

STATE OF MICHIGAN
COURT OF APPEALS

JOHN S. MCPHEE,

Claimant-Appellant,

v

ROBERT GITTLEMAN LAW FIRM, PC,

Employer-Appellee,

and

DEPARTMENT OF LICENSING &
REGULATORY AFFAIRS, UNEMPLOYMENT
AGENCY,

Respondent-Appellee.

UNPUBLISHED
September 16, 2014

No. 314452
Oakland Circuit Court
LC No. 2012-125302-AA

Before: HOEKSTRA, P.J., and WILDER and FORT HOOD, JJ.

PER CURIAM.

Claimant appeals by leave granted the January 4, 2013 order of the circuit court reversing the Michigan Compensation Appellate Commission (“MCAC”) and finding that claimant was not entitled to unemployment compensation. Because the circuit court failed to apply the proper standard of review to the MCAC’s findings, we vacate the circuit court’s decision, reinstate the January 30, 2012 order of the MCAC, and remand to the circuit court for reconsideration of the MCAC’s decision under the appropriate standard of review.

Beginning in 2008, claimant worked as an associate in Robert Gittleman’s law firm. In 2010, claimant announced his candidacy for district judge of the 39th district Court in Fraser, Michigan. Claimant informed Gittleman of his intentions and, though he continued to work at the law firm during his campaign, he indicated that he would be leaving the firm if he won the election and he advised Gittleman to advertise for a replacement. Claimant eventually lost the election; but, in the interim, Gittleman had placed an advertisement and hired a new associate, ultimately leaving claimant without employment. The underlying dispute arising from these facts is whether claimant voluntarily left his employment at the law firm or whether he was fired.

On November 10, 2010, claimant filed a claim for unemployment with the Unemployment Insurance Agency. The agency found that claimant's separation from the firm was not for misconduct or a deliberate disregard of the firm's interest, and therefore, claimant was not disqualified from receiving unemployment benefits. Gittleman's firm protested the agency's determination, but the agency affirmed its original finding and further found that claimant was fired on November 3, 2010.

Thereafter, the parties appeared before an administrative law judge for a hearing on claimant's claim for unemployment compensation, at which time the ALJ heard testimony from Gittleman, claimant, and claimant's wife. As a result of the hearing, the ALJ determined that claimant was ineligible for unemployment benefits because he had left without good cause attributable to his employer. The ALJ found as a factual matter that Gittleman, "after advising the claimant that the odds of his winning were very slim, ran an ad for a new attorney at the request of the claimant and with the approval of the claimant." Based on this finding, the ALJ reasoned that "running an ad for a replacement attorney with the full knowledge and approval of the claimant should clearly have advised the claimant that the employer was accepting his resignation."

Claimant then appealed the ALJ's decision to the MCAC. After reviewing the administrative record, the MCAC reversed the ALJ, finding that claimant did not voluntarily leave his employment with the firm and that the firm had not shown claimant was discharged for misconduct. Specifically, in reversing the ALJ, the MCAC explained that, "If the Claimant had told the Employer he would be leaving regardless of the outcome of the election and that the Employer should hire a replacement, we would agree [that claimant had resigned]. However, the Claimant merely informed the Employer of his candidacy and advised that it make contingency plans in the event he won." As explained in a supplemental opinion issued by the MCAC, the MCAC did not discern any errors of law in the ALJ's decision, but rather conducted a de novo review pursuant to which it determined that there had been a discharge from employment, not a voluntary leaving by claimant.

After the MCAC's reversal of the ALJ, Gittleman's firm appealed to the Oakland Circuit Court. The circuit court reversed because it determined that the MCAC "improperly substituted its judgment for that of [the] ALJ and in doing so committed an abuse of discretion." Because the ALJ heard the testimony of the witnesses involved, the circuit court reasoned that the MCAC should have deferred to the ALJ's findings of fact, particularly in regard to questions involving credibility, and thus the circuit court concluded that the MCAC should have adhered to the ALJ's determination that claimant's departure from the firm was voluntary. The circuit court remanded the case to the MCAC with instructions to enter a "ruling consistent with [the] ALJ's findings of fact that appellee voluntarily left appellant's employment."

Following the circuit court's decision, claimant filed leave to appeal in this Court, which we granted. On appeal, claimant argues that the circuit court applied an incorrect standard of review to the MCAC's decision and consequently erred in reversing the MCAC's finding that claimant had been discharged from his employment. Thus, the narrow issue before this Court is whether the circuit court employed a correct standard of review in its assessment of the MCAC's findings.

This Court has a limited review of a circuit court’s review of an agency determination. *Dana v American Youth Foundation*, 257 Mich App 208, 211; 668 NW2d 174 (2003). Specifically, “[t]his Court reviews a lower court’s review of an administrative decision to determine whether the lower court applied correct legal principles and whether it misapprehended or misapplied the substantial evidence test to the agency’s factual findings, which is essentially a clearly erroneous standard of review.” *Vanzandt v State Employees’ Retirement Sys*, 266 Mich App 579, 585; 701 NW2d 214 (2005). “As defined in numerous other contexts, a finding is clearly erroneous when, on review of the whole record, this Court is left with the definite and firm conviction that a mistake has been made.” *Boyd v Civil Serv Comm*, 220 Mich App 226, 234–235; 559 NW2d 342 (1996). In contrast, our review of the circuit court’s legal conclusions is de novo. *Mericka v Dep’t of Community Health*, 283 Mich App 29, 36; 770 NW2d 24 (2009). Thus, “[g]reat deference is accorded to the circuit court’s review of the administrative agency’s factual findings; however, substantially less deference, if any, is accorded to the circuit court’s determinations on matters of law.” *Id.* (quotations omitted).

