STATE OF MICHIGAN

COURT OF APPEALS

APRILLE MARTIN,

Claimant-Appellee,

v

MICHIGAN UNEMPLOYMENT INSURANCE AGENCY,

Appellant,

and

MSE BRANDED FOODS OF MICHIGAN,

Respondent-Appellee.

UNPUBLISHED
November 22, 2022

No. 358711
Genesee Circuit Court
LC No. 20-115053-AE

Before: GLEICHER, C.J., and SERVITTO and YATES, JJ.

PER CURIAM.

The Michigan Unemployment Insurance Agency (Agency) brought this appeal by leave granted[1] to challenge a circuit court's ruling affirming in part and reversing in part the order of the Unemployment Insurance Appeals Commission (Commission) that claimant, Aprille Martin, is entitled to unemployment benefits and eligible for at least 14 weeks of those benefits. The Agency seems to concede that Martin is entitled to unemployment benefits for a two-week period, but the Agency takes issue with the circuit court's conclusion that, as a matter of law, Martin is eligible for at least 14 weeks of benefits. Because we agree with the circuit court's analysis, we affirm.

[1] *Martin v Dep't of Labor and Economic Opportunity*, unpublished order of the Court of Appeals, entered February 24, 2022 (Docket No. 358711).

I. FACTUAL BACKGROUND

This appeal involves a dispute about the circumstances under which Martin quit her job as a cashier and bartender for respondent, MSE Branded Foods, at the Bishop International Airport. A notice of determination stated that Martin quit her job on January 10, 2020, due to nonpayment of wages, that her "efforts to give [her] employer the opportunity to make a payment adjustment were unsuccessful[,]" and that her "leaving was with good cause attributable to the employer[,]" so she was "not disqualified for benefits." But a notice of redetermination issued two weeks later concluded that Martin was ineligible for benefits because new evidence demonstrated that she did not give her employer an opportunity to make an adjustment before quitting, so Martin's "leaving was without good cause attributable to the employer."

Martin appealed that redetermination to an administrative law judge (ALJ). In rendering a ruling, the ALJ made findings of fact that are not in dispute. The ALJ found that "claimant worked for MSE Branded Foods from June 6, 2019, through January 10, 2020." Also, the ALJ found that Martin "was a full-time bartender or cashier depending on the shift assignment and was paid on an hourly/tips basis." Ultimately, the ALJ found that she voluntarily quit. Although the ALJ found that Martin gave her employer two weeks' notice, the ALJ observed that the employer's witnesses remembered things differently:

> Ann Russell is the General Manager. She testified she posted an announcement on or about January 2, 2020, stating that henceforth she was reverting to the existing policy on attire. She had allowed the dress code to be relaxed somewhat, but felt it was getting out of hand. Ms. Russell said the claimant's response was to ask if the decision could be discussed. She was informed it was not up for discussion. The claimant then said it did not work for her. Shortly thereafter, she told Ms. Russell she was giving her notice. Ms. Russell said she scheduled, or left the claimant on the schedule, for the remainder of that week and for the following week with a last day worked of January 10, 2020.
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> Exhibits #2 and #3 were associated with the issue of the claimant's pay for January 20, 2020. She testified her work got entered incorrectly by someone and she was paid at the wrong rate. The employer agreed and testified the matter was resolved almost immediately with payment to the claimant. The claimant did not dispute the fact she received payment as described by the employer.
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> The employer also provided testimony that the entry of "forgot to clock in" on the time slips is simply a default printout which appears whenever there is an entry for a time change, or a position change (such as from bartender duties to cashier duties).

On the basis of these findings of fact, the ALJ concluded that Martin "has not established the facts to support a voluntary quit attributable to the employer."

