10.00

VOLUNTARY LEAVING

Section 29(1)(a)

Section 29(1)(a)

VOLUNTARY LEAVING, Constructive voluntary leaving, Pay reduction, Permanent closing

CITE AS: Copper Range Co v UCC, 320 Mich 460 (1948).

Appeal pending: No

Claimant: James W. Austin, et al
Employer: Copper Range Co
Docket No: B5 9204 2910

SUPREME COURT HOLDING: Where employees are threatened with the loss of their jobs if they refuse a pay cut, their action in rejecting the proposal, followed by the permanent closing of the facility, does not constitute voluntary leaving.

FACTS: The market price of the employer's product fell sharply at the end of World War II. The 539 claimants were asked to accept a reduction in their wage scale, and were told the company would not continue operations at the existing pay rates. The employees voted down the pay cut. The employer closed the facility permanently.

DECISION: The claimants are not disqualified for voluntary leaving.

RATIONALE: "(W)e are not as yet prepared to accept and apply the doctrine of constructive voluntary leaving, particularly in the light of the circumstances of the instant case."

"To place the stamp of judicial approval upon the contentions of appellee in the instant case would be tantamount to the issuance of a notice to all employers in Michigan that, whenever they are confronted with economic loss, they can demand an abrogation of their working agreements and reduce compensation to a point unacceptable to employees, and thereby absolve themselves of the responsibilities imposed upon them by the unemployment compensation act."

Section 29(1)(a)

VOLUNTARY LEAVING, Good cause, Uncertainty of compensation

CITE AS: Muns v Glassman Oldsmobile, Inc., No. 84721 (Mich App December 12, 1986).

Appeal pending: No

Claimant: Terry J. Muns
Employer: Glassman Oldsmobile, Inc.
Docket No: B83 10704 91510

COURT OF APPEALS HOLDING: Claimant had good cause attributable to the employer where he worked as a salesman and was regularly paid a "draw" against commissions and quit when the employer made statements which suggested continuation of this compensation arrangement was uncertain.

FACTS: Claimant worked as a new car salesperson. He worked 50 hours a week and was paid on a commission only basis. He did receive $175.00 a week as a draw against commissions and the employer did not attempt to recoup the draw if sufficient commissions were not earned. Claimant failed to "make his draw" only one week out of 26. In January, 1983 he experienced problems related to diabetes which affected his productivity and caused him to miss work. He was hospitalized for a month. Upon his return he was in a meeting with the vice president and sales manager. During that meeting claimant was told the employer "intended to talk to Terry every single week to determine whether or not he had accumulated enough commissions to warrant the draw and if he hadn't, we were going to review whether a draw would be appropriate for that particular week." Claimant then quit because he could not afford to work without a draw.

DECISION: Claimant is not disqualified for voluntary leaving.

RATIONALE: "[U]nder the reasonable person test of Carswell, supra, we do think the employer's statements gave the claimant good cause to leave his employment.

Both the hearing referee and the board of review found that the employer's sales manager (or the vice president) did use language suggesting to Muns that he would not receive his draw should his sales fail to justify a draw in the future. Should Muns have been required to stay on and risk that the employer would choose not to pay him if he made insufficient sales in a 50 hour week? We think not. The employer's statements, as testified to by Muns and the sales manager, constituted at least a substantial change in the method of determining Muns' pay. Courts in other states have found a substantial pay reduction 'good cause' for leaving employment."

Section 29(1)(a)

VOLUNTARY LEAVING, Average employee standard, Fear of prejudice, Social relationship

CITE AS: Schultz v Grede Foundries, Inc, No 78 3191 (Mich App September 11, 1979); lv den 407 Mich 958 (1980).

Appeal pending: No

Claimant: Rosemarie Schultz
Employer: Grede Foundries, Inc.
Docket No: B76 7742 51982

COURT OF APPEALS HOLDING: Good cause for voluntary leaving exists " ... where an employer's actions would cause a reasonable, average and otherwise qualified worker to give up his or her employment."

FACTS: The claimant voluntarily resigned because of the employer's manner of filling a vacancy. Although the claimant was eventually selected, on the basis of seniority, a co-worker who had a social relationship with a supervisor was improperly offered the transfer first. The claimant expressed a fear that prejudice would be shown to her.

DECISION: The claimant is disqualified for voluntary leaving.

RATIONALE: "On appeal, plaintiff claims that the circuit court erred in adopting the 'average person' test as the standard for determining whether she left her employment without good cause attributable to defendant."

"Plaintiff was not under any legal, economic, or physical compulsion to leave her job, nor is there any evidence in the lower court record indicating that she did so unintentionally."

"We find that the 'average employee' standard properly effectuates the legislative intention behind MCL 421.29 (1)(A), MSA 17.531 (1)(A). Under that standard, 'good cause' compelling an employee to terminate his employment should be found where an employer's actions would cause a reasonable, average and otherwise qualified worker to give up his or her employment."

Section 29(1)(a)

VOLUNTARY LEAVING, Bona fide residence, Prerequisite of employment, Residency requirement, Misconduct discharge

CITE AS: City of Saginaw v Lindquist, sub nom Parks v ESC, 427 Mich 224 (1986).

Appeal pending: No

Claimant: Nancy A. Lindquist
Employer: City of Saginaw
Docket No: B81 06822 RO1 78455

SUPREME COURT HOLDING: Failure to sufficiently comply with a condition of employment constitutes a voluntary leaving without good cause attributable to the employer.

FACTS: The claimant was working for the involved employer when she moved from Saginaw to Lupton with her husband and children. She lived in Saginaw a few days a week to be close to work but never intended the Saginaw address to be her permanent address. The claimant was terminated for failing to maintain a bona fide residence in the City of Saginaw as required by its Administrative Code.

DECISION: The claimant is disqualified pursuant to Section 29(1)(a) of the MES Act.

RATIONALE: Although the claimant did not resign because of the change in the location of her residence, her failure to sufficiently comply with the residency requirement, a condition of her employment, constituted a voluntary leaving without good cause attributable to the employer. The court was not persuaded that claimant's attempts to comply with the requirement constituted wilful "misconduct connected with work." The claimant is treated "as if she had done that which was presumably required under the circumstances -- resigned because of the relocation of her permanent residence."

10.05

Section 29(1)(a)

VOLUNTARY LEAVING, Involuntary, Distance to work

CITE AS: Laya v Cebar Construction, 101 Mich App 26 (1980).

Appeal pending: No

Claimant: David Laya
Employer: Cebar Construction
Docket No: B76 10141 54586

COURT OF APPEALS HOLDING: "Voluntary" as used in Section 29(1)(a) must connote a decision based upon a choice between alternatives which ordinary men would find reasonable.

FACTS: The claimant lived in Warren, Michigan with his family. In 1976 he was laid off and could not find work in his local area. Through his union he learned of work in Cincinnati, Ohio. He accepted the job, lived in Ohio during the week and drove home (272 miles) on weekends. The distance created difficulties within the family and trouble in making the drive. He quit after 25 days.

DECISION: Claimant is not disqualified for benefits pursuant to Section 29(1)(a).

RATIONALE: Where the claimant was not faced with a choice between alternatives that ordinary persons would consider reasonable, his choice was "no choice at all," and his leaving was involuntary and non-disqualifying.

6/91
3, 7, d5:NA

Section 29(1)(a)

VOLUNTARY LEAVING, Condition of employment, High risk insurance, Restricted driver's license, Truck driver

CITE AS: Michael v City Sewer Co, No. 47314 (Mich App October 29, 1980).

Appeal pending: No

Claimant: James E. Michael
Employer: City Sewer Co.
Docket No: B77 17151 57756

COURT OF APPEALS HOLDING: Where a person with a restricted driver's license is employed as a driver, on the condition that the employee will pay the additional cost of high risk insurance, a large increase in the cost of the insurance is not good cause for voluntary leaving.

FACTS: When the claimant began driving a truck for the employer he had a restricted driver's license. He was required to pay $75.00 for the extra cost of high risk insurance for one year. When the additional cost rose to $600.00 for six months, the claimant voluntarily resigned.

DECISION: The claimant is disqualified for voluntary leaving.

RATIONALE: "The Supreme Court has stated in Echols v Employment Security Comm, 380 Mich 87, 92; 155 NW2d 824 (1968); " ... the loss of a claimant's prerequisites for continued employment, especially through his own negligence, is a voluntary leaving without good cause attributable to the employer."

"Plaintiff was not subjected to additional requirements by the employer, rather it was plaintiff's failure to maintain the prerequisite license and insurance which resulted in his job loss."

"[F]rom the very beginning plaintiff paid the insurance, and had he not done so, he would not have been hired to drive a truck."

Section 29(1)(a)

VOLUNTARY LEAVING, Burden of proof, Dissatisfaction with duties, Lack of work assignments, Non-productive time, Quantity of work, Question of law

CITE AS: Cooper v University of Michigan, 100 Mich App 99 (1980).

Appeal pending: No

Claimant: Margaret Cooper
Employer: University of Michigan
Docket No: B76 12784 54167

COURT OF APPEALS HOLDING: (1) The employer does not bear the burden of proof concerning disqualification for voluntary leaving. (2) Dissatisfaction with a lack of work assignments does not constitute good cause for voluntary leaving.

FACTS: The claimant left a clerical position, stating that her work assignments were not sufficient to keep her busy.

DECISION: The claimant is disqualified for voluntary leaving.

RATIONALE: "While we are clearly presented with a disqualification question, we disagree with plaintiff's position that the employer bears the burden of proof in all cases involving an employee's disqualification for unemployment benefits."

"Plaintiff herein left work because she was dissatisfied with the amount of work assigned to her. In light of the undisputed facts attending the plaintiff's cause, whether this motivation constitutes 'good cause attributable to the employer or employing unit' is a question of law, Thomas v Employment Security Comm, 356 Mich 665, 668, 97 NW2d 784 (1959).

"In Albright v Unemployment Compensation Board of Review, 106 A 2D 879 (Pa 1954), a bookkeeper quit his job because he did not have enough to do. The court held that the plaintiff was not entitled to unemployment benefits."

10.08

Section 29(1)(a)

VOLUNTARY LEAVING, Good cause, Personality conflict

CITE AS: VanDuinen v S-2 Yachts, Inc., Alpena Circuit Court No. 85-007113 AE (F) (August 26, 1986).

Appeal pending: No

Claimant: Thomas VanDuinen
Employer: S-2 Yachts, Inc.
Docket No. B84-07402-R01-98084

CIRCUIT COURT HOLDING: Standing alone, a personality conflict between a claimant and his supervisor will not support a finding of good cause to leave work.

FACTS: Claimant was a supervisor in charge of materials handling. Prior to his separation, the claimant had several meetings with a personnel official regarding a personality conflict which existed between himself and his immediate supervisor, the vice president of operations. Despite his meetings the conflict went unresolved. As a consequence, the claimant left his employment.

DECISION: The claimant is disqualified for voluntary leaving.

RATIONALE: Employees often disagree with management's philosophies and orders. These disagreements occasionally stem from personality conflicts. Personality conflicts are common in the work place and in every day life. Good cause can "only be established when the external pressures are so compelling that a reasonably prudent person, exercising ordinary common sense and prudence, would be justified in quitting work under similar circumstances. These situations occur when there is discrimination, sexual harassment, abusive language accompanied by additional mistreatment, illegal or unethical practices by the employer, or the like." The personality conflict in the instant case does not rise to such a level.

7/99
11, 15: N/A

Section 29(1)(a)

VOLUNTARY LEAVING, Burden of proof, Residency requirement

CITE AS: Zausner v City of Kalamazoo, No. 70876 (Mich App June 26, 1984).

Appeal pending: No

Claimant: Nancy Zausner
Employer: City of Kalamazoo
Docket No: B81 07242 78438

COURT OF APPEALS HOLDING: Reasonable efforts to comply with a city's residency requirement are insufficient to avoid disqualification from unemployment benefits for voluntarily leaving work.

FACTS: When Plaintiff was hired by the employer, she acknowledged the city's residency requirement. She did not, however, move into the city within six months, as required. At her request, defendant city granted an extension of an additional six months. When Claimant did not move into the city after the end of the extension, she was terminated.

DECISION: Claimant is disqualified for voluntary leaving.

RATIONALE: The burden of proof is on claimant where potential disqualification for benefits required inquiry into whether behavior causing termination of employment was voluntary, Cooper v University of Michigan, 100 Mich App 99, 103 (1980). In Echols v Employment Security Commission, 380 Mich 87 (1968), the Supreme Court held that a cab driver whose license was suspended for accumulating too many points, causing the loss of his job, was disqualified for voluntary leaving. "The within case is like Echols, in that there was a certainty that assumption of a known risk would result in the loss of her job, namely, failure to establish residency in the city within the specified time . . . Because of this certainty, it may fairly be said that she voluntarily left her job without good cause attributable to her employer."

Section 29(1)(a)

VOLUNTARY LEAVING, Involuntary leaving, Good faith effort to find permanent employment, Temporary employment.

CITE AS: Pizunski v Fastening House, No. 73255 (Mich App December 27, 1984).

Appeal pending: No

Claimant: Ed M. Pizunski
Employer: Fastening House
Docket No: B81 08232 78656

COURT OF APPEALS HOLDING: Where an individual quits a job that he never intended to be more than temporary, the separation is disqualifying.

FACTS: "Plaintiff, a Canadian citizen, was a member of the Muskegon Mohawk hockey team until January, 1981. In February, 1981, plaintiff's wife's employer temporarily transferred her to Ontario, Canada. Plaintiff accompanied his wife to Ontario and there accepted a job as a truck driver with defendant, Fastening House. In March, 1981, plaintiff's wife completed her assignment in Ontario and returned to Muskegon. Plaintiff and his wife knew before going to Ontario that her assignment there would last only three to five weeks. The couple owned a home in the Muskegon area, and plaintiff had filed the papers necessary to obtain a "green card" which would enable him to work in the United States. The couple never intended that they would stay in Canada."

DECISION: The claimant is disqualified for voluntary leaving.

RATIONALE: The Court relied on Laya v Cebar Construction Co., 101 Mich App 26 (1980), in reaching its decision. In Laya, the court "emphasized that the plaintiff before it had made a good faith effort to find permanent employment but had failed for reasons beyond his control."

"Here, in contrast, plaintiff took the job in Canada knowing that his stay in Canada would be brief. Plaintiff here did not abandon as unworkable an experiment undertaken in good faith, but instead quit a job he never intended to be more than temporary. Under these circumstances, plaintiff's decision to quit cannot be characterized as involuntary ... "

Section 29(1)(a)

VOLUNTARY LEAVING, Constructive voluntary leaving, Discharge, Leave of absence

CITE AS: Ackerberg v Grant Community Hospital, 138 Mich app 295 (1984).

Appeal pending: No

Claimant: Karla Ackerberg
Employer: Grant Community Hospital
Docket No: B81 07538 78982

COURT OF APPEALS HOLDING: The employer must show that the claimant falls within the expressed terms of one of the disqualifications stated in the unemployment act.

FACTS: Plaintiff submitted a leave of absence form requesting an unpaid, personal leave beginning March 27, 1981, and extending for one and one-half years. The employer countered with an offer to give plaintiff a 30-day leave of absence. Plaintiff refused a 30-day leave and believed she was rightfully allowed the leave she requested. Plaintiff informed the employer she intended to begin her leave as requested by her with or without approval. The employer terminated plaintiff's unemployment immediately.

DECISION: Claimant is not disqualified for voluntary leaving.

RATIONALE: Relying on Thomas v Employment Security Comm., 356 Mich 665 (1959) and Copper Range Co. v UCC, 320 Mich 460 (1948), the court declined to find a constructive voluntary leaving when the claimant was actually discharged by the employer. Because the employer discharged the claimant on March 23, we can only speculate as to what the claimant would have done on March 27. The Act does not permit disqualification on the basis of speculation as to what an individual would have done if he or she had not been discharged.

Section 29(1)(a)

VOLUNTARY LEAVING, Good cause attributable to employer, Change in working conditions

CITE AS: Payne v Colony Bar, No. 1-11 AE, St. Clair Circuit Court (September 27, 1984).

Appeal pending: No

Claimant: Mary L. Payne
Employer: Colony Bar
Docket No: B83 17556 93994W

CIRCUIT COURT HOLDING: Good cause for voluntary leaving exists where there has been a substantial change in the working conditions.

FACTS: Claimant voluntarily left her employment with the Colony Bar after approximately nineteen years. She left because of a substantial change in working conditions, i.e., the introduction of loud, rock-type music which changed the very nature of the establishment and its clientele.

DECISION: The claimant is not disqualified for voluntary leaving.

RATIONALE: The Court adopted the standard set forth by McGinnis v Moreau, 149 502d 188.

"Mere dissatisfaction with working conditions does not constitute "good cause" for quitting the employment unless the dissatisfaction is based upon discriminatory or unfair or arbitrary treatment, or is based upon a substantial change in working conditions from those in force at the time the claimant's employment in his position commenced, so as to render the work unsuitable to the claimant, considering the worker's physical fitness, qualifications, earning ability, and the like.

"'Good cause' compelling an employee to terminate his employment should be found where an employer's actions would cause a reasonable, average and otherwise qualified worker to give up his or her employment. Schultz v Grede Foundries, Inc., No. 79-391, (Mich App.September 11, 1979).

"The separation from employment here was not considered in the light of the foregoing standard. An aging, long-time employee (who might also be reasonable, average and otherwise qualified per Schultz) was entitled to a careful assessment of the physical and emotional impact of the employer's substantial change of musical format, clientele and the general ambience of the place of employment."

Section 29(1)(a)

VOLUNTARY LEAVING, Good cause, Living wage

CITE AS: Setta v Chrysler Corp, No. 301-977, Wayne Circuit Court (September 3, 1959).

Appeal pending: No

Claimant: Richard Setta
Employer: Chrysler Corporation
Docket No: B58 6122 22034

CIRCUIT COURT HOLDING: A claimant who makes a good faith attempt at earning a living but is unable to earn a living wage is not disqualified for benefits pursuant to Section 29(1)(a) when he quits.

FACTS: Claimant was laid off from Chrysler for lack of work. He later obtained work as a salesman for the Brown Company. Claimant began his sales job with a salary and commission. After 6 weeks he went to straight commission. After he shifted to commission, the claimant's income dropped so low he could not earn a living wage. The drop of wages was not the result of any lack of effort on the claimant's part.

DECISION: Claimant not disqualified pursuant to Section 29(1)(a).

