



UIAC Docket # 260172

Docket No.: [REDACTED]  
Case No.: [REDACTED]  
Employer: [REDACTED]  
Claimant: [REDACTED]  
SSN: [REDACTED]

This is an important legal document. Please have someone translate the document.

هذه وثيقة قانونية مهمة. يرجى أن يكون هناك شخص ما يترجم المستند.

এটি একটি গুরুত্বপূর্ণ আইনি ডকুমেন্ট। দয়া করে কেউ দস্তাবেজ অনুবাদ করুন।

Este es un documento legal importante. Por favor, que alguien traduzca el documento.

这是一份重要的法律文件，请让别人翻译文件。

Ky është një dokument ligjor i rëndësishëm. Ju lutem, kini dikë ta përktheni dokumentin.

## ORDER

The Unemployment Insurance Agency's (Agency) August 9, 2019 Redetermination is modified.

Claimant is not disqualified for benefits under the illegal drug provisions of Section 29(1)(m) of the Michigan Employment Security Act (Act).

Claimant is not disqualified for benefits under the misconduct provisions of Section 29(1)(b) of the Act.

Claimant is not required to requalify under the provisions of Section 29(3) of the Act.

Claimant is entitled to benefits for each claimed week following the date of filing a claim for benefits, if he is otherwise eligible and qualified.

Decision Date: October 3, 2019



WINSTON A. WHEATON  
ADMINISTRATIVE LAW JUDGE

[REDACTED]

**PARTICIPANTS**

	9/11/19		10/1/19			
	Sworn	Sworn	Sworn	Sworn	Sworn	Sworn
Claimant	X	X	X	X		
Representative						
Witness						
Witness						
Witness						
Witness						
Employer						
Representative	X	X	X	X		
Witness	X		X	X		
Witness	X		X	X		
Witness			X	X		
Witness						
Witness						
Witness						

**EXHIBITS**

NO	SUBMITTED BY			DOCUMENT DATED	FORM NO	DOCUMENT DESCRIPTION
	UIA	E	C			
A1-4		X		12/10/18		Employer policies re: illegal drugs and at-fault vehicle accidents
B1-3		X		6/13/18		Hair test for illegal drugs
1a-c			X	6/13/18		Urine test for illegal drugs



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## JURISDICTION

On August 22, 2019, the Employer timely appealed an August 9, 2019 Unemployment Insurance Agency (Agency) Redetermination, which held that Claimant is not disqualified for benefits under the illegal drug provisions of Section 29(1)(m) of the Act.

## ISSUE(S)

Whether Claimant is disqualified for benefits under the illegal drug provisions of Section 29(1)(m) of the Act.

OR

Whether Claimant is disqualified for the receipt of benefits as a result of a suspension or discharge for misconduct connected with his work, pursuant to Section 29 (1)(b) of the Act.

## APPLICABLE LAW

Section 29 of the Act provides:

(1) Except as provided in subsection (5), an individual is disqualified from receiving benefits if he or she:

(m) Was discharged for illegally ingesting, injecting, inhaling, or possessing a controlled substance on the premises of the employer; refusing to submit to a drug test that was required to be administered in a nondiscriminatory manner; or testing positive on a drug test, if the test was administered in a nondiscriminatory manner. If the worker disputes the result of the testing, and if a generally accepted confirmatory test has not been administered on the same sample previously tested, then a generally accepted confirmatory test shall be administered on that sample. If the confirmatory test also indicates a positive result for the presence of a controlled substance, the worker who is discharged as a result of the test result will be disqualified under this subdivision. A report by a drug testing facility showing a positive result for the presence of a controlled substance is conclusive unless there is substantial evidence to the contrary. As used in this subdivision and subdivision (e):

(i) "Controlled substance" means that term as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

(ii) "Drug test" means a test designed to detect the illegal use of a controlled substance.

(iii) "Nondiscriminatory manner" means administered impartially and objectively in accordance with a collective bargaining agreement, rule, policy, a verbal or written notice, or a labor-management contract.

Section 29(1) of the Act provides:

Except as provided in subsection (5), 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**

The Employer performs meter installations of HVAC load control units in residences. Claimant was employed as an installer. He was discharged for violation of the Employer's drug policy and for having an accident with the company vehicle.

