STATE OF MICHIGAN

COURT OF APPEALS

MARIE KOETJE,

Plaintiff-Appellant,

v

TEAMWORK and MICHIGAN EMPLOYMENT SECURITY AGENCY,

Defendants-Appellees.

UNPUBLISHED
May 26, 1998

No. 200118
Kent Circuit Court
LC No. 96-007520 AE

Before: Corrigan, C.J., and Hoekstra and Young, Jr., JJ.

PER CURIAM.

Plaintiff appeals by leave granted from an order of the lower court affirming the Michigan Employment Security Board of Review's decision, which reversed the hearing referee's decision and instead found plaintiff both disqualified from and ineligible for unemployment compensation benefits. We affirm.

I

First, plaintiff argues that the Board's conclusion that she was ineligible and disqualified from receiving unemployment benefits is contrary to law and unsupported by competent, material and substantial evidence. Therefore, plaintiff contends that the lower court erred in affirming the Board's decision. On appeal from a decision of the Michigan Employment Security Commission Board of Review, a reviewing court can reverse only if the decision is contrary to law or unsupported by competent, material and substantial evidence on the record. Const 1963, art 6, § 28, *Robinson v Young Men's Christian Ass'n,* 123 Mich App 442, 445; 333 NW2d 306 (1983).

Pursuant to MCL 421.29(1)(e); MSA 17.531(1)(e), the Board disqualified plaintiff from receiving benefits because it concluded that that she failed, without good cause, to accept suitable work when offered. When determining whether work is suitable, the Board must consider several factors delineated at MCL 421.29(6); MSA 17.531(6), which at the time plaintiff was offered work, included "the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness and prior training, the individual's experience and prior earnings, the individual's length of unemployment

and prospects for securing local work in the individual's customary occupation, and the distance of the available work from the individual's residence." On appeal, plaintiff primarily focuses on the Board's conclusion that she refused employment for which her wages would be substantially similar to her prior earnings.[1] In support of her argument that the new employment would not pay comparable wages to those she was previously earning, plaintiff cites an opinion of a lower court and an unpublished opinion of this Court, neither of which are binding on this Court. See, e.g., *Forgach v George Koch & Sons Co*, 167 Mich App 50, 56; 421 NW2d 568 (1988).

As evidenced by the split decisions of the Board and the hearing referee in this case, we recognize that this case is one in which reasonable minds can differ regarding whether the work plaintiff refused was suitable because the wages would be substantially similar to her prior earnings. However, neither the lower court nor this Court decides this issue de novo. Our review of this issue is limited to whether the decision is unsupported by competent, material and substantial evidence on the record. Const 1963, art 6, § 28, *Robinson, supra* at 445. We have reviewed the record and hold that the decision of the Board was supported by the evidence. Plaintiff rejected two offers of work for which the wages were appropriate given plaintiff's qualifications and previous experience as well as the available job market. Therefore, we are not persuaded by plaintiff's argument that she rejected offers of work that were not suitable on this basis.

Next, plaintiff argues that even assuming the work was suitable, the Board erred in disqualifying her from receiving benefits because she had good cause to refuse the work where the lower-paying second-shift job would cause her to incur increased child care costs. We disagree. Although personal reasons may constitute "good cause" under section 29(1)(e) for refusing suitable work, *Dueweke v Morang Drive Greenhouses, Inc*, 411 Mich 670, 679; 311 NW2d 712 (1981), the Board of Review in this case properly found that plaintiff failed to produce evidence that showed that her refusal of the new employment was for good cause. Plaintiff admitted that the Department of Social Services could have helped her defray any increase in child care costs. Also, although plaintiff informed defendant Teamwork that she was only available for first-shift work, she later certified that she was available to work any shift in her protest to the MESC's original determination. Thus, plaintiff has changed her story several times regarding which shift she is available to work.

