STATE OF MICHIGAN
GRETCHEN WHITMER
GOVERNOR
DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY
Unemployment Insurance Appeals Commission
SUSAN CORBIN
ACTING DIRECTOR

CASE SUMMARIES: MRTMA FIRST IMPRESSION MATTER

UIAC Case No. 19-[redacted]-260172

This is an employer appeal of an ALJ ruling that the claimant is *not* disqualified for benefits under the illegal substance provision of Section 29(1)(m), or the misconduct provision of Section 29(1)(b).

Facts

The claimant was an HVAC meter installer at residences. In June 2019, he struck a vehicle while backing out of a driveway with a company vehicle. Minor damage was caused to the bumpers of both vehicles and as a result, Claimant was sent for drug testing. The urine test was negative for all controlled substances. The hair test was positive for THC metabolite. He was discharged for violating the employer's drug policy and having an accident with the company vehicle. The ALJ further found that, "While the THC metabolite may be indicative of some exposure to marijuana in the past, it is not a controlled substance." Record evidence supported that drug testing was performed in compliance with the Federal Department of Transportation (DOT) rules and regulations.

Ruling

Section 29(1)(m): The ALJ cited Section 29(1)(m) for the rule that claimants are disqualified for testing positive for a Schedule 1 controlled substance. He noted that Schedule 1 does not include THC metabolites "or the full or any abbreviated name of 11-carboxy-THC." He further cited *People v Feezel*, 486 Mich 184 (2010) in support of that proposition. Because the claimant tested positive only for "metabolites," the ALJ concluded that the employer failed to establish that the claimant tested positive for a Schedule 1 controlled substance. Thus, the claimant was not disqualified under Section 29(1)(m).

Section 29(1)(b): The ALJ cited *Carter v Michigan Employment Security Commission*, 364 Mich 538 (1961) for the rule that disqualifying conduct requires deliberate disregard of the employer's interest or a pattern of conduct so obviously indifferent to the employer's interests that it is tantamount to misconduct. He found that the minimal damage to the vehicles indicated that the accident represented no more than an isolated instance of ordinary negligence and thus was not disqualifying.

UIAC Case No. 19-[redacted]-260176

This is an employer appeal of an ALJ ruling that the claimant is *not* disqualified for benefits under the illegal substance provision of Section 29(1)(m), or the misconduct provision of Section 29(1)(b).

Facts

The claimant was a maintenance worker who was sent for drug testing after he reported an on-the-job injury in April 2019. He tested positive for marihuana on a drug screen and was discharged as a result. The claimant did not contest the accuracy of the drug test. He denied marihuana use at work and working under the influence.

Ruling

Section 29(1)(m): Section 29(1)(m) requires disqualification when a claimant is discharged for testing positive for the illegal use of a controlled substance. The ALJ cited the recently adopted MRTMA for the rule that consumption of marihuana is not an unlawful act for those 21 years and older. Because the claimant did not possess an illegal controlled substance, she ruled that he cannot be found disqualified for benefits under the Act.

Section 29(1)(b): The ALJ found no disqualification under Section 29(1)(b) as there was no evidence that the claimant used or was under the influence at work.

UIAC Case No. 21-[redacted]-262736W

This is a claimant appeal of an ALJ ruling that the claimant is disqualified for benefits under the illegal substance provision of Section 29(1)(m).

Facts

The claimant worked as a stacker operator. In November 2019, he fell from the stacker and was seriously injured and hospitalized. The claimant was tested for drugs on the day of the fall pursuant to the employer's post injury testing policy. At the hearing, the employer introduced a laboratory report with a positive result for "marijuana metabolites" which was admitted into evidence over the hearsay objection of the claimant. The claimant did not dispute the result because he had been unaware of the test. He had no recollection of any hospital services on the day of the fall and did not receive a copy of the test until days before the hearing. The employer did not allege that the claimant appeared to be under the influence while he was at work on the date of the fall. The claimant admitted using marihuana in November 2019 but denied using it on the day of the accident or in the days preceding the accident.

Ruling

The ALJ found that the claimant was tested at the hospital on the date of the accident and that the testing was conducted in a nondiscriminatory manner. She ruled that the claimant was disqualified under Section 29(1)(m).

Related Authority

The immunity clause of the MRTMA, MCL 333.27955(2)
Workplace/employer provision of MRTMA MCL 333.27954(3)
Braska v Challenge Mfg Co, 307 Mich App 340 (2014)
People v Feezel, 486 Mich 184 (2010)
DOT Regulations 49 CFR Part 40, section 40.87 *et al.*