Central to the present appeal is the correct standard to be applied by the circuit court when reviewing decisions from MCAC and, in turn, what standards MCAC must employ when reviewing the decisions of an ALJ. These respective standards of review are set forth by statute. In particular, MCL 421.38(1) provides the standard of review for the circuit court when reviewing a decision from MCAC. In relevant part, this provision states:

(1) The circuit court . . . may review questions of fact and law on the record made before the administrative law judge and the Michigan compensation appellate commission involved in a final order or decision of the Michigan compensation appellate commission, and may make further orders in respect to that order or decision as justice may require, *but the court may reverse an order or decision only if it finds that the order or decision is contrary to law or is not supported by competent, material, and substantial evidence on the whole record.* [MCL 421.38(1) (emphasis added).]

Evidence qualifies as “competent, material, and substantial” provided that it “is that which a reasonable mind would accept as adequate to support a decision, being more than a mere scintilla, but less than a preponderance of the evidence.” *Vanzandt*, 266 Mich App at 584. When applying this standard, a circuit court “may not invade the province of the agency as fact-finder, resolve evidentiary disputes, or pass on witness credibility.” *Hodge v US Security Assoc, Inc.*, ___ Mich App ___, ___; ___ NW2d ___ (2014), slip op at 6.

In contrast to the deferential standard of review that must be applied by the circuit court, the MCAC’s review of the ALJ’s findings is not nearly so limited. On the contrary, the MCAC is not required to provide formal deference to the factual findings of the ALJ, and is indeed authorized to reconsider evidence, and to elicit new evidence. See MCL 421.34(2), (8). Specifically, the statutory authority of the MCAC to review decisions on appeal from an ALJ is provided by MCL 421.34, which states, in relevant part:

(2) An appeal to the [MCAC] from the findings of fact and decision of the administrative law judge or from a denial by the administrative law judge of a motion for a rehearing or reopening shall be a matter of right by an interested

party. The [MCAC], *on the basis of evidence previously submitted and additional evidence as it requires, shall affirm, modify, set aside, or reverse the findings of fact and decision of the administrative law judge or a denial by the administrative law judge of a motion for rehearing or reopening.* [Emphasis added.]

The statutory language plainly permits the MCAC, “on the basis of evidence previously submitted,” to reverse the ALJ in regard to both the ALJ’s ultimate decision and its “findings of fact.” MCL 421.34(2). See also *Colony Town Club v Mich Unemployment Compensation Comm*, 301 Mich 107, 112; 3 NW2d 28 (1942) (recognizing appeal board not limited to findings of fact made by the hearer of proofs). Nothing in the statutory language indicates that the MCAC must defer to the ALJ’s findings of fact and credibility determinations, or that it abuses its discretion by failing to do so. In other words, the MCAC may, on the basis of the evidence presented, substitute its judgment for that of the ALJ.

In light of the respective standard of reviews, it becomes apparent that, in this case, the circuit court applied incorrect legal principles when it evaluated the MCAC on an abuse of discretion standard and determined that the MCAC abused its discretion by making its own findings of fact contrary to those made by the ALJ. In effect, the circuit court inhibited the MCAC’s statutory authority to make its own factual conclusions and improperly elevated the decision of the ALJ. In actuality, the only questions before the circuit court involved whether the MCAC’s decision was (1) contrary to law, or (2) unsupported by competent, material, and substantial evidence on the whole record. See MCL 421.38(1). By focusing instead on whether the MCAC abused its discretion by departing from the ALJ’s factual findings, the circuit court applied an improper standard of review and thus clearly erred through its application of incorrect legal principles. See *Dignan v Mich Pub Sch Employees Retirement Bd*, 253 Mich App 571, 578; 659 NW2d 629 (2002). Consequently, we vacate the decision of the circuit court, reinstate the MCAC’s January 30, 2012 order, and remand to the circuit court for reconsideration of the MCAC’s order under the proper substantial evidence standard of review.¹

¹ We note that during the pendency of this appeal, pursuant to the circuit court’s January 4, 2013 order, the case was remanded to the MCAC with instructions to enter a “ruling consistent with [the] ALJ’s findings of fact that appellee voluntarily left appellant’s employment.” In compliance with this directive, the MCAC entered an order on February 27, 2014 indicating that claimant was disqualified from receiving benefits. Given our decision to vacate the circuit court’s order due to its application of an incorrect standard of review, we also vacate the resulting February 27, 2014 order of the MCAC entered in compliance with the circuit court’s erroneous directives.

Vacated and remanded for further proceedings consistent with this opinion. This opinion shall have immediate effect pursuant to MCR 7.215(F)(2). We do not retain jurisdiction. As the prevailing party, claimant may tax costs pursuant to MCR 7.219.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Karen M. Fort Hood