Martin thereafter appealed the ALJ's decision to the Commission, which "agree[d] with the ALJ's conclusion that the claimant quit her employment without good cause attributable to the employer" but "disagree[d] with the ALJ's finding that the claimant is disqualified for benefits beginning week ending January 11, 2020." Instead, the Commission ordered that Martin "should

be found disqualified for benefits beginning week ending January 25, 2020 and not disqualified for benefits from January 5, 2020 through January 18, 2020 (weeks ending January 11, 2020 and January 18, 2020) under [MCL 421.]29(1)(a) of the Act." The Commission reached its conclusion by relying upon *Stephen's Nu-Ad, Inc v Green*, 168 Mich App 219; 423 NW2d 625 (1988), which it interpreted to provide "that when an employer discharges an employee prior to the end of the employee's resignation notice period, the time between the date of the discharge and the end of the employee's notice period is not covered by the voluntary leaving provision of the Act." Thus, the Commission concluded that Martin was eligible for benefits for the two-week period from January 5, 2020, through January 18, 2020, but she was disqualified for benefits after that.

Martin appealed the Commission's decision to the Genesee County Circuit Court, arguing that the Commission's decision contravened MCL 421.27(d). The Agency took no position on the matter. At a hearing, Martin's attorney contended that Martin was eligible for more than just two weeks of benefits because this Court had previously explained that if an employer discharges an employee before the notice period is over, it is improper to speculate about whether the employee would have actually left the job on the notice date. Counsel also argued that Michigan law now provides that a person eligible for unemployment benefits is eligible for a minimum of 14 weeks of benefits, even though counsel conceded that eligibility does not mean that a person will receive benefits for all of those weeks due to reasons like failing to certify or not submitting a job search. Counsel observed that Martin testified before the ALJ that she would have been willing to continue in her job had her concerns been adequately addressed. Counsel for the Agency explicitly elected not to respond to Martin's presentation. The circuit court agreed with Martin's statutory argument, reasoning that the "amended text of [MCL 421.27(d)] now makes clear that all claimants must be granted a minimum of 14 weeks of benefits upon a finding that that they are eligible for benefits." The circuit court's written order states as follows:

> IT IS HEREBY ORDERED for the reasons stated on the Record that the Commission's September 25, 2020, decision is AFFIRMED in part and REVERSED in part.
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> IT IS FURTHER ORDERED THAT the Unemployment Insurance Appeals Commission's November 24, 2020, decision that Aprille Martin in [sic] entitled to unemployment benefits is affirmed.
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> IT IS FURTHER ORDERED THAT Claimant/Appellant Aprille Marin is eligible for at minimum fourteen weeks of unemployment insurance benefits beginning the week of January 13, 2020.

After the circuit court entered its written order, the Agency moved for reconsideration. The Agency asserted that the circuit court lacked jurisdiction to enter the portion of its order granting Martin 14 weeks of benefits because the Commission did not address the number of weeks Martin was eligible for benefits. The Agency also contended that the circuit court acted beyond the scope of its appellate authority when it granted Martin 14 weeks of benefits. The circuit court disagreed, reasoning that the Commission necessarily considered the number of weeks for which Martin was eligible for benefits when it ordered that Martin was eligible for two weeks of benefits. The circuit court stated that, on appeal, it simply reviewed the Commission's decision that Martin "was not disqualified for only two weeks of benefits—and the provisions of MCL § 421.27(d)." It stated

that it "found instead that [Martin] is an 'eligible individual' within the meaning of that statutory provision and, thus, eligible for fourteen (not two) weeks of benefits." The Agency now appeals the circuit court's order concerning the duration of Martin's eligibility for benefits.

