Benefits Denied or One Less Job?

By Kenneth P. Poirier

Not All "Voluntary Leavings" are Alike

Michigan's unemployment benefits system exists to help those who become unemployed through no fault of their own.[1] The system was designed to be accessible to those who need to use it, yet the complexities of the statute that authorizes the system rival those of the Internal Revenue Code.

An issue that arises with some frequency involves an employee who quits work. Assume that a worker has two jobs at the same time. The worker quits the part-time job and later loses the full-time job. Does quitting the part-time job to concentrate on the full-time job disqualify the worker from receiving unemployment benefits when the individual loses the full-time job, or by doing so does one merely become a worker with one less job and not thereby disqualified for benefits? This article will explore this question and two answers that have been offered to resolve it.

The Michigan Employment Security Act (the Act)[2] provides the statutory basis for Michigan's unemployment benefits system. The Act authorizes monetary aid to unemployed persons as well as an administrative appeals system for resolving disputes concerning the payment of benefits or the charges for those benefits.

Most unemployment cases that rise to the administrative appeals level are fact-specific. A claimant is an individual who files a claim for unemployment benefits. When the claimant no longer works for a given employer, the factual reasons for the separation from work determine whether the claimant is qualified for benefits under the Act. Did the individual leave work? Was the departure for some reason that was "attributable to the employer"? Did the employer fire the claimant? Was the departure the result of "misconduct" on the part of the claimant?

Conversely, the circumstances of the claimant's separation from employment will also determine whether the employer will be charged for benefits payable to the claimant. Payroll taxes assessed against Michigan employers, not claimants, fund the system.[3] The Unemployment Insurance Agency (the Agency) calculates the tax rate paid by any given employer based on, among other things, the company's experience with the unemployment system. The more unemployment claims successfully filed by former employees, the higher the firm's tax rate.

If the facts establish the conditions laid out in the Act, the rights and duties of the parties as stated in the Act will follow. The question of whether the quitting claimant is disqualified for benefits or simply has one less job, then, is not purely academic. Its resolution one way or the other will mean that your client, a business owner, may or may not experience an unemployment payroll tax increase, potentially to the point of influencing a decision whether to close the business. On the other hand, if your client is the claimant, a negative resolution to the question could mean that your client would find it all the more difficult to pay bills, even to the point of finding it necessary to move to another state.

The question has not been addressed by Michigan's Supreme Court or Court of Appeals. It has, however, been addressed at the circuit court level in Michigan, as well as by the Michigan Employment Security Board of Review (the Board). The Board is an administrative body responsible for hearing appeals from administrative law judges, also called referees. The Board consists of five members appointed by the governor with the advice and consent of the Senate. Of the five members, two represent employee interests, two represent employer interests, and one represents the general public. The member representing the general

Fast Facts

The Michigan Employment Security Act was enacted during the Depression as part of a nationwide effort to mitigate the hazards of unemployment.

Michigan law allows individuals who quit their jobs to receive unemployment benefits if they leave work involuntarily or voluntarily but with good cause attributable to the employer.

Employers and claimants who disagree with decisions regarding the payment of unemployment benefits can bring their disagreements to an administrative law judge for resolution.

public also serves as the Board's chair. The members serve for four years or until a successor is appointed and confirmed. Administrative law judges are civil service employees designated by the Michigan State Office of Administrative Hearings and Rules to hold initial hearings on unemployment issues resulting from decisions of the Agency, which administers Michigan's unemployment benefits program under the Act.[4]

Although most unemployment cases are resolved by a simple application of the law to the facts, the occasional case will arise involving a provision of the Act whose meaning is not entirely clear. The term "misconduct," for example, is the root of the majority of cases that go to hearings for resolution, yet it is not defined by the Act. The courts, on the other hand, have defined it.[5] Other areas of the Act have not been defined with finality either by the courts or the legislature.

One such example involves the Act's voluntary leaving provision. The Act disqualifies someone who leaves work without good cause attributable to the employer.[6] A question that has not been resolved with finality, however, is the one that is the subject of this article: If a worker leaves a part-time job to concentrate on a full-time job, has he "left work" within the meaning of the Act and, if so, does the voluntary departure disqualify him from receiving unemployment benefits under the Act—or is he simply an employed worker with one less job?

