

STATE OF MICHIGAN
COURT OF APPEALS

DEPARTMENT OF LABOR AND ECONOMIC
OPPORTUNITY/UNEMPLOYMENT
INSURANCE AGENCY,

Appellant,

v

KIMBERLY CARR and QUEST INC.,

Appellees.

UNPUBLISHED
September 23, 2024
9:12 AM

No. 366505
Wayne Circuit Court
LC No. 22-012685-AE

Before: CAMERON, P.J., and JANSEN and SWARTZLE, JJ.

PER CURIAM.

Appellant, the Michigan Department of Labor and Economic Opportunity/the Unemployment Insurance Agency (“the Agency”), appeals by leave granted¹ the circuit court order denying the Agency’s appeal of a September 2022 decision of the Unemployment Insurance Appeals Commission (“the Commission”) regarding the claim for unemployment benefits by the claimant, appellee Kimberly Carr, after her separation of employment from appellee Quest Inc.² The Agency is seemingly also appealing the circuit court order denying reconsideration of the order denying the Agency’s appeal, although the substance of the Agency’s argument relates to the order denying the appeal. Specifically, the Agency argues that the circuit court exceeded its authority when it determined that Quest’s employer account should not be charged for Carr’s benefits because this issue was not properly before the circuit court. We affirm the circuit court’s denial of the Agency’s appeal.

¹ *Dep’t of Labor and Economic Opportunity v Carr*, unpublished order of the Court of Appeals, entered November 7, 2023 (Docket No. 366505).

² Although Carr was the claimant of unemployment benefits, she did not participate in the circuit court proceedings, nor is she directly involved in this appeal.

I. BACKGROUND

This case arises from Carr’s claim for unemployment benefits from Quest after leaving her employment. Carr was hired by Quest as a personal assistant in 2016. Her job duties involved providing in-home patient care. Her last day worked was December 10, 2020, after which she went on medical leave. She was expected to return to work in February 2021, but she informed her manager that she was accepting another job, and her manager accepted her resignation. While she was on leave, she was offered a position through a different employer; however, she did not pass required testing for the new position and never began that employment. Her separation date from Quest was March 10, 2021, and the reason documented was “Employment is At Will and employee quit.” She filed her claim for unemployment benefits the same day.

II. ADMINISTRATIVE PROCEDURAL HISTORY

The Agency initially issued a monetary determination to Carr indicating she earned enough wages during the base period to meet the monetary requirements for a claim for unemployment benefits, but because she quit her employment, a determination would be made whether she was otherwise qualified. The Agency then issued a notice of determination informing Carr that because she quit, her leaving was without good cause attributable to the employer, and she did not meet the “leaving to accept” requirements under MCL 421.29(5) of the Michigan Employment Security Act (MESA), MCL 421.1 *et seq.*, and was therefore disqualified under MCL 421.29(1)(a).³ Carr protested the determination, saying she was high-risk for COVID-19 while working with in-home patients, and her children were at home attending online classes at the time. The Agency again found Carr disqualified from benefits because no new information was provided to warrant reversal, she had not been hired for full-time work, and her leaving was without good cause attributable to Quest.

Carr again protested, asserting the same COVID-19-related reasons for leaving her employment. Carr’s protest was heard before an administrative law judge (ALJ) in March 2022, who remanded the case to the Agency for a determination whether Carr was eligible for pandemic unemployment assistance based on her qualifying circumstances—being immunocompromised and having her children at home for online schooling.

On April 11, 2022, the Agency issued a notice of redetermination indicating that “based on new information,” Carr’s separation from Quest was due to “self-quarantine/self-isolating due to COVID-19,” and as such, Carr was not disqualified from benefits under MCL 421.29(5) of the MESA, and the previous determination was null and void. Specifically, the notice stated that the “QUEST INC account will not be charged.”

³ MCL 421.29 governs disqualification from unemployment benefits. Subsection (1)(a) provides that an individual is disqualified from receiving benefits if she “[l]eft work voluntarily without good cause attributable to the employer or employing unit. . . .” Section (5) provides that “if an individual leaves work to accept full-time work with another employer . . . ,” then Section (1) does not apply.

