STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OCEANA

LAKESHORE PUBLIC ACADEMY,

Employer/Appellant,

File No. 03-004110-AE

v

PATRICIA A. SCRIBNER, and State of Michigan, Department of Consumer and Industry Services, Bureau of Workers' & Unemployment Compensation, Formerly MESC and Unemployment Agency,

OPINION

Claimant/Bureau/Appellees.

Lakeshore Public Academy ("Academy") appeals the decision of the Employment Security Board of Review which granted Patricia Scribner unemployment benefits under MCL 421.29(1)(a). This decision is affirmed.

I.

The testimony at the administrative hearing showed that on November 22, 2003, Steve Hamilton, a teacher at the Academy, and his wife, confronted Scribner regarding her discipline of Hamilton's step-son during the previous day. In response to questions from the administrative law judge ("ALJ"), Scribner testified that the following occurred:

> Q. All right: So a co-worker, Mr. Hamilton, did or said what?
>
> A. He came into my classroom—we call it a wing. And was upset with me. Pointed his finger in my face. When I tried to—tried to so some—to say, please don't do that, he came even closer, pointed a finger at my face, glared into my eyes and said, I can point my finger at whoever I want to point my finger at.
>
> Q. All right. What—what was your—how did you feel when he did this?
>
> A. Totally intimidated.
>
> Q. All right. What did—now, where—this occurred where, in your classroom?

A. In the classroom.

Q. At approximately what time?

A. It was a—probably a little bit after 8:00 because the students were coming in to the room.

Q. Okay. Was anyone with him?

A. Yes.

Q. Who?

A. His wife.

Q. What did his wife do?

A. She grabbed him by the arm or took him by the arm and pulled him away from me. [Tr, pp 8-9]

Shortly thereafter, Scribner attempted to report this incident by leaving a voice mail for Michelle Baskin, the Administrative Facilitator for the Academy. Baskin was unable to promptly respond to this call, because she was away from work for medical reasons.

Scribner followed up the voice mail message with another telephone call to Baskin which she was able to answer. Scribner recalled the conversation as follows:

Q. What did you tell her?

A. I told her about the finger-pointing incident. And I told her I—I just couldn't work under those conditions.

Q. What was her response?

A. She asked me to think about it. [Tr, p 10]

Baskin recalled that the incident between Scribner and Hamilton caused Scribner to express an intention to quit her employment:

Q. Yes, what did she say to you in the phone conversation when she finally reached you on November 22?

A. That—she did say that she was going to quit.

Q. All right. Did she say why she was going to quit?

A. Because—because of Mr. Hamilton. [Tr, p 17]

The Academy has a written policy prohibiting threatening behavior toward staff members, and it directs the administrative staff regarding the handling of these incidents:

> The board of directors believes that a staff member should be able to work in an environment free of threatening speech or actions. Threatening behavior consists (sic) any words or deeds that intimidate a staff member or cause anxiety concerning his or her physical and/or psychological well-being is strictly forbidden.
>
> Any student, parent, visitor, staff member or agent of this board who is found to have threatened a member of the staff will be subject to discipline or reported to the authorities.
>
> The administrative facilitator shall implement guidelines whereby students and employees understand this policy and appropriate procedures are established for prompt and effective action on any reported incidents.

Baskin testified that she promptly reviewed Scribner's complaint with Hamilton, who gave a dramatically different version of what occurred during this incident. Baskin was unable to reconcile the statements given by Scribner and Hamilton; thus, she concluded that no disciplinary action was warranted against Hamilton.

Baskin did not inform Scribner of the meeting with Hamilton nor did Baskin explain to Scribner why no formal action was going to be taken as a result of her complaint. Baskin was unable to provide an explanation to the ALJ regarding the Academy's failure to communicate its decision and rationale for not taking any formal action:

> Q. Well I guess the thing that confuses me here is that if you did meet with Mr. Hamilton and made a decision that there was such a dichotomy between the statements of the two and without any supporting statements from anybody else that you could not take any disciplinary action, why you didn't feel the necessity to communicate that to Ms. Scribner so that she understood why you were taking disciplinary action.
>
> A. [No verbal response]
>
> Q. Can you explain that to me?
>
> A. No. [Tr, p 24]

On November 26, 2002, Baskin sent an e-mail message to Scribner regarding the need for a meeting "to facilitate a smooth and dignified separation." A few weeks later, on January 6, 2003, Scribner submitted her formal letter of resignation to the Academy. In this letter, Scribner wished the Academy well, praised Baskin for her work and leadership, and concluded by stating that "it is time" to leave the Academy. Scribner's last day of work was January 17, 2003, which coincided with the end of the school semester.