RATIONALE: "The 2nd and 29th sections of the Michigan Statute when taken together, suggest that the test intended by the voluntary quit provision of Section 29 is this: Was the employee driven to leave by external pressures rather than subjective conveniences or desires. If the external pressure is great enough to make it perfectly reasonable to quit, then Section 29 of the statute does not seem to me to impose any disqualification. When one earns only $21.00 a month with nothing better in prospect, the alternatives are simple; either to starve or to quit. Under such circumstances, is there really any choice? And, when one is compelled to take the only available course, can he be said to have voluntarily done anything? Where, as in the Setta case, the pressure stems from lack of earnings sufficient to provide one's family with the barest necessities, and with nothing better in prospect, it seems to me that there is external pressure great enough to make quitting a perfectly reasonable, indeed, an inescapable, act. Under these circumstance, either there is not a voluntary leaving of work or there is good cause for voluntarily quitting which is attributable to the employer."

Section 29(1)(a)

VOLUNTARY LEAVING, Good Cause, Verbal abuse from foreman

CITE AS: Dexter v Winter's Sausage, No. 80626 (Mich App January 16, 1986); lv granted 425 Mich 872 (1986); lv den 428 Mich 897 (1987).

Appeal pending: No

Claimant: Joyce A Dexter
Employer: Winter's Sausage
Docket No: B83 11386 92075W

COURT OF APPEALS HOLDING: "An employer's screaming at the employee does not constitute good cause attributable to the employer for the employee to terminate the employment relationship."

FACTS: The claimant testified that she quit her job because she could not tolerate being constantly yelled at by her foreman. Two witnesses corroborated the claimant's allegations of constant yelling. One witness testified that claimant received more abuse than the other employees. The other witness testified that she had occasionally seen and heard the foreman yelling and cursing at claimant from across the room. The office manager testified that the foreman involved yelled at all the employees, and that his screaming was merely part of his work habits.

DECISION: The claimant is disqualified for voluntarily leaving her job.

RATIONALE: "In Butler v Newaygo, 115 Mich App 445, 449; 320 NW2d 401 (1982), this Court found that neither a reprimand nor "the mere fact that the claimant felt personally affronted" by his employer's conduct constituted good cause to leave his job. In a like vein, we conclude that voluntary unemployment for "good cause" must be limited to instances where the unemployment is caused by events so compelling that reasonable men and women would conclude they constitute a valid reason for giving up employment. See Dueweke v Morang Drive Greenhouses, Inc, 411 Mich 670, 679-680; 311 NW2d 712 (1981), Anno: Unemployment Compensation: Harassment or other Mistreatment by Employer or Supervisor as "Good Cause" Justifying Abandonment of Employment, 76 ALR3d 1089 and cases cited therein. The referent is the average person, not the super-sensitive."

"We cannot say as a matter of law that the supervisor's conduct is so compelling that reasonable persons of average sensibilities would conclude that plaintiff had a valid reason to give up her employment. ... A harmonious relationship with a supervisor helps to make an employee's work pleasant, but the Employment Security Act was designed to address the evil of involuntary economic insecurity and not to compensate the worker who has an imperfect supervisor."

10.15

Section 29(1)(a)

VOLUNTARY LEAVING, Consumer Protection Act, Good Cause, Illegal work activities

CITE AS: Hibbard v Tuff Kote Dinol Rustproof, No. 82-17148 AE, Muskegon Circuit Court (May 17, 1983).

Appeal pending: No

Claimant: Thomas Hibbard
Employer: Tuff Kote Dinol Rustproof
Docket No: B82 13562 85191W

CIRCUIT COURT HOLDING: " ... An employee whose work duties include activities which require the employee to violate federal, state or local laws has demonstrated good cause attributable to the employer or employing unit."

FACTS: Claimant terminated his employment because his company advertised to the public a "two-step" rust proofing process which involved the application of both a penetrant and a sealant; however, the management of the firm often instructed claimant to apply only the penetrant or only the sealant to an automobile. Claimant felt that he was "cheating the public" and not doing the rust-proofing jobs properly or as advertised, and that numerous customer complaints resulted from this practice. After protesting to management about this improper and inadequate procedure, claimant resigned.

DECISION: The claimant is not disqualified for voluntary leaving.

RATIONALE: The employer's occasional practice of requiring claimant to utilize a one-step rust proofing process when the employer advertised to the public a two-step rust proofing process compelled claimant to participate in practices which were in clear violation of the Michigan Consumer Protection Act, MCLA 445.901 et seq, MSA 19.418(1) et seq.

The Court adopted the reasoning of the Commonwealth Court of Pennsylvania in Zinman v Unemployment Compensation Board of Review, 8 Pa Cmwlth 649, 305 A2d 380 (1973), in which the Court held that a legal duty to obey laws may constitute appropriate circumstances for an employee to voluntarily terminate employment and still qualify for unemployment compensation benefits. Claimant acted in good faith and as a reasonable person in terminating his employment rather than continue in an illegal practice. Claimant had good cause to resign, and this good cause was directly attributable to the employer.

11/90
1, 6, d14:NA

Section 29(1)(a)

VOLUNTARY LEAVING, Quit in anticipation of discharge, Reasonable person standard

CITE AS: Carswell v Share House, Inc, 151 Mich App 392 (1986).

Appeal pending: No

Claimant: Elizabeth Carswell
Employer: Share House, Inc
Docket No: B83 10743 91926W

COURT OF APPEAL HOLDING: An employee who tenders a resignation effective immediately rather than work a two week notice period offered by the employer has voluntarily terminated employment. A reasonable person standard should be applied when determining "good cause" under Section 29(1)(a).

FACTS: Claimant, a secretary, had expressed dissatisfaction about her wages. After being told she would not be getting an increase, she expressed her intention to look elsewhere for employment. Several days later the employer gave claimant a letter accepting her "offer to voluntarily quit". The letter went on to indicate claimant's replacement would start in two weeks and claimant could work until then. Later that same day claimant submitted a letter of resignation effective immediately.

DECISION: Claimant voluntarily left her employment. Remanded by the court for fact finding as to whether claimant had good cause attributable to the employer.

RATIONALE: "[W]e find that there is little doubt that plaintiff left her employment voluntarily. Although she had an opportunity to continue her employment for two weeks, she tendered her resignation effective immediately. Plaintiff was not under any legal, economic, or physical compulsion to leave her job, nor is there any evidence in the lower court record indicating that she did so unintentionally."

"The real question presented to us is whether plaintiff's leaving of her job was 'without good cause attributable to the employer.' ... 'Good cause' as used in MCL 421.29(1)(a); MSA 17.531(1)(a), has not been defined.... We find that the 'reasonable man' standard properly effectuates the legislative intention behind MCL 421.29(1)(a); MSA 17.531(1)(a). Under that standard, 'good cause' compelling an employee to terminate his employment should be found where an employer's actions would cause a reasonable, average, and otherwise qualified worker to give up his or her employment."

Section 29(1)(a)

VOLUNTARY LEAVING, Detrimental reliance, Estoppel barring revocation, Hiring of replacement, Notice of leaving, Withdrawal of resignation

CITE AS: Engel v Derthick Associates, Inc, No. 78-179125 AE, Oakland Circuit Court (July 6, 1979).

Appeal pending: No

Claimant: Blanche Engel
Employer: Derthick Associates, Inc.
Docket No: B77 875 55320

CIRCUIT COURT HOLDING: Where an employee is not permitted to withdraw a resignation after the employer has hired a replacement, the claimant is disqualified for voluntary leaving.

FACTS: The claimant gave notice of leaving her employment. She later attempted to withdraw her resignation, but the employer had already hired a replacement. The employer allowed the resignation to stand as submitted.

DECISION: The claimant is disqualified for voluntary leaving.

RATIONALE: "The referee apparently concluded that claimant was estopped to withdraw her resignation because the employer had placed advertisements, had interviewed, and in fact had hired claimant's replacement. The question of estoppel is essentially a question of fact, Pursell v Wolverine-Pentronix, INc, 44 Mich App 416, 420 (1973."

"Once an employee knowingly and voluntarily sets in motion processes which ultimately result in her replacement, she cannot reasonably expect those processes to grind to a halt because she changes her mind. Certainly it is the policy of the Employment Security Act to minimize the effects of unemployment. However, the Act cannot be so broadly construed as to require businesses to be run at the whims of the employees. The Act was never intended to make employers into social welfare agencies. Thus, once an employer, such as Derthick in this case, begins to act on an employee's resignation, that employer cannot be required to honor an employee's attempt to withdraw a resignation."

Section 29(1)(a)

VOLUNTARY LEAVING, Administrative order, Civil Rights Commission, Collateral estoppel, Equal employment opportunity, Res judicata, Sex discrimination

CITE AS: Webber v Lansing Insurance Agency, No. 78-22105 AA, Ingham Circuit Court (April 18, 1980).

Appeal pending: No

Claimant: Bobbi Webber
Employer: Lansing Insurance Agency
Docket No: B77 7500 55662

CIRCUIT COURT HOLDING: Good cause for voluntary leaving may be found where the claimant felt discriminated against, even where a final order of the Michigan Civil Rights Commission has found no actionable discrimination.

FACTS: The claimant resigned and filed a Civil Rights Commission complaint alleging sex discrimination. An M.E.S.C. referee found good cause for voluntary leaving. The Civil Rights complaint was dismissed, but the Board of Review subsequently affirmed the referee.

DECISION: The claimant is not disqualified for voluntary leaving.

RATIONALE: "The binding effect of administrative rulings has been dealt with by the Court of Appeals in the case of Strachan v Mutual Aid Club, 81 Mich App 165 265 NW2D 66 (1978)." "The court illustrates that once an administrative order becomes final, res judicata will attach." "The Michigan Employment Security Commission is barred from making an actual finding of fact that actionable discrimination here exists." "[T]he Referee did not determine that there was actionable discrimination. Rather, the decision is founded upon appellee's belief that her employer had discriminated against her." "This determination is a far cry from a finding of actionable discrimination, and that is the only holding which can be barred by res judicata."

Section 29(1)(a) and 29(8)

VOLUNTARY LEAVING, Good Cause, Promise of increased compensation, Labor dispute, Acting in concert

CITE AS: Degi v Varano Glass Co., 158 Mich App 695 (1987)

Appeal pending: No

Claimant: Paul G. Degi
Employer: Varano Glass Company
Docket No: B84 09066 97679W

COURT OF APPEALS HOLDING: Where an employer has promised additional compensation to a claimant for taking on new duties, the employer's failure to provide that additional compensation constitutes good cause attributable to the employer. A worker, who is not acting in concert with other employees and is discharged after protesting wages, hours, or working conditions is not engaged in a labor dispute.

FACTS: Claimant worked in the employer's flat glass department. On his own claimant had acquired skills in making beveled and stained glass. The employer decided to start an art glass department. Claimant agreed to work there. An increase in claimant's wages was discussed. Claimant had a proposed employment contract prepared and presented it to the employer. Claimant spent 2 months performing tasks related to art glass work but did not receive a wage increase. Claimant advised the employer he would not continue in the art glass department without a contract. The employer advised him to continue working in the art glass department or punch out. Claimant punched out and did not return.

DECISION: Claimant is not disqualified for voluntarily leaving his employment since he had good cause attributable to the employer for leaving.

RATIONALE: "On the facts of this case, a reasonably prudent person would be justified in giving up employment. The employer's activity would motivate the average able-bodied and qualified worker to give up his or her employment in such a situation."

"We conclude that a worker who is not acting in concert with other employees, but rather who is individually protesting wages, hours and working conditions to his employer and who is summarily discharged, is not engaged in a "labor dispute" as that phrase is used in Section 29()[sic]. To hold otherwise would be to unduly broaden the commonly understood meaning of the phrase 'labor dispute'".

Section 29(1)(a)

VOLUNTARY LEAVING, Layoff, Leaving to accept employment, Reasonable assurance, Resignation during layoff, School denial period, Teacher aide

CITE AS: Makela (Waterford School District), 1980 BR 66562 (B79 01484).

Appeal pending: No

Claimant: Eve Makela
Employer: Waterford School District
Docket No: B79 01484 66562

BOARD OF REVIEW HOLDING: Where an individual is on a layoff for lack of work, and resigns to accept work with another employer, the claimant is not disqualified for voluntary leaving.

FACTS: The claimant, a teacher aide, was laid off in June. She received reasonable assurance or reemployment in the fall. While on layoff, the claimant accepted office work with another employer, and resigned the teacher aide position.

DECISION: The claimant is not disqualified for voluntary leaving.

RATIONALE: "Prior Board decisions have consistently held that in order for the disqualification provisions of Section 29(1)(a) to apply the claimant must be actually in employment or that the employment relationship continues as in the case of a leave of absence or labor dispute. Here, the claimant was not in employment when she quit and, therefore, is not subject to the disqualification provisions of the Act. See Wright (Packard Motor Car Co), Appeal Docket No. B9-1771-9898 (1949)."

Section 29(1)(a)

VOLUNTARY LEAVING, Good cause, Part-time work, Pay reduction

CITE AS: Wasolaskus (Tom's Grandville Station), 1978 BR 55248 (FSB76 13211).

Appeal pending: No

Claimant: Dennis Wasolaskus
Employer: Tom's Grandville Station
Docket No: FSB76 13211 55248

BOARD OF REVIEW HOLDING: A seventeen (17) percent reduction in wages is good cause for voluntarily leaving part-time work.

FACTS: The claimant was a part-time attendant at a filling station. He worked 20 hours per week at $2.50 per hour. The claimant's pay was subsequently reduced about $40.00 per month by his removal from the Saturday work schedule. The claimant resigned as a result.

DECISION: The claimant is not disqualified for voluntary leaving.

RATIONALE: "Jack Desser, d/b/a/ Jack Desser Biscuit Company v Appeal Board, Wayne County Circuit Court, No. 324-748 (July 5, 1962), held that a 'substantial reduction' in wages can constitute 'good cause' for quitting one's employment. The 'substantial reduction' in Desser consisted of a 20 percent reduction in claimant's gross commissions. The curtailment of hours imposed by employer upon claimant in this case would have reduced his income by approximately 17 percent if he had continued his employment. The reduction ir wages was 'substantial.'

"The part-time nature of claimant's employment does not, per se alter the substantiality of the reduction in claimant's wages."

Section 29(1)(a)

VOLUNTARY LEAVING, Collective bargaining agreement, Mandatory retirement

CITE AS: Dolce v Ford Motor Company, sub nom Parks v ESC, 427 Mich 224 (1986).

Appeal pending: No

Claimant: Dominick Dolce
Employer: Ford Motor Company
Docket No: B78 52393 R01 59916

SUPREME COURT HOLDING: An individual who is forced to leave work pursuant to mandatory retirement provisions of a collective bargaining agreement is not disqualified under Section 29(1)(a) of the MES Act.

FACTS: The claimant was separated from his employment, at age 68, by operation of a mandatory retirement provision of the collective bargaining agreement.

DECISION: The claimant is not disqualified for voluntary leaving.

RATIONALE: "We do not believe that the drafters intended to deny benefits from persons unemployed due to being mandatorily retired. We recognize that under Michigan law the union is the collective bargaining agent for all the employees and in many respects the employee is bound by and accountable for the actions of its bargaining agent. However for purposes of determining voluntariness under the MESA, the collective bargaining process is too remote from the individual employees who come and go under it to allow those legislative presumptions under the state's scheme of labor law to transform a forced retirement into a voluntary leaving."

"The statute disqualifies those who have left work voluntarily. Dolce did not leave work voluntarily, but was forced to leave. ... Dolce was helpless to stave off the aging process and his eventual termination. The presence of a union agreement with the employer does not change the relationship between the employee and employer with respect to this statutory inquiry. The language of the statute directs the inquiry to whether the worker left voluntarily and does not address any agreements between the employer and third parties."

Section 29(1)(a)

VOLUNTARY LEAVING, Burden of proof

CITE AS: Borg v MUCC, No. 277, 192 Wayne Circuit Court (February 28, 1955).

Appeal pending: No

Claimant: Edgar Borg
Employer: Ansaldi Tool & Engineering
Docket No: B54 749 15677

CIRCUIT COURT HOLDING: "On the question of disqualification for voluntarily leaving without good cause attributable to the employer, it appears to the court that the burden of proof is upon the employer to establish that voluntary leaving took place."

FACTS: Claimant worked for the employer until November 25, 1953. Claimant testified he did not work between that date and December 4, 1953 because there was no work. Claimant testified that the employer promised to call when work was available, but did not do so. The employer contended that claimant was unwilling to work full time and had voluntarily quit.

DECISION: Claimant is not disqualified.

RATIONALE: The employer did not establish that claimant's leaving was voluntary.

Section 29(1)(a) & (b)

VOLUNTARY LEAVING, Discharge in anticipation of leaving

CITE AS: Stephen's Nu-Ad, Inc v Green, 168 Mich App 219 (1988).

Appeal pending: No

Claimant: Howard Green
Employer: Stephen's Nu-Ad, Inc
Docket No: B86 02424 102397W

COURT OF APPEALS HOLDING: Claimant's immediate termination by the employer after having given notice of intent to quit is not disqualifying under Section 29(1)(a). However, since claimant made it clear and was unwaivering that he intended to quit after his two week notice, claimant is disqualified after the date he intended to quit under Section 29(1)(a).

FACTS: On 2-3-86 claimant informed the employer that on 2-15-86 he would no longer be working for the employer. Claimant was asked to continue the employment relationship, but he declined. Later that day the employer told claimant his employment was being immediately terminated.

DECISION: Claimant is not disqualified for the period of 2-3-86 to 2-15-86 under Section 29(1)(a) but claimant is disqualified after 2-15-86 under Section 29(1)(a).

RATIONALE: Claimant's leaving on 2-3-86 was not voluntary. "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."

However, due to claimant's persistent and irrefragable declarations that under no circumstance would he work for the employer after 2-15-86, claimants unemployment after 2-15-86 was voluntary and disqualifying under Section 29(1)(a).

Section 29(1)(a)

VOLUNTARY LEAVING, Good cause, Economic necessity, Living wage, Stop-gap employment

CITE AS: Holmquist (Swiss Colony Store), 1978 BR 54085 (B76 9343).

Appeal pending: No

Claimant: Garth H. Holmquist
Employer: Swiss Colony Store
Docket No: B76 9343 54085

BOARD OF REVIEW HOLDING: Where economic pressure motivates a claimant to leave stop-gap employment which does not pay a living wage, the separation is not disqualifying.

FACTS: "In this case, the claimant obtained stop-gap employment in a Madison, Wisconsin food shop while attempting to obtain employment commensurate with his educational and career objectives. The job provided about twenty hours of work per week, paid only $2.20 per hour, and was to end around January 1, 1976." The claimant quit on December 19, 1975 to return to Michigan. He testified that he had been unable to find permanent work in Wisconsin and could not afford to remain there. His wife was unemployed as well.

