

Court of Appeals, State of Michigan

ORDER

Suzanne Lawrence v Michigan Unemployment Insurance Agency

Colleen A. O'Brien
Presiding Judge

Docket No. 332398

Kathleen Jansen

LC No. 2015-150311-AE

Cynthia Diane Stephens
Judges

The Court orders that the motion for reconsideration is DENIED. We find no merit in respondent's arguments that (1) this Court invaded the fact finding province of the administrative law judge (ALJ), or (2) that this Court is required to remand the matter to the ALJ to afford respondent the opportunity to present evidence it otherwise failed to present.

Respondent misconstrues this Court's decision and the nature of this Court's obligation. Our review of a circuit court order is limited to "whether the lower court applied correct legal principles and whether it misapprehended or misapplied the substantial evidence test to the agency's factual findings." *Braska v Challenge Mfg Co*, 307 Mich App 340, 351-352; 861 NW2d 289 (2014) (quotation marks and citation omitted). Although this Court may not substitute its own factual findings for those of the ALJ, in adhering to the applicable standard of review, this Court is required to consider the existence or nonexistence of facts to support the conclusions of the circuit court.

Respondent cites no authority for its assertion that this Court should remand the matter to the ALJ and allow respondent to present additional evidence. While we are unable to determine on this record whether respondent had notice of or had the opportunity to attend the hearing before the ALJ or the appellate commission, we note that respondent was a party to and full participant in the proceedings before the circuit court and before this Court on appeal. In light of Lawrence's arguments at every stage of these proceedings, respondent would have been clearly aware of the issue of payment as a defense to its claims regarding eligibility. Respondent failed to present the evidence it now seeks to admit to the ALJ on remand. At no point during the proceedings has respondent argued that it was deprived of notice or denied the opportunity to present additional evidence, or requested a remand in order to supplement the record with relevant evidence. Respondent has not submitted the evidence it now claims to have in its possession with its motion for reconsideration. Respondent chose to relentlessly pursue an alleged \$158 overpayment on the assumption that this Court would blindly defer to respondent's unsupported arguments. Respondent has done so to its own detriment.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

AUG 18 2017
Date

Chief Clerk