Although other states have resolved this question, it has not been answered by Michigan's Supreme Court, Court of Appeals, or legislature. As a result, two schools of thought have arisen over the issue in Michigan.

The question arises with some frequency and deserves consideration. How would you counsel a client facing a hearing involving the issue of unemployment disqualification based on voluntary leaving or one less job?

First Come the Facts, Then Comes the Law

Assume that five years ago you represented an unemployment benefits claimant pro bono, so now you are your law firm's resident expert on unemployment matters. Given your exalted status, your partner referred to you the client seated before you. He has an unemployment benefits hearing before one of Michigan's administrative law judges seven days from now. You listen to your client's story. While he begins, you vaguely remember that the Michigan Employment Security Act governs the Michigan unemployment system, MCL 421 point 29 something-or-other, but you put aside the thought so you can concentrate on his story.

In summary, he was an auditor. He practiced his trade, working for two employers simultaneously—a bank and an auditing firm. He worked full time for the bank and part time for the auditing firm. At his request, the auditing firm had agreed to schedule his assignments so they would not interfere with his bank audit work, and the arrangement worked quite well.

Eventually, the bank offered your client a raise with additional responsibilities. It was a more attractive pay rate than he was getting from his part-time job with the auditing firm. He was not in danger of losing his part-time auditing job, and he could easily have kept working there if he had wanted to do so. Because of the higher pay rate offered by his full-time job with the bank, however, and because he felt that he could no longer do justice to both jobs at the same time, your client left his work with the part-time firm to concentrate on his full-time bank job. He left on good terms. Further, your client assures you that there was nothing that he disliked about his part-time work except that his pay rate there was lower than his new pay rate with his full-time bank job.

But the best-laid schemes of mice and auditors gang aft agley.[7] A month after he left his part-time job, the bank laid off your client without any indication of when or if he might return to work. With no job, your client applied for unemployment benefits the day after the layoff took effect.[8] He is befuddled, though. He cannot understand why the Agency is disqualifying him based on his resignation from his part-time job when he applied for benefits because of his layoff from the full-time employer. The answer lies in how the Act looks at the part-time employer on the one hand and your client on the other.

As stated previously, unemployment benefits are funded by contributions from employers who are subject to the Michigan Employment Security Act.[9] The Agency charges benefits proportionally to all "base period" employers.[10] Base period employers are those for whom the claimant worked during a period extending backwards, potentially up to 18 months before the date when the claimant applies for benefits.[11] Since your client worked for the auditing firm during his base period, even though it was part-time work, the Agency could charge that employer for benefits payable to him. This is why the Agency brought your client's part-time employer into consideration. What was it about your client that prompted the Agency's decision?

A claimant who is disqualified for benefits because of a voluntary resignation must then requalify for benefits with earnings from another employer.[12] Further, the Act provides that a disqualification such as that faced by your client begins during the week in which the event that causes the disqualification occurs—for example, the resignation from the part-time job—and that the disqualification continues until the claimant requalifies for benefits.[13] No requalification? No benefits. Your client did not have sufficient earnings with the full-time employer to requalify after he quit his

part-time job. This is the problem faced by many claimants who quit part-time work to concentrate on a concurrently held full-time job.

Your client showed you the determination, or initial decision, on whether he qualified for unemployment benefits that he received from the Agency. The determination said that your client was disqualified from receiving benefits because he voluntarily left work without good cause attributable to the part-time employer under Section 29(1)(a) of the Act.[14] He then showed you the written protest he sent to the Agency within 30 days after he received the determination, as required by Section 32a(1) of the Act.[15] He also showed you the redetermination, or second decision, concerning his qualification that the Agency sent to him following his protest.[16] The redetermination affirmed the initial determination's denial. Finally, your client showed you the appeal letter that he sent to the Agency within 30 days after he received the redetermination, as also required by Section 32a(1) of the Act.[17]

How should you advise your client? What sort of arguments should you raise before the administrative law judge? While the specific question facing your client has not been answered with finality in Michigan, there have been answers proposed by different sources.