DECISION: The claimant is not disqualified for voluntary leaving.

RATIONALE: "Where an employee is unable to earn a living wage at his job, his leaving the job is involuntary and not disqualifying. Brainard v Employment Compensation Commission of Delaware, 76 A2d126, cited approvingly by Justice Edwards in Lyons v Employment Security Commission, 363 Mich 201 (1961)."

Section 29(1)(a)

VOLUNTARY LEAVING, Compensation, Failure to pay overtime, Underpayment of wages, Wage and hour statute

CITE AS: Yoder (ABC Heating and Supply), 1980 BR 62185 (B78 07654).

Appeal pending: No

Claimant: David Yoder
Employer: ABC Heating and Supply
Docket No: B78 07654 62185

BOARD OF REVIEW HOLDING: Where a wage and hour statute requires payment of time and a half for hours in excess of 40 hours per week, failure to pay that rate is good cause for voluntary leaving.

FACTS: "One of the reasons given by claimant for quitting his job was that he was not receiving time and one-half pay for his overtime work.

"Mr. Smith, representative of the employer, reviewed his records at the hearing and admitted that he owed the claimant additional money. He stated that the claimant did work over- time hours and did not receive time and one-half and that he would see to it that the claimant received his money."

DECISION: The claimant is not disqualified for voluntary leaving.

RATIONALE: The Board adopted the decision of the Referee, who held: "Michigan law generally provides that employers who have four or more employees over the age of 18 are required to pay time and one-half for hours in excess of 40 hours. Since in the instant case, the employer did not pay the claimant according to the State law, the claimant did have a good cause attributable to the employer for quitting his job and he is not disqualified for benefits under Section 29(1)(a) of the Act."

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Section 29(1)(a)

VOLUNTARY LEAVING, Failure to use grievance procedure, Alternate remedies

CITE AS: Johnides v St. Lawrence Hospital, 184 Mich App 172 (1990).

Appeal pending: No

Claimant: Tim A. Johnides
Employer: St. Lawrence Hospital
Docket No: B87 04342 106605W

COURT OF APPEALS HOLDING: A claimant may establish good cause for voluntary leaving despite having failed to pursue a grievance procedure available to him prior to quitting.

FACTS: Claimant asked for a transfer from his night shift position in employer's psychiatric unit A. He was placed on administrative leave for two weeks while employer attempted to find another position for him. When claimant returned to work, employer only agreed to pay him for four of the days he was off. Claimant quit and filed in small claims court. He was awarded compensation for the full period of his administrative leave.

DECISION: Claimant was not disqualified for voluntary leaving.

RATIONALE: "In deciding whether the failure to pursue an available grievance procedure will operate to disqualify an employee from receiving unemployment benefits, many factors should be considered. First, the nature of the grievance procedure should be analyzed. For instance, where there exists a formal employer-employee negotiated grievance procedure, such as that under a collective bargaining agreement, the reasons for requiring an employee to abide by the terms of the agreement, and therefore first resort to the grievance procedure, are much more compelling than in the case where there exists merely an informal employer-imposed procedure. Further, the nature of the dispute should be analyzed in light of the procedure available. That is, it should be determined whether the procedure is one likely to resolve the dispute or whether the dispute at issue is of the type contemplated by the grievance procedure. If not, then a failure to resort to the procedure should not affect a claimant's eligibility for unemployment compensation. Finally, other variables, such as whether resort to the grievance procedure would be a mere futility, should also be examined. Each of these considerations should be analyzed in light of all the other relevant facts of the case in determining whether a reasonable, average, and otherwise qualified worker would feel compelled to give up his of her employment without first resorting to an available grievance procedure."

Additionally, the court observed: "Nowhere does the act require, nor does it suggest, that a claimant must first file a complaint in either a judicial forum or with the Department of Labor in order to preserve his eligibility for unemployment compensation."

Section 29(1)(a)

VOLUNTARY LEAVING, Agricultural labor, Circuit Court review, Justiciable issue, Leaving to accept employment, Maximum benefit entitlement, Moot issue, Non-liable employing unit

CITE AS: Miller v Hoffmaster Farms, No. 79-1282 AV, Allegan Circuit Court (January 11, 1980).

Appeal pending: No

Claimant: L. Scott Miller
Employer: Hoffmaster Farms
Docket No: EB76 17267 55335

CIRCUIT COURT HOLDING: (1) An individual who leaves a non-liable employing unit to accept work with a liable employer is disqualified for voluntary leaving. (2) A disqualification is not made moot by a claimant's subsequent receipt of the maximum benefit entitlement.

FACTS: The claimant tended a dairy herd, on a part-time basis, for a non-liable agricultural employing unit. He was disqualified for leaving to accept full-time work with a liable employer, but subsequently received benefits for the maximum number of weeks.

DECISION: The claimant is disqualified for voluntary leaving.

RATIONALE: "While another party, one actually deprived of benefits, may have better standing to present the issue involved in this case, the claimant should be entitled to a circuit court review of the record ... ".

"[A]n employing unit can be composed of agricultural labor, but such a unit, at least during the period that appellant worked for Hoffmaster Farms, cannot be subject to the terms of MCLA 421.41; MSA 17.543 defining 'employer.'"

"It should be pointed out that MCLA 421.29 (5); MSA 17.531 (5) waives the disqualification period when an individual leaves an employer, even though working part-time, to take a full-time job with another employer. Presumably, because not all employing units are employers, this waiver is not extended to those individuals who leave an employing unit to take a job with an employer."

Section 29(1)(a)

VOLUNTARY LEAVING, Condonation, Grievance procedure, Harassment, Persona non grata, Sarcasm

CITE AS: Giebel v State of Michigan, No. 3863, Midland Circuit Court (October 1, 1974).

Appeal pending: No

Claimant: Richard A. Giebel
Employer: State of Michigan
Docket No: B71 2038 40969

CIRCUIT COURT HOLDING: Where supervisory sarcasm and co-worker harassment make an employee persona non grata in the work place, the entire course of conduct becomes attributable to the employer, and may constitute good cause for voluntary leaving, even where the claimant does not use the grievance procedure.

FACTS: The claimant worked as a Public Welfare Trainee in the Department of Social Services. The Court adopted the Referee's findings, and said:

"In summary, it appears that the claimant made certain objections to the conduct of fellow employees with regard to drinking beer in the offices and taking home shoes which had been donated for indigents. These complaints, going over the head of supervisors in some instances, and personality idiosyncrasies of the claimant made him persona non grata with co-employees and supervisors. They engaged in a course of conduct which claimant describes as harassment."

The Referee found that when the claimant asked for a day off, "The employer stated that he was permitted to take the day off. She further stated that he did not need written permission. His supervisor then said, 'Just go away and stay away and don't bother to come back.'" The claimant resigned, without filing a grievance, after staff members ransacked his office, put a mental health manual on his desk and posted a religious caricature on his office door, to teach him a lesson.

DECISION: The claimant is not disqualified for voluntary leaving.

RATIONALE: "The brief of the Appellee admits only the 'sarcastic statement by an irritated superior on one occasion,' but when that statement is placed in the time sequence of the other acts of harassment the entire course of conduct becomes attributable to the employer. Passive employer approval can be sufficient. Taylored Products, Inc. v MESC, Berrien Circuit #C-3963-H (1966), 5 CCH Unemployment Insurance Reporter Section 1975.949."

Section 29(1)(a)

VOLUNTARY LEAVING, Good cause, Sexual harassment

CITE AS: Luke v Jemco, Inc., No. 81157 (Mich App March 19, 1986).

Appeal pending: No

Claimant: Mary L. Luke
Employer: Jemco, Inc.
Docket No: B80 11464 R01 84773

COURT OF APPEALS HOLDING: Employees who have voluntarily left their employment for reasons of sexual harassment need not prove they sought to remedy the situation before quitting in order to avoid disqualification.

FACTS: Claimant quit after employer accused her of conspiring and fabricating with other employees. This was the culmination of a series of objectionable actions on employer's part, primarily consisting of degrading, sexually explicit statements directed to claimant. Claimant did not complain to employer about his behavior. When it escalated to an intolerable level, she quit.

DECISION: Claimant was not disqualified for voluntary leaving.

RATIONALE: In cases of sexual harassment, particularly where the employer personally is the source of such harassment, claimants should not bear a burden of proof beyond that of proving that the reasons for leaving constituted good cause attributable to the employer.

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Section 29(1)(a)

VOLUNTARY LEAVING, Return to same work, Sexual harassment

CITE AS: Reeves v Mike's Famous Ham Place, No. 77532 (Mich App July 5, 1985).

Appeal pending: No

Claimant: Sharon Sue Reeves
Employer: Mike's Famous Ham Place
Docket No: B83 03316 89615W

COURT OF APPEALS HOLDING: When a claimant over the course of several years leaves and then returns to the employer's employ on a number of occasions under the exact same conditions, the claimant's own actions evidence the fact conditions were not such that any reasonable person in the claimant's position would feel compelled to leave.

FACTS: The claimant had worked as a waitress in the employer's restaurant. Over the course of a number of years the claimant had left the work place only to return at a later date under the same conditions. The claimant's final leaving was prompted by a critical assessment of her work by the employer. However, when the claimant applied for benefits she insisted that a pervasive pattern of sexual harassment had existed in the work place and provided her with a good cause for her voluntary leaving.

It should be noted that on each occasion that the claimant returned to the work place she left other gainful employment to do so.

DECISION: The claimant was disqualified for benefits under the voluntary leaving provision of the MES Act, Section 29(1)(a).

RATIONALE: By freely choosing to return to the work place with a full understanding of the conditions present the claimant by her own behavior evidenced that the situation was not harassing and therefore not all reasonable persons in her position would have felt compelled to leave.

Section 29(1)(a)

VOLUNTARY LEAVING, Abandonment of employment, Leaving without authorization, Notice of leaving, Withdrawal of resignation

CITE AS: McGee v Jervis B. Webb, Co., No. 80-004405 AE, Wayne Circuit Court (June 4, 1980).

Appeal pending: No

Claimant: James McGee
Employer: Jervis B. Webb Co.
Docket No: B78 54246 61954

CIRCUIT COURT HOLDING: An employee " ... does not have a unilateral right to rescind his resignation at will."

FACTS: The claimant told his employer he was quitting his job. He then left work without authorization. "It is undisputed that later in the day the appellant thought better of his decision to walk of the job in a huff and attempted to revoke his resignation. His employer, however, would not concur."

DECISION: The claimant is disqualified for voluntary leaving.

RATIONALE: "Based upon the authorities called to my attention, the decision involving facts most closely analogous to the facts in this case is the decision of the Michigan Supreme Court in Jenkins v Employment Security Commission, 364 Michigan 379 (1961). In Jenkins, the Michigan Supreme Court held that the employee had left work voluntarily without good cause attributable to the employer."

"It would seem to this Court that, once an employee manifests the intention to his employer to quit permanently, that the employer has a right to accept such manifestation at face value. It seems to this Court to be both fair and logical to conclude that the employee does not have a unilateral right to rescind his resignation at will."

Section 29(1)(a)

VOLUNTARY LEAVING, Domestic problems

CITE AS: Rutherford v Payan, No. 87265 (Mich App July 15, 1986).

Appeal pending: No

Claimant: Barbara R. Rutherford
Employer: Ardeshir Mofahkam Payan
Docket No: B82 18102 91682W

COURT OF APPEALS HOLDING: Personal problems which result from reasonable and ordinary work requirements will not support a finding of good cause attributable to the employer.

FACTS: The time demands of the claimant's employment were such that they caused her spouse to become suspicious that the claimant was having an affair with her employer. As a result the claimant's husband became angry and resentful. The husband eventually demanded that the claimant leave her employment and she did so.

DECISION: The claimant is disqualified for benefits under the voluntary leaving provision of the MES Act, Section 29(1)(a).

RATIONALE: While the claimant had marital and domestic problems which resulted from demands of her job it cannot be said that the claimant's personal problems were directly attributable to the employer. Rather, it would seem as if any employment would have caused the same difficulties and therefore there was no distinct connection between the claimant's personal problems and her work. Further, even if there had been, it is questionable whether personal problems which are not directly incident of work place responsibilities can form a basis for a finding of good cause.

Section 29(1)(a)

VOLUNTARY LEAVING, Good cause, Personal work quality standards

CITE AS: Ryan v Macomb-Oakland Regional Center, No. 92138 (Mich App May 22, 1987).

Appeal pending: No

Claimant: Michael Ryan
Employer: Macomb-Oakland Regional Center
Docket No: B82 23667 90219

COURT OF APPEALS HOLDING: The employer's failure to meet internal performance standards which were higher than those required by law does not provide a basis for a finding of good cause for voluntarily leaving as it was not established an average, reasonable claimant would be compelled to leave work under such circumstances.

FACTS: The claimant was employed as an assistant program director for the Macomb-Oakland County Regional Center and was responsible for developing and implementing programs for the center's severely retarded residents. The claimant voluntarily left his position. He resigned because he felt that the residents were receiving inadequate care. The claimant did not assert that the employer's standards were below those required by the State and there was no evidence in the record to indicate the situation was such. Rather, the claimant attempted to show that the employer violated its own standard of providing habilitative, social, recreational and educational services to promote the individual growth of the residents.

DECISION: The claimant was disqualified for benefits under the voluntary leaving provision of the MES Act, Section 29(1)(a).

RATIONALE: While the claimant may have felt that the employer could have done a better job providing services there was nothing in the record to indicate the services actually rendered were in any way substandard. Consequently, the claimant was without good cause for his leaving and therefore was disqualified for benefits.

Section 29(1)(a)

VOLUNTARY LEAVING, Health or physical condition, Pregnancy

CITE AS: Watson v Murdock's Food and Wet Goods, 148 Mich App 802 (1986).

Appeal pending: No

Claimant: Michelle Watson
Employer: Murdock's Food and Wet Goods
Docket No: B83 13107 92389W

COURT OF APPEALS HOLDING: A separation due to a disabling medical condition attributable only to a claimant's circumstances is a voluntary leaving without good cause attributable to the employer.

FACTS: Claimant, a waitress, became pregnant and was diagnosed as suffering from a separation of the pubic bone. Her physician restricted her from work involving lifting or bending. When she presented the restrictions to the employer, he read the note and walked away and the claimant left. She assumed he understood she could no longer work. She had no intention of returning after giving birth.

DECISION: The claimant is disqualified.

RATIONALE: The court stated the MES Act "was intended to provide relief to those persons 'able and available' to perform work but who are prevented from doing so by economic forces beyond their control" and "not intended to provide a form of mandatory health or disability insurance at the expense of the employers who fund the system." The court interpreted the statutory term "voluntary" as follows:

"The question presented here can be posed more specifically as whether Section 29(1)(a) is applicable, i.e., has plaintiff 'left work voluntarily without good cause attributable to the employer. ...' Obviously, the word 'voluntary', taken alone, is capable of two meanings under these facts. In a sense, plaintiff's separation from employment was involuntary since she did not choose to suffer from a medical condition which requires that she avoid the bending and lifting required in her job. On the other hand, the absence can be construed as a voluntary and wise decision based upon the advice of her doctor. The question, then, is which meaning was intended by the Legislature. We believe that the answer can be derived from the modifying phrase "without good cause attributable to the employer.' In the case before us, it certainly cannot be denied that plaintiff left with good cause. Her own health and that of her baby were at stake. Thus, if the modifying phrase did not include the portion emphasized above, Section 29(1)(a) would be clearly inapplicable. However, when the emphasized portion is included, it becomes clear that plaintiff was intended to be disqualified by this section. Although her termination was for good cause, it can be attributed only to her own circumstances, and not to her employer."

Section 29(1)(a)

VOLUNTARY LEAVING, Burden of proof, Discharge, Hearsay

CITE AS: Ilitch v City of Livonia, No. 84-407788 AE, Wayne Circuit Court (July 3, 1984).

Appeal pending: No

Claimant: Joanne M. Ilitch
Employer: City of Livonia
Docket No: B82 07871 RO1 84138

CIRCUIT COURT HOLDING: Where an employee concludes on the basis of subjective convictions that the employment is terminated and leaves, the separation is disqualifying.

FACTS: The claimant was employed as a home delivery meals coordinator under a contract of employment that was to expire September 30, 1981. On September 23, 1981, claimant was called into the office of Mr. Duggan and advised that her contract would not be renewed. Because of some past experience with Mr. Duggan, claimant interpreted this interview as an immediate discharge and left the job site. The claimant, in fact, alleged that she was discharged. The employer testified that claimant quit her employment and that claimant was never told that her employment was terminated on September 23, 1981.

DECISION: The claimant is disqualified for voluntary leaving.

RATIONALE: "It can only be construed to be a perfectly reasonable approach on the part of a supervisor to call in a contract employee at a time when the term of the contract will soon be expiring and discuss with her the status of the program. On the other hand, it is entirely unreasonable for a contract employee, who has but one week left in the term of the contract under which she is working, to enter such a meeting and, without receiving any objective indication of immediate termination of her employment, to conclude entirely on the basis of her subjective convictions, that her employment was then and there being terminated. If ever there was competent, material and substantial evidence of simply 'walking off the job,' i.e., voluntary quit, the entire record in this case establishes that type of employment termination.

"Claimant had the burden of proof to show that she was not disqualified from benefits and ... she failed to meet that burden of proof."

Section 29(1)(a)

VOLUNTARY LEAVING, Good cause, Seven day work week

CITE AS: Hansen v Fox Haus Motor Lodge No. 84-402-940 AE, Wayne Circuit Court (August 21, 1984)

Appeal pending: No

Claimant: Jean Hansen
Employer: Fox Haus Motor Lodge
Docket No: B83 10869 91613W

CIRCUIT COURT HOLDING: Good cause attributable to the employer was shown for voluntary leaving where the record was barren of any standard of employment in the motel/inn industry or business.

FACTS: Claimant worked six days a week during the first eleven months of employment; but then she was required to work seven days per week, as well as on call at night, and without any vacation, except Christmas day.

DECISION: Claimant is not disqualified for voluntary leaving.

RATIONALE: "The record is barren of any standard of employment in the motel/inn industry or business. Absent extraordinary reasons for respondent to operate in such a fashion, the court finds this testimony appalling. Respondent's requirement to have claimant perform the listed duties on a daily basis -- except perhaps on a slow Christmas day -- is tantamount to twentieth century slavery."