On June 11, 2019, Claimant was dispatched to a residence to do an installation. The normal procedure for entering onto a property is to back the service vehicle into the driveway. On this particular occasion, a vehicle was following closely behind Claimant, so he drove his vehicle nose first down the driveway. Upon completion of his task, he was unable to turn around, so he backed his vehicle out. In the process of backing up, he stuck a parked vehicle on the roadway, doing extremely minor damage to both vehicles' bumpers.

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As a result of the accident, Claimant was sent for a drug screen. The urine test was negative for all controlled substances (C1#1b); the hair test was positive for THC metabolite (See ER#B1). The Employer did not produce the medical review officer to explain the discrepancy in the tests. While THC metabolite may be indicative of some exposure to marijuana in the past, it is not a controlled substance.

### **REASONING AND CONCLUSIONS OF LAW**

The Employer has the burden of proving violation of the illegal drug provisions of the Act, as well as the burden of proving disqualifying misconduct.

Disqualifying misconduct contemplated by *Carter, supra*, envisions deliberate disregard of the employer's interests, or a pattern of conduct so obviously indifferent to the employer's interests that it is tantamount to a deliberate act.

In regard to the vehicular accident, the minimal damage indicates that this was no more than an isolated instance of ordinary negligence. As such, it is not considered disqualifying misconduct under *Carter*. While the Employer may have a different standard, that standard does not outweigh the standard for disqualification for unemployment benefits established by the Court in *Carter*.

Section 29(1)(m) of the Act only disqualifies persons for use or possession of a controlled substance. The Legislature's list of schedule 1 controlled substances does not contain the term "metabolite" or the full or any abbreviated name of 11-carboxy-THC. See *People v. Feezel*, 486 Mich 184 (2010). The fact that Claimant had a negative urine test for a controlled substance casts a shadow on the other test result. The Employer's credibility in this regard is undermined by the fact that it initially failed to disclose it. The Employer produced the exculpatory evidence only after being directed to provide it for the second day of the hearing.

Based on the record established in this matter, and the applicable law, the Employer has failed to establish that Claimant tested positive for a controlled substance; and it has failed to establish disqualifying misconduct. The Agency's Redetermination is modified to include consideration of misconduct in relation to the vehicular accident.

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**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 by an office or agent office of the agency OR (2) files a written, signed, appeal to the Michigan Compensation Appellate Commission at P.O. Box 30475, Lansing, MI 48909-7975 (Facsimile: 517-241-7326); OR (3) files a direct appeal, upon stipulation, to the Circuit Court on or before:

**November 4, 2019**

I, T. Barlow, certify a copy of this order has been sent on the day it was signed, to each of the parties at their respective addresses on record.

(SEE ATTACHED SHEET)

## English

**IMPORTANT!** This document(s) contains important information about your unemployment compensation rights, responsibilities and/or benefits. It is critical that you understand the information in this document.

**IMMEDIATELY:** If needed, call 1-866-500-0017 for assistance in the translation and understanding of the information in the document(s) you have received.

## Arabic

أ. "هام! يحتوي هذا المستند (المستندات) على معلومات هامة عن حقوقك الخاصة بتعويضات البطالة، ومسؤولياتك وأثر تخصصاتك، وأذلك فمن المهم جداً أن تفهم البيانات الواردة في هذا المستند.  
على الفور: إذا كنت بحاجة إلى مساعدة اتصل بالرقم 1-866-500-0017 للحصول على مساعدة في ترجمة وفهم المعلومات الواردة في المستند (المستندات) التي تلقيتها."

## Bengali

“ওরুদ্বপূর্ণ এই তথ্যপত্রে আপনার বেকার ভাতা অধিকার, দায়িত্ব এবং/অথবা সুবিধাগুলি সম্পর্কে ওরুদ্বপূর্ণ সূচনা দেওয়া আছে। এটা ওরুদ্বপূর্ণ যে, এই তথ্যপত্রে থাকা সূচনাগুলি আপনি ভালো করে বুঝে নেবেন।  
অবিলম্বেঃ আপনি যে তথ্যপত্র(গুলি) পেয়েছেন এতে থাকা সূচনাগুলি বুঝা এবং অনুবাদের ক্ষেত্রে সাহায্য পেতে প্রয়োজনানুসারে 1-866-500-0017 নম্বরে ফোন করুন।”

## Spanish

**¡IMPORTANTE!** Este documento(s) contiene información importante sobre sus derechos, obligaciones y/o beneficios de compensación por desempleo. Es muy importante que usted entienda la información contenida en este documento.