II. LEGAL ANALYSIS

On appeal, the Agency contends that the circuit court exceeded its authority to review the Commission's decision, and that the circuit court misinterpreted the applicable law when it held that Martin was eligible for 14 weeks of benefits. When reviewing a circuit court's analysis of an agency's decision, we must consider "whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial-evidence test to the agency's factual findings." *Boyd v Civil Serv Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996). The circuit court had to determine whether the agency's action was authorized by law and whether its findings were "supported by competent, material, and substantial evidence on the whole record." Const 1963, art 6, § 28. A decision is not authorized by law when it violates our constitution or a statute, if it exceeds the statutory authority or jurisdiction of the agency, if it was made by unlawful procedures resulting in material prejudice, or if it was arbitrary and capricious. *Northwestern Nat'l Cas Co v Comm'r of Ins*, 231 Mich App 483, 488; 586 NW2d 563 (1998). As we have explained, "substantial evidence" is "evidence that a reasoning mind would accept as sufficient to support a conclusion." *Dignan v Mich Pub Sch Employees Retirement Bd*, 253 Mich App 571, 576; 659 NW2d 629 (2002). It is "more than a mere scintilla but less than a preponderance of the evidence." *VanZandt v State Employees' Retirement Sys*, 266 Mich App 579, 584; 701 NW2d 214 (2005). This standard is comparable to a search for clear error. *Dignan*, 253 Mich App at 576.

The Court reviews de novo all matters of statutory interpretation. *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 117-118; 754 NW2d 259 (2008). "When construing a statute, the primary goal is to ascertain and give effect to the intent of the Legislature." *Mantei v Mich Pub Sch Employees Retirement Sys*, 256 Mich App 64, 72; 663 NW2d 486 (2003). This Court first looks at the statutory language, and if the expressed language is clear, we must enforce the statute as written. *Id*. When considering the text of a statute, "this Court presumes that every word is used for a purpose." *Id*. The Court must be sure that statutory wording is not ignored or rendered meaningless. *Id*. "Unless defined in the statute, every word or phrase of a statute will be ascribed its plain and ordinary meaning." *Id*. Agency interpretations of a statute "are entitled to respectful consideration, but they are not binding on courts and cannot conflict with the plain meaning of the statute." *In re Rovas*, 482 Mich at 117-118. Respectful consideration is not the same as deference. *Id*. at 108. Respectful consideration simply means that the agency's decision may be helpful when construing a provision with a doubtful or obscure meaning. *Grass Lake Improvement Bd v Dep't of Environmental Quality*, 316 Mich App 356, 363; 891 NW2d 884 (2016).

As an initial matter, we reject the Agency's argument that the circuit court acted outside its authority when it reviewed the Commission's decision. Under MCL 421.38(1):

> The circuit court . . . may review questions of fact and law on the record made before the administrative law judge and the Michigan compensation appellate commission involved in a final order or decision of the Michigan compensation appellate commission, and may make further orders in respect to that order or decision as justice may require, but the court may reverse an order or decision 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 . . . .

The issue before the ALJ was whether Martin was disqualified from benefits under MCL 421.29(1)(a), i.e., whether Martin "voluntarily quit" her job. At the time, MCL 421.29(1)(a), as amended by 2013 PA 146, stated that "an individual is disqualified from receiving benefits if he or she [l]eft work voluntarily without good cause attributable to the employer or employing unit." "The question whether an employee left work 'voluntarily' is a matter of law." *Clarke v North Detroit Gen Hosp*, 179 Mich App 511, 515; 446 NW2d 493 (1989). "The Legislature's use of the term 'voluntary' is clear and requires application." *Stephen's Nu-Ad*, 168 Mich App at 223 (quotation marks and citation omitted). " 'Voluntary' connotes a choice between alternatives which ordinary persons would find reasonable." *Clark*, 179 Mich App at 515.

