

STATE OF MICHIGAN
COURT OF APPEALS

HAZEL I. KUNZ,

Claimant-Appellant,

v

MID-MICHIGAN REGIONAL
MEDICAL CENTER,

Employer-Appellee,

and

MICHIGAN EMPLOYMENT
SECURITY COMMISSION,

Appellee.

UNPUBLISHED
December 6, 1996

No. 181965
Clare County
LC No. 94-900036-W

Before: MacKenzie, P.J., and Jansen and T.R. Thomas*, JJ.

PER CURIAM.

Claimant worked for the Mid-Michigan Regional Medical Center as a billing clerk from February 1990 until September 18, 1991, when she was terminated after her employer learned that she had secretly taped a private conversation between herself and her supervisor, Cheryl Hoskey. Claimant appeals by leave granted from a circuit court order that affirmed a decision of the Michigan Employment Security Commission (MESC) Board of Review denying her claim for unemployment benefits. Specifically, the Board of Review affirmed a referee's determination that claimant was discharged by her employer for misconduct and was therefore disqualified under § 29(1)(b) of the Michigan Employment Security Act, MCL 421.29(1)(b); MSA 17.531(1)(b), from receiving unemployment benefits. We affirm.

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

Claimant first contends that the decision of the Board of Review was contrary to law because neither the Board nor the referee considered claimant's reasons for taping her conversation with her supervisor. We disagree. In his decision denying claimant unemployment benefits, the referee summarized claimant's explanation for taping her conversation with Hoskey and then concluded that claimant's actions nonetheless constituted disqualifying misconduct. The mere fact that the referee did not expressly state either that he did not believe claimant's testimony, or that claimant's reasons did not justify her actions, does not mean that her reasons were not taken into consideration by the referee. Compare *Blom v Thermotron Corp*, 139 Mich App 50, 55; 360 NW2d 172 (1984). Because the referee and the Board of Review acknowledged but rejected claimant's explanation for her act of surreptitiously tape recording a conversation with her supervisor, the decision to deny her claim was not contrary to law. Accordingly, we decline to reverse. See *Vanderlaan v Tri-County Community Hospital*, 209 Mich App 328, 331; 530 NW2d 186 (1995).

Claimant next argues that her act of secretly taping her conversation with Hoskey was not disqualifying misconduct, but at most a good-faith error in judgment. Under § 29(1)(b), a person is disqualified from receiving unemployment benefits when he or she is discharged "for misconduct connected with the individual's work." The word "misconduct" has been defined by our Supreme Court as follows:

The term "misconduct"... is limited to conduct evincing such wilful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not to be deemed "misconduct" within the meaning of the statute. [*Carter v Employment Security Comm*, 364 Mich 538, 541; 111 NW2d 817 (1961), quoting *Boynton Cab Co v Neubeck*, 237 Wis 249; 296 NW 636 (1941).]

In this case, claimant's actions fell below the standard of behavior that the medical center had a right to expect from its employees and constituted an intentional and substantial disregard of the employer's interest. Claimant had been suspended after repeated citations for deficient work performance, and upon her return to work, she armed herself with a concealed tape recorder and requested a private meeting with Hoskey. She then taped the conversation without advising Hoskey that she was doing so. Although claimant explained that she taped the conversation because she was afraid Hoskey would not accurately recollect the discussion, claimant did not wait for Hoskey to inaccurately characterize the conversation. Instead, claimant immediately told a co-worker that she had secretly taped Hoskey's statements and also played the tape in her husband's presence. Under these circumstances, we reject claimant's suggestion that her actions were simply a good-faith error in judgment. Claimant deliberately sought to discredit her supervisor and involved a co-worker in the

scheme. Because the decision of the referee and the Board of Review was not contrary to law and was supported by competent, material, and substantial evidence on the whole record, *Vanderlaan, supra*, we affirm the determination that claimant's misconduct disqualified her from receiving unemployment benefits.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Kathleen Jansen

/s/ Terrence R. Thomas