

PART 14: EMPLOYMENT SECURITY HEARINGS AND APPEALS

SUBPART A. GENERAL PROVISIONS

R 792.11401 Scope.

Rule 1401. The rules in this part govern proceedings before administrative law judges and the Michigan compensation appellate commission under the Michigan employment security act, 1936 PA 1, MCL 421.1 to 421.75.

History: 2015 AACCS.

R 792.11402 Definitions.

Rule 1402. (1) As used in these rules:

(a)"Act" as used in this part means the Michigan employment security act, 1936 PA 1, MCL 421.1 to 421.75.

(b)"Agency" means the unemployment insurance agency as created in Executive Reorganization Order No. 2003-1, MCL 445.2011.

(c)"Agent office" means an unemployment insurance office outside the state of Michigan serving as agent of the agency.

(d) "Good cause" includes, but is not limited to, any of the following:

(i) Newly discovered material evidence that, through no fault of the party, had not previously been available to the party.

(ii) A legitimate inability to act sooner.

(iii) A failure to receive a reasonable and timely notice, order, or decision through no fault of the party.

(iv) Untimely delivery of a protest, appeal, or an agency document by a business or governmental agency entrusted with delivery of mail.

(v) Relying on incorrect information from the agency, administrative law judge, the hearing system or the Michigan compensation appellate commission.

(e)"Michigan compensation appellate commission" means the commission created by Executive Order 2011-6 to hear appeals under 1936 PA 1, MCL 421.1 to 421.75.

(f) Unless the context otherwise requires, the word "party" means the agency, the employing unit, and the claimant, and includes an agent or attorney of the agency, the employing unit, or the claimant.

History: 2015 AACCS.

R 792.11403 Adjournments; taking testimony of witness unable to appear and testify at scheduled hearing; deposition.

Rule 1403. (1) Adjournments of hearings may be granted by the administrative law judge or the Michigan compensation appellate commission panel before whom the appeal is pending. Adjourned hearings shall be rescheduled to a time and place that the administrative law judge or

the Michigan compensation appellate commission deems most convenient for all interested parties.

(2)The administrative law judge or the Michigan compensation appellate commission panel may schedule an adjourned hearing at a place convenient to the residence of a witness to take his or her testimony, if he or she is unable to appear and testify at a regularly scheduled hearing.

(3)The testimony may be taken by any administrative law judge of this state or of any agent state, or may be taken by deposition pursuant to the provisions of law applicable to depositions in civil actions pending in the circuit courts of this state.

History: 2015 AACCS.

R 792.11404 Witness fee vouchers; processing.

Rule 1404. At the conclusion of a hearing by the administrative law judge or the Michigan compensation appellate commission, the agency shall process witness fee vouchers for payment for those witnesses who satisfy all of the following conditions:

- (a) Were duly subpoenaed.
- (b) Appeared in person at the hearing.
- (c) Verified their mileage and proper mailing addresses.

History: 2015 AACCS.

**SUBPART C. MICHIGAN COMPENSATION APPELLATE COMMISSION
APPEALS UNEMPLOYMENT CASES**

R 792.11417 Scope; appeal; form.

Rule 1417. (1) These rules apply to practice and procedure before the Michigan compensation appellate commission in appeals under the act, MCL 421.1 to 421.75, and are governed by R 792.11401 to R 792.11433.

(2) An appeal to the Michigan compensation appellate commission shall be in writing and shall be signed by the party appealing or his agent.

(3) Forms for appeals to the Michigan compensation appellate commission and for rehearing by the Michigan compensation appellate commission shall be available at the office of the Michigan compensation appellate commission and all agency offices that are open to the public.

History: 2015 AACCS.

R 792.11418 Appeal; deadline; procedure for late appeal.

Rule 1418. (1) An appeal to the Michigan compensation appellate commission shall be received at the office of the Michigan compensation appellate commission.

(2) To be received on time, an appeal to the Michigan compensation appellate commission must be received within 30 days after the mailed date the administrative law judge's decision, order denying rehearing or reopening.

(3) The Michigan compensation appellate commission is without jurisdiction to consider the merits of any appeal received after the 30-day appeal period. A party whose appeal is received by the Michigan compensation appellate commission after the 30-day appeal period may request a reopening by the administrative law judge under R 792.11405, assuming the request is received within 1 year of the date of mailing of the administrative law judge's decision. The administrative law judge's decision or order on the reopening request may then be appealed to the Michigan compensation appellate commission.