Section 29(1)(a)

VOLUNTARY LEAVING, Buyout program, Alternatives

CITE AS: Coleman v MESC, No. 117120 (Mich App March 21, 1990).

Appeal pending: No

Claimant: William N. Coleman
Employer: General Motors
Docket No: B87 02913 105830

COURT OF APPEALS HOLDING: Where a claimant who is given a choice among reasonable alternatives decides to accept a "buy-out" he is subject to disqualification for voluntary leaving.

FACTS: Claimant began working for the employer in 1978 at a GM warehouse near his home. In 1986, GM announced it was closing this warehouse at the end of the year. GM tried to relocate the employees, and offered to pay relocation expenses for employees relocating more than 35 miles from home. Claimant was given three options (1) to accept a transfer to the GM Tech Center approximately 50 miles away; (2) a lay-off with benefits for one year; (3) a buy-out of approximately $50,000.00. Claimant chose the buy-out.

DECISION: Claimant is disqualified for voluntary leaving.

RATIONALE: "The board found that if plaintiff would have accepted the job at the Warren technical center his seniority and pay would not have been affected. While the location was further from plaintiff's home, plaintiff's reason for not accepting the job was the lack of job security. The board concluded that plaintiff has as much security as any other employee and, therefore, plaintiff was presented with a choice between accepting a job and signing the special incentive separation agreement. Hence, plaintiff had a choice of reasonable alternatives and chose to quit without good cause attributable to his employer. ... We agree with the board's decision that plaintiff's options presented reasonable alternatives and, therefore, made plaintiff's decision to quit a voluntary one."

Section 29(1)(a)

VOLUNTARY LEAVING, Corroborated testimony, Good cause, Pattern of conduct, Self-serving testimony, Shortened hours

CITE AS: Leonard v Dimitri's Restaurant, No. 84-1550 AE Macomb Circuit Court (October 25, 1984).

Appeal pending: No

Claimant: Rosemary Leonard
Employer: Dimitri's Restaurant
Docket No: B81 16355 83802

CIRCUIT COURT HOLDING: The testimony reveals a believable pattern of sexual harassment and conduct unacceptable in the employer-employee relationship.

FACTS: Claimant quit after employers fondled her and made suggestive comments to her. The waitresses uniforms were changed to "very brief" uniforms. Claimant's hours were cut while the claimant was attending her boyfriend who was terminally ill. The hours were not restored. Moreover, claimant was threatened with repercussions if she did not tell her girlfriend not to return to the restaurant. The incidents of sexual harassment were corroborated by other waitresses who had worked for the employers. The employers denied actively taking part in any of the incidents and related that the claimant harassed them.

DECISION: Claimant is not disqualified for voluntary leaving.

RATIONALE: The totality of the circumstances ... including the sexual improprieties, the threatening talk with regard to her friend's conduct, the cutting of her hours ... constituted good cause attributable to the employer. The employer's testimony lacked credibility and/or credible corroboration.

Section 29(1)(a)

VOLUNTARY LEAVING, Alternatives, Overtime, Pay reduction, Personal reasons for leaving

CITE AS: Chmielewski v General Dynamics, No. E834-00-606 AE, Kalamazoo Circuit Court, (January 2, 1985).

Appeal pending: No

Claimant: Anthony Chmielewski
Employer: General Dynamics
Docket No: B83 06554 90342W

CIRCUIT COURT HOLDING: The claimant's decision to quit was based on economic considerations and was voluntary.

FACTS: The employer cut down on claimant's overtime. Claimant decided to quit because: (1) his wife had suffered a heart attack and her physician lived in Kalamazoo; (2) claimant desired to use his wife's health insurance; (3) claimant's reduced pay made the cost of living away from Portage too prohibitive.

DECISION: Claimant is disqualified for voluntary leaving.

RATIONALE: "Basic purpose of the Michigan Employment Security Act is to provide relief to the unemployed worker and his family from the burden of unemployment ... " The claimant had a real choice - to move his family to Detroit as he had planned before his wife's heart attack and the cut in overtime - or to quit.

Section 29(1)(a)

VOLUNTARY LEAVING, Alternatives, College student, Overtime

CITE AS: Toner v Physician's Bookkeeper, Inc., No. 75551 (Mich App January 15, 1985).

Appeal pending: No

Claimant: Debbie Toner
Employer: Physician's Bookkeeper, Inc.
Docket No: B81 11228 69170

COURT OF APPEALS HOLDING: Substantial evidence supports the conclusion that plaintiff quit her job.

FACTS: Plaintiff, a full-time student, was asked to work eight hours of overtime, along with the other employees, because of a temporary backlog of work. Plaintiff tried several alternatives in attempting to work the overtime hours, but could not avoid a conflict with her school work. The plaintiff told the employer she believed she would have to quit work. The employer asked whether she wanted to give her notice at that time or wait until the second semester. Plaintiff elected to give notice at that time.

DECISION: Claimant is disqualified for voluntary leaving.

RATIONALE: "The Board's decision turned on resolution of an evidentiary conflict, namely whether plaintiff quit her job or whether she was dismissed. The manager testified that plaintiff quit. Plaintiff admitted experiencing difficulty in reconciling her work hours with her college class schedule. The employer tried to accommodate the needs of the employee. This is not an instance in which the employer coerced the claimant to abandon employment by leaving her with no tenable alternative."

Section 29(1)(a)

VOLUNTARY LEAVING, Abuse of discretion, Adjournment of hearing, Discharge, Due process, Resignation

CITE AS: Rosewarne, d/b/a/ Crossroads Imports v Dyktor, No. 82-28690 AE, Ingham Circuit Court (February 26, 1985).

Appeal pending: No

Claimant: Denise R. Dyktor
Employer: Mary Anne Rosewarne, d/b/a Crossroads Imports
Docket No: B81 01118 76258

CIRCUIT COURT HOLDING: (1) An employee who gives notice of an intent to quit should not be penalized with a loss of wages by termination prior to the intended date of separation. (2) Since claimant was the party seeking review and the one unemployed, it was not an abuse of discretion to deny the employer's request for an adjournment.

FACTS: The employer discharged claimant in anticipation of the claimant's projected departure.

DECISION: Claimant is not disqualified for voluntary leaving.

RATIONALE: The court, agreeing with Miller v Visiting Nurses Association, 1978 BR 54326, stated that notice of an employee's intention to quit is a benefit to the employer. Thus, it makes no sense to discourage this practice by allowing the employer the prerogative of deciding the employee's last date. "This court is merely acknowledging notions of fundamental fairness ... The giving of notice ... is appropriate behavior by an employee. Such behavior should not be penalized with a loss of expected wages."

Section 29(1)(a)

VOLUNTARY LEAVING, Alternatives, Shift change, Discharge

CITE AS: Davidson v Globe Security Systems, No. 82-10158 AW Monroe Circuit Court (January 25, 1985).

Appeal pending: No

Claimant: Dennis Davidson
Employer: Globe Security Systems
Docket No: B81 02428 76380

CIRCUIT COURT HOLDING: Claimant was laid off when the employer unreasonably deprived claimant of work.

FACTS: The employer decided to eliminate the day shift of guards and to continue the afternoon and night shifts. The seniority of some day guards entitled them to bump a corresponding number of afternoon and night guards. Claimant could not immediately answer when he was asked whether he wanted afternoon or night shift, and replied that he wanted time to think. The employer treated this response as a quit.

DECISION: Claimant is not disqualified for voluntary leaving.

RATIONALE: "The employer gave the claimant a right to choose. The effect on a person's lifestyle in choosing one shift as opposed to the other could and probably would be very great. The employer reasonably had three options: to make an immediate assignment to either shift; to fix time for the employee to consider; to tell the employee he must make an immediate choice or be deemed to have quit. The employer followed none of these options, but opted unreasonably to deprive the employee of any work."

Section 29(1)(a)

VOLUNTARY LEAVING, Ill spouse, Personal reasons

CITE AS: Leeseberg v Smith-Jamieson Nursing, Inc., 149 Mich App 463 (1986).

Appeal pending: No

Claimant: Judy Leeseberg
Employer: Smith-Jamieson Nursing, Inc.
Docket No: B83 20309 94897

COURT OF APPEALS HOLDING: An employee is subject to disqualification for voluntary leaving when she deliberately fails to report to work for compelling personal reasons with foreknowledge her employment might end if she fails to report.

FACTS: Claimant's husband sustained serious injuries in an accident. Claimant twice phoned her employer to inform them she desired to remain home to care for him. She requested an indefinite leave of absence but the request was denied. She was told her position could not be held open and a replacement would be hired.

DECISION: Claimant is disqualified for voluntary leaving.

RATIONALE: "'Voluntary' connotes a choice between reasonable alternatives, Lyons v E.S.C., 363 Mich 201 (1961) ... Plaintiff chose to face termination because she wanted to care from her injured husband. While plaintiff's choice was prompted by compelling personal reasons, a good personal reason does not equate with good cause under the statute."

10.45

Section 29(1)(a)

VOLUNTARY LEAVING, Free training, Offer of full-time work, Part-time work

CITE AS: Skalecki v Anslow, M.D., P.C., No. 85-546 AE, Macomb Circuit Court (September 26, 1985).

Appeal pending: No

Claimant: Jo Ann L. Skalecki
Employer: Richard Anslow, M.D., P.C
Docket No: B83 21682 96585W

CIRCUIT COURT HOLDING: "Claimant cannot be charged with voluntarily terminating her employment without good cause attributable to the employer where she is required to accept new full-time employment for which she is not trained or experienced."

FACTS: Claimant worked for Dr. Anslow on a part-time basis as a medical assistant. Employees performing the functions of transcriber and billing officer left the employment of Dr. Anslow. The claimant was offered the opportunity of working full time as the transcription and insurance processing person. Claimant was unable to type. The employer, at its expense, offered to send claimant to school for stenographic-transcription typing skills. Claimant indicated she was not interested in the training for full-time work.

DECISION: Claimant is not disqualified for voluntary leaving.

RATIONALE: Inasmuch as claimant is not trained or experienced, claimant did not have to accept this position even if free training was offered.

Section 29(1)(a)

VOLUNTARY LEAVING, Early retirement, Contract negotiations

CITE AS: Clark Equipment Co. v Schultz, No. 88079 (Mich App October 15, 1987).

Appeal pending: No

Claimant: John A. Schultz
Employer: Clark Equipment Co.
Docket No: B83 15815 93709W

COURT OF APPEALS HOLDING: Claimants made a choice between reasonable alternatives and are disqualified for voluntary leaving where they retired early to take advantage of a retirement program in an existing contract rather than risk a change of benefits resulting from contract negotiations.

FACTS: The involved claimants were eligible for early retirement under an existing collective bargaining agreement scheduled to expire 6-17-83. Because of their seniority they were assured of continued employment. Claimants received information from their union regarding what their pension rights would be after the contract expired. Although the employer "threatened" during negotiations to cancel the pension plan, that "threat" was not conveyed to the claimants, nor were they advised to retire by the union representative. Uncertain about their pension benefits after expiration of the contract, claimants elected to retire effective May 31, 1983.

DECISION: Claimants are disqualified for voluntary leaving.

RATIONALE: "Voluntariness must connote a decision based upon reasonable alternatives not merely acquiescence to a result imposed by physical and economic facts utterly beyond an individual's control. Lyons v Employment Security Comm, 363 Mich 201, 216; 108 NW2d 849 (1961); Laya, supra, 32. Here, claimants were not faced with economic pressures which created untenable alternatives. Cf., Larson v Employment Security Commission, 2 Mich App 540; 140 NW2d 777 (1966); Laya, supra. Rather, they had a choice between retiring and taking the substantial pension benefits already negotiated or postponing retirement and taking their chances on newly negotiated pension benefits which might be more or less favorable."

10.47

Section 29(1)(a)

VOLUNTARY LEAVING, Good Cause, Co-worker behavior, Profanity

CITE AS: Smith v Andrews on the Corner, No. 94071 (Mich App July 22, 1987).

Appeal pending: No

Claimant: Ollie Smith
Employer: Andrews on the Corner
Docket No: B85 02586 99533W

COURT OF APPEALS HOLDING: Claimant quit work without good cause attributable to the employer where she quit without notice because of a co-worker's profanity and anger and refused to continue work despite the employer's offer to change the co-worker's schedule.

FACTS: Claimant was employed as a part time cook for two years. Throughout that period she experienced frustration with the full time co-worker who was in charge of the kitchen. Claimant was upset by the co-worker's frequent profanity and angry moods. The employer attempted to intervene on occasion, without success. Only the claimant had difficulty with the co-worker. Eventually the claimant quit without notice. She refused to return to work despite an offer from the employer to change the co-worker's schedule.

DECISION: Claimant is disqualified for voluntary leaving.

RATIONALE: "In this case, we have no difficulty in concluding that claimant's disqualification is amply supported by competent, material and substantial evidence on the record. Despite the Biblical injunction to 'swear not at all,' we are not unmindful that, as observed by Mark Twain, 'In certain trying circumstances, urgent circumstances, desperate circumstances, profanity furnishes a relief denied even to prayer.' ... In our estimation, claimant's precipitous and unannounced termination from employment was not a reasonable reaction to her workplace discomfiture. Clearly, the employer was amenable to implementing scheduling changes in order to accommodate claimant's wounded sensibilities. ... [W]e believe reasonable efforts were made to eliminate the periodic conflicts between the employees. ... The employer was yielding, while claimant was inflexible; we feel that under the circumstances in this case, this inflexibility was unreasonable."

Section 29(1)(a)

VOLUNTARY LEAVING, Discharge or leaving, Prerequisite of employment, State licensing requirement

CITE AS: Clarke v North Detroit General Hospital, 437 Mich 280 (1991).

Appeal pending: No

Claimants: Edna T. Clarke; Toni R. Dawson
Employers: North Detroit General Hospital; Detroit Receiving Hospital
Docket Nos: B85 06161 100961; B85 06779 100382W

SUPREME COURT HOLDING: The claimants did not leave work voluntarily when they were discharged after failing the nursing board licensing examination.

FACTS: Both claimants were graduates of college-based nursing programs. Following their graduations they obtained temporary state nursing licenses as required by statute which permitted them to work as graduate nurses. In order to obtain a permanent license as a registered nurse, both were required to take and pass the state licensing exam. Both took the exam. Both failed. As a result they both lost their temporary licenses and employment as graduate nurses, consistent with the policies of their employing hospitals. Neither quit nor willingly resigned.

DECISION: The claimants are not disqualified from receiving unemployment compensation benefits.

RATIONALE: The claimants did not voluntarily leave their employment. Rather, they were discharged by the employers after failing the licensing examination. The employers did not allege misconduct, negligence or illegal acts and there was no evidence that either claimant was negligent in preparing for or taking the examinations. Fault cannot be ascribed to the claimants merely because they failed the examination.

6/91
6, 15, d11:E
3, 6, d9:NA

10.49

Section 29(1)(a)

VOLUNTARY LEAVING, Loss of license, Driver's license, Prerequisite of employment

CITE AS: Echols v MESC, 380 Mich 87 (1968).

Appeal pending: No

Claimant: Bruce Echols
Employer: John Kraus, d.b.a. Checker Cab
Docket No: B63 5770 31807

SUPREME COURT HOLDING: "[T]he loss of a claimant's prerequisites from continued employment, especially through his own negligence is a voluntary leaving without good cause attributable to the employer . ... [T]he claimant lost his operator's license through no fault of the employer and it is our opinion that his leaving was not constructive but purely a voluntary leaving and he should be disqualified."

FACTS: Claimant was a taxicab driver. His driver's license was suspended for 90 days as the result of the accumulation of 12 points or more. Claimant therefore was unable to work as a taxicab driver. Claimant was not discharged by his employer. The employer indicated at the Referee hearing that claimant could return to work as soon as he had his license restored.

DECISION: Claimant is disqualified for voluntarily leaving his employment without good cause attributable to the employer.

RATIONALE: "The employee because of his negligent operation of an automobile was unable to obtain a license from the Secretary of State's office, and it was incumbent upon him to have a license to be employed." "... to put a stamp of approval on unemployment benefits for a man who had been violating the law and say a man who violates the law and lost his license as a result of his negligence, should be paid unemployment benefits, ... goes far and beyond what the intention of the unemployment compensation act was." (Quoting with approval from the decisions of the Appeal Board and the Wayne County Circuit Court.)

Section 29(1)(a)

VOLUNTARY LEAVING, Voluntariness

CITE AS: Larson v MESC, 2 Mich App 540 (1966).

Appeal pending: No

Claimant: Paul A. Larson
Employer: Campbell, Wyant & Cannon Foundry
Docket No: UCX63 3742 31606

COURT OF APPEALS HOLDING: "Claimant was forced to cease working because of his work connected injury. His signature on the combined resignation and settlement represents the act of a necessitous man faced with only one tenable alternative. This is not the 'voluntary' termination of employment contemplated by the statute.

FACTS: Claimant suffered a work related back injury which caused him to stop working on April 3, 1963. His doctor authorized him to perform light work but the employer had no such work available. On May 17, 1963 claimant signed an agreement to resign and waive his seniority with the employer in exchange for the redemption of his Worker's Compensation claim in the amount of $1142.

DECISION: Claimant is not disqualified.

RATIONALE: "We do not deny that the claimant undoubtedly knew what he was doing when he signed this instrument, but it is another thing to say that he had a tenable alternative. Signing a settlement agreement under the circumstances in which Paul A. Larson found himself does not equate with leaving work voluntarily."

"One spectre looms throughout this entire transaction: economic straits. The Employment Security Act was intended to protect just such a person as claimant from the subtly coercive effects of economic pressure, and to prevent just such a consequence as we have here."

Section 29(1)(a)

VOLUNTARY LEAVING, Out-of-state employment, Voluntariness, Personal reasons

CITE AS: Lyons v MESC, 363 Mich 201 (1961).

Appeal pending: No

Claimant: Charles Lyons
Employer: Chrysler Corporation
Docket No: B57 5079 20232

SUPREME COURT HOLDING: Section 29(1)(a) is applicable to separations from work outside of Michigan. The finding that claimant left work voluntarily without good cause attributable to the employer was supported by the evidence.

FACTS: The claimant was laid off from one of the employer's Michigan plants. After receiving a few weeks of unemployment benefits, he accepted work at the employer's Indiana plant, 273 miles from home. The car he relied on broke down, the friend with whom he planned to commute quit, he did not receive expected overtime, and he learned his minor son had left home. He resigned the Indiana employment to return to Michigan. He was denied further benefits as his leaving was voluntary without good cause attributable to the employer.

DECISION: The claimant is disqualified for voluntary leaving.