II.

MCLA 421.29(1)(a) provides that a person who voluntarily leaves her employment without good cause attributable to the employer is ineligible for unemployment benefits. The ALJ concluded that Scribner quit her job for good cause attributable to her employer, and the Academy argues that this decision is contrary to law and not supported by competent, material, and substantial evidence.

The Academy claims that the ALJ's decision violates the legal principle established by Schultz v Oakland County, 187 Mich App 96; 466 NW2d 374 (1991). I disagree. In Schultz, a deputy sheriff, who was on medical leave due to stress, submitted a letter of resignation during his leave period, and two days later, he attempted to withdraw his resignation which was not allowed by his employer. The MESC denied the deputy's claim for unemployment compensation, because it concluded that he voluntarily quit his job without good cause attributable to his employer.

On appeal, the legal issue focused on whether the deputy voluntarily resigned, because he testified that his letter of resignation was the product of medication and stress. In this case, Scribner makes no claim that her resignation was involuntary. Unlike the Schultz case, the issue here focuses on whether the resignation was a product of good cause attributable to the employer.

Alternatively, the Academy claims that the ALJ erred by using Scribner's dissatisfaction with the Academy's decision to not discipline Hamilton as a basis to conclude that Scribner left her job for good cause attributable to her employer. "Good cause" may be personal to the employee, provided it is based on a situation that could lead a reasonable person to quit her employment. Carswell v Share House,Inc., 151 Mich App 392; 390 NW2d 252 (1986)

The Academy contends that the ALJ improperly supplanted the role of the Academy to determine what, if any, discipline should be meted out to its employees. However, the ALJ did not rule that the failure of an employer to discipline an employee in response to a co-worker's complaint automatically supplies good cause to quit a job. 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. In other words, the manner in which the Academy handled the complaint, not the decision made by Baskin in response to the complaint, led to the ALJ's decision.

This conclusion, when coupled with the undisputed testimony of Scribner regarding her co-worker's threatening behavior, caused the ALJ to find good cause attributable to the employer.

Lastly, the Academy argues that the ALJ's conclusion that Scribner left her job for good cause attributable to her employer is not supported by competent, material, and substantial evidence. Appellate review of the findings of fact by an administrative tribunal is limited, and it is ordinarily not proper for the reviewing court to substitute its view of the facts for that of the tribunal. Saber v Capitol Reproductions, Inc., 28 Mich App 462; 184 NW2d 518 (1970). The factual findings of the tribunal should be upheld if supported by substantial evidence, and the term "substantial evidence" only requires more than a mere scintilla of evidence but less than the preponderance of this evidence. Becotte v Gwinn Schools, 192 Mich App 682; 481 NW2d 728 (1992).

The Academy challenges the ALJ's findings of fact that Scribner's testimony concerning Hamilton's threatening behavior was "unrebutted" and that Baskin had "not disciplined" him. The Academy correctly points out that Baskin testified that she promptly investigated the incident and that she found that Hamilton disputed Scribner's version of the incident, and Baskin could not reconcile the versions of the two employees to make any firm conclusion regarding what happened.

However, Scribner was the only person who testified at the hearing that had personal knowledge of what happened on November 22, 2002. Baskin's information comes only second-hand from the parties to the inicident, and no explanation is apparent why the Academy did not call Hamilton, who still worked at the school, as a witness. Considering this circumstance, the ALJ's finding that Scribner's testimony was "unrebutted" is supported by substantial evidence.

The Academy contends that the ALJ erroneously determined that the Academy failed to implement its rule against threatening behavior by not disciplining Hamilton. The decision to discipline or not discipline Hamilton is not the point. The point is that on the record available to the ALJ, the Academy did not complete the process of handling Scribner's complaint by communicating to her that it was investigated and what, if any, action would be taken to respond to the complaint. These facts led the ALJ to conclude that from Scribner's perspective, she may reasonably conclude that a co-worker could violate the rule against threatening behavior, and the Academy was unwilling or unable to do anything about it.

In sum, the ALJ's decision is not contrary to the law, and, given my limited role in reviewing his findings of fact, I must conclude that there is sufficient evidence in the record to support his decision. Accordingly, the decision of the ALJ is affirmed.

May 10, 2004

Anthony A. Monton (P26051)
Circuit Judge