(4) An appeal or request for rehearing or reopening to the Michigan compensation appellate commission may be made by personal service, postal delivery, facsimile transmission, or other electronic means as prescribed by the Michigan compensation appellate commission. If an appeal or request is made by facsimile transmission, the following will be presumed:

(a) That the facsimile transmission was received on time if it was received by the Michigan compensation appellate commission not later than the last minute of the day of the applicable deadline as provided in these rules under prevailing Michigan time.

(b) That the facsimile transmission was received on the date and at the time electronically entered or printed on the face of the document, subject to verification by the Michigan compensation appellate commission at its discretion.

History: 2015 AACCS.

R 792.11419 Commission; decision based on record; notice.

Rule 1419. (1) The Michigan compensation appellate commission may decide cases on the record made by the administrative law judge, without any of the following:

- (a) Oral argument before it.
- (b) Additional evidence.
- (c) Consideration of written argument.

(2) The record made by the administrative law judge includes the transcript or recording of the hearing, accurate copies of exhibits clearly marked and received at the administrative law judge hearing, and written argument submitted to the administrative law judge if the other parties present at the hearing have been served a copy of the argument and have been given an adequate opportunity to respond to it.

(3) The Michigan compensation appellate commission shall serve a notice of receipt of appeal on all parties. The notice of receipt of appeal shall inform parties of the right to request all of the following:

- (a) Oral argument.
- (b) Opportunity to submit additional evidence.
- (c) Opportunity to submit written argument.

History: 2015 AACCS.

R 792.11420 Oral argument; application.

Rule 1420. (1) Oral argument to the Michigan compensation appellate commission shall be by written application and must be received within 14 days after the mailed date of the notice of receipt of appeal.

(2) A written application shall set forth the reasons for requesting oral argument. The application shall be served on all other parties at the time of filing with the Michigan compensation appellate commission.

(3) The application shall be granted or denied by at least 2 members of the Michigan compensation appellate commission panel assigned to review the appeal.

(4) On the motion of at least 2 members of the Michigan compensation appellate commission panel assigned to review a pending appeal, oral argument may be ordered.

(5) The Michigan compensation appellate commission may at its discretion consider oral argument presented in person by conference telephone or other electronic means.

History: 2015 AACCS.

R 792.11421 Presentation of additional evidence; application.

Rule 1421. (1) Presentation of additional evidence to the Michigan compensation appellate commission shall be by order of the Michigan compensation appellate commission.

(2) If a party applies to the Michigan compensation appellate commission for permission to present additional evidence, the application shall be in writing and shall set forth the reasons why the additional evidence should be received. The application must be served on all other parties at the time of filing with the Michigan compensation appellate commission. The granting or denial

of additional evidence is within the discretion of the Michigan compensation appellate commission.

(3) To be granted, the application shall be approved by 2 members of the Michigan compensation appellate commission panel assigned to review the appeal.

History: 2015 AACCS.

R 792.11422 Additional evidence; order.

Rule 1422. (1) When the Michigan compensation appellate commission orders additional evidence, it may do any of the following:

(a) Conduct a hearing pursuant to the act for the purpose of taking and receiving such evidence as it deems necessary.

(b) Remand the matter to an administrative law judge for the purpose of taking and receiving such evidence and submitting the evidence so received to the Michigan compensation appellate commission for decision.

(c) Set aside the administrative law judge's decision and remand the matter to the administrative law judge for the purpose of receiving such additional evidence and issuing a new decision based upon the entire record.

(2) Absent an evidentiary hearing, the Michigan compensation appellate commission shall mail a copy of any evidence it intends to introduce into the record to each party. The parties shall have 14 days thereafter to object to or refute such evidence.

History: 2015 AACCS.

R 792.11423 Written argument; reply; deadlines; consideration; agreement; application for oral argument or additional evidence not deemed written argument; amicus briefs.

Rule 11423. (1) A party may apply to the Michigan compensation appellate commission for permission to submit written argument. The application shall be in writing and shall set forth the reasons for requesting written argument.

(2) The application must be received by the Michigan compensation appellate commission within 14 days after the mailed date of the notice of the receipt of appeal. The application must be served on all other parties at the time the application is filed with the Michigan compensation appellate commission.