RATIONALE: The application of Section 29(1)(a) to separations from work outside of Michigan is consistent with the language of that Section as well as those parts of the Act which provide for reciprocal agreements between states for one state to pay accrued benefits to an employee after he has moved to another state and become unemployed. A contrary interpretation would impose more stringent standards on employees working wholly in Michigan than those whose employment takes them outside the state.

The justices split on the question of the voluntariness of the leaving. Three justices stated the leaving was for wholly personal reasons and, as a matter of law, was voluntary and without good cause attributable to the employer. Two justices agreed with the disqualification but viewed the issue of voluntariness as one of fact which had been decided against the claimant on the basis of evidence which supported the finding. Three justices, in an opinion by Justice Edwards, concluded that, as a matter law, the leaving was involuntary. (See Laya v Cebar Construction Company, 101 Mich App 26 (1980), Digest page 10.05. Therein, the court adopted Justice Edwards' standard for determining the voluntariness of a separation.)

VOLUNTARY LEAVING, Constructive

CITE AS: Miller v Soo Coin Wholesale Vending Co, No. 78-12255-AE, Muskegon Circuit Court (July 6, 1979).

Appeal pending: No

Claimant: Roxanne Miller
Employer: Soo Coin Wholesale Vending Company
Docket No: B76 17106 RO 54539

CIRCUIT COURT HOLDING: Claimant was terminated. Therefore her leaving cannot be described as voluntary.

FACTS: After missing several days of work, claimant was told that she would have to be replaced. She was told that she could return to train her replacement and help catch up on other work, but she did not return.

DECISION: Claimant is not disqualified.

RATIONALE: To characterize claimant's termination as a voluntary quit is akin to "constructive voluntary leaving" which has been rejected and criticized by the Michigan Supreme Court. Wickey v Michigan Employment Security Commission 369 Mich 487 (1959). "'Claimant did not quit but was, in fact, discharged because of her absences from work. The fact that claimant could have trained her replacement does not convert claimant's termination into a voluntary leaving ...'" (Quoting dissenting opinion of Board of Review Member).

Section 29(1)(a)

VOLUNTARY LEAVING, Health or physical condition

CITE AS: Wynne (Michigan Department of Social Services), 1988 BR 103153W (B86-07148).

Appeal pending: No

Claimant: Ruth M. Wynne
Employer: Michigan Department of Social Services
Docket No: B86 07148 103153W

BOARD OF REVIEW HOLDING: A leaving due to established illness which is at the direction of a physician is involuntary and does not subject the claimant to disqualification under Section 29(1)(a).

FACTS: The claimant found her work stressful and suffered from hypertension, tension headaches and colitis. She unsuccessfully sought a transfer. She left her employment on the advice of her doctor.

DECISION: The claimant's leaving was involuntary and therefore not disqualifying under Section 29(1)(a). Decided by entire Board.

RATIONALE: The majority analyzed the construction of Section 29(1)(a) as well as former decisions dealing with involuntary leaving, i.e. Lyons v ESC, 303 Mich 201 (1961), Larson v ESC, 2 Mich App 540 (1966), and Laya v Cebar Construction, 101 Mich App 26 (1980). It concluded the Referee's application of Watson v Murdock's Food and Wet Goods, 148 Mich App 802 (1989) was erroneous as the claimant's leaving, due to illness and at the direction of her physician, was involuntary.

A minority of the Board noted Watson was distinct precedent on Section 29(1)(a) and concluded in order for a separation, voluntary or involuntary, to be non-disqualifying, the separation must be with good cause attributable to the employer. But, a claimant who leaves work for health reasons may avoid disqualification if it is established (1) the medical problem arose out of the work environment, (2) the claimant approached the employer to alleviate the condition causing the problem, or to find a way of retaining employment despite the problem, (3) the employer created the condition or, having knowledge of the condition, was unable or unwilling to alleviate it or to provide alternative employment and, (4) the claimant was still able to perform work within the medical restriction if the conditions in the work environment causing or aggravating the medical problem were abated.

These Members concluded the claimant's separation was with good cause attributable to the employer and not disqualifying.

Section 29(1)(a), 29 (1)(b)

VOLUNTARY LEAVING, Discharge or voluntary leaving, Notice of intent to quit

CITE AS: Kmiec v Ole Tacos, No. 78-4545-AV, Ottawa Circuit Court (August 22, 1979).

Appeal pending: No

Claimant: Charles M. Kmiec
Employer: Ole Tacos
Docket No: B77 2254 56841

CIRCUIT COURT HOLDING: To determine whether a termination is a leaving or a discharge, the total facts of the matter must be assessed to determine the "proximate cause" of the termination.

FACTS: Claimant notified the employer that he was unhappy in his job and would give the employer two weeks notice of intent to quit when he had obtained another job. The employer notified the claimant he should set a definite separation date. After the claimant and employer discussed the matter, they agreed upon the date that claimant would end his employment.

DECISION: Claimant is disqualified for benefits pursuant to Section 29(1)(a) of the Act.

RATIONALE: "Our reading of the Referee's opinion leads us to conclude that the Referee extended his consideration of facts and circumstances to those events occurring after claimant's original notice to his employer that he intended to quit at some undetermined date in the future, and prior to the actual separation. ... The Referee recognized that he was obliged to determine whether or not claimant was "primarily responsible" for his unemployment. We believe that such language is substantially synonymous with "proximate cause", and that it goes beyond one who merely introduces the topic of a possible future separation."

Section 29(1)(a)

VOLUNTARY LEAVING, Good cause, Union contract, Wage concessions

CITE AS: Warblow v Kroger Co, 156 Mich App 316 (1986).

Appeal pending: No

Claimant: Jeffrey J. Warblow
Employer: The Kroger Company
Docket No: B85 01356 RO1 99512W

COURT OF APPEALS HOLDING: "Good cause attributable to the employer is not established where an employee quits due to a majority of his union agreeing to accept wage concessions, presumably in return for retaining jobs for its members."

FACTS: Claimant worked for Kroger for approximately 9 years until April 1984 when he took a medical leave of absence. While he was on leave, claimant's union negotiated a new contract with the employer which called for various concessions including a reduction in wages. When claimant was certified as being able to return to work he notified the employer he was quitting because of the contract concessions.

DECISION: Claimant is disqualified for voluntarily leaving his employment without good cause attributable to the employer.

RATIONALE: "In the instant case, plaintiff [claimant] was bound as a member of the union, by the terms of the collective bargaining agreement. He knew that the union was authorized to make decisions which were binding on all of its members. Plaintiff was constrained to accept the burdens as well as the benefits of such membership."

VOLUNTARY LEAVING, Good cause, Religious beliefs, Abortion

CITE AS: Meyers v Northwest OB-GYN Assoc., P.C., No. 84-281749-AE, Oakland Circuit Court (July 22, 1986).

Appeal pending: No

Claimant: Patricia D. Meyers
Employer: Northwest OB-GYN Assoc., P.C.
Docket No: B83 17579 93897W

CIRCUIT COURT HOLDING: Claimant did not establish good cause for voluntary leaving where she objected to the employer's practice of performing abortions because of her religious beliefs, but continued to work for a year, and the employer attempted to accommodate her beliefs.

FACTS: Claimant was employed as a medical assistant. At the time of hire abortions were performed at another employer location and claimant expressed a willingness to assist. By the time that procedure was started at claimant's work location she had experienced a change in religious committment, and when asked if she would assist, she declined for religious reasons. In order to avoid conflicts with claimant's beliefs the employer attempted to work around the situation. Those efforts included bringing in another employee on an ad hoc basis to assist, as well as adjusting patient schedules and other staff schedules. On three occasions claimant did assist with abortions when no one else was available. After a year of this arrangement the claimant apprised the employer the situation was "not working out". A separation followed, though the parties disputed how the departure date was determined.

DECISION: Claimant is disqualified for voluntary leaving.

RATIONALE: The circuit court affirmed a split (5-2) decision by the full Board of Review. The court found the employer could employ the claimant in a way that did not conflict with her religious beliefs and in fact took "extreme measures" including adjustment of employee schedules to accommodate those beliefs. Claimant worked for a year under those circumstances and, in light of the disputed separation date, was willing to work longer. As a result the court concluded claimant's "religious beliefs were not in such conflict with her employment duties that she was forced to resign."

10.57

Section 29(1)(a)

VOLUNTARY LEAVING, Withdrawal of resignation

CITE AS: Schultz v Oakland County, No. 113057 (Mich App January 22, 1991).

Appeal pending: No

Claimant: Arthur Schultz
Employer: Oakland County
Docket No: B87 06344 106226W

COURT OF APPEALS HOLDING: An unconditional resignation by an employee is effective immediately and if without good cause attributable to the employer, is disqualifying, notwithstanding an attempt to rescind the resignation prior to the last day of employment.

FACTS: Claimant was an Oakland County sheriff's deputy. Because of stress claimant was on a medical leave of absence scheduled to end December 8, 1986. On November 24, 1986 he had submitted a letter of resignation to the employer stating that he intended to change his career. Two days later he sought to withdraw the resignation letter, but to employer refused to allow him to do so. Claimant applied for unemployment benefits in April, 1987 but was denied. On appeal the claimant argued that his resignation was involuntary because he had not been allowed to withdraw it.

DECISION: Claimant was disqualified pursuant to Section 29(1)(a) of the Act.

RATIONALE: "Even in the light of the remedial purpose of the Michigan Employment Security Act, the majority of jurisdictions, with which we align ourselves, appear to deem the resignation of an employee, which is unconditional in its terms, immediately effective for unemployment compensation purposes, a voluntary leaving of the employment without good cause attributable to the employer and, thus, an act which renders the employee ineligible for unemployment benefits. This is so notwithstanding a subsequent attempt to rescind the notice of resignation prior to the actual last day of employment...."

Section 29(1)(a)

VOLUNTARY LEAVING, Voluntariness, Good cause attributable to the employer

CITE AS: DCA Food Industries, Inc. v Karr, No. 81665 (Mich App January 24, 1986).

Appeal pending: No

Claimant: John L. Karr
Employer: DCA Food Industries, Inc.
Docket No: B81 03019 77378

COURT OF APPEALS HOLDING: "Because of the phrase attributable to the employer, 'good cause' cannot be found for purely personal reasons under Section 29(1)(a)."

FACTS: Claimant worked for the employer and also was a volunteer fire fighter. He reported for work exhausted after fighting a fire and asked his group leader if he could leave work early. Later, claimant and his union representative met with his supervisor and the personnel supervisor. The employer expressed concerns about the fire fighting duties interfering with claimant's work and asked claimant if his job at the fire department was more important. Claimant became angry and expressed an intention to quit. Several times the employer asked him to reconsider. Claimant then signed a "voluntary quit" statement. Later, he requested his job back, but the employer refused to rehire him except as a new employee.

DECISION: The claimant is disqualified for voluntarily leaving his work without good cause attributable to the employer.

RATIONALE: The claimant made a choice between working and not working for the employer. He did not acquiesce in a result beyond his control and therefore his leaving was voluntary. Laya v Cebar Construction Co., 101 Mich App 26 (1980).

The claimant may have believed that the choice presented by the employer was between voluntary fire fighting, on which he placed great importance, and employment. While his leaving may have been for "good cause" for personal reasons, Section 29(1)(a) requires that the "good cause" be attributable to the employer. Dueweke v Morang Drive Greenhouses, 411 Mich 670 (1981) (adopting Judge Levin's dissent in Keith v Chrysler Corp, 41 Mich App 708 (1972).

10.59

Section 29(1)(a)

VOLUNTARY LEAVING, Involuntary, Non-resident alien, Visa expiration

CITE AS: Detroit Receiving Hospital v Arnoldi, No. 90-012313-AE Wayne Circuit Court (December 28, 1990).

Appeal pending: No

Claimant: Eva Arnoldi
Employer: Detroit Receiving Hospital
Docket No: B88 12307 109719W

CIRCUIT COURT HOLDING: Because changes in the U.S. immigration laws were beyond her control, a Canadian alien could not be disqualified for voluntary leaving when she resigned because her visa was not renewed.

FACTS: Claimant is a citizen of Canada. For sixteen years she worked as a registered nurse at Detroit Receiving Hospital. On 1-10-88 she applied to have her visa renewed but was denied because a new law limited the length of time non-resident aliens could work in the U.S. to five years and the claimant had already worked twelve. Unable to work in the U.S. any longer, the claimant resigned. She then filed for unemployment benefits.

DECISION: The claimant did not voluntarily leave her employment therefore was not disqualified for U.I.

RATIONALE: Claimant's resignation was due to changes in the immigration law beyond her control and was therefore involuntary.

10.60

Section 29(1)(a)

VOLUNTARY LEAVING, Reasonable person standard, Spouse as employer, Procedure, Burden of legal argument

CITE AS: Sempliners Formalwear v Leifer, Bay Circuit Court No. 94-3420-AE, February 14, 1995

Appeal pending: No

Claimant: Debra J. Leifer
Employer: Sempliners Formalwear
Docket No. B92-31007-124907W

CIRCUIT COURT HOLDING: Claimant is not subject to disqualification where she left her employment, and the state, to ensure her personal safety from her husband who was also co-owner of the employer.

FACTS: The claimant worked for the employer from February 1990, to February 1992. The claimant was married to the president and part-owner of the employer. The claimant and her husband wintered in their home in Florida. The claimant had the practice of working full-time for the employer out of her Florida home. In spring of 1991, the claimant and her husband returned to Michigan. The claimant's husband became threatening towards her and other employees. The employer took steps to remove the claimant's husband from his office and to prohibit him from entering the business. The claimant informed the employer she planned on staying in Florida permanently because she feared for her safety and wanted to avoid her husband. Her husband hit her at work, threatened her, closed their joint checking account, changed the locks on their Michigan residence, and confiscated her car.

DECISION: The claimant is not disqualified for benefits.

RATIONALE: This matter is an "unusual and unique case in that the claimant's employer is her husband." This unique relationship resulted in the employer, through the claimant's husband, exerting an inordinate amount of control over the claimant's professional and personal life. The claimant had the practice of staying in Florida during the winter months and working out of her Florida home. The claimant did not intend to resign but informed the employer she intended to work from Florida as was her practice. The employer did not notify the claimant that she would compromise her employment by remaining in Florida.

It is the duty and responsibility of a party, not the court, to search for and uncover legal authority in support of the party's argument.

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12, 17, d24: H

Section 29(1)(a)

VOLUNTARY LEAVING, Quit in anticipation of layoff

CITE AS: City of Three Rivers v Baker, St. Joseph Circuit Court No. 97-1128 AE (June 10, 1998).

Appeal pending: No

Claimant: William Baker
Employer: City of Three Rivers
Docket No. B96-01929-R01-140906W

CIRCUIT COURT HOLDING: If an individual leaves work in order to avoid a layoff the leaving is voluntary but with good cause attributable to the employer.

FACTS: The claimant was employed as a captain in the employer's fire department. In March 1995, the employer announced it would be downsizing and as a result the claimant would be laid off as of August. Recognizing that his wife's salary would not be enough to support their family once he was laid off, claimant and his wife both began looking for other employment. The wife found and accepted another position out of state at a significantly better rate of pay. Thereafter, claimant was notified the layoffs would no longer be necessary and he could continue working. By that point, claimant had relocated his family and disposed of his assets in Michigan. Therefore, claimant gave written notice of his resignation and left his employment two weeks later.

DECISION: The claimant was not disqualified for benefits for voluntary leaving.

RATIONALE: When an employer notifies an employee that the employee will be laid off at a designated future date, that employee must take that notice as a recommendation from the employer that he begin a search for new employment. Although claimant was later notified circumstances had changed and he could continue his employment, at that juncture claimant had no reasonable choice but to move to be with his family. It is not reasonable for a claimant to choose to remain employed, in an insecure job that had just threatened him with layoff, at the cost of his family.

7/99
21, 12: H

Section 29(1)(a)

VOLUNTARY LEAVING, Good cause, Shift rotation

CITE AS: Mapes v Alreco Metals, Inc., Berrien Circuit Court No. 86-1287-AE-H (August, 1989)

Appeal pending: No

Claimant: John W. Mapes
Employer: Alreco Metals, Inc.
Docket No. B85-04697-99955

CIRCUIT COURT HOLDING: A rotating work shift arrangement may constitute good cause attributable to the employer

FACTS: When hired, claimant was told he could expect to work one "swing shift" every 13 weeks. Shortly afterwards his union entered into a new contract whereby the employer could establish a "grasshopper shift". Claimant was placed on the "grasshopper shift." As a consequence, he was required to rotate among the three shifts every two to three days. During a twenty-eight day cycle claimant experienced nine shift changes.

Claimant completed three twenty-eight day cycles. He had sought reassignment to other shifts on other lower paying positions. Those requests were denied. As a consequence, claimant decided to leave his employment. The claimant indicated the constant change in shifts had adversely affected both his physical and mental health. No medical documentation was submitted to support his contention.

DECISION: Claimant was not disqualified for voluntary leaving

RATIONALE: The court found the claimant's leaving was with good cause attributable to the employer. It reasoned the constant shift change was more than distasteful and caused physical distress. The court stated, "a choice between working a job which one cannot perform without substantial physical difficulty and leaving that job is really no choice at all." Notably, the court found the fact that the collective bargaining agreement allowed the employer to establish such a shift was not dispositive.

7/99
14, 6, d3: G

Section 29(1)(a)

VOLUNTARY LEAVING, Good cause, Sarcasm

CITE AS: Levesque v Meijer Thrifty Acres, unpublished per curiam Court of Appeals July 24, 1989 (No. 111618).

Appeal pending: No

Claimant: Nancy Levesque
Employer: Meijer Thrifty Acres
Docket No. B87-02390-105594

COURT OF APPEALS HOLDING: Good cause was not established where claimant's leaving was triggered by her personal affront and hurt feelings due to her supervisor's rude and sarcastic comments.

FACTS: Claimant was employed for approximately two years as a secretary to the store's incumbent director. She voluntarily left her employment. She contends her leaving was with good cause because the store director was allegedly rude and sarcastic to her.

DECISION: Claimant is disqualified for voluntary leaving.

RATIONALE: It was found that the store manager's "quick wit" may have been unpleasant for the claimant but was not such that it would have caused an average employee to leave his or her employment. The court reasoned that feeling personally affronted by an action taken by one's supervisor does not constitute good cause, citing Butler v City of Newaygo, 115 Mich App 445 (1982) and, citing cases from other states, observed that hurt feelings engendered by a supervisor's sarcasm have not been found to rise to the level of good cause entitling a person to receive unemployment benefits. Similarly, hurt feelings caused by a supervisor's ignoring an employee also do not amount to good cause.