On June 16, 2022, the Agency issued another notice of redetermination, stating:

A (re)determination becomes final if no request for reconsideration is received within 30 calendar days from the date of mailing. The Agency may reconsider a prior (re)determination after the 30-day period has expired, if the request is made within one year and good cause is established for the late request. Good cause has been established for late reconsideration due to new information being received. Based on new information, that the separation from QUEST INC was due to Self-Quarantine / Self-Isolating Due to COVID-19, the previous (re)determination is null and void.

You are not disqualified for benefits under MES Act, Sec 29(5).

Quest appealed this redetermination because it did not include the language of the previous redetermination providing that its account would not be charged. A second hearing was held before the ALJ, who entered an order indicating that the June 2022 redetermination by the Agency was modified, and held: “The Claimant is not disqualified for benefits by reason of her separation from Quest Inc. under the [MESA], Section [29(5)], the leaving to accept new employment/recall provision. The Quest Inc. Account will not be charged.”

The Agency appealed this order to the Commission, arguing that the ALJ provided no legal authority for holding that Quest’s employer account would not be charged, and the only issue for review by the ALJ was whether Carr was disqualified under Section 29(5). The Agency asked the Commission to set aside the ALJ order and affirm the June 2022 redetermination in full. The Commission found that the ALJ decision had to be modified because the June 2022 redetermination was null and void because there was no reconsideration by the Agency within 30 days of the April redetermination, so it became final.⁴ When the Agency issued the June 2022 redetermination more than 30 days later, good cause was needed,⁵ but the June 2022 redetermination indicated its good cause was the new information that Carr’s separation from employment was to quarantine for COVID-19. This was the same information in the April 2022 redetermination, so it was not “new” information to justify good cause. As such, the Commission set aside the June 2022 redetermination, and upheld the April 2022 redetermination, which held that Carr was not disqualified from benefits and Quest’s account would not be charged.

⁴ See MCL 421.32a(1) (an agency determination is final unless an interested party appeals the determination within 30 calendar days of the determination’s mail date).

⁵ See MCL 421.32a(2) (the Agency shall review an appeal filed after the 30-day period only if “good cause” exists to permit the late protest). The MESA does not define “good cause,” but Mich Admin Code, R 421.270(1) provides a nonexhaustive list of circumstances that constitute “good cause” for late appeals, including “[i]f an interested party has newly discovered material facts which . . . were not available to the party at the time of the determination,” “[i]f the agency has additional or corrected information,” and “[i]f an administrative clerical error is discovered[.]”

III. CIRCUIT COURT APPEAL PROCEDURAL HISTORY

The Agency appealed the Commission decision in circuit court, asserting that it had good cause to reopen the case and issue the June 2022 redetermination, which was corrected information that the Quest account should be charged, the lack of which in the June 2022 redetermination also constituting a clerical error. The Agency then asserted that the ALJ decision that the Quest account should not be charged was contrary to MCL 421.17(9).⁶ Since Carr never worked for a new employer, the “leaving to accept” provision in MCL 421.29(5) did not apply, and MCL 421.17(9) provides that the Quest account should be charged. Thus, the Agency requested that the circuit court reverse the Commission decision to void the June 2022 redetermination and remand to the Commission for a determination whether the Quest employer account should be charged.

Quest responded that there was never a determination made that there was good cause attributable to the employer for Carr’s separation that would allow her benefits to be charged to Quest, so the ALJ decision not to charge Quest’s account and the Commission decision ordering the April 2022 redetermination final should be affirmed. Quest also argued the Agency did not have good cause to reopen the April 2022 redetermination because the June 2022 redetermination relied on the same “new information.”

In its reply brief, the Agency reasserted that it had good cause to issue the June 2022 redetermination, and also argued that the Commission conclusion that Quest’s account should not be charged was not based on the merits of that issue, so it was not properly before the circuit court, and the circuit court should remand to the Commission.

The circuit court agreed with Quest that the Agency failed to provide any legal basis for which Quest’s account should have been charged, since the initial determination by the Agency in August 2021 was that Carr quit to accept new employment, i.e., without good cause attributable to the employer; thus, Quest would never have been charged for Carr’s unemployment benefits. Even when the MESA was modified for pandemic relief, the new employer would be charged. The circuit court agreed with the Agency that it had good cause to issue the June 2022 redetermination, but still held upheld the Commission decision, and denied the Agency’s appeal. The Agency moved for reconsideration of this order, which the circuit court denied. The Agency now appeals, limited to the argument that the circuit court exceeded its authority in deciding the merits of the chargeable-account issue rather than remanding the matter to the Commission to decide.

⁶ MCL 421.17 governs nonchargeable benefits accounts, and provides, “Notwithstanding any other provision of this act, any benefit paid to a claimant that is laid off or placed on a leave of absence must not be charged to the account of any employer who otherwise would have been charged but instead must be charged to the nonchargeable benefits account. This subsection does not apply after March 31, 2021.” MCL 421.17(9). Section 9 was added to the statute in response to the COVID-19 pandemic, and initially stated it would not apply after December 31, 2020. 2020 PA 229. The language was amended to change the date to March 31, 2021, by 2020 PA 258.

IV. STANDARDS OF REVIEW

In reviewing the Commission decision, the circuit court had to determine whether it was “contrary to law, was supported by competent, material, and substantial evidence on the whole record, was arbitrary or capricious, was clearly an abuse of discretion, or was otherwise affected by a substantial and material error of law.” *Polania v State Employees’ Retirement System*, 299 Mich App 322, 328; 830 NW2d 773 (2013) (quotation marks and citation omitted). If an agency decision is not contrary to law and otherwise supported by competent, material, and substantial evidence on the whole record, the circuit court must affirm. *Id.*

This Court’s review of the circuit court’s decision is “limited to determining whether the trial court properly applied those principles: [the Court] must determine whether the trial court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency’s findings.” *Id.* This is essentially the clearly erroneous standard of review. *Brang, Inc v Liquor Control Commission*, 320 Mich App 652, 660; 910 NW2d 309 (2017). “A finding is clearly erroneous where, after reviewing the record, this Court is left with the definite and firm conviction that a mistake has been made. Thus, the circuit court’s decision will only be overturned if this Court is left with a definite and firm conviction that a mistake was made.” *Vanzandt v State Employees Retirement System*, 266 Mich App 579, 585; 701 NW2d 214 (2005). “This Court gives great deference to a circuit court’s review of the factual findings made by an administrative agency, but substantially less deference, if any, is afforded to the circuit court’s decision on matters of law.” *Brang*, 320 Mich App at 660-661.

To the extent this appeal involves the statutory interpretation of the MESA, this review is de novo. *Polania*, 299 Mich App at 328. The circuit court’s decision to deny the Agency’s motion for reconsideration is reviewed for an abuse of discretion. *Tripp v Baker*, ___ Mich App ___, ___; ___ NW3d ___ (2023) (Docket No. 360960); slip op at 8. “A trial court abuses its discretion if it chooses an outcome outside the range of principled outcomes.” *Id.* at ___; slip op at 8 (quotation marks and citation omitted).

V. ANALYSIS

The Agency argues that the circuit court exceeded its authority when it determined that Quest’s employer account should not be charged because that issue was not properly before the circuit court on the Agency’s appeal of the Commission decision. We disagree.

Const 1963, art 6, § 28 provides circuit courts with direct review of agency decisions— “[t]his review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.” Here, the Agency appealed the September 2022 Commission decision in the circuit court, which held Carr eligible for benefits, and that Quest’s employer account would not be charged. The circuit court’s review of the Commission decision is governed by the MESA as follows:

(1) The circuit court in the county in which the claimant resides or the circuit court in the county in which the claimant’s place of employment is or was located, or, if a claimant is not a party to the case, the circuit court in the county in which

the employer's principal place of business in this state is located, may review questions of fact and law on the record made before the administrative law judge and the Michigan compensation appellate commission⁷ 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. Application for review shall be made within 30 days after the mailing of a copy of the order or decision by any method permissible under the rules and practices of the circuit court of this state. [MCL 421.38(1).]

The issue before this Court is whether the circuit court exceeded its authority under the MESA when it affirmed the decision of the Commission that the Quest employer account would not be charged. What is not before this Court is the merits of the issue whether Quest's account should be charged. At the circuit court hearing, the court decided this issue on the merits, determining that under the MESA, even with its modifications for pandemic relief, Quest's employer account would not be charged because Carr quit to accept new employment, i.e., without good cause attributable to Quest, and it did not matter that she ultimately did not start working for a new employer. The Agency argues that the merits of the issue whether Quest's employer account should be charged were not properly before the circuit court because the Commission only considered whether the Agency had good cause to issue the June 2022 redetermination; thus, the circuit court should have remanded the matter to the Commission to decide the chargeable-account issue rather than address it itself.

The Agency solely relies on the unpublished decision of *Mackrain v Dep't of Labor and Economic Opportunity/Unemployment Ins Agency*, unpublished per curiam opinion of the Court of Appeals, issued November 10, 2022 (Docket No. 357913), p 2-3. In that matter, the claimant was terminated from her job and filed for unemployment benefits, and the Agency issued a determination that she was disqualified because she was terminated for misconduct. *Id.* at 1. The claimant protested, and the Agency did not find good cause for her late request. *Id.* The claimant appealed, and an ALJ determined that the claimant had good cause, and had not engaged in misconduct to disqualify her from benefits. *Id.* at 1-2. The employer appealed to the Commission, which determined that the claimant had not established good cause, but did not address the misconduct issue. *Id.* at 2. The Commission set aside the ALJ's determination because of its conclusion that the claimant's protest was not timely filed. *Id.* The claimant appealed to the circuit court, which reversed the Commission decision, concluding that the claimant had shown good cause for her late protest. *Id.* at 2.

The Agency appealed the circuit court decision in this Court, only challenging the circuit court's reinstatement of the ALJ decision that the claimant had good cause rather than remanding

⁷ "The Michigan Compensation Appellate Commission has been replaced, in relevant part, by the Unemployment Insurance Appeals Commission." *Martin v Mich Unemployment Ins Agency*, 511 Mich 1002, 1002 n 1; 991 NW2d 209 (2023) (*Martin II*), citing Executive Reorganization Order No. 2019-13.

the matter to the Commission for a determination on the merits. *Id.* at 2. The circuit court had concluded that it did not have the authority to remand to the Commission without providing any basis to support that conclusion. *Id.* at 2. Relying on the power of the circuit court to review administrative decisions in MCL 421.38(1), as well as its discretion to address a dispositive argument and not discuss other issues, *id.* at 2-3, this Court held:

The employer appealed the ALJ's decision to the [Commission], which addressed the issue of whether good cause was shown in the late request for a redetermination, but did not address the merits of the ALJ's conclusion that there was no disqualifying misconduct. The circuit court's reversal of the first issue does not automatically reinstate the ALJ's decision on the second issue. It was not, as the circuit court said, the [Commission's] decision not to address the merits. An appeal was taken to the [Commission] and, with the just-cause issue no longer dispositive, a decision on the merits of the misconduct issue is necessary. And the appropriate venue at this stage to make that decision is the [Commission]. Simply put, the circuit court should have remanded the matter to the [Commission] to address the disqualifying misconduct issue. [*Id.* at 3.]

Thus, this Court affirmed the circuit court decision reversing the just-cause determination by the Commission, vacated the circuit court decision reinstating the ALJ misconduct determination, and remanded to the Commission to decide that issue on appeal. *Id.* at 3.

In another unpublished opinion, *Martin v Mich Unemployment Ins Agency*, unpublished opinion of the Court of Appeals, entered November 22, 2022 (Docket No. 358711) (*Martin I*), p 1, aff'd in part and rev'd in part, 511 Mich 1002 (2023), the Agency appealed the circuit court ruling affirming in part and reversing in part a Commission decision that the claimant was entitled to unemployment benefits and eligible for 14 weeks of benefits. The Agency conceded the claimant was entitled to benefits for two weeks, but challenged the circuit court decision that the claimant was eligible for 14 weeks. *Id.* The Agency initially determined the claimant was ineligible because she left her employment without good cause attributable to the employer. *Id.* at 2. She appealed to an ALJ, who found that she voluntarily quit, i.e., without good cause attributable to the employer. *Id.* She appealed to the Commission, which agreed that she quit without good cause attributable to the employer, but concluded that she was eligible for benefits for a two-week period. *Id.* at 2-3. The claimant appealed the Commission decision in the circuit court, asserting it violated MCL 421.27(d) (governing the maximum amount payable to an individual in a benefit year), and the circuit court agreed, finding that the statute as amended granted claimants a minimum of 14 weeks if they are eligible for benefits. *Id.* at 3. The Agency moved for reconsideration, asserting that the circuit court "lacked jurisdiction to enter the portion of its order granting [the claimant] 14 weeks of benefits because the Commission did not address the number of weeks [the claimant] was eligible for benefits," and that the court "acted beyond the scope of its appellate authority when it granted [the claimant] 14 weeks of benefits." *Id.* at 3. The circuit court disagreed, and denied reconsideration. *Id.* at 3-4.

On appeal, this Court rejected the Agency's argument that the circuit court acted outside its authority when reviewing the Commission decision. *Id.* at 4, citing MCL 421.38(1).

The Agency takes a remarkably cramped view of the circuit court’s authority in this case. In a hypertechnical sense, the Agency is correct: no reference was made to [MCL 421.27(d)] before the ALJ or the Commission. But as the circuit court noted, once the Commission made the determination that [the claimant] was eligible for benefits, the plain language of § 27(d) mandated that she is eligible for “not more than 20 weeks of benefits or less than 14 weeks of benefits.” The Commission found that [the claimant] was not disqualified for benefits, but it determined that she was eligible for only two weeks of benefits, in direct contradiction to the statute. Thus, it made an error of law, which the circuit court had the authority to correct just as it did in setting the minimum period of eligibility for benefits at 14 weeks. [*Id.* at 6.]

On appeal to the Michigan Supreme Court, in lieu of granting leave to appeal, the Court reversed part of this Court’s decision on other grounds, but it specifically affirmed “that the lower courts had jurisdiction to decide this matter under MCL 421.38(1), which provides the courts with broad powers of review of any questions of fact and law on the record made before the [ALJ] and the [Commission] and to make further orders in respect to [the Agency’s decisions] as justice may require” *Martin v Mich Unemployment Ins Agency*, 511 Mich 1002, 1002; 991 NW2d 209 (*Martin II*) (quotation marks omitted; first and second alteration added, third alteration in original).

As an initial matter, *Mackrain* and *Martin I* are unpublished and therefore not binding on this Court, but may be considered for their persuasive value. *Demske v Fick*, ___ Mich App ___, ___ n 13; ___ NW3d ___ (2024) (Docket No. 362739); slip op at 11 n 13. The Agency relies on *Mackrain* to assert that “[i]f reversing an Appeals Commission decision limited to a procedural or threshold issue, the circuit court must remand the matter to the Appeals Commission for a determination on the merits,” and that “the circuit court should have remanded to the Appeals Commission for a determination as to whether Quest Inc.’s employer account should be charged.” We disagree with the Agency’s narrow interpretation of MCL 421.38(1) and *Mackrain*, and conclude that *Martin II* is binding. See *In re Lombard*, ___ Mich App ___, ___ n 3; ___ NW3d ___ (2024) (Docket No. 367714); slip op at 5 n 3 (“An order of the Michigan Supreme Court is binding precedent if it constitutes a final disposition of an application and contains a concise statement of the applicable facts and reasons for the decision.”) (quotation marks and citation omitted); *Mercurio v Huntington Nat’l Bank*, ___ Mich App ___, ___; ___ NW3d ___ (2023) (Docket No. 361855); slip op at 13 (“the Court of Appeals is bound to follow decisions by [the Michigan Supreme Court] except where those decisions have clearly been overruled or superseded.”) (quotation marks and citation omitted).

This case is distinguishable from *Mackrain* because here, the circuit court did not question its ability or authority to remand the matter to the Commission. Rather, the Agency requested in its circuit court brief on appeal and reply brief that the circuit court remand to the Commission to address the chargeable-account issue; however, the Agency also argued the merits of that issue in its brief. It specifically argued that because Carr never started working for a new employer, MCL 421.29(5) did not apply, and MCL 421.17(9) required that Quest’s account be charged. Quest addressed the merits of the issue in its circuit court brief. And in the Agency’s reply, it asserted that the Commission did not reach the merits of the issue, so it was not properly before the circuit court. At the circuit court hearing, the Agency attorney reiterated the Agency’s position that the main issue was whether the Agency had good cause to issue the June 2022 redetermination, but

said she would address the specifics of whether Quest’s account should be charged if requested by the court. The Quest attorney then argued the merits of the issue, and the court ultimately agreed that the ALJ was correct in determining that the Quest account should not be charged.

The circuit court did not clearly err. MCL 421.38(1) permits the circuit court to “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[.]” “[T]he ultimate goal in all questions of statutory interpretation is to ascertain and give effect to the Legislature’s intent.” *Milne v Robinson*, 513 Mich 1, 12; 6 NW3d 40 (2024) (quotation marks and citation omitted). “[T]he most reliable evidence of that intent is the plain language of the statute. If the statute’s language is clear and unambiguous, we assume that the Legislature intended its plain meaning, and we enforce the statute as written.” *Rouch World, LLC v Dep’t of Civil Rights*, 510 Mich 398, 410; 987 NW2d 501 (2022) (quotation marks and citations omitted). The plain language of MCL 421.38(1) gives the circuit court broad authority to review issues brought before an ALJ and the Commission, and to order relief as justice requires. See *Martin II*, 511 Mich at 1002 (MCL 421.38(1) gives circuit courts “broad powers of review” of administrative decisions).

The statute does not, contrary to the argument of the Agency, limit the circuit court’s authority to preclude review of an issue that was decided by the ALJ, not specifically addressed by the Commission, but then raised by the Agency before the circuit court on appeal. See *Martin I*, unpub op at 6 (although the statute governing weeks of benefits was not addressed by the ALJ or the Commission, the determination that the claimant was eligible mandated the amount of time for which she could receive benefits). “[A] party may not claim as error on appeal an issue that the party deemed proper in the trial court because doing so would permit the party to harbor error as an appellate parachute.” *In re Conservatorship of Brody*, 321 Mich App 332, 347; 909 NW2d 849 (2017) (quotation marks and citation omitted). Although the Agency requested that that circuit court remand the issue to the Commission, it also raised the merits of the issue before the circuit court and offered to address the merits at the hearing, and cannot now argue that the circuit court exceeded its authority in deciding the issue. The determination that Carr was eligible for benefits mandated a determination whether Quest’s account would be charged under MCL 421.17. It is a question of law that is part and parcel of Carr’s claim for unemployment benefits, and within the circuit court’s discretion to decide under MCL 421.38(1).

Thus, the circuit court did not clearly err by upholding the Commission decision affirming the ALJ conclusion that Quest’s employer account could not be charged, and therefore denying the Agency’s appeal. Based on this conclusion, the circuit court did not abuse its discretion in denying the Agency’s motion for reconsideration of the order denying the appeal.

Affirmed.

/s/ Thomas C. Cameron
/s/ Kathleen Jansen
/s/ Brock A. Swartzle