The Final Answer is Yet to Come

Recently, the Board took up the issue facing your client in the matter of *Jacqueline A. Morris v RGIS LLC.*[18] The facts of your client's case outlined above are loosely taken from the facts that the Board faced in *Morris*.

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The Board majority in *Morris* found that the claimant was qualified for benefits based on her resignation from a part-time employer for whom she worked while simultaneously employed full-time by another firm from which she ultimately separated as well. The *Morris* majority began its reasoning by citing the purpose of the Act, noting its remedial purpose of assisting those who are unemployed through no fault of their own, as articulated in the Act itself and in caselaw. From this remedial premise, the Board pointed out the need to construe the Act liberally to achieve the statute's purpose.

The majority then pointed out that, under the Act, unemployment benefits are only available to eligible "unemployed" persons who are not for some other reason prevented from receiving them.[19] Next, the majority referred to the Act's definition of the term "unemployed,"[20] concluding that rather than becoming unemployed when she quit her part-time job, the claimant was acting in a manner that was consistent with the Act's purpose by retaining her full-time employment.

This approach, the majority indicated, had been followed some 14 years earlier in a circuit court case, *Dickerson v Norrell Health Care.*[21] The conclusion of *Dickerson* was that the claimant was not disqualified from receiving unemployment benefits because at the time of her resignation from her part-time job she was not "totally unemployed." In support of this approach, the Board majority in *Morris* noted that at least one other Michigan circuit court decision, *Mitchell v Wal-Mart Associates,*[22] decided a similar case in the same manner, and that decisions from at least four other states did likewise.[23] The Board majority further pointed out that neither *Dickerson* nor *Mitchell* had been reversed, although both had been criticized.

The existence of a majority decision, however, implies a dissenting decision as well. The dissenting Board member differed from the majority's conclusion essentially for two reasons: (1) the majority position was not required under the Act or caselaw, and (2) it resulted in unintended consequences.

Citing Michigan caselaw, the dissent noted that a claimant would have good cause to leave work under the Act when the reason for leaving would cause a reasonable, average, otherwise qualified employee to resign.[24] There was nothing to show that the part-time employer gave the claimant good cause to quit. So by itself, the claimant's resignation from the part-time employer in *Morris* would have been disqualifying.

Then, specifically addressing *Dickerson* and *Mitchell,* the dissent pointed out that the Board was not required to follow the rationale of those two decisions. This is because the Board is not bound by circuit court decisions and unpublished opinions of the Court of Appeals.[25]

But what, according to the dissent, was wrong with the Board majority's approach? Why not consider the remedial purpose of the Act and interpret the voluntarily leaving provision as being inapplicable because after leaving the part-time work, the claimant was not totally unemployed?

First, the dissent pointed out that the reasoning of the majority conflicted with the plain and unambiguous language of Section 29(1)(a) of the Act. Indeed, the language does not, in so many words, condition a disqualification upon a claimant's departure resulting in total unemployment. The provision merely provides that a person who "leaves work without good cause attributable to the employer" is disqualified.

The dissent further noted that while the rationale of the majority and the circuit courts in *Dickerson* and *Mitchell* attempted to prevent one apparent inequity, they inadvertently permitted another. The harm that the majority tried to avoid was the claimant's disqualification for benefits. Her layoff from her full-time job would not have disqualified her. It was her earlier resignation

from her unrelated part-time job that disqualified her, hence the apparent inequity to the claimant.

Although there was nothing that the part-time employer did to cause her to leave, she left that job voluntarily, so there was no "good cause attributable to the employer." Despite this—and here is the unintended inequity—charges would be assessed against the part-time employer to pay for the claimant's benefits because of the part-time employer's status as a base period employer.[26] The dissent pointed out that under the majority's approach, the part-time employer faced tax rate increases as well as charges to its account even though it did nothing to cause the claimant to quit her job.

Additionally, the dissent identified another unintended result of the majority's approach. A claimant could hold two or more jobs, quit one of them without good cause, and, as long as the claimant kept working at least part time and was therefore not totally unemployed, the claimant could collect unemployment benefits. The account of the prior employer would be charged for the claimant's benefits as well as the account of the current employer, even though neither employer caused the claimant's resignation. Accordingly, the dissent would have disqualified the claimant in *Morris* based on the resignation from the part-time job.