7/99
3, 11: A

Section 29(1)(a)

VOLUNTARY LEAVING, Leaving or discharge, Evidence of intent, Fact-finding, Substantial evidence

CITE AS: Kirby v Benton Harbor Screw Co., unpublished per curiam Court of Appeals June 16, 1995 (Docket No. 163513).

Appeal pending: No

Claimant: Michael J. Kirby
Employer: Benton Harbor Screw Co.
Docket No. B90-10197-116367W

COURT OF APPEALS HOLDING: The Board of Review decision must be affirmed if based on competent, material, substantial evidence in the record and in accordance with the law.

FACTS: The parties disagreed as to the proper characterization of the separation.

On February 15, 1990, his last day of work, the claimant received an unfavorable evaluation. He finished his shift that day and went home. He returned to the plant later that evening. While there, he went to his office, reconciled his petty cash account, left documentation of his expense account, cleared his personal belongings from his desk and left his company keys. He also asked two co-workers to witness these acts and verify he was only taking his personal effects. While departing the claimant mumbled an obscenity and stated, "I'm leaving." Thereafter, the claimant appeared to work at his regular time the following Monday only to discover he had been replaced.

DECISION: Claimant is disqualified for voluntary leaving.

~~RATIONALE: Although the circuit court and Court of Appeals may have~~ reached a different conclusion given the facts in the record, the circuit court decision was reversed and the Board of Review decision reinstated because there was competent, material and substantial evidence to support the Referee and Board's finding that the claimant had voluntarily left his employment.

7/99
11, 19: F

Section 29(1)(a)

VOLUNTARY LEAVING, Good cause, Profanity.

CITE AS: Frankenstein v Independent Roofing & Siding, Delta Circuit Court No. 88-8956-AE (June 16, 1989)

Appeal pending: No.

Claimant: Terry J. Frankenstein
Employer: Independent Roofing & Siding
Docket No. B87-12977-106695W

CIRCUIT COURT HOLDING: Foul, vulgar, sexually oriented outbursts, not directed at the claimant, but tolerated by her for five years, do not constitute good cause attributable to the employer.

FACTS: Claimant worked for the employer from July 1982, until August, 1987. She resigned at that time because of what she considered the employer's "extremely foul language." The language itself did not substantively change during the period of the claimant's employment. However, the claimant perceived it was worse near the end because of what she felt was an increased frequency. During her employment the claimant had only complained about the language once.

DECISION: Claimant is disqualified for voluntary leaving.

RATIONALE: Upon a review of the entire record, the circuit court found that the claimant had indeed listened to foul, vulgar and sexually oriented outbursts from her employer over a period of five years. But, this language was not directed at her nor did she feel fear or sexual hostility and had only complained once during the course of her five years of employment. In light of these facts, the court found the record supported the findings of the Board of Review.

7/99
13, 4, d14: G

Section 29(1)(a)

VOLUNTARY LEAVING, Good cause, Unethical behavior

CITE AS: Bongiorno v Orchard Ford/Lincoln, Berrien Circuit Court No. 88-214-AL-Z (April 25, 1989).

Appeal pending: No

Claimant: Randy Bongiorno
Employer: Orchard Ford/Lincoln
Docket No. B87-03625-105495W

CIRCUIT COURT HOLDING: Unethical, but not illegal or unconscionable, business practices do not constitute good cause for leaving if they would not cause an average, reasonable, qualified worker to give up his or her employment.

FACTS: The claimant was employed as a used-auto salesperson. He left his employment because he could no longer tolerate sales practices which he believed were misleading and deceptive. The employer acknowledged some of the tactics may have been misleading and deceptive but denied they were fraudulent or illegal. The practices had been in place since the claimant began his employment and he had not complained about them prior to his departure.

DECISION: Claimant is disqualified for voluntary leaving.

RATIONALE: The court acknowledged illegal business practices would support a finding of good cause. But, the court refused to apply an Oregon Court of Appeals case which held that requiring an employee to participate in unethical business practices constituted good cause if the acts were unconscionable and so morally offensive they would be intolerable to a reasonable person. Here, the sales techniques were not illegal nor anything other than standard industry practice.

7/99
14, 13: G

10.67

Section 29(1)(a)

VOLUNTARY LEAVING, Employment environment, Unethical behavior

CITE AS: Corney v Amstaff PEO, Inc, Wayne Circuit Court, No. 96-645985-AE (April 28, 1997)

Appeal pending: No

Claimant: Joan G. Corney
Employer: Amstaff PEO, Inc., and MESA
Docket No. B96-00644-139329

CIRCUIT COURT HOLDING: An employee's leaving is non-disqualifying when under the totality of the circumstances, the employer's course of conduct precludes the employee from performing the job in an effective and efficient manner.

FACTS: The claimant was the only sales representative for the employer, a food service company. The claimant called on prospective clients for vending machine and cafeteria food service. The employer excluded the claimant from information concerning changes in the business and changes in clientele. The event causing the claimant to leave concerned a tour of the employer's plant for a prospective client. On the day of the tour, the claimant's manager informed her the employer would no longer prepare its own food. The claimant felt the proposal she wrote for the prospective client, which stated the employer prepared the food, and which was submitted to her manager a week before the tour, was a sham, and the decision not to inform her about the change an insult to her credibility.

DECISION: The claimant is not disqualified for benefits.

RATIONALE: The court looked at the cumulative effect of the employment environment to which the claimant testified. "Specifically, the court finds compelling the Appellant's testimony about the hostile attitude of her superiors, the changes in her working conditions, the lack of support from her immediate supervisor, including the failure to keep the Appellant apprised of changes in the company's products which she was supposed to be selling, and finally the major change in the operation of the business that precipitated the Appellant's quitting . . . ." The court does not believe that a reasonable person should be required to lie or otherwise dissemble to prospective clients as a condition of employment. The claimant's supervisor testified at the hearing and stated "he did not believe it was necessary to inform the Appellant of a major change in the business operations," despite the fact he knew she was making a presentation. The court also concluded that the claimant did not have to follow any complaint process pursuant to Johnides v St Lawrence Hospital, 184 Mich App 172 (1990).

7/99
24, 16, d22: N/A

Section 29(1)(a)

VOLUNTARY LEAVING, Good cause, Pay reduction, Loss of overtime, De novo fact finding.

CITE AS: Mann v H & H Wholesale, Inc., Wayne Circuit Court No. 89-910064-AE (September 14, 1989)

Appeal pending: No

Claimant: Earl Mann
Employer: H & H Wholesale, Inc.
Docket No. B88-00843-108076

CIRCUIT COURT HOLDING: A 15% reduction in pay does not constitute good cause attributable to the employer.

FACTS: While employed, claimant had earned $8.00 per hour and worked 47 1/2 hours per week. Near the end of claimant's employment the employer became aware it was obligated to pay the claimant time and a half for overtime. The employer informed the claimant he would receive all back pay owed and the claimant's schedule would be reduced to 40 hours per week. The reduction in hours would have resulted in a net decrease in the claimant's pay of 15%. Claimant quit.

DECISION: Claimant is disqualified for voluntary leaving.

RATIONALE: In contrast to other cases involving greater reductions in pay, the court found as a matter of law the 15% reduction was not substantial enough to constitute good cause to leave employment.

Note, in reaching its' decision, the circuit court observed that it was reviewing the facts as found by the Board, as the Board is the ultimate fact-finder, not the Referee.

7/99
3, 4, d14: E

10.69

Section 29(1)(a)

VOLUNTARY LEAVING, Good Cause, Request for resignation

CITE AS: Johnston v Smith, unpublished per curiam Court of Appeals May 26, 1993 (No. 139979)

Appeal pending: No

Claimant: Henry Smith
Employer: George L. Johnston
Docket No. B89-10825-113573

COURT OF APPEALS HOLDING: The employer's actions in asking the claimant for his resignation "in the absence of proof of misconduct would have induced an average, reasonable, and otherwise qualified worker to leave" the employer's employment.

FACTS: Employer accused the claimant of theft after observing items used in the employer's business in the claimant's vehicle. Claimant denied the accusation and had a witness to corroborate his story. Employer did not believe the claimant, and asked him to resign. The claimant refused, and asked the employer to discharge him. The employer did not discharge the claimant because it lacked proof the claimant committed theft. Claimant failed to report for his next scheduled shift, and applied for benefits four days later. The Referee concluded the employer's suggestion that he resign constituted good cause attributable to the employer.

DECISION: The Court of Appeals affirmed the holdings of the lower tribunals and found the claimant not disqualified for benefits under Section 29(1)(a).

RATIONALE: "Good cause attributable to the employer exists 'where an employer's actions would cause a reasonable, average, and otherwise qualified worker to give up his or her employment.' Johnides v St. Lawrence Hospital, 184 Mich App 172, 175 (1990) (quoting Warblow v The Kroger Co, 156 Mich App 316, 321 (1986)). For example, where an employer advised an employee to 'do it the employer's way or punch out,' the court agreed that there was good cause attributable to the employer for the employee's resignation. Degi v Varano Glass Co, 158 Mich App 695, 697, 699 (1987)."

7/99
13, 11: N/A

Section 29(1)(a)

VOLUNTARY LEAVING, Leaving or discharge, Teacher, Evaluation

CITE AS: Imlay City Community Schools v Merillat, Lapeer Circuit Court, No. 86-011243 AE(B) (August 22, 1988)

Appeal pending: No

Claimant: Calvin Merillat
Employer: Imlay City Community Schools
Docket No. B85-05959-99964

CIRCUIT COURT HOLDING: Where claimant, a non-tenured teacher, initiates his resignation after receiving an unfavorable, but grievable, evaluation, he is disqualified for voluntary leaving.

FACTS: The claimant was employed as a probationary teacher for one school year. Because of his probationary status, the claimant did not have rights under the Teacher Tenure Act. The high school principal evaluated the claimant's performance. The evaluation indicated the claimant's performance was unsatisfactory and recommended that the Board of Education not renew the claimant's contract for the following school year. Upon reviewing his evaluation, the claimant resigned rather than let the evaluation and recommendation be forwarded to the School Board. There was a grievance procedure in place which would have allowed the claimant to contest the unfavorable evaluation or a decision by the School Board not to renew his contract.

DECISION: Claimant is disqualified for benefits under the voluntary leaving provision.

RATIONALE: The Board of Review found that since the principal had recommended the claimant's contract not be renewed, the claimant had in effect been discharged. The court found this ruling to be erroneous as the claimant initiated the idea of resignation. The court observed that not only was the evaluation contestable through a grievance procedure, but the principal had no authority to discharge the claimant. Moreover, the School Board could have refused to follow the principal's recommendation, or, if they had not renewed his contract, that decision itself could have been subject to grievance.

7/99
11, 6, d15: N/A

10.71

Section 29(1)(a)

VOLUNTARY LEAVING, Shift change

CITE AS: Kerrison v Flint Memorial Park Assoc, Genesee Circuit Court No. 94-33568-AE (August 18, 1997)

Appeal pending: No

Claimant: Christine Kerrison
Employer: Flint Memorial Park Association
Docket No. B93-15828-RM9-137646W

CIRCUIT COURT HOLDING: An employer's "refusal to change an employee's shift does not as a matter of law constitute good cause for quitting."

FACTS: The claimant simultaneously held two separate positions with the employer. During the day she worked as an office supervisor at 40 hours per week alternating between working from 9:00 a.m. to 5:00 p.m. or 11:00 a.m. to 7:00 p.m. During the evening the claimant worked as a cleaning person twenty hours per week. The claimant went on a maternity leave. Before going on leave, the claimant requested to return to work on a part-time basis. On returning to work, the claimant worked the office job from 3:00 p.m. to 7:00 p.m. She requested additional hours, which the employer granted. The claimant also requested to return to the shift she worked before taking a maternity leave. The employer denied the request because that position was not available. The claimant then gave two weeks notice she was quitting the office position. Afterwards, the claimant was terminated from the cleaning position.

DECISION: The claimant is disqualified from receiving unemployment benefits.

RATIONALE: The claimant initially chose to limit her hours since she requested to return part-time after her maternity leave ended. When she requested more hours, the employer attempted to accommodate her. The claimant then insisted on returning to a position that was no longer available as the result of her choice to limit her hours. The claimant's leaving is not with good cause attributable to the employer.

7/99
24, 16, d22: N/A

Section 29(1)(a)

VOLUNTARY LEAVING, Loyalty oath

CITE AS: MacKintosh v MESC, Wayne Circuit Court No. 95-509950-AE (September 11, 1995)

Appeal pending: No

Claimant: Nancy MacKintosh
Employer: Forham Johnston Realty, Inc.
Docket No. B93-13467-129308

CIRCUIT COURT HOLDING: An employee's refusal to sign a confidentiality agreement and subsequent resignation is not with good cause attributable to the employer when the employer's request is reasonable.

FACTS: The claimant worked as the employer's office manager, and as a result had unique access to the employer's confidential information. The claimant's husband worked as an independent contractor for the employer, but resigned to accept a position with a competitor. The employer requested the claimant sign a confidentiality agreement. The claimant failed to do so. After three and a half weeks passed, the employer again requested she sign the confidentiality agreement. The claimant submitted a resignation. The employer requested she reconsider, but claimant decided to leave.

DECISION: The claimant is disqualified for benefits under Section 29(1)(a).

RATIONALE: The claimant was the only employee married to an employee of a competitor. The claimant had no right to reveal the employer's confidential information. The employer has the right to take reasonable precautions to protect its confidential information.

7/99
21, 18, d12: L

10.73

Section 29(1)(a)

VOLUNTARY LEAVING, Non-tenured teacher

CITE AS: Burross v Croswell Lexington Schools, Macomb Circuit Court Docket No. 94-2995-AE (April 11, 1995)

Appeal pending: No

Claimant: Mary M. Burross
Employer: Croswell Lexington Schools
Docket No. B92-30364-124904

CIRCUIT COURT HOLDING: When the claimant, a teacher, tenders a resignation on the advice of the school's principal, the leaving is not considered disqualifying since the claimant did not initiate the separation.

FACTS: The claimant worked as a high school special education teacher, having previously worked in an elementary school. She was under a one-year written contract as a probationary employee. The claimant received a negative evaluation. The school's principal informed her that he would recommend the claimant not be offered another contract. The claimant met with the principal and two union officials. The principal told the claimant if she submitted a resignation she could have the evaluation stricken from her record which would increase her chances of finding employment. Claimant understood the principal did not have the final say as to whether she would be offered a new contract. Nevertheless, the claimant took this advice and submitted a resignation.

DECISION: The claimant is not disqualified for benefits.

RATIONALE: The court distinguished the present matter from Imlay City Community Schools v Merillat, unpublished opinion Ingham County Circuit Court, August 27, 1988 (Docket No. 86-011243-AE). In Merillat the claimant initiated the resignation idea, and decided to tender his resignation after reflecting on the advantages and disadvantages. In the present matter, "there was unrefuted evidence that claimant was told she should resign to preserve her employment record." The claimant did not "initiate the discussion regarding her resignation."

7/99
24, 17, d2: J

Section 29(1)(a)

VOLUNTARY LEAVING, Involuntary leaving

CITE AS: Mercy Memorial Hospital Corp v Tompkins, Monroe Circuit Court, No. 94-2923-AE (May 4, 1995)

Appeal pending: No

Claimant: Rhonda L. Tompkins
Employer: Mercy Memorial Hospital Corp.
Docket No. B93-00829-126935

CIRCUIT COURT HOLDING: An involuntary separation due to serious health problems and hospitalization is not a voluntary leaving and the disqualification provision of Section 29(1)(a) is inapplicable.

FACTS: The claimant began working for the employer on December 13, 1991. On June 22, 1992, she was hospitalized for hypermesis relating to her pregnancy. The claimant maintained contact with her employer and provided medical documentation regarding her illness. On July 15, 1992, the employer terminated the claimant, retroactive to June 15, 1992. The employer terminated the claimant because, as a probationary employee, she was not entitled to a medical leave of absence. The employer contended the claimant quit, the claimant contended she was involuntarily terminated. The claimant's physician precluded her from doing any work until August 1, 1992, when the restrictions were lifted.

DECISION: The claimant is not disqualified for benefits.

RATIONALE: The burden of establishing the separation was involuntary or voluntary with good cause attributable to the employer rests with the claimant. Cooper v University of Michigan, 100 Mich App 99 (1980). The court distinguished Watson v Murdock's Food and Wet Goods, 148 Mich App 802 (1986), and Leeseberg v Smith-Jamieson, 149 Mich App 463 (1986). In the present matter the court noted the record did not indicate the claimant intended to leave work after her baby was born, unlike the claimant in Watson who did not intend to return. The court distinguished Leeseberg since the claimant in the present matter was herself ill. In Leeseberg claimant's spouse was ill. The claimant "involuntarily left work due to her serious heath problems and hospitalization." Section 29(1)(a) is inapplicable. The employer did not discharge the claimant for misconduct pursuant to Washington v Amway Grand Plaza, 135 Mich App 652 (1984).

7/99
24, 12: N/A

10.75

Section 29(1)(a)

VOLUNTARY LEAVING, Good cause, Remedial action

CITE AS: Munley v Child Care Plus, Inc., unpublished per curiam Court of Appeals March 30, 1994 (No. 150603).

Appeal pending: No

Claimant: Mary Anne Munley
Employer: Child Care Plus, Inc.
Docket No. B89-07785-112696

COURT OF APPEALS HOLDING: If the underlying reason for a resignation is fully resolved by the employer before the effective date of resignation, there is no good cause for leaving.

FACTS: On February 9, 1989 the employer's manager advised the claimant that effective Monday, February 13, 1989 her work hours would be reduced to 4.5 hours a day -- a reduction in excess of 40%. At that time, the claimant verbally advised the employer she would have to resign her employment to pursue full-time work. Her manager responded "okay." On Friday, February 10, 1989 the claimant submitted a written notice of resignation with an effective date of February 24, 1989. On Wednesday, February 15, 1989 the employer reconsidered and decided the claimant could continue as a full-time teacher through June 9, 1989. When notified, the claimant indicated it was still her intention to leave, and she did so on February 24, 1989.

DECISION: The claimant is disqualified under Section 29(1)(a).

RATIONALE: The question to be resolved was whether the claimant's leaving was with good cause attributable to the employer. The Court of Appeals found it was not. The Court of Appeals found the employer's actions would not have caused an otherwise qualified worker to give up her employment until June 9, 1989. While not expressly stated in the decision, it appears the court concluded that if the reason for a resignation is fully addressed before the effective date of resignation there is no good cause for leaving. In the underlying Board of Review decision, the Board found the good cause had been "extinguished" by the employer's change of position.