Last, plaintiff argues that the Board erred in concluding she was ineligible for benefits because of her limited availability to work. See MCL 421.28(1)(c); MSA 17.350(1)(c). Plaintiff contends that she needed to be available for full-time work only during the same hours most recently worked, which was the first shift. Accordingly, plaintiff contends that she did not make herself unavailable for work by refusing a second-shift job. We disagree. To be considered able and available for work under the act, a plaintiff must be "genuinely attached to the labor market," which means that she "must be desirous to obtain employment, and must be willing and ready to work." *Bingham v American Screw Products Co*, 398 Mich 546, 558; 248 NW2d 537 (1976) (quoting *Dwyer v Appeal Bd of Michigan Unemployment Compensation Comm*, 321 Mich 178, 188-189; 32 NW2d 434 (1948)). One who restricts her employment to certain hours of the day is not "available" for work where the work for which she is qualified is not likewise limited. *Ford Motor Co v Appeal Bd of Michigan Unemployment Compensation Comm*, 316 Mich 468, 473-474; 25 NW2d 586 (1947).

Here, plaintiff restricted her possible employment to first-shift positions. However, plaintiff is qualified for factory work or general labor, which is not limited to certain hours as evidenced by her subsequent job offers for a general laborer on both first and second shifts. The offers were for full-time work for which plaintiff was qualified to perform by her past experience and training. Hence, under the reasoning of *Ford Motor Co, supra,* plaintiff rendered herself unavailable and ineligible for unemployment benefits by restricting her employment options to positions with certain hours.

Therefore, we are not persuaded by plaintiff's arguments and hold that the lower court properly affirmed the Board's decision that plaintiff refused suitable work without good cause and thereby rendered herself ineligible for benefits by making herself unavailable for employment. The Board's decision was not contrary to law and was supported by competent, material and substantial evidence.

II

Plaintiff also faults the Board of Review for not according proper deference to the referee's unique opportunity to weigh the testimony of the witnesses and determine their credibility. To support her position, plaintiff relies on language from our Supreme Court's decision in *Michigan Employment Relations Comm v Detroit Symphony Orchestra, Inc,* 393 Mich 116, 126-127; 223 NW2d 283 (1974) (citing *Universal Camera Corp v National Labor Relations Bd,* 340 US 474, 496-497; 71 S Ct 456; 95 L Ed 2d 456 (1951)), that requires a reviewing court to consider the referee's credibility determinations as part of the record. We reject plaintiff's argument for two reasons.

First, credibility determinations were not the reason for the Board of Review's reversal of the referee's decision in this case. Rather, the Board reversed the referee's decision on two questions of law, plaintiff's disqualification pursuant to MCL 421.29(1)(e); MSA 17.531(1)(e) and plaintiff's ineligibility pursuant to MCL 421.28(1)(c); MSA 17.350(1)(c). As the lower court judge in this case pointed out, the evidence in this case permitted two different legal conclusions notwithstanding any credibility determinations. Second, the Board's decision was well within the purview of its review powers because the Board "may on its own motion affirm, modify, set aside, or reverse a decision or order of a referee on the basis of the evidence previously submitted in the case." MCL 421.35; MSA 17.537. See also MCL 421.34; MSA 17.536. Thus, our Supreme Court has held that the Board of Review "is vested with independent duty as well as plenary authority to decide each plaintiff's qualification for benefits without regard for the fact or nature of opposition, if any, by the employer or, for that matter by the commission itself." *Miller v F. W. Woolworth Co,* 359 Mich 342, 350; 102 NW2d 728 (1960).

Affirmed.

/s/ Maura D. Corrigan
/s/ Joel P. Hoekstra
/s/ Robert P. Young, Jr.

[1] Plaintiff makes a related argument about the short duration between when she was laid off from her previous employment and when she received her first offer of new employment. We decline to address the merits of this argument because plaintiff has failed to provide supporting authority. *Price v Long Realty, Inc*, 199 Mich App 461, 467; 502 NW2d 337 (1993).