

January 27, 2020

Julie Petrik
Unemployment Insurance Appeals Commission
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Sent via email to: PetrikJ@michigan.gov

Re: Recommendations for Improving the Unemployment Insurance Appeals Commission

Dear Ms. Petrik:

The Workers' Right Clinic (formally known as the Unemployment Insurance Clinic) is writing to provide our recommendations for improving the Unemployment Insurance Appeals Commission ("the Commission"). We believe that these recommendations will make the Commission's appeals process more transparent and easier to navigate for all parties. Some of the following are suggestions for general operations, while others are designed to improve Rules and policies. Rule recommendations will be noted with parenthesis in the titles below.

Our recommendations are as follows:

1) The Commission Should be Required to Reopen a Case upon a Showing of Good Cause (Legislation/Rule)

Under Section 34 of the Michigan Employment Security Act, the Commission "may, for good cause, reopen and review a prior decision of the Michigan compensation appellate commission and issue a new decision after the 30-day appeal period has expired," (emphasis added). Under its current interpretation, the Commission only grants a reopening if there is a demonstrated abuse of discretion by the earlier adjudicator.

Recently, the legislature amended the Agency's reopening provision to remove Agency discretion and make reopening mandatory upon a showing of good cause – (implementing "shall" in the rule). The same should be true for the Commission. Section 34 should be amended so that the Commission *must* or *shall* reopen a case upon a showing of good cause.

2) The Commission Should Allow Written Argument if the Claimant is Represented (Rule)

Currently, written argument is not allowed unless both parties are represented. A virtue of this system is that employers (who are more likely to be represented than claimants) are not routinely advantaged over pro se claimants. The downside, however, is that it is more difficult for represented claimants with complex legal claims to present their arguments to the Commission. We propose a different system: a one-way ratchet in which written argument is allowed so long as the claimant is represented. This rule protects

potentially vulnerable claimants while advancing the Agency's purpose of providing aid to qualified claimants.

3) The Commission Should Provide Increased Support for Pro Se Litigants (Rule, ERO)

Claimants are much more likely to be unrepresented before the Commission than either employers or the Agency. Pro se litigants need assistance in preparing appeals and presenting their arguments. The Commission should have extensive materials available online to assist pro se litigants in their appeals. California has a good example of pro se materials available online, which can be found on this webpage: https://www.edd.ca.gov/Unemployment/Manage_an_Unemployment_Insurance_Claim.htm.

Pro se materials should include a digest of significant Commission decisions. The Commission provided a digest in the past, but stopped updating it in 2004. Maryland has a good example of an appellate digest that is accessible to pro se litigants, which can be found at: <https://www.dllr.state.md.us/uiappeals/decisions/>.

Information about how to access these new pro se resources should be included in all ALJ and MCAC decisions, and should also accompany any Commission notice of receipt of appeals.

4) The Commission Should Issue Publicly Available Written Decisions

The Commission should issue written decisions that clearly set forth the legal principles applied in every case. The Commission should redact SSNs & EINs, then make all such written decisions (save transfers and stays) publicly available online in a searchable format. The Clinic maintains a digest and would be happy to work with the Commission to facilitate making decisions public.¹

5) The Commission Should Designate Precedent Setting Opinions "For Publication"

A majority of the Commission should be empowered to designate a decision as "for publication." These published opinions should have precedential value for future decisions of the Commission and ALJs.

6) The Commissioners Should be able to Designate a Case for *En Banc* Review

The Commission should be able to self-regulate its jurisprudence. A majority of the Commissioners should be able to designate any case for *en banc* review by the entire Commission, particularly if a case will be marked "for publication" and serve as precedent for future decisions.

¹ The old Michigan Board of Review digest is here: <https://goo.gl/3E9b5P>. Recently, the University of Michigan Law School has taken on updating the digest - <https://miuidigest.org>. It is noteworthy to mention that the Clinic has reached out about creating a partnership for the database, and the MAHS Executive Director forbade the partnership. Nevertheless, a university-government partnership would benefit the public and should be reconsidered.

7) **The Chair Should be able to Designate a Case for En Banc Review if it Presents an Issue of First Impression**

The Chair should be empowered to designate an appeal as containing issues of first impression and set it for en banc review by the entire commission. Additionally, parties should be able to submit a short request to the Chair asking for an appeal to be decided en banc if it involves an issue of first impression.

8) **The Commission Should Conduct Oral Hearings for De Novo Review of Factual Findings**

The Act does not explicitly provide the Commission with authority to conduct de novo review of ALJ factual findings.² However, the Commission appears to have taken such license anyways and issues de novo factual findings on appeal without the benefit of a new hearing. This decision makes for questionable jurisprudence. De novo review of the facts by the Commission should only be allowed after the Commission conducts an independent evidentiary hearing.

9) **The Commission Should Publish Data on their Decisions**

Each month, the Commission should publish data on how often it reverses or affirms the decisions of ALJs, sorted by the area of the act at issue and by the party that received the favorable decision (claimant v. employer).

Thank you for your commitment to improving access and fairness in the UI administrative system. The Clinic appreciates being involved in as the Commission moves forward to accomplish its goals. We can be reached by phone or email to discuss any of our recommendations further. Thank you for your time and consideration.

Sincerely,



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² “The Michigan compensation appellate commission may on its own motion affirm, modify, set aside, or reverse a decision or order of an administrative law judge on the basis of the evidence previously submitted in the case; direct the taking of additional evidence; or permit a party to the decision or order to initiate further appeals before it.” MCL 421.34.8 (2018).