7/99
3, 11, 12: N/A

Section 29(1)(a)

VOLUNTARY LEAVING, Good cause, Discipline, Absence beyond control

CITE AS: Farnsworth v Michigan Masonic Home, unpublished per curiam Court of Appeals January 17, 1992 (No. 130244).

Appeal pending: No

Claimant: Paula M. Farnsworth
Employer: Michigan Masonic Home
Docket No. B88-08686-109087W

COURT OF APPEALS HOLDING: Discipline imposed for legitimate absences and other factors beyond a claimant's control may provide good cause for leaving.

FACTS: The claimant had been ill with mononucleosis and was off of work. Upon her return, the claimant was disciplined. Although acknowledging her absences were either the result of illness or pre-approved annual leave, the employer disciplined her for being excessively absent. It also criticized her appearance and slurred speech. The claimant's slurred speech was the result of a congenital birth defect. The employer believed it was indicative of alcohol use. Shortly thereafter, the claimant submitted her resignation.

DECISION: The claimant was not disqualified under Section 29(1)(a).

RATIONALE: The claimant reasonably believed she would be subjected to further discipline for legitimate absences and other factors beyond her control.

7/99
14, 4, d13: N/A

Section 29(1)(a)

VOLUNTARY LEAVING, Sale of business, Owner-employee

CITE AS: Rashid v R.G.R., Inc., Oakland Circuit Court No. 84-284496 AE (April 3, 1986)

Appeal pending: No

Claimant: Robert Rashid
Employer: R.G.R., Inc.
Docket No. B84-05596-97032W

HOLDING: Voluntary sale of a business and resulting unemployment of the business' employee-owner disqualifies the employee-owner from unemployment benefits under 29(1)(a).

FACTS: The claimant was the sole shareholder and principal corporate officer of a corporation which operated a car wash. The claimant sold his interest in the enterprise to a competing entity. It was understood by the claimant at the time of sale that if he sold the business he would not be retained as an employee by the new owner.

DECISION: The claimant was disqualified for benefits under Section 29(1)(a).

RATIONALE: The claimant contended he sold out to his competitor because he was left with no other business alternative. However, as of the date of sale the business was earning a sizable profit and was in no immediate danger of failure. The claimant was not forced to sell his business. Rather he sold it because it was more profitable to sell for the offered price than to compete for available business. The claimant had a choice between reasonable alternatives. Therefore, both the sale of his business and the resulting unemployment were voluntary.

7/99
3,11: N/A

10.78

Section 29(1)(a)

VOLUNTARY LEAVING, Plant closing, Retirement, Burden of proof

CITE AS: Tomei v General Motors Corporation, 194 Mich App 180 (1992).

Appeal pending: No

Claimant: Edwardo J. Tomei
Employer: General Motors Corporation
Docket No. B88-03087-108810W

COURT OF APPEALS HOLDING: In plant closing cases, the burden of proof for demonstrating the voluntariness of a claimant's decision to leave or retire falls first on the employer. The employer must show that the choices it offered were reasonable, viable and clearly communicated.

FACTS: In 1985, GMC announced closure of it's BOC Flint body assembly plant. Claimant had 17 years seniority and was 64 years old. He understood he could transfer to a Buick plant in Flint, wait and transfer at a later time, or stay where he was. Claimant believed he lacked seniority and was too old to retain a job if he transferred, so he stayed put. Two years later (December 1987) when the plant closed, he was involuntarily retired. It turned out, that claimant could have held a job if he'd gone to Buick. Also he could have elected to take a layoff for up to two years when his plant closed, during which time he could have collected sub-pay benefits. He could then have retired at the end of two years instead of retiring when the Flint plant closed.

DECISION: Claimant is not disqualified for voluntary leaving.

RATIONALE: Claimant was forced to rely on information provided by employer in making his employment decision. The information necessary for claimant to make an informed choice lay within the knowledge and control of the employer. Therefore, it is up to the employer to show that the options offered are not unreasonable, untenable or illusory. In this case, claimant's decision to retire when his plant closed rather than accept a two year layoff with uncertain prospects for recall and an uncertain impact on future retirement rights, was not a voluntary severance of employment. Claimant "was forced to choose between untenable options in the face of an indeterminate future. While employment decisions are difficult under the best of circumstances, the mystery and confusion surrounding the decisions plaintiff had to make rendered it nearly impossible to make an informed, sensible choice."

7/99
4, 13, d14: N/A

10.79

Section 29(1)(a)

VOLUNTARY LEAVING, Buyout program

CITE AS: McArthur v Borman's, 200 Mich App 686 (1993).

Appeal pending: No

Claimant: Robin McArthur
Employer: Borman's Inc.
Docket No. B88-04285-108675W

COURT OF APPEALS HOLDING: Where employer, pursuant to plan authorized by collective bargaining agreement, gave claimant option of accepting a buyout accompanied by monetary incentives or remaining on the job and facing a permanent reduction to part-time work two years hence, she had reasonable alternatives from which to choose and her decision to leave was voluntary and for personal reasons.

FACTS: Under a 1987 collective bargaining agreement, employer could reduce up to 50% of its full-time work force to part-time in August, 1989. Claimant did not have enough seniority to maintain her full-time position after August, 1989. Claimant accepted buyout of $16,000 in exchange for resigning prior to December 31, 1987.

DECISION: Claimant is disqualified under Section 29(1)(a).

RATIONALE: "The state has a substantial interest in reserving unemployment benefits for those who became unemployed 'due to forces beyond their control.' 'Voluntary' connotes a choice between alternatives that ordinary persons would find reasonable. Unemployment benefits are not designed to protect those who receive large cash settlements following voluntary separations, but to assist those who become unemployed through no fault of their own." (citations omitted) Claimant's decision to accept buyout was voluntary because she could have continued to work full-time for two more years and earned more in that time than the value of the buyout. There was no immediate threat of reduction in hours. Claimant was offered a significant monetary incentive to leave her job. Therefore, her reasons for leaving were personal and not for good cause attributable to the employer.

7/99
13, 4, d14: N/A

Section 29(1)(a)

VOLUNTARY LEAVING, Involuntary leaving, Health, Pregnancy, Attempt to return

CITE AS: Warren v Caro Community Hosp, 457 Mich 361(1998).

Appeal pending: No

Claimant: Cindy Warren
Employer: Caro Community Hospital
Docket No. B91-00630-118357

SUPREME COURT HOLDING: When a claimant is willing to continue working but is advised by a doctor not to work because of a temporary or short-term, self-limited medical condition properly documented by the treating physician, the claimant did not voluntarily leave work by following the doctor's advice. If an employer refuses to allow the employee to return as soon as medically possible, the employee is entitled to unemployment compensation.

FACTS: As she neared the end of her pregnancy, claimant submitted a request for a medical leave. The request was denied as under the collective bargaining agreement it was the employer's policy to refuse leaves to employees who had not been employed a year. Shortly thereafter, the claimant gave birth and consequently failed to report to work. When released by her physician, she sought to return to work at the hospital. but was refused. She did not seek unemployment benefits for the period that she was medically unable to work. Rather, she only sought to return to work following her pregnancy.

DECISION: Claimant is not disqualified for voluntary leaving.

RATIONALE: "[W]e continue to hold that whether a person is entitled to unemployment benefits is a two-part inquiry. Under the first prong, we must determine whether plaintiff voluntarily left her position. If we find that she left her position involuntarily, the inquiry ends and she is entitled to unemployment compensation. ... However, if the court finds that plaintiff left her position voluntarily, we must advance to prong two to determine whether her leaving was 'without good cause attributable to the employer.'" The claimant was advised by her doctor not to work beyond a certain date. Fault should not be ascribed to the claimant simply because a medical condition rendered her temporarily unable to work. Because she received medical advice not to work, she did not voluntarily leave, and thus is entitled to unemployment benefits for the period she was medically able to work, but her employer refused to allow her to return. Note the Court distinguished this case factually from Watson v Murdock's Food, 148 Mich App 802 (1986) on the basis Ms. Watson had no intention of returning to work and was seeking benefits for the period when medically unable to work.

7/99
11, 12, d19: H

Section 29(1)(a)

VOLUNTARY LEAVING, Concurrent employment

CITE AS: Dickerson v Norrell Health Care, Inc, Kent Circuit Court No. 95-1806-AE September 21, 1995.

Appeal pending: No

Claimant: Florence Dickerson
Employer: Norrell Health Care, Inc.
Docket No. B93-11864-127766W

CIRCUIT COURT HOLDING: A claimant who had simultaneous full-time and part-time employment, who left the part-time job for disqualifying reasons, and later unexpectedly lost the full-time job for non-disqualifying reasons, is not disqualified from receiving benefits under Section 29(1)(a). This claimant can be said to have "left work" only if "quitting resulted in total unemployment, not one less job."

FACTS: From December, 1992, to April, 1993, the claimant worked two jobs. One job was full-time for Luther Home, the other job was part-time for Norrell Health Care. The claimant quit the part-time job with Norrell Health Care due to family obligations. About a month later, she lost her full-time job. The claimant applied for benefits and was denied. Nothing about the loss of the full-time job was disqualifying. However, the claimant's quit of her part-time job was held to disqualify her from the benefits she would otherwise have received as the result of the loss of her full-time job.

DECISION: The claimant is not disqualified from receiving benefits.

RATIONALE: The court relied on cases from other states which it found identical to the present case. See McCarthy v Iowa Employment Security Commission, 76 NW2d 201 (1956); Brown v Labor & Industrial Relations Commission, 577 SW2d 90 (1979); Gilbert v Hanlon, 335 NW2d 548 (1983); and Merkel v HIP of New Jersey, 573 A2d 517 (1990). In those cases, the reviewing courts held that an "employee can be said to have left work only if quitting resulted in total unemployment, not one less job." The court found this interpretation is "more reasonably in accord with the Legislature's intent because common sense as well as the rules on construction . . . says that the Legislature intended" that result. Richards v American Fellowship Ins Co, 84 Mich App 629, 634 (1978), lv app den 406 Mich 862 (1979). The Board of Review's interpretation "undermine[s] the core premise of the Michigan Employment Security Act without accomplishing anything other than providing an unearned windfall to employers at the expense of employees."

7/99
21, 12: K

Section 29(1)(a)

VOLUNTARY LEAVING, Discharge in anticipation of leaving

CITE AS: Walsh v First Metropolitan Title, Oakland Circuit Court No. 97-551063-AE (January 26, 1998).

Appeal pending: No

Claimant: Kathleen Walsh
Employer: First Metropolitan Title
Docket No. B97-01169-RO1-144003W

CIRCUIT COURT HOLDING: The claimant's immediate termination by the employer is disqualifying under Section 29(1)(a) when the claimant failed to provide a two week notice and was uncooperative when asked if the claimant had accepted employment with a competitor.

FACTS: The claimant worked as a title examiner for the involved employer. On September 17, 1996, the claimant informed the employer she was resigning to accept employment with another title company effective September 20, 1996. The employer was concerned the claimant was going to work for a competitor, and asked the claimant where she was going, but she declined to disclose the identity of the new employer. The employer indicated there is a lot of pirating of employees in this industry. The employer discharged the claimant immediately pursuant to its practice to accept an employee's resignation as immediately effective when the employee refuses to disclose the identity of the new employer.

DECISION: The claimant is disqualified from receiving benefits under Section 29(1)(a) of the Michigan Employment Security Act.

RATIONALE: The court noted the Referee distinguished this matter from Stephen's Nu-Ad, Inc v Green, 168 Mich App 219 (1988), because the claimant did not give the employer the benefit of a two week notice. The court stated "[i]t appears from the record that [claimant]'s poor handling of her resignation, including her failure to give her employer the courtesy of a two week notice, and the fact that she appeared to be going to work for a competitor led to her termination on September 17, 1996." The court found those facts supported the conclusion that the claimant's separation was "the result of an unrestrained, volitional, freely chosen or willful action on her part."

7/99
24, 16, d22: J

Section 29(1)(a)

VOLUNTARY LEAVING, Health, Reasonable alternatives, Involuntary leaving

CITE AS: Haynes v Flint Painting, Stripping and Derusting, Genesee Circuit Court, No. 94-32420-AE (August 16, 1995).

Appeal pending: No

Claimant: Maggie M. Haynes
Employer: Flint Painting, Stripping and Derusting
Docket No. B93-13254-128491

CIRCUIT COURT HOLDING: "When an individual is caught between a rock (leaving her employment) and a hard place (risking her health), the decision to act one way rather than the other is not a voluntary leaving."

FACTS: The claimant worked for the employer for two years before learning she had breast cancer. The claimant's job involved heavy lifting and extensive manual labor. The claimant requested an alternate position because of the strain that type of work would have on her health. The employer informed the claimant that no alternative position was available and her request could not be accommodated. The claimant also requested a medical leave of absence for surgery and chemotherapy. The employer denied the request stating company policy did not provide for medical leaves of absence. The employer informed the claimant could return to work after completing therapy. The claimant did not return to work and filed a claim for unemployment benefits.

DECISION: The claimant is not disqualified from receiving benefits under Section 29(1)(a).

RATIONALE: In light of the totality of circumstances, claimant acted reasonably when she chose to leave rather than endanger her health. She was not in the position of exercising any reasonable alternatives. Laya v Cebar Construction, 101 Mich App 26 (1980). The court found this matter distinguishable from Watson v Murdock's Food and Wet Goods, 148 Mich App 802 (1986), because the claimant approached the employer and requested alternative work, unlike the claimant in Watson who intended to leave her employment due to complications with her pregnancy. The claimant in the present matter left work after learning that alternative work would not be available. The claimant was "forced from a position that her health would not allow her to perform, and employment which her employer did not take steps to continue."

7/99
21, 18, d12: K

Section 29(1)(a)

VOLUNTARY LEAVING, Sexual harassment

CITE AS: Mathews v Transportation Management, Inc, Kalamazoo Circuit Court No. B95-0144-AE (February 9, 1996).

Appeal pending: No

Claimant: Mary Mathews
Employer: Transportation Management, Inc.
Docket No. B93-01271-126090W

CIRCUIT COURT HOLDING: When the employer is aware of a complaint of sexual harassment, fails to take steps to rectify the problem after adequate notice and the problem is likely to persist or repeat, the leaving is with good cause attributable to the employer.

FACTS: The claimant was sexually harassed by two male co-workers. She informed her supervisor, and the men's supervisor, about the harassment. The claimant admitted she did not specifically state that she was being sexually harassed to her supervisor. After she complained to her supervisor the harassment ceased until the supervisor departed. The claimant's manager, an employer witness, was aware of the claimant's complaint. Sexual comments were regularly made over the employer's radio. The employer was aware obscene objects were left in the workplace, and while the employer removed the objects it made no effort to investigate. During claimant's exit interview, the manager revealed to the claimant she was aware of the claimant's sexual harassment complaint. When the claimant threatened to file a complaint with the Michigan Department of Civil Rights, the manager laughed and told her to go ahead.

DECISION: The claimant is not disqualified from receiving benefits.

RATIONALE: The manager was aware of the claimant's complaint to her supervisor. The claimant's reference to the Civil Rights Commission indicates the complaint concerned sex discrimination. Since the manager responded by laughing, it was "reasonable for the claimant to assume the employer was not going to rectify the hostile work environment after adequate notice, and that repetition of the episode was likely to occur."

7/99
12, 8, d21: F

Section 29(1)(a)

VOLUNTARY LEAVING, Constructive voluntary leaving

CITE AS: Devyak v Faygo Beverages, Wayne Circuit Court, No. 88-815646-AE (May 1, 1989).

Appeal pending: No

Claimant: Beverly J. Devyak
Employer: Faygo Beverages
Docket No. B87-12781-106535W

CIRCUIT COURT HOLDING: An employer cannot unilaterally decide that an employee has voluntarily quit. There must be substantiation from the employee that the employee intended to sever the employment relationship.

FACTS: The claimant experienced medical problems which led to surgery. She returned to work, but experienced surgical complications. The claimant's workload, working hours, fatigue, a sinus infection and headaches caused her great stress. The claimant was entitled to a two week vacation. When claimant inquired about scheduling a vacation her supervisor told her she could not take any vacation time. She went to higher management without success. Claimant told her supervisor "this is horseshit," laid down her Blue Cross card and her pass. Claimant left, taking her purse and calendar, but did not clean out her desk. A few hours later she contacted the employer's president who directed her to report her illness to her supervisor. She contacted her supervisor who told her she was considered a voluntary quit. She attempted to return to work and provide proof of her illness.

DECISION: Claimant is not disqualified for benefits under Section 29(1)(a).

RATIONALE: While the evidence shows the claimant "blew up" on June 4, 1987, there is nothing in the record to show she intended to quit her job. The claimant did not say she was resigning, she did not clean out her desk, she called the president of the company the same day to inform him of her illness, she notified her supervisor of her illness and produced proof of her illness in an attempt to return to work. The employer "cannot, on its own, decide that an employee has voluntarily quit a job without sufficient substantiation from the employee." Wickey v ESC, 369 Mich 487 (1963). The doctrine of "constructive voluntary leaving" does not exist under Michigan unemployment compensation law.

7/99
13, 14: N/A

Section 29(1)(a)

VOLUNTARY LEAVING, Mandatory training, Reasonable person standard

CITE AS: Bis v Electronic Data Systems, unpublished per curiam Court of Appeals, March 8, 1995 (No. 156482).

Appeal pending: No

Claimant: Lawrence C. Bis
Employer: Electronic Data Systems Corporation
Docket No. B90-16245-117532W

COURT OF APPEALS HOLDING: The employer did not make working conditions so unpleasant that a reasonable person in the claimant's shoes would have felt compelled to resign for reasons attributable to the employer.

FACTS: As a condition of hire, the employer required claimant to complete a three-phase training program. The claimant successfully completed the first phase but resigned after completing two weeks of the second phase. The second phase required participants to work fifteen to sixteen hours per day, seven days per week, for ten weeks, to test their physical and mental stamina. The employer allowed three warnings regarding performance during the second phase before a participant would be discharged. Claimant experienced physical and emotional problems during the second phase, but did not inform his supervisor. Rather, he expressed doubts about his ability to continue and requested to return to phase one. The claimant had not fallen behind in the second phase or received a performance warning. The claimant's supervisor informed him that if he did not complete the second phase he would be terminated. The claimant concluded he had no choice but to resign or face termination, so he decided to resign.

DECISION: The claimant is disqualified for benefits.