So two judicial approaches present themselves to answer whether your client is disqualified because he left his job with his part-time employer without good cause attributable to that employer or whether, when he left that job, he was not disqualified because he was simply an employed worker with one less job. Which approach should be followed? How should the matter be resolved? If you lose before the administrative law judge, will you appeal to the Board or beyond?[27]

Are there any alternative solutions to those which have been proposed by the Board and the circuit courts in Michigan? It is interesting to note that at least one state, Maryland, addressed this matter legislatively.[28]

Different avenues present themselves, then, for the resolution of this question. Until a case progresses beyond the circuit court with a published decision or until the Michigan legislature takes up the issue, there will be opportunities for advocacy of one solution or the other. Which one will prevail? Maybe yours. ■

Kenneth P. Poirier has been an administrative law judge in Michigan since 1999. Before that, he served on active duty in the U.S. Army Judge Advocate General's Corps, worked as a policy advisor and staff attorney for the Michigan Senate, and was a policy coordinator on the staff of Gov. John M. Engler. Mr. Poirier earned his juris doctor from the Notre Dame Law School in 1983.

FOOTNOTES

1. MCL 421.2.
2. MCL 421.1 *et seq.*
3. MCL 421.31.
4. MCL 421.3, 421.33 through 421.36; Executive Order Nos. 2003-18 and 2005-1. See also Plummer, *The State Office of Administrative Hearings and Rules: The centralization of Michigan's administrative law hearings,* 85 Mich B J 11, 18–22 (November 2006).
5. See *Carter v Michigan Employment Sec Commission,* 364 Mich 538; 111 NW2d 817 (1961).
6. MCL 421.29(1)(a).
7. See Burns, *To a Mouse, on Turning Her Up in Her Nest with the Plough, November 1785,* in The Norton Anthology of English Literature, Third Edition, Volume 2 (W.W. Norton & Company, Inc, 1974), p 24.
8. Administrative Rule R 421.210(4).
9. MCL 421.13, 421.26, and 421.31.
10. MCL 421.20(b).
11. MCL 421.45 and 421.46.
12. MCL 421.29(3)(f).
13. MCL 421.29(2).
14. MCL 421.29(1)(a).
15. MCL 421.32a(1).
16. *Id.*
17. *Id.*
18. *Jacqueline A. Morris v RGIS LLC,* No. B2009-00159-203322W (November 6, 2009).
19. MCL 421.28(1).
20. "An individual shall be considered unemployed for any week during which he or she performs no services and for which remuneration is not payable to the individual, or for any week of less than full-time work if the remuneration payable to the individual is less than his or her weekly benefit rate." MCL 421.48(1).
21. *Dickerson v Norrell Health Care,* Kent Circuit Court, No. 95-1806-AE (September 21, 1995).
22. *Mitchell v Wal-Mart Associates,* No. 02-31816-AE, Allegan Circuit Court (November 22, 2002).
23. *McCarthy v Iowa Employment Security Commission,* 76 NW2d 201 (Iowa, 1956); *Brown v Labor & Industrial Relations Commission,* 577 SW2d 90 (Mo App, 1979); *Gilbert v Hanlon,* 335 NW2d 548 (Neb, 1983); and *Merkel v HIP of New Jersey,* 573 A2d 517 (NJ, 1990).
24. *Carswell v Share House, Inc,* 151 Mich App 392; 390 NW2d 252 (1986).
25. *Moultrie v D.A.I.I.E.,* 123 Mich App 403; 333 NW2d 298 (1983).
26. MCL 421.45 and 421.46.
27. MCL 421.38 sets out the requirements for circuit court review of decisions by the Board and by administrative law judges.
28. See *Barbara Church v Speedway Superamerica LLC,* No. B2002-00251-RO1-163474W (August 31, 2004), in which a different majority of the Board of Review, addressing similar circumstances, referred to Maryland's unemployment statute, stating that "A claimant who is otherwise eligible for benefits from the loss of full-time employment may not be disqualified from the benefits attributable to the full-time employment because the claimant voluntarily quit a part-time employment, if the claimant quit the part-time employment before the loss of the full-time employment."