IN THE COURT OF APPEALS 01/14/97

OF THE

STATE OF MISSISSIPPI

NO. 95-CC-00781 COA

GERTRUDE J. HILL

APPELLANT

v.

MISSISSIPPI EMPLOYMENT SECURITY COMMISSION

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. GRAY EVANS

COURT FROM WHICH APPEALED: SUNFLOWER COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

ALSEE MCDANIEL

ATTORNEY FOR APPELLEE:

JAN D. GARRICK

NATURE OF THE CASE: UNEMPLOYMENT BENEFITS

TRIAL COURT DISPOSITION: UNEMPLOYMENT BENEFITS DENIED

BEFORE BRIDGES, P.J., COLEMAN, PAYNE, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

Hill was denied unemployment benefits by the Mississippi Employment Security Commission and the Circuit Court of Sunflower County. She appeals the denial arguing that she involuntarily left her job due to conditions that made the job hazardous to her safety. Finding the argument without merit, we affirm.

FACTS

Hill was employed as a project manager for two and a half years with the South Delta Regional Housing Authority. Her job required her to travel to different locations in the Mississippi Delta to supervise public housing units. Two Housing Authority employees had been hired to cover a certain number of units within a geographical area. The number of project manager slots was determined by the number of housing units allotted by an agreement with the federal government. Because of a decrease in funding, one of the project managers had to be released. This caused an increase in travel each day for Hill. Hill was still paid the same base salary plus $.22 per mile for work-day travel measured from her assigned job site, which changed through the years. She remained a resident of Rolling Fork the entire period, and her travel from her home to her assigned job site was not compensated. She testified that the amount of travel that she was required to do doubled. She alleges that this increase required her to leave home between 6:30 and 6:45 a.m. and to return home at 6:30 or 7:00 at night. Hill contends that this forced her to resign her position.

DISCUSSION

Our standard of review has been articulated on many occasions. In *Allen v. Mississippi Employment Security Comm'n*, 639 So. 2d 904, 906 (Miss. 1994), the court said this:

> This Court's standard of review of an administrative agency's findings and decisions is well established. An agency's conclusions must remain undisturbed unless the agency's order 1) is not supported by substantial evidence, 2) is arbitrary or capricious, 3) is beyond the scope or power granted to the agency, or 4) violates one's constitutional rights. [Citations omitted]. A rebuttable presumption exists in favor of the administrative agency, and the challenging party has the burden of proving otherwise. [Citations omitted.] Lastly, this Court must not reweigh the facts of the case or insert its judgment for that of the agency. [Citations omitted.]

Hill argues that she was forced to quit her job due to the "hardship conditions" created by the additional travel assigned to her. She contends that this subjected her to increasing danger of traveling alone. Although the evidence shows that Hill's job entailed traveling from the beginning, she argues that her travel requirements increased to a point that it was no longer feasible for her to remain employed with the Housing Authority.

The supreme court has held that unemployment compensation laws are for the use of persons unemployed through no fault of their own. *Mills v. Mississippi Employment Security Comm'n*, 228 Miss. 789, 89 So. 2d 726 (1956). The only requirement is that the unemployment be involuntary. Miss. Code Ann. § 71-5-513 lists disqualifications for benefits. The applicable part of that statute states that an individual shall be disqualified for benefits:

> (1)(a) For the week, or fraction thereof, which immediately follows the day on which he

> left work voluntarily without good cause, if so found by the commission, and for each week thereafter until he has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly benefit amount, as determined in each case, provided that marital, filial and domestic circumstances and obligations shall not be deemed good cause within the meaning of this subsection. . .

Miss. Code Ann. § 71-5-513(A)(1)(a). The burden is upon the employer to show that no good cause existed for the claimant's quitting work, at least once a prima facie showing of good cause is made. *Mississippi Employment Security Comm'n v. Gaines,5*80 So. 2d 1230, 1233 (Miss. 1991).

Although there are no cases directly on the issue of whether or not increase in travel constitutes good cause for quitting a job, the supreme court has stated that "[t]he question is in all instances whether there is a 'good cause' factor but for which there would have been no relinquishment of employment." *Gaines*, 580 So. 2d at 1234. "To the extent that there is prima facie evidence of some other 'good cause' factor, the burden is upon the employer to negate it as a 'but for' cause of quitting." *Id*.