(3) The application for written argument shall be granted or denied, subject to subrule (4) of this rule. To be granted, the application shall be approved by 2 members of the Michigan compensation appellate commission panel assigned to review the application.

(4) The Michigan compensation appellate commission may consider a party's written argument only if any of the following conditions exist:

(a) All parties are represented by an attorney or other agent of record.

(b) All parties agree that the Michigan compensation appellate commission may consider written argument. The agreement must be in writing, signed by each party, and received by the Michigan compensation appellate commission not later than 14 days after the mailed date of the notice of receipt of appeal.

(c) The Michigan compensation appellate commission orders oral argument before it.

(d) The Michigan compensation appellate commission orders evidence produced before it.

(5) A reply, if any, to another party's timely written argument, together with a statement of service of a copy on each other party, shall be received by the Michigan compensation appellate commission not later than 14 days after the mailed date of the other party's written argument.

(6) An extension of time for the filing of written argument may be permitted by the Michigan compensation appellate commission at its discretion and if warranted by the circumstances.

(7) A party's application to the Michigan compensation appellate commission for either oral argument or additional evidence shall not be deemed a written argument within the meaning of this rule.

(8) When the parties are permitted to submit written argument pursuant to this rule and section 34 of the act, MCL 421.34, the Michigan compensation appellate commission may consider requests for permission to submit an amicus brief from persons or organizations that are not parties to the matter before the Michigan compensation appellate commission. If the Michigan compensation appellate commission, in its discretion, grants such a request, all parties shall be notified and the brief shall be submitted to the Michigan compensation appellate commission, together with a statement of service of a copy of the brief on each of the parties.

History: 2015 AACCS.

R 792.11424 Record of proceedings; transmittal to the Michigan compensation appellate commission following notification of appeal.

Rule 1424. The director of the hearing system or his or her designate shall promptly transmit the record of proceedings before the administrative law judge, including the supporting accurate copies of exhibits clearly marked, to the Michigan compensation appellate commission.

History: 2015 AACCS.

R 792.11425 Transfer of proceeding pending before administrative law judge.

Rule 1425. (1) A party to a proceeding pending before an administrative law judge may file a regular application to the Michigan compensation appellate commission for either of the following:

(a) Transfer of the proceeding to the Michigan compensation appellate commission.

(b) Transfer of the proceeding to another administrative law judge.

(2) A party may file 2 regular applications for transfer. A regular application shall be filed at least 3 business days before the pending scheduled hearing. An application received after business hours shall be considered filed the next business day.

(3) A party may file a delayed application for transfer. A delayed application is one filed less than 3 business days before the pending scheduled hearing. The Michigan compensation appellate commission may grant a delayed application for sufficient cause shown, that establishes both of the following:

(a) That circumstances leading to the delay were beyond the control of the applicant.

(b) That to hold the hearing would violate due process.

(4) A party may file an extenuating circumstances application for transfer. An extenuating circumstances application may be filed after a party has filed 2 or more applications, in any combinations of subrule (2), (3), or (4) of this rule. The Michigan compensation appellate commission may grant the application for sufficient cause shown that establishes both of the following:

(a) That suspending the proceeding will not create undue hardship for the opposing party.

(b) That holding the hearing would violate due process.

(5) As soon as practicable, the Michigan compensation appellate commission shall notify the administrative law judge of 1 of the following:

(a) That a regular application for transfer is pending.

(b) That an application for delayed transfer is granted.

(c) That an application for extenuating circumstances transfer is granted.

(6) Upon notification under subrule (5) of this rule, the administrative law judge shall immediately issue an order suspending any further proceedings before him or her that involve the pending or granted application.

(7) Upon its own motion, or in response to an application under subrules (2), (3), or (4) of this rule, the Michigan compensation appellate commission shall determine whether sufficient cause exists to transfer the proceeding.

History: 2015 AACS.

R 792.11426 Subpoenas.

Rule 1426. If the Michigan compensation appellate commission orders additional evidence to be taken before it, a party may ask the Michigan compensation appellate commission for subpoenas to compel witnesses to testify or to compel the production of books, records, and papers. The Michigan compensation appellate commission, or a panel of the commission, may issue a subpoena on its own initiative.

History: 2015 AACS.