In *Stephen's Nu-Ad*, 168 Mich App at 222-224, this Court stated:

> The facts disclose that on February 3, 1986, claimant informed his employer of his intent to voluntarily quit his job in two weeks and that, prior to the lapse of that two-week period, his employer discharged him. Claimant's notice of intent to quit his job in two weeks did not immediately alter his status as an employee of Stephen's Nu-Ad. But for the discharge effected by his employer, claimant would have continued working until the end of the two-week period. Apparently, claimant was under no obligation to give his employer any notice of his intent to quit; such notice was provided, it seems, purely for reasons of courtesy and consideration for the employer. In return for his courtesy, claimant was fired.
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> A panel of this Court, commenting on the voluntary-quit provision in the Michigan Employment Security Act, has observed: "The Legislature's use of the term 'voluntary' is clear and requires application." We agree. In the present case, we would render perverse the meaning of the word "voluntary" by concluding that claimant voluntarily left his job. In no way was claimant's separation from his employment on February 3, 1986, the result of an unrestrained, volitional, freely chosen, or wilfull action on the part of claimant. The notice of an intention to permanently leave work in two weeks is not notice of an intention to permanently leave work immediately. If an employer so chooses to treat the former identically with the latter—which, of course, is an employer's prerogative—this does not transmute, for purposes of the Michigan Employment Security Act or otherwise, the employee's premature separation from his or her job into a voluntary action on the part of the employee. After being fired, the only choice left to claimant regarding whether to stay at, or to leave, his employment was of the Hobson's variety. [Citation omitted.]

In 1994, six years after this Court decided *Stephen's Nu-Ad*, the Legislature significantly amended MCL 421.27(d). See 1994 PA 162. At the relevant time, MCL 421.27(d), as amended by 2020 PA 229, provided as follows:

> Subject to subsection (f)[2] and this subsection, the maximum benefit amount payable to an individual in a benefit year for purposes of this section and section 20(d) is the number of weeks of benefits payable to an individual during the benefit year, multiplied by the individual's weekly benefit rate. The number of weeks of benefits payable to an individual shall be calculated by taking 43% of the individual's base period wages and dividing the result by the individual's weekly benefit rate. If the quotient is not a whole or half number, the result is rounded down to the nearest half number. However, for each eligible individual filing an initial claim before January 15, 2012, not more than 26 weeks of benefits or less than 14 weeks of benefits are payable to an individual in a benefit year. *For each eligible individual filing an initial claim on or after January 15, 2012, not more than 20 weeks of benefits or less than 14 weeks of benefits are payable to an individual in a benefit year*. The limitation of total benefits set forth in this subsection does not apply to claimants declared eligible for training benefits in accordance with subsection (g). Notwithstanding any other provision of this act, with respect to benefit years and claims for weeks beginning before January 1, 2021, for each eligible individual who files a claim for benefits and establishes a benefit year, not more than 26 weeks of benefits or less than 14 weeks of benefits may be payable to an individual in a benefit year. [Emphasis added.]

The Agency takes a remarkably cramped view of the circuit court's authority in this case. In a hypertechnical sense, the Agency is correct: no reference was made to § 27(d) before the ALJ or the Commission. But as the circuit court noted, once the Commission made the determination that Martin was eligible for benefits, the plain language of § 27(d) mandated that she is eligible for "not more than 20 weeks of benefits or less than 14 weeks of benefits." The Commission found that Martin was not disqualified for benefits, but it determined that she was eligible for only two weeks of benefits, in direct contradiction to the statute. Thus, it made an error of law, which the circuit court had the authority to correct just as it did in setting the minimum period of eligibility for benefits at 14 weeks.

We also reject the Agency's argument that the circuit court misinterpreted MCL 421.27(d). The plain text of that provision dictated that if Martin was not disqualified from receiving benefits, "not more than 20 weeks of benefits or less than 14 weeks of benefits are payable to" Martin in her benefit year. The circuit court did not conclude that Martin must receive 14 weeks of benefits, wholly excused from further eligibility requirements for each week of benefits she seeks. Instead, the circuit court merely corrected the Commission's plain statutory error that limited Martin to two weeks of eligibility, contrary to MCL 421.27(d).

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Deborah A. Servitto
/s/ Christopher P. Yates

[2] Subsection (f) deals with employer-side issues.