

STATE OF MICHIGAN  
COURT OF APPEALS

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LORI L. PIECZYNSKI-DUMAS and  
UNEMPLOYMENT INSURANCE AGENCY,

UNPUBLISHED  
July 15, 2008

Appellees,

v

SPECTRUM HEALTH CONTINUING CARE,

No. 276634  
Manistee Circuit Court  
LC No. 06-012457-AE

Appellant.

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Before: Sawyer, P.J., and Jansen and Hoekstra, JJ.

MEMORANDUM.

Petitioner was terminated from her employment with respondent Spectrum Health Continuing Care (respondent) for failing to inform respondent that she had received excess wages due to a bookkeeping error by respondent's payroll department. Respondent challenged petitioner's claim for unemployment benefits on the ground that petitioner had been terminated for misconduct. Although the hearing referee found in favor of petitioner, the Michigan Employment Security Board of Review reversed. On the basis of an apparent typographical error in the Board's written decision, the circuit court reinstated the decision of the hearing referee. We vacate the circuit court's order and remand for further proceedings consistent with this opinion.

The Board of Review's written decision, which reversed the decision of the hearing referee, included an obvious clerical error. In its decision, the Board wrote that "[i]n the instant matter, it is clear the employer *failed* to present sufficient evidence to establish its burden of proof[.] Accordingly we are left to conclude the Referee's decision should be reversed." (Emphasis added). It is manifest from the Board's analysis finding petitioner to have engaged in misconduct by failing to report the overpayments, and from the Board's ultimate decision to deny petitioner unemployment benefits, that the Board actually concluded that respondent had met its burden of proof. Thus, the Board's statement that the employer "failed" to meet its burden of proof was clearly a typographical error.

The circuit court concluded after oral argument that the Board's decision contained a "substantial and material mistake as to law," stating that "[i]f in the opinion of the Board of Review the employer failed to present sufficient evidence to establish its burden of proof, as was the decision of the referee as well, the only thing the Board of Review can do under the law is to affirm the award of unemployment compensation. Thus, this [c]ourt reverses the decision of the

Board of Review for its clear and material mistake as to law.” It was clearly unreasonable, and thus clearly erroneous, *Galuszka v State Employees’ Retirement Sys*, 265 Mich App 34, 39; 693 NW2d 403 (2005), for the circuit court to reverse the Board’s decision based merely on the clerical error at issue. Rather, the circuit court should have disregarded the clerical error and reviewed the substance of the Board’s decision. See *Central Cartage Co v Fewless*, 232 Mich App 517, 535-536; 591 NW2d 422 (1998) (observing that “clerical mistakes in . . . parts of the record . . . may be corrected by the court at any time on its own initiative”); see also MCR 2.612(A)(1). We vacate the circuit court’s order and remand this case to the circuit court to review the substance of the Board’s decision under the proper legal framework.

In light of this analysis, we do not reach the remaining issues raised on appeal, except to note that we decline respondent’s invitation to effectively review the substance of the Board’s decision ourselves. We defer to the circuit court’s review of an agency decision, reviewing the circuit court’s decision in such a case for clear error. *Galuszka, supra* at 39. We do not review the agency’s decision de novo or delve into the substance of the particular agency’s decision ourselves; that is the task of the circuit court. On remand, the circuit court shall review the substance of the Board’s decision without regard to the abovementioned clerical error.

We vacate the circuit court’s order and remand this matter to the circuit court for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra