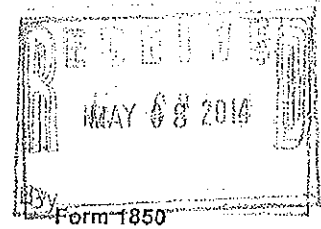


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM



DECISION

ADMINISTRATIVE LAW JUDGE: DOUGLAS WAHL

SSN:

Appeal No:

JURISDICTION

On March 25, 2014, the claimant timely appealed a Notice of Denial of Request for Redetermination issued by the Unemployment Insurance Agency (Agency) on March 24, 2014. In its Notice of Denial, the Agency held that the determination was mailed or personally served on November 20, 2013, and that the claimant's protest was received by the Agency on March 20, 2014, which was beyond the 30-day protest or appeal period provided by law. The Agency further held good cause for the late request had not been established pursuant to Section 32a(2) of the Michigan Employment Security Act (Act).

The determination issued on November 20, 2013, found the claimant disqualified from receiving benefits under the voluntary leaving provision, Section 29(1)(a), of the Act. The notice of hearing included the misconduct provision, Section 29(1)(b) of the Act, as a possible issue for the hearing.

APPEARANCES

A hearing was held in Southfield, Michigan on May 6, 2014 at which time the following appeared:

, Claimant
Brittany H. Asmus, Attorney for Claimant

ISSUES

Whether the appellant filed a timely protest/appeal, or had good cause to be late, under Section 32a of the Act, and if so, whether the claimant is disqualified under the misconduct provision.

APPLICABLE LAW

MCL 421.32a provides:

(2) The unemployment agency may, for good cause, including any administrative clerical error, reconsider a prior determination or redetermination after the 30-day period has expired and after reconsideration issue a redetermination affirming, modifying, or reversing the prior determination or redetermination, or transfer the matter to an administrative law judge for a hearing. A reconsideration shall not be made unless the request is filed with the unemployment agency, or reconsideration is initiated by the unemployment agency with notice to the interested parties, within 1 year from the date of mailing or personal service of the original determination on the disputed issue.

MCL 421.29 provides in part:

- (1) An individual is disqualified from receiving benefits if he or she:
- * * *
- (b) Was suspended or discharged for misconduct connected with the individual's work or for intoxication while at work.

"Misconduct" is not defined in the statute but Courts have defined the term. In *Carter v Michigan Employment Security Commission*, 364 Mich 538 (1961), the Supreme Court adopted the definition of misconduct in *Boynton Cab Company v Neubeck*, 296 NW 636, 640 (Wis 1941) which states as follows:

The term 'misconduct'... is limited to conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are

not to be deemed 'misconduct' within the meaning of the statute.
Carter, supra, at 541.

The Employer has the burden of demonstrating misconduct by a preponderance of the evidence. *Fresta v Miller*, 7 Mich App 58, 63-64 (1967).

FINDINGS OF FACT

On December 19, 2013, the claimant filed a timely protest in response to the Agency's November 20, 2013 determination, by facsimile and by US Mail.

The claimant worked for the employer from 1997 to October 31, 2013. The claimant resigned in lieu of being discharged. The claimant was placed on a Performance Improvement Plan, but in the eye of the employer, she did not improve, which is why she was given the choice of resigning or being fired. The claimant did not have the option of continued employment. The claimant was discharged due to poor performance; however, the claimant did the job to the best of her ability.

REASONING AND CONCLUSIONS OF LAW

The claimant complied with Section 32a of the Act. She filed two protests, timely. She has the documentation to support her sworn testimony, which was not rebutted.

The claimant was discharged. The employer had the burden to show the discharge was for disqualifying misconduct. The employer elected to not participate in the hearing; and therefore, entered no evidence. The claimant's testimony does not support a finding of misconduct. No misconduct was proved.

ORDER

The Agency's March 24, 2014 Adjudication is reversed.

The claimant filed a timely protest under Section 32a of the Act.

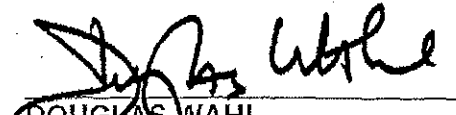
The Agency's November 20, 2013 Adjudication is modified.

The claimant is not disqualified from receiving benefits under the voluntary leaving provision, Section 29(1)(a), of the Act.

The claimant is also not disqualified from receiving benefits under the misconduct provision, Section 29(1)(b), of the Act.

The claimant may receive benefits for each claimed week following the filing for benefits, if otherwise eligible and qualified.

Decision Date: May 7, 2014


DOUGLAS WAHL
ADMINISTRATIVE LAW JUDGE

IMPORTANT: TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME

This Order will become final unless an interested party takes ONE of the following actions: (1) files a written, signed, request for rehearing/reopening to the Administrative Law Judge OR (2) files a written, signed, appeal to the Michigan Compensation Appellate Commission, OR (3) files a direct appeal, upon stipulation, to the Circuit Court on or before:

June 6, 2014

I hereby certify that I personally mailed envelopes, properly addressed to each of the parties at their respective addresses as listed on the face of this document. In each envelope a true copy of the Administrative Law Judge Decision or Order was enclosed.

G. Wright	Southfield	May 7, 2014
Name	City Mailed	Date Mailed

(SEE ATTACHED SHEET)

REQUEST FOR REHEARING OR REOPENING BEFORE AN ADMINISTRATIVE LAW JUDGE

Where the appeal to the Administrative Law Judge has been dismissed for lack of prosecution or a party is in possession of newly discovered material information not available when the case was heard by the Administrative Law Judge, it is more sensible for the dissatisfied party to request a rehearing before the Administrative Law Judge instead of appealing to the Michigan Compensation Appellate Commission. A request for rehearing before the Administrative Law Judge must be signed by the requesting party or their agent, and RECEIVED by the Michigan Administrative Hearing System at 25660 W. Eight Mile Rd., Southfield, MI 48033, within 30 calendar days after the date of this decision.

If no appeal to the Commission or request for rehearing is received within 30 calendar days after the date of this decision, the law provides that this decision may be reopened and reviewed by an Administrative Law Judge, only for "good cause", and only if such request for reopening is RECEIVED by the Michigan Administrative Hearing System or by any of the Agency's offices within 1 year after the date of the mailing of this decision.

APPEAL TO THE MICHIGAN COMPENSATION APPELLATE COMMISSION

The Michigan Compensation Appellate Commission (MCAC) consists of nine members appointed by the governor. It is not part of the M.E.S.A.

An appeal to the Michigan Compensation Appellate Commission (MCAC) can be filed by mail, fax or in person. An appeal cannot be filed by telephone, but information about the appeal process can be obtained by calling (800) 738-6372. An appeal must be signed by the appealing party or their agents. An appeal must be signed by the appealing party or their agent.

To be filed on time, a written appeal to the Michigan Compensation Appellate Commission must be RECEIVED by the Commission via U.S. postal mail at P.O. Box 30475, Lansing, MI 48909-7975, via fax at (517) 241-7326 or at one of the Agency's offices, within 30 calendar days after the mailing date of the attached decision (as indicated on the last page of the decision).

BY-PASS OF COMMISSION/DIRECT APPEAL TO THE CIRCUIT COURT

Normally a party dissatisfied with an Administrative Law Judge decision or order can appeal to circuit court only after first appealing to the Commission and then appealing the resulting decision, if unfavorable, to the state circuit court.

But, according to Section 38 of the M.E.S. Act (M.C.L.A. 421.38), under limited circumstances a party may "by-pass" the Commission and appeal directly to a circuit court. Section 38(2) provides that a by-pass will occur if a written stipulation agreed to by the claimant and employer (or their agents and attorneys) is filed within 30 calendar days of the mailing of the Administrative Law Judge decision or order.

The stipulation must be mailed to the Michigan Administrative Hearing System, 3026 W. Grand Blvd, Ste 2-700, Detroit, Michigan 48202. It is suggested that a copy of the stipulation also accompany the appeal filed with the circuit court.

The appeal to circuit court must be filed with the clerk of the appropriate circuit court within 30 calendar days of the mailing of the Administrative Law Judge order or decision.

If a claimant is a party to the case, the appropriate circuit court is the circuit court of the county in which the claimant resides or of the county in which the claimant's place of employment is or was located.

If a claimant is not a party to the case, the appropriate circuit court is the circuit court of the county in which the employer's principle place of business in this state is located.

The responsibility for properly and timely filing an appeal with the clerk of the court rests with the party filing the appeal.