**INMEDIATAMENTE:** Si necesita asistencia para traducir y entender la información contenida en el documento(s) que recibió, llame al 1-866-500-0017.

## Mandarin

重要提示！这份文件包含有关失业补偿的权利、责任和/或利益的重要信息。您需要理解本文件中的信息，这一点至关重要。立即：如果需要，请拨打1-866-500-0017，可获得帮助，以帮助您翻译和理解所收到的文件中的信息。

## Albanian

1. “**E RËNDËSISHME!** Ky dokument (dokumente) përmban informacion të rëndësishëm mbi të drejtat, përgjegjësitë dhe/ose përfitimet tuaja nga kompensimi i papunësisë. Është shumë e rëndësishme që ta kuptoni informacionin në këtë dokument.
2. **MENJËHERË:**Nëse është e nevojshme, telefononi në numrin 1-866-500-0017 për t’ju ndihmuar me përkthimin dhe kuptimin e informacionit të dokumentin (dokumenteve) që keni marrë.”

**REQUEST FOR REHEARING OR REOPENING BEFORE AN ADMINISTRATIVE LAW JUDGE**

When the appeal to the Administrative Law Judge (ALJ) 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 ALJ, the party may request rehearing in writing before the ALJ instead of appealing to the Michigan Compensation Appellate Commission (Commission). A request for rehearing must be signed by the requesting party or their agent, and **RECEIVED** by the Michigan Office of Administrative Hearings and Rules (MOAHR) at **611 West Ottawa, 2nd Floor, Lansing, MI 48933** or by an office or agent office of the agency, within 30 calendar days after the date of this decision. The party requesting rehearing must also serve the request on the opposing party. A rehearing request received (as described above) more than 30 days after the decision is mailed, shall be treated as a request for reopening.

The ALJ may, for good cause, reopen and review this decision and issue a new decision or issue a denial of rehearing/reopening.

If a request for rehearing or reopening is not received by MOAHR, and an appeal to the Commission is not submitted, the hearing decision becomes final.

**If the Agency fails to comply with an ALJ decision or order more than 30 days, but within 1 year, after the date of mailing of the decision, you may request, in writing, that the ALJ reopen the matter. You must serve a copy of the request to reopen on the other party.**

**APPEAL TO THE UNEMPLOYMENT INSURANCE APPEALS COMMISSION**

The Unemployment Insurance Appeals Commission (Commission) consists of up to nine members appointed by the governor and is not part of the Unemployment Insurance Agency (UIA).

An appeal to the Commission shall be in writing and signed by the party or his/her agent and **RECEIVED** directly by the COMMISSION within 30 days after the mailing of the ALJ's hearing decision or order denying rehearing or reopening. A timely appeal or request for rehearing/reopening may be made by personal service, postal delivery (**P.O. Box 30475, Lansing, MI 48909-7975**), facsimile transmission (**517.241.7326**), or other electronic means as prescribed by the Commission.

The timely appeal/request may also seek to present additional evidence in connection with the appeal or request an oral argument before the Commission. The Commission may consider written argument only if all parties are represented; by agreement of the parties; the Commission orders oral argument; or the Commission orders evidence be produced before it. For additional information, please review the Mich Admin Code, Rules 792.11416 through 792.11429 or visit <http://www.michigan.gov/lara/0,4601,7-154-35738--,00.html>.

An appeal cannot be requested by telephone, but information about the appeal process can be obtained by calling (800) 738-6372 or visiting [http://www.michigan.gov/documents/uia\\_UC1800\\_76144\\_7.pdf](http://www.michigan.gov/documents/uia_UC1800_76144_7.pdf).

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

A party may by-pass appealing to the Commission and appeal a decision or final order of an ALJ directly to a circuit court in the county in which the Claimant resides or in the county in which the Claimant's place of employment is (or was) located, or if the 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, if the parties (Claimant and Employer), or their respective authorized agents/attorneys, sign a timely written stipulation agreeing to the direct appeal to the circuit court. **The stipulation must be mailed to the Michigan Office of Administrative Hearings and Rules, 3026 W. Grand Blvd, 2nd Floor Annex, Suite 2-700, Detroit, Michigan 48202.** Application for review to a circuit court must be made within 30 days after the mailing date decision or final order by any method permissible under the rules and practices of the circuit court.

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