The MESC claims that Hill's purpose for quitting her job was a personal problem with transportation and that the supreme court has stated that such a problem is not good cause for quitting a job. The cases cited by MESC deal with either quitting or not accepting a job because of problems with finding transportation to and from the job site. Hill argues here that the good cause was the additional travel that was required near the time of her resignation, not the original amount of travel.

Though the point is not clear from the record, we find that the increase in travel is not due to the travel from her home in Rolling Fork to her job site. The greatest initial distance she had to travel to begin a day occurred when she was stationed in Cleveland. Hill testified that this assignment was not a problem. She was later transferred to the Indianola office where she supervised units in Indianola, Belzoni, and Moorehead. Still Hill states that there was no problem with the arrangement. Finally, Hill was transferred to Greenville. Greenville was closer to Rolling Fork than was Cleveland or Indianola, so to the extent she is complaining about having to leave home early enough to reach Greenville by the start of her work day, that was actually a decrease in the distance from that she had earlier traveled in order to start her work day in Cleveland. Hill argues that the problems began after she became the only manager to supervise 217 housing units. Hill contends that she was required to double the number of miles she traveled, therefore, forcing her to resign. However, unless she now had to start her workday in Greenville earlier or end it later than she had in Cleveland, longer hours were not involved. She presented no evidence that her work-day increased in length, only that there was more driving once her day commenced.

The findings of fact section of the Commission's decision stated that there had indeed been an increase in the amount of travel required of Hill. The Commission concluded, however, that Hill voluntarily left her employment without good cause. The Commission based this conclusion on the fact that from the beginning Hill had been required to travel to perform her job tasks and that "these conditions had not changed except the amount of miles had increased based upon the work load."

The supreme court has recognized changes in work conditions such as a substantial reduction in earnings, hazardous conditions, and reduction in work hours to be reasons for involuntarily quitting a job for good cause. *See, e.g., Melody Manor, Inc. v. McLeod*, 511 So. 2d 1383, 1385 (Miss. 1987). There may be changes in work conditions involving driving that could be considered good cause for voluntarily quitting a job. However, there is no evidence, as alleged in Hill's brief, that she had to "work longer hours at the same rate of pay," or as a result of a *change* in duties, had "to leave home very early in the morning and arriving home later in the evening, which caused her serious concerns for her personal safety since she traveled by herself." She is not complaining of the amount of driving during the work day, just the difficulty in dealing with the extension to the work day in order to reach and return from work. The record is devoid of evidence that additional pre- and post-workday driving or hours were required once she was stationed in Greenville, compared to the hours required for Cleveland or even Indianola and Belzoni, nor is there evidence that the workday itself was longer. The proof appears to the contrary. Since Hill's complaint is that there was a change in employment requiring her to leave too early and return too late, making her workday hazardous, the record supports the MESC's rejection of this as good cause.

Even if the alleged good cause is the additional workday driving, conducted during the same number of hours as before, there is no evidence to support that this change constituted a danger to her physical safety. By initially accepting her position, when there was already a substantial amount of driving, Hill implicitly agreed with the suitability of the job requirements. A mere increase in the number of miles to travel, in a job that has always entailed substantial travel, does not constitute good cause for quitting work.

Our supreme court has said:

> The eligibility and disqualification provisions set out in the Mississippi Employment Security Law clearly indicate that this law is for the protection of persons who are part of the force of working employees who are ready, willing and able to perform their work, but who, through no fault of theirs, are not permitted to do so, and the law is not to be used to reward those who, for reasons of their own, refuse to work at suitable employment.

Mississippi Employment Security Comm'n v. Fortenberry, 193 So. 2d 142, 144 (Miss.1966).

There was substantial evidence to support the finding of the Commission and ultimately the circuit court's finding. Hill was not entitled to unemployment compensation benefits when she quit her job because she wanted a job closer to home. Therefore, we affirm.

THE JUDGMENT OF THE CIRCUIT COURT OF SUNFLOWER COUNTY IS AFFIRMED WITH ALL COSTS TAXED TO THE APPELLANT.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING,

McMILLIN, AND PAYNE, JJ., CONCUR.