. R 68-71. Her duties did not involve instruction. R 68-71.

On June 21, 2007, CSAS provided Thomas with a letter indicating that she had a reasonable assurance of returning to her job in the fall for the 2007-2008 school year. R 83. Thomas did return to her job as latchkey coordinator, but in the interim, she applied for unemployment benefits. Eventually, the Unemployment Insurance Agency (UIA) issued a redetermination that Thomas was not ineligible for unemployment benefits. CSAS objected to the redetermination on the grounds that Thomas was subject to the school denial period. After a hearing, an Administrative Law Judge (ALJ) reversed the UIA's redetermination. Specifically, the ALJ concluded that

> The evidence offered at the hearing did not indicate that the involved employer, Charter School Administration, was an 'educational institution,' as defined above. However, even though the claimant was not an employee of such an institution, she performed non-instructional services 'for an educational institution' (emphasis added) as required by Section 27(i)(2) of the Act, namely, the Academy of Detroit charter school academy, by working at the academy.

R 92.

Thomas appealed to the Board of Review, which reversed the ALJ's decision. The majority of the Board concluded that MCL 421.27(i)(2) was the applicable subsection of

the school denial provision, but determined that CSAS did not qualify as an educational institution for purposes of MCL 421.27(i)(2) and MCL 421.53(3). R 100. Thus, the majority concluded that Thomas, as an employee of a non-educational institution, was not subject to the school denial period. The majority stated that "[a]lthough CSAS provides staffing and administrative services 'for' a public school academy, we find no support that the Legislature intended all employers which provide services "for" an educational institution to be subject to the school denial period." R 100. Finally, the majority noted that section 27(i) of the MESA has been amended to provide that persons employed by Educational Service Agencies (ESAs) (governmental entities which employ specialized teachers and contract them out to individual schools) are subject to the school denial provision. According to the majority,

> Because the Michigan Legislature deemed it necessary to enact express amendments subjecting persons employed by ESAs to the school denial period, it is manifest that the preposition 'for' was not intended to envelope all organizations providing services 'for' educational institutions within the Section 27(i)(2) school denial period.

R 102.

One member of the Board of Review dissented, arguing that "claimant performed 'service' for an education institution. The legislature did not specify in Section 27(i)(2) of the MES Act that the employer or employing unit had to be that institution." R 104.

CSAS' timely appeal is now before the Court.

Standard of Review

The Employment Security Act provides for judicial review of Board decisions, and states as follows:

> 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 to that order or decision 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.
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> * * * *

MCL 421.38(1).

Substantial evidence is that which a reasoning mind accepts as sufficient to support a conclusion. *Russo v State Dep't of Licensing & Regulation*, 119 Mich App 624, 631; 326 NW2d 583 (1982). While it consists of more than a mere scintilla of evidence, it may be substantially less than a preponderance of the evidence. *Id.* Great deference is given to the findings of an administrative law judge because, as the trier of fact, the administrative law judge has the opportunity to hear testimony and view witnesses. *Id.* His or her decision will be upheld so long as it is supported by substantial evidence on the whole record. *Id.*

Discussion

On appeal, CSAS argues that the Board of Review's decision was contrary to law, 'because Claimant-Appellee Audrenia Thomas should be subject to the 'school denial period' and therefore ineligible for unemployment benefits under § 27(i)(2) of the Michigan Employment Security Act".For the reasons discussed below, the Court will affirm the decision of the Board of Review.

At issue in this case is MCL 421.27(i)(2), also known as the"school denial period' provision.[1] Under MCL 421.27(i)(2),

> Benefits based on service in employment described in section 42(8), (9), and (10) are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this act, except that:

[1] It is undisputed that Thomas did not perform any services in an instructional, research, or principal administrative capacity.

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> [w]ith respect to service performed in other than an instructional, research, or principal administrative capacity for an institution of higher education as defined in section 53(2) or for an educational institution other than an institution of higher education as defined in section 53(3), benefits shall not be paid based on those services for any week of unemployment beginning after December 31, 1977 that commences during the period between 2 successive academic years or terms to any individual if that individual performs the service in the first of the academic years or terms and if there is a reasonable assurance that the individual will perform the service for an institution of higher education or an educational institution other than an institution of higher education in the second of the academic years or terms.