R 792.11427 Proceedings before Michigan compensation appellate commission panels.

Rule 1427. (1) A matter to be heard by the Michigan compensation appellate commission shall be assigned to a 3-member panel of the Michigan compensation appellate commission for disposition.

(2) A decision reached by the majority of the panel or of the entire commission sitting en banc shall be the decision of the Michigan compensation appellate commission.

(3) The entire Michigan compensation appellate commission shall conduct a full review of any appeal not yet decided and mailed if full commission review is requested by 6 commissioners.

(4) A decision of the full Michigan compensation appellate commission that is equally divided shall constitute an affirmance of the decision initially appealed to the Michigan compensation appellate commission.

History: 2015 AACCS.

R 792.11428 Michigan compensation appellate commission; communications.

Rule 1428. The members of the Michigan compensation appellate commission may communicate with employers, employees, and their agents and with representatives of the public interest about issues of unemployment insurance and matters affecting the administration of the act.

History: 2015 AACCS.

R 792.11429 Michigan compensation appellate commission; decision or order; copies; notice of rights of appeal.

Rule 1429. (1) The Michigan compensation appellate commission shall issue written decisions or orders that are signed and dated. The Michigan compensation appellate commission need not provide any explanation or reasons for its decision or order when it affirms an administrative law judge's decision without substantive alteration or modification.

(2) Decisions of the Michigan compensation appellate commission shall contain the rights of appeal pursuant to R 792.1442.

History: 2015 AACCS.

R 792.11430 Rehearing of Michigan compensation appellate commission's decision. Rule 1430. (1) A request for a rehearing of a Michigan compensation appellate commission decision shall be received by the Michigan compensation appellate commission within 30 days after the mailed date of the decision. A party requesting a rehearing shall serve the request on all other parties at the time of filing with the Michigan compensation appellate commission.

(2) The Michigan compensation appellate commission may grant rehearing on its own motion.

(3) Granting a rehearing is within the discretion of the Michigan compensation appellate commission.

(4) If a request for rehearing is denied, both the denial and the Michigan compensation appellate commission's decision may be appealed to the appropriate circuit court pursuant to section 38 of the act, MCL 421.38.

(5) A rehearing request received more than 30 days after the mailed date of the decision shall be treated as a request for reopening.

History: 2015 AACCS.

R 792.11431 Reopening and review of Michigan compensation appellate commission's decision.

Rule 1431. (1) A request for a reopening and review of the Michigan Compensation appellate commission's decision shall be received by the Michigan compensation appellate commission within 1 year, but not more than 30 days after the mailed date of decision.

(2) Reopening will be granted only if good cause is established. If the Michigan compensation appellate commission grants reopening, the order or decision allowing reopening shall contain a statement of the basis of the good cause finding. If the Michigan compensation appellate commission denies reopening, the order denying reopening shall contain a statement of the basis for the denial.

(3) The Michigan compensation appellate commission may grant reopening its own motion, with notice to the parties, within 1 year after the mailed date of the decision.

(4) If the Michigan compensation appellate commission grants a request for reopening, it shall decide the underlying issues of the case based on the record already made and any additional evidence the Michigan compensation appellate commission may enter in the record.

(5) If the Michigan compensation appellate commission denies a request for reopening, both the denial of reopening and the initial decision may be appealed to the appropriate circuit court under section 38 of the act, MCL 421.38.

History: 2015 AACCS.

R 792.11432 Notice of rights of appeal.

Rule 1432. (1) Each Michigan compensation appellate commission decision or final order shall notify the parties of all of the following:

(a) A party has the right to make a timely appeal of a decision or final order of the Michigan compensation appellate commission to a circuit court.

(c) A party may make a timely request to the Michigan compensation appellate commission to rehear a decision.

(d) A party may make a timely request to the Michigan compensation appellate commission, subject to a showing of good cause, to reopen and review a decision.

(2) Each Michigan compensation appellate commission decision or final order shall state the deadlines and places of receipt of the alternatives in subrule (1) of this rule. It shall also state in boldface type: "TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME."

History: 2015 AACCS.

R 792.11433 Stipulations.

Rule 1433. (1) The parties to an appeal before the Michigan compensation appellate commission may stipulate to facts at issue.

(2) Stipulations shall not be in any sense in derogation of the act and shall not involve an interpretation of the act.

History: 2015 AACCS.