RATIONALE: The "good cause" standard essentially asks "whether an employee left work with 'cause of a necessitous and compelling nature.'" Cooper v University of Michigan, 100 Mich App 99, 105 (1980). The claimant's self-doubts ultimately led him to resign. The claimant was entitled to three performance warnings, and had not received any warnings before resigning. His supervisors believed he could successfully complete the program. Nothing indicated the claimant was incapable of successfully completing the second phase.

7/99
11, 3: F

Section 29(1)(a)

VOLUNTARY LEAVING, Prerequisite of employment, Constructive voluntary leaving

CITE AS: Lee v Bermex, Inc, Wayne Circuit Court No. 93-324459-AE (January 27, 1994).

Appeal pending: No

Claimant: Christopher A. Lee
Employer: Bermex, Inc.
Docket No. B91-3452-RO1-121313W

CIRCUIT COURT HOLDING: A loss of a prerequisite of employment through one's own inaction is a purely voluntary leaving, not a constructive leaving.

FACTS: Claimant worked as a meter reader. As a requirement of employment, the claimant was expected to have a vehicle. The claimant met this requirement when hired, but later "totaled" his vehicle. The employer allowed the claimant to use public transportation or car-pool with another employee until he found a replacement vehicle. This accommodation continued for seven months. The employer gave the claimant an advance pay-out of vacation time to purchase a vehicle. The employer was unable to continue to accommodate the claimant's lack of a vehicle. The claimant failed to obtain a vehicle. The employer discharged the claimant.

DECISION: The claimant is disqualified for benefits under Section 29(1)(a).

RATIONALE: The court distinguished this matter from Clarke v North Detroit General Hosp, 437 Mich 280 (1991). Unlike the nurses in Clarke who took steps to meet their condition of employment by preparing for an examination, the claimant in the present matter "made no effort to meet his condition of employment." The claimant's discharge "resulted from his decision not to do anything about his situation for a lengthy period of time." His leaving "could reasonably be characterized as volitional, freely chosen and willful - in short, voluntary." The court found applicable Echols v MESC, 4 Mich App 173 (1966), and City of Saginaw v Lindquist, 139 Mich App 515 (1984), which hold that a loss of a prerequisite of employment through one's actions is a voluntary leaving without good cause attributable to the employer.

7/99
24, 17, d12: N/A

Section 29(1)(a)

VOLUNTARY LEAVING, Good cause, Tenured teacher, Discipline, Constructive discharge

CITE AS: Gebhardt v Lapeer Community Schools, unpublished per curiam Court of Appeals September 17, 1992 (No. 132176).

Appeal pending: No

Claimant: Barbara J. Gebhardt
Employer: Lapeer Community Schools
Docket No. B87-12530-110516W

COURT OF APPEALS HOLDING: 1) An employer's decision to discipline based on a legitimate policy or procedure does not constitute good cause for leaving. 2) A school system's request that a school board dismiss a tenured teacher does not constitute constructive discharge.

FACTS: The claimant was a tenured school teacher. She was charged with first degree criminal sexual conduct. This prompted the employer to suspend the claimant with pay. When the claimant was convicted the employer requested that the Board of Education dismiss the claimant. Pursuant to the employer's request, a hearing was noticed. The hearing resulted in a negotiated settlement whereby the claimant would resign her position, the employer would withdraw the tenure charges and the claimant would receive a cash settlement. The claimant asserted her leaving was a constructive discharge. (Note: after her separation, but prior to the Referee hearing, claimant's conviction was set aside.)

DECISION: The claimant was disqualified under Section 29(1)(a).

RATIONALE: Referral to the school board was a procedure designed to protect the claimant, not injure her. Consequently, the hearing could not be characterized as a working condition that would force a reasonable person to resign. Accordingly, there was no constructive discharge. The court also rejected the argument that claimant would have lost her job with or without a hearing as the employer was determined to terminate her employment, therefore she was not required to pursue a futile course of action. The court observed that while the employer was zealous, its actions were not merely vexatious. Since the Teacher Tenure Act provides possible appellate relief, that option was not futile. Moreover, when an employer reprimands or relieves an employee of his or her duties based on a legitimate policy or procedure, it does not give an employee good reason to resign.

7/99
11, 13: N/A

Section 29(1)(a)

VOLUNTARY LEAVING, Layoff notice, Resignation

CITE AS: Cooper v Mount Clemens Schools, Barry Circuit Court, No. 98-194-AE (December 29, 1998).

Appeal pending: No

Claimant: Cyntheal Cooper
Employer: Mount Clemens Schools
Docket No. B97-12037-146470

CIRCUIT COURT HOLDING: A person who "resigns" after losing their job to a layoff has not voluntarily terminated their employment.

FACTS: On April 24, 1997 the claimant received a notice she would be laid off at the end of the contract year. On April 28, 1998 the claimant submitted a letter to the employer that indicated the claimant would not return to work for the employer in the next school year.

DECISION: The claimant is not disqualified for voluntary leaving.

RATIONALE: The Board of Review erred by finding the claimant left her position voluntarily. Claimant could not leave a job she already lost. "A person who 'resigns' after losing their job to a layoff has not voluntarily terminated their employment."

7/99
24, 16, d22: F

Section 29(1)(a)

VOLUNTARY LEAVING, Leave of absence

CITE AS: Sherwood v Michigan Bell Telephone Co., Wayne Circuit Court No. 99-914657AE (October 28, 1999).

Appeal pending: No

Claimant: Thomas Sherwood
Employer: Michigan Bell Telephone Company
Docket No. B98-07068-149398

CIRCUIT COURT HOLDING: Claimant left employment voluntarily without good cause attributable to employer because he did not apply for a leave of absence even after he received a letter from the employer warning him his employment was about to be terminated. Turning in doctor's notes was not sufficient action to maintain employment.

FACTS: Claimant was injured on the job and was off on a medical LOA from August 1997 to January, 1998, at which time he was assigned to The Toledo office, a 50 mile commute one-way. Claimant was suffering back pain associated with the injury. He provided the employer with doctor's notes limiting his driving distance and time because driving aggravated his back pain. After failing to report to work for several days, the claimant was terminated. He had not applied for a medical leave of absence. Employer had sent the claimant a warning letter (of impending termination) but the claimant ignored it.

DECISION: The claimant is disqualified for voluntary leaving. Circuit court affirmed Board of Review in its reversal of the Referee decision, albeit for different reasons.

RATIONALE: Claimant initiated his separation by failing to report to work and failing to apply for a medical leave of absence to cover his absences. Claimant had valid medical restrictions but failed to demonstrate that they prevented him from reporting to work.

21, 16, d23: L

Section 29(1)(a)

VOLUNTARY LEAVING, Good cause, Threat, Co-worker behavior, Failure to communicate

CITE AS: Lakeshore Public Academy v Scribner, No. 03-004110-AE, Oceana Circuit Court (May 10, 2004)

Appeal pending: No

Claimant: Patricia A. Scribner
Employer: Lakeshore Public Academy
Docket No. B2003-06865-RO1-170206

CIRCUIT COURT HOLDING: Claimant established good cause for leaving. Employer did not complete the process of handling the claimant's complaint by communicating to her that it was investigated and what action would or would not be taken in response. The claimant reasonably concluded the employer was unable or unwilling to discipline a co-worker who violated employer's rule against threatening behavior.

FACTS: Claimant worked as a teacher. Another teacher and his wife, confronted claimant in her classroom regarding her discipline of their child on the previous day. Claimant testified the other teacher put his finger in her face, glared at her, and made intimidating comments. This happened as students were entering the classroom. Claimant reported this incident to the employer, and indicated she could not work under those conditions. Employer had a policy prohibiting threatening behavior toward staff which provided that if a threat occurred, the perpetrator would be disciplined. Employer's witness investigated the incident, but could not reconcile differing statements from claimant and the other teacher, so the teacher was not disciplined. After not hearing anything more from the administration, claimant resigned a couple weeks later.

DECISION: Claimant is not disqualified for voluntary leaving.

RATIONALE: "The ALJ's decision turned on the failure of the Academy to complete the normal and expected handling of an employee's grievance by communicating to the employee the results of the investigation and what, if any, action would be taken in response to the complaint." It is the manner in which employer handled the complaint, not the failure to impose discipline, that leads to a finding of non-disqualification.

11/04

Section 29(1)(a)

VOLUNTARY LEAVING, Concurrent employment, Part-time work

CITE AS: Mitchell v Wal-Mart Associates, No. 02-31816-AE, Allegan County Circuit Court (November 22, 2002).

Appeal pending: No

Claimant: Denise M. Mitchell
Employer: Wal-Mart
Docket No. B2001-15958-RO1-162871W

CIRCUIT COURT HOLDING: A claimant who voluntarily leaves part-time employment to save her full-time employment is not disqualified under Section 29(1)(a) if she is subsequently laid-off by the full-time employer.

FACTS: The claimant worked part-time for Wal-Mart, and simultaneously worked for a full-time employer. She was working more than 65 hours/week total. Claimant left her part-time employment due to conflicts with her work schedule with her full-time employer. The full-time employer unexpectedly laid her off the following day.

DECISION: The claimant is not disqualified pursuant to Section 29(1)(a).

RATIONALE: "Given the conflict in work schedules between the two jobs…,Wal-Mart's actions of staffing and continuing operations at times threatening to the claimant's full-time job would cause a reasonable and average person to choose between the two." Claimant reasonably chose her full-time job. The court found non-binding support from another circuit and two other states in Dickerson v Norrell Health Care Inc, No. 95-1806-AE, Kent Circuit Court (September 21, 1995); Merkel v HIP of New Jersey, 573 A2d 517 (1990); and, Gilbert v Hanlon; 335 NW2d 548 (1983). In those cases, "the courts found that technical interpretations of "work" worked an injustice to the purpose and intentions of each state's respective law by equating one's reasonable decision to leave a part-time job with the unreasonable quest to leave employment altogether."

11/04

Section 29(1)(a)

VOLUNTARY LEAVING, Concurrent employment, Part-time work

CITE AS: Hilton (Meijer Stores Limited), 2004 BR 170939 (B2003-09139)

Appeal pending: No

Claimant: Akira Hilton
Employer: Meijer Stores Limited
Docket No. B2003-09139-170939

BOARD HOLDING: A claimant who has simultaneous employment with a part-time employer and a full-time employer, who leaves her part-time job because it conflicts with the full-time job, is disqualified under Section 29(1)(a) because her leaving was not attributable to the part-time employer.

FACTS: Claimant worked for Meijer on a part-time basis, and simultaneously worked full-time for Wallside Windows. Claimant voluntarily left her employment with Meijer because it conflicted with her full-time employment. Ten days later, Wallside Windows discharged the claimant for non-disqualifying reasons.

DECISION: The claimant is disqualified from receiving benefits under Section 29(1)(a).

RATIONALE: In Dickerson v Norrell Health Care, Inc., Kent Circuit Court No. 95-1806-AE September 21, 1995, (Digest 10.81), the circuit court addressed what presents itself as a gross inequity: that although claimant had been laid off from a full-time job for non-disqualifying circumstances, the claimant was nevertheless ineligible for benefits solely because the claimant had just voluntarily left an unrelated part-time job. The court's conclusion that a claimant could not be found to have "left employment" unless her leaving resulted in **total** unemployment is at odds with the plain and unambiguous language of the statute. The court also ignores that the employer the claimant quit faces charges to its account and tax rate increases even though it in no way contributed to the job separation. Additionally, if such a claimant quit only one of her jobs, she could receive unemployment benefits provided she still worked at least part-time and thus was not **totally** unemployed. Then the former full-time employer's account would be charged for the benefits paid, and the current part-time employer would also be charged for a portion of the benefits, even though neither employer in any way contributed to the claimant's job separation. The Board notes that circuit court decisions are not binding precedent. Due to the potential unintended consequences of Dickerson, if a change in the statutory language is necessary, it should come from the legislature.

11/04

Section 29(1)(a)

VOLUNTARY LEAVING, After-acquired evidence, Illegal work activities

CITE AS: Spence v The Dakota Corp., No. 00-1666-AE, Isabella Circuit Court (October 30, 2000)

Appeal pending: No

Claimant: Edwin Spence
Employer: The Dakota Corporation
Docket No. B1999-04176-152773

CIRCUIT COURT HOLDING: A truck driver required to violate USDOL regulations to meet the employer's schedule, but who notifies the employer about the potential violations, has good cause attributable to the employer for a voluntary leaving if the employer fails to take remedial action.

FACTS: Claimant worked for the employer as a truck driver for three years. Claimant drove a minimum of seven hours between Grand Haven, Michigan and Windsor, Ontario, delivering five loads of sand in four days. Claimant also commuted two and a half hours one-way to work, and spent four hours loading and unloading sand. The driving schedule resulted in claimant getting little or no sleep. Claimant falsified his travel logs to meet USDOT regulations. He complained to the employer that the schedule was taxing, illegal, compromised health and safety of the public, and that another employee also falsified logs. Claimant left after the employer failed to alter his schedule. Later the USDOT fined the employer $2100 for violations, including the false report of records of duty status.

DECISION: Claimant is not disqualified for voluntary leaving.

RATIONALE: Claimant realized he was harming his health working in an illegal manner, violating USDOT regulations, and if he were caught he would be individually responsible for the fine. While claimant repeatedly informed employer that employer was forcing him to drive illegally and that he falsified his logs to maintain an appearance of legality, employer insisted the schedule was legal and refused to review claimant's documentation. Employer told claimant he was on his own if he was caught with falsified logs. Employer should have known the schedule could not be done legally.

11/04

Section 29(1)(a)

VOLUNTARY LEAVING, Definition of layoff, Characterization of separation

CITE AS: Dushane v Bailey T L DDS, No. 00-40206-AE, Muskegon Circuit Court (February 6, 2001)

Appeal pending: No

Claimant: Tracy L. Dushane
Employer: Bailey T L, DDS
Docket No. B1999-13378-154400

CIRCUIT COURT HOLDING: The nature of the separation determines whether the claimant is laid off or voluntarily quit, not the labels used by the parties. A layoff is a separation of an employee from employment (a) at the will of the employer, (b) due to a lack of work, and (c) which is at least initially understood by the employer and the employee to be temporary.

FACTS: Claimant approached the employer and asked to be laid off so that she could look for other employment. Employer had work available for claimant. Claimant stated in her application for benefits that she was "laid off due to lack of work." Claimant admitted in her testimony that it was her choice to leave the job.

DECISION: Claimant is disqualified for voluntary leaving.

RATIONALE: The question to be resolved is whether or not the facts of this matter demonstrate an actual layoff of the claimant as defined by Michigan courts. The Board is not "bound by the words used by the employer and employee to describe the separation." I.M. Dach Co. v ESC, 347 Mich 465, 489 (1956). The Court of Appeals in MESC v General Motors Corp, 32 Mich App 642, 647 (1971) held that, "A layoff is a termination of employment at the will of the employer, without prejudice to the worker. Layoffs may be due to lack of orders, technical changes, or failure of flow of parts or materials to the job, as needed." "A 'layoff', as distinguished from a discharge, contemplates a period during which a working man is temporarily dismissed . . .." MESC v General Motors Corp, supra, at 648. In Chrysler Corp v Washington, 52 Mich App 229, 234-235 (1974), the court defined "layoff" as, "To cease to employ (a worker) usually temporarily because of slack in production and without prejudice to the worker usually distinguished from a fire." In this matter, the claimant admitted she asked for a "layoff" and said she would leave and not come back.

11/04

Section 29(1)(a)

VOLUNTARY LEAVING, Good Cause, Terms of employment contract, Handbook, Non-compete clause, Substantial change

CITE AS: Human Capability Corp. v Carson, No. 03-331656-AE, Wayne Circuit Court (April 6, 2004)

Appeal pending: No

Claimant: Barbara D. Carson
Employer: Human Capability Corporation
Docket No. B2003-02940-169363

CIRCUIT COURT HOLDING: Where the employer unilaterally changed the terms and conditions of employment by altering the employee handbook to include non-competition and prohibition of outside employment provisions, the claimant had good cause for voluntary leaving.

FACTS: In January 2002, employer updated the policies contained in its 1998 employee handbook. The 2002 employee handbook contained a non-competition provision and prohibited outside employment. The claimant refused to sign and was separated from employment. The 1998 employee handbook prohibited outside work on employer's time, and lacked an express provision barring work with a competitor after separating from employer's employ.

DECISION: Claimant is not disqualified for voluntary leaving.

RATIONALE: The employer did not dispute that claimant left work voluntarily. The employer asserted claimant lacked good cause for leaving because claimant was an at-will employee, who lacked an employment contract or a legitimate expectation that employer would not alter the terms and conditions or employment. The court held that employer's argument was misplaced - that claimant's employment status and employer's right to alter the terms and conditions of work would be pertinent if the enforceability of a common-law employment contract were at issue. Toussaint v Blue Cross & Blue Shield of Michigan, 408 Mich 579 (1980). The court found that Toussaint and its progeny do not govern administrative proceedings when the issue is whether the claimant left with good cause attributable to employer under Section 29(1)(a) of the Act.

The addition of the moonlighting prohibition, and anti-compete clause were a substantial and material change in the terms of employment.

11/04

Section 29(1)(a)

VOLUNTARY LEAVING, Good cause, Threat

CITE AS: Simpson v MBS Commercial Printers, Inc, Bay Circuit Court, 99-3129-AE-B (August 25, 2000).

Appeal pending: No

Claimant: Darren H. Simpson
Employer: MBS Commercial Printers, Inc.
Docket No. B98-00846-148280W

CIRCUIT COURT HOLDING: A death threat made by employer, coupled with past abuse from the employer, and the employee's reasonable belief that employer was capable of acting on the threat, constitutes good cause attributable to the employer for voluntary leaving.

FACTS: On the claimant's last day, he had an argument with the owner, which the owner initiated. Claimant testified the owner threatened to kill him, which the employer denied. The ALJ failed to make a credibility finding. Claimant had difficulty with the owner in the past - physical and verbal abuse by the owner, and a physical assault by the owner's brother. The owner owned guns; claimant believed he would carry out the death threat and later filed a police report. The claimant worked the balance of his shift before leaving.

DECISION: The claimant is not disqualified from receiving benefits.

RATIONALE: Claimant finished his shift on Friday, and notified employer that he quit the following Monday. Instead of provoking employer in an environment employer controlled, claimant opted to notify employer of his leaving at a later time, allowing for a period of "cooling down." Claimant chose the prudent course, which in no way diminishes the seriousness of employer's threat. Good cause exists where the circumstances which prompted the claimant's departure would have caused an average, reasonable, and otherwise qualified worker to leave. Carswell v Share House, Inc., 151 Mich App 392 (1986). The employer made a death threat. Employees should not have to labor under the threat of murder.

11/04