

STATE OF MICHIGAN  
EMPLOYMENT SECURITY BOARD OF REVIEW

In the Matter of the Claim of

PAMELA A. URBAN,

Claimant

SECRETARY OF STATE,

Employer

DECISION OF BOARD OF REVIEW

This matter comes before the Board of Review on the claimant's appeal from a Referee's decision dated March 21, 1986. Said decision held that the claimant is ineligible for benefits from February 3, 1985 and through an indefinite period pursuant to the leave of absence provisions of Section 48 of the MES Act. The decision further held that, pursuant to Section 62(a) of the Act, the claimant must repay the benefits that she received for the period from February 3, 1985 through August 3, 1985.

After a review of the entire record, the Board finds the following facts:

The claimant began working for the involved employer in December of 1974 and last performed services as a branch examiner. She last performed such services on July 31, 1984 (T, p 5).

The claimant was a member of the Michigan State Employees Association. The contract executed between that organization and the State of Michigan provided for various types of leaves of absences. Article 16, Section D of that agreement provided that an employee may request a waived rights leave of absence of up to one (1) year in those situations when an employee must leave his or her position for reasons beyond his or her control and for which a regular leave of absence is not granted. Employees requesting and granted a waived rights leave of absence do not have the right to return to State service at the end of the leave but will have the continuous nature of their service protected provided they return to work prior to the expiration of such leave (T, pp 12-13; Ex. 4-2).

Due to illness of family members the claimant spoke to her District Manager about a leave of absence for a six-month period which would commence on August 1, 1984 and terminate on January 1, 1985. The manager assured her that she would be reinstated if there were openings (T, pp 5,7-8). On July 26, 1984 the claimant signed an employee departure form waiving all rights to return to employment at the expiration of the leave and which indicated that the leave would expire on July 31, 1985 (Ex. 3). It was the claimant's belief that she had until July 31, 1985 to return if she so wished (T, pp 9-10).

In January of 1985 the claimant advised the employer of her desire to return to work. She was advised that there were no positions available for her (T, pp, 6,17).

The claimant filed her claim for benefits on February 5, 1985 (Ex. 1).

It was the employer's position that although the claimant had no right to recall, she was not considered unemployed until July 28, 1985 (T, p 16).

Section 48(3) of the Michigan Employment Security Act reads, in pertinent part, as follows:

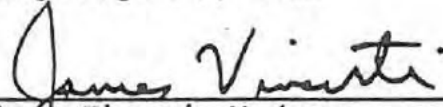
"An individual shall not be deemed to be unemployed during any leave of absence from work granted by an employer either at the request of the individual or pursuant to an agreement with the individual's duly authorized bargaining agent, or in accordance with law."

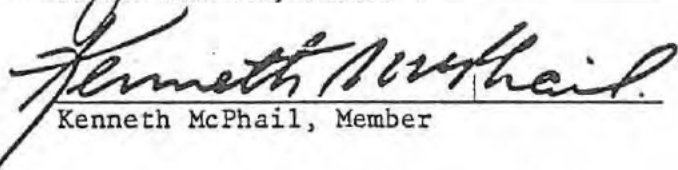
The MES Act does not define the term "leave of absence". However, the Michigan Supreme Court has stated that the term, generally speaking, means a temporary authorized release from one's duties for a stated period with the right or duty to return at the end thereof. American Telephone and Telegraph Co, v MESC, 376 Mich 271 (1965). This Board has previously held that a waived rights "leave of absence" is not a leave of absence within the meaning of Section 48 of the Act. Besteman (Michigan Department of Social Services), 1979 BR 60790 (B78-00488). Therefore, it is our opinion that the claimant was not on a leave of absence and should not be held ineligible pursuant to Section 48 of the Act.

The Referee's decision dated March 21, 1986 is hereby reversed.

The claimant is not ineligible for benefits pursuant to Section 48 of the Act.

The claimant is not required under Section 62(a) of the Act to repay the benefits received for the period from February 3 through August 3, 1985.

  
James Viventi, Member

  
Kenneth McPhail, Member

MAILED AT DETROIT, MICHIGAN August 1, 1986

This decision will become final unless a written request for rehearing or appeal to the appropriate circuit court is RECEIVED on or before

September 2, 1986

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME.