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CIRCUIT COURT ORDER/OPINION
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Appeal Docket No: 178151WH

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Reversed

48 Section of the Act

Date: 2/7, 2006

R. Douglas Daligga, Director
MES - Board of Review

PC _____
REP _____

Prepared by Stephine Gwin

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

REMONDA D. PALMER-SHEFFIELD,

Appellant,

v

Case No: 2004-065764-AE
Hon. Deborah G. Tyner

NORTHWEST AIRLINES, INC., and
STATE OF MICHIGAN, DEPARTMENT OF
LABOR & ECONOMIC GROWTH,
UNEMPLOYMENT INSURANCE AGENCY,

Appellees.

_____/

REMONDA D. PALMER-SHEFFIELD
In Pro Per
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West Bloomfield, MI 48322-2301

MARTIN J. VITTANDS (P-26292)
Attorney for Appellee Unemployment
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_____/

OPINION AND ORDER

At a session of said Court, held in the Courthouse, in the
City of Pontiac, County of Oakland, State of Michigan, on

DEC 19 2005

PRESENT: THE HONORABLE DEBORAH G. TYNER, Circuit Judge

This matter is before the Court on appeal from a March 17, 2005, Order Denying Application for Rehearing by the Michigan Employment Security Board of Review.

Appellant, Remonda Palmer-Sheffield, testified that she currently works for Northwest Airlines. In 2001, Appellant took voluntary leave from her employment through a program that allowed senior flight attendants to take leave and returned junior flight attendants back to work. The 2001-leave program allowed her to retain her benefits and Northwest agreed not to contest unemployment. During this period, Appellant obtained unemployment benefits, which Northwest did not contest.

In 2004, Northwest again offered the leave program and Appellant again voluntarily took leave from her employment. Before taking the leave, Appellant called her union, and after speaking with a representative, Appellant believed that the 2004-leave program was the same as the 2001-leave program. Appellant volunteered for the leave program because she did not think that Northwest would contest unemployment.

Winfield Holmes, a Northwest In-flight Manager and Northwest's representative at the hearing, agreed that in 2001 Northwest did not contest unemployment. However, Holmes testified that the terms of the leave program had changed. Holmes testified that Appellant was notified of the terms of the 2004-leave program by e-mail. One of the conditions of the 2004 program was that Northwest would contest unemployment.

Appellant testified that she did not remember getting that e-mail.

A reviewing court may reverse a decision of the Michigan Employment Security Board of Review 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." MCL 421.38(1). "Substantial evidence is that which a reasonable mind would accept as adequate to support a decision." *In re Kurzyniec Estate*, 207 Mich App 531, 537 (1994). "It is more than a mere scintilla but less than a preponderance of the evidence." *Id.*

Appellant argues that she elected to be laid off pursuant to an option provided under her employer plan, which permitted such an election. Appellant contends that this election was made with the employer's consent and there was a temporary layoff because of a lack of work. Appellant argues that this falls squarely under the last sentence of MCL 421.48(3); therefore, the decision of the Board of Review should be reversed.[1]

The Unemployment Insurance Agency also argues that the Board of Review decision should be reversed.[2] The Agency states that Appellant was granted benefits in 2001, but denied them in 2003 even though the conditions were similar. The Agency reasons that the "convenience leaves" offered by the employer are nothing more than disguised layoffs[3], having some parallel in *Doerr v Universal Engineering Division,* 90 Mich App 455 (1979). In *Doerr*, the employer locked out the employees during collective bargaining negotiations and then opposed granting unemployment benefits to them on the basis that the unemployment was caused by a labor dispute. The Employment Security Board of Review and the Circuit Court found that the locked out employees were not entitled to unemployment benefits. The Court of Appeals reversed finding that the employer had emphasized an economic slowdown; therefore, the lockout was really a disguised layoff and the employees were entitled to benefits. *Id.* at 461-462.

[1] Appellant adopted the reasoning of the one dissenting member of the Board of Review.

[2] Northwest seemingly would oppose reversing the Board of Review but they have not filed a brief in this matter; therefore, their arguments are waived on appeal. *Blazer Foods, Inc v Restaurant Properties, Inc,* 259 Mich App 241, 253 (2003).

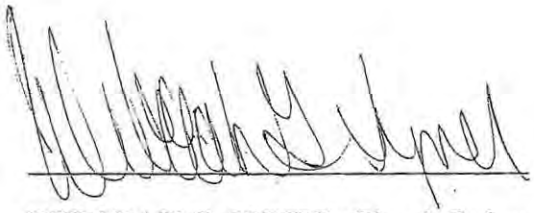
[3] The Agency reasons that the layoffs in 2001 allowed high seniority employees the option to be laid off so lower seniority employees could continue working. Layoffs obviously save employers money. The employer did the same thing in 2003, but called it "convenience leaves" as a ruse and said that it would contest unemployment benefits. Northwest planned to save even more money in 2003 by not only having employees absent from work without pay, but also by attempting to deny them unemployment benefits. Because the employer's "convenience leaves" were disguised layoffs, the Agency reasons, the decision of the Board of Review should be reversed as contrary to law.

This Court finds that the Employment Security Act provides that:

> An individual shall neither be considered not unemployed nor on a leave of absence solely because the individual elects to be laid off, pursuant to an option provided under a collective bargaining agreement or written employer plan which permits such election, when there is a temporary layoff because of lack of work, and the employer has consented thereto. [MCL 421.48.]

In this case, Appellant elected to be laid off. This option was provided to Appellant under a written plan electronically mailed to Northwest employees. This program was initiated because there was a lack of work for the Northwest attendants. Under MCL 421.48 Appellant can not be considered "not employed" or "on a leave of absence." Accordingly the Board of Review's January 28, 2005, Decision is contrary to MCL 421.48.

WHEREFORE, IT IS HEREBY ORDERED that the Board of Review's January 28, 2005, Decision is reversed.



DEBORAH G. TYNER, Circuit Judge