CSAS argues that Thomas' work as a latchkey coordinator was "service performed for an educational institution other than an institution of higher education," such that Thomas is subject to the school denial period, even though Thomas' employment was with CSAS, which is not an educational institution. The Unemployment Insurance Agency, on the other hand, argues that because Thomas was employed by CSAS, her work as a latchkey coordinator did not constitute "service performed for an educational institution" within the meaning of the MESA.[2]

The primary goal in statutory interpretation is to determine and give effect to the intent of the legislature. *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 159; 615 NW2d 702 (2000). Courts must look to the plain and unambiguous language of a statute and can only go beyond the statutory language if it is ambiguous. *Id.* "Only where the statutory language is ambiguous may a court properly go beyond the words of the statute

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[2] The Unemployment Insurance Agency also argues that MCL 421.27(i)(2) is inapplicable because Thomas' employment with CSAS did not constitute "service in employment described in section 42(8), (9), and (10)." Upon review of the record, it appears that the Unemployment Insurance Agency failed to raise the aforementioned argument before the Board of Review. Failure to raise an issue before the Board of Review precludes a claimant from raising that issue on review to this Court. *Ackerberg v Grant Community Hospital*, 138 Mich App 295; 360 NW2d 599 (1984), *Taylor v United States Postal Service*, 163 Mich App 77; 413 NW2d 736 (1987).

to ascertain legislative intent." *Sun Valley Foods v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). Provisions must be read in the context of an entire statute to produce a harmonious result. *People v Couzens*, 480 Mich 240, 249; 747 NW2d 849 (2008). As far as possible, effect should be given to every phrase, clause, and word in the statute. *Gebhardt v O'Rourke*, 444 Mich 535, 542; 510 NW2d 900 (1994).

Under CSAS' interpretation of MCL 421.27(i)(2), the application of the school denial period does not depend on whether an individual is employed by an educational institution, but instead depends on whether there was "service performed for" an educational institution. In other words, under CSAS' interpretation, "service performed for" an educational institution is subject to the school denial period under the MESA, regardless of whether an individual is employed by an educational institution.

CSAS' interpretation only makes sense if MCL 421.27(i)(2) is read in isolation from the remainder of the MESA. As previously noted herein, in interpreting a statute, provisions must be read in the context of an entire statute to produce a harmonious result. *People v Couzens*, *supra*.

Under MCL 421.42(1), "'Employment' means service performed for remuneration or under any contract of hire, written or oral, express or implied." MCL 421.42(5) provides, in relevant part, that "[s]ervices performed by an individual for remuneration shall not be deemed to be employment subject to this act, unless the individual is under the employer's control or direction as to the performance of the services both under a contract for hire and in fact." Based on the plain language of the aforementioned definitions, only an individual who is employed by an educational institution can perform services for that

institution within the meaning of MCL 421.27(i)(2), and thereby be subject to the school denial period.

As the Board of Review pointed out, the Legislature saw fit to include MCL 421.27(i)(9) and MCL 421.27(n), which specifically provide that certain classes of individuals (educational service agency employees and bus drivers, respectively) who perform services that benefit educational institutions but are not employed by such institutions are nevertheless subject to the school denial period. If CSAS' interpretation of MCL 421.27(i)(2) were correct, MCL 421.27(i)(9) and MCL 421.27(n) would be superfluous.

It is undisputed that CSAS employed Thomas as defined by MCL 421.42(5). CSAS hired Thomas and had the authority to fire her. The Academy of Detroit paid CSAS for Thomas' services, just as it paid for all services provided by CSAS. Although Thomas performed her work as a latchkey coordinator at the Academy of Detroit, and in that sense "performed services" for an educational institution, Thomas was, in fact, performing services for CSAS because she was fulfilling CSAS' contractual duties to the Academy of Detroit. CSAS is not an educational institution within the meaning of MCL 421.53.

Based on the plain language of the MESA, the Court is of the opinion that Thomas is not subject to the school denial period. Thomas was employed by and performed services for CSAS, which is not an educational institution within the meaning of MCL 421.53(3). Accordingly, the Court will affirm the decision of the majority of the Board of Review.

This resolves the last pending matter and closes the case.

ISIDORE B. TORRES

Isidore B. Torres
Circuit Court Judge

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