

Attached is a decision of the Unemployment Insurance Appeals Commission (Commission). This decision **WILL BECOME FINAL** unless further action is taken by you. It is important that you pay attention to all filing deadlines. The mailed date and the filing deadline can be found at the bottom of the last page of the Commission decision.

The Michigan Employment Security Act (The Act) provides three separate options for seeking relief from decisions or final orders of the Commission.

1. APPEALS TO CIRCUIT COURT

You may appeal a final order or decision of the Commission to Circuit Court within **30 days** after the mailed date of the decision.

An appeal of a final decision to Circuit Court can be filed in the county in which the claimant resides or the circuit court of the county in which the claimant's place of employment is or was located, or, if a claimant is not a party to the case, the circuit court of the county in which the employer's principal place of business in this state is located. Application for review shall be made within 30 days after mailing a copy of the order or decision by any method permissible under the rules and practices of the circuit courts of this state. **Circuit court claims of appeal are to be filed with the clerk of the appropriate circuit court.**

2. REHEARING

You may file for rehearing with the 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 Commission.

The Act provides that the Commission may, either upon application by an interested party for rehearing or on its own motion, proceed to rehear, affirm, modify, set aside, or reverse a prior decision on the basis of the evidence previously submitted or on the basis of additional evidence. An application for rehearing must be submitted within **30 days** of the mailed date by personal service, postal delivery, electronic delivery, or facsimile transmission to the contact information shown at the bottom of the page.

3. REOPENING

You may file for reopening with the Commission **after** the 30-day appeal period expires but within 1 year after the date of mailing.

The Act provides that the Commission may, for good cause, reopen and review a prior decision and issue a new decision **after** the 30-day appeal period has expired, but a review shall not be made unless the request is filed with the Commission, or review is initiated by the Commission with notice to the interested parties, within 1 year after the date of mailing of the prior decision. A request for reopening must be submitted by personal service, postal delivery, electronic delivery, or facsimile transmission to the contact information shown at the bottom of this page.

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY
UNEMPLOYMENT INSURANCE APPEALS COMMISSION
P.O. Box 30475
Lansing, MI 48909-7975
1-800-738-6372 or (517) 284-9300
Fax: (517) 241-7326
www.michigan.gov/uiac
LEO-UIAC-Info@michigan.gov

STATE OF MICHIGAN
UNEMPLOYMENT INSURANCE APPEALS COMMISSION

In the Matter of

[REDACTED]

Claimant,

[REDACTED]

Employer.

Appeal Docket No.: [REDACTED] 22-001523

UIA Case No.: [REDACTED]

Matter of First Impression
Decided *En Banc*¹

DECISION OF UNEMPLOYMENT INSURANCE APPEALS COMMISSION

This case is before the Unemployment Insurance Appeals Commission on the claimant's timely appeal from an April 18, 2022 decision by an Administrative Law Judge (ALJ). The ALJ's decision modified a November 9, 2021 redetermination by the Unemployment Insurance Agency (Agency) and found the claimant disqualified for benefits under the voluntary leaving provision in Section 29(1)(a) of the Michigan Employment Security Act (Act).

This is a Matter of First Impression before the Commission involving an employer's requirement that an employee be vaccinated for COVID-19. The issue before the Commission is whether a claimant is disqualified for unemployment benefits if the claimant refuses to be vaccinated or seek an exemption from vaccination.

The claimant submitted a document to the Commission, which we treat as a request to submit additional evidence. However, the document submitted was admitted into the record as Exhibit 7 at the April 15, 2022 hearing. As such, the claimant's request is denied.

After reviewing the entire record in this matter, we find the ALJ's decision must be modified. Our reasons are as follows.

The ALJ found the claimant voluntarily left her employment because she knowingly failed to maintain a prerequisite of employment under Section 29(1)(a). The facts do not support the application of this provision of the Act. Section 29(1)(a) of the Act states in pertinent part:

¹ At full strength, the Commission has seven appointed Commissioners. The six signatures on this decision reflect a current vacancy on the Commission.

An individual who becomes unemployed as a result of negligently **losing a requirement for the job of which he or she was informed at the time of hire** is considered to have voluntarily left work without good cause attributable to the employer. [Emphasis added.]

The claimant's employment ended because she did not receive a COVID-19 vaccination or obtain an exemption for vaccination. However, the record is devoid of any evidence of a COVID-19 vaccine requirement *at the time of claimant's hire*, and therefore, the prerequisite language in Section 29(1)(a) is not applicable.

Based on the foregoing, the claimant is not disqualified under the voluntary leaving provision in the Act.

The misconduct provision of the Act, Section 29(1)(b), was also noticed for hearing in this case. In a November 9, 2021 redetermination, the Agency considered the claimant's separation under the misconduct provision of Section 29(1)(b) and found her claimant not disqualified. The employer appealed. Therefore, we consider whether the employer terminated the claimant's employment for a reason that constitutes misconduct. Section 29(1)(b) of the Act provides:

- (1) 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.

The Michigan Supreme Court has defined misconduct as:

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.

Carter v Employment Security Commission, 364 Mich 538, 541; 111 NW2d 817 (1961), quoting [*Boynnton Cab Co. v. Neubeck*, 237 Wis. 249, 259–260, 296 NW 636 \(1941\)](#).

In the instant matter, the employer is a health care system. The claimant worked as a server in a dining hall in one of the employer's health care facilities. On July 8, 2021, the employer announced that employees must submit proof of COVID-19 vaccination or obtain an exemption or deferral from vaccination by a certain date (September 21, 2021, for the claimant) or be subject to termination of employment. The employer's vaccination policy was grounded in safety concerns. The Vaccine Policy Q&A (July 7, 2021) states:

Safety is a Core Value of [Employer]. Nothing is more important than the safety of our patients, residents, colleagues, physicians and communities. The COVID-19 vaccine is the single most effective tool in slowing, and even stopping, the spread of COVID-19 and saving lives. Our Core Value of Safety also calls on us to do everything we can to protect ourselves, our colleagues, our patients and our communities. Unvaccinated colleagues can catch and then spread COVID-19 to patients, residents, other colleagues and their loved ones. As health care professionals, we are responsible for doing everything we can to end the pandemic and save lives in our communities.

The claimant's employment was terminated after she failed to submit proof of vaccination or obtain an exemption or deferral before the deadline. At the hearing, the claimant described her reasons for not being vaccinated as "personal." She also testified that she did not request an exemption or deferral because she believed these were limited to people who were pregnant or trying to conceive. However, the employer distributed information to employees that specifically mentioned medical reasons, such as allergies to vaccine components, and deeply held religious beliefs as bases for seeking exemption or deferral from vaccination.

We find the employer's vaccination requirement to be entirely reasonable and consistent with the stated purpose of protecting the employer's patients, residents, and employees from COVID-19. Further, the record reflects that the employer provided its employees with ample time and information about the vaccination requirement and appropriate exemptions. Under these circumstances, we conclude that the employer had a right to expect that its employees would be vaccinated or obtain an exemption or deferral by the specified deadline.

Based on the foregoing, we find the claimant's actions constitute a deliberate violation of the standards of behavior that the employer had the right to expect from its employees, which is misconduct under the Act.

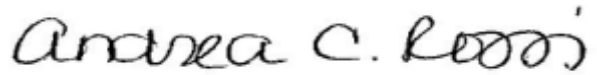
Accordingly, we find the claimant disqualified for benefits under Section 29(1)(b) of the Act.

IT IS THEREFORE ORDERED that the ALJ's decision is MODIFIED. The claimant is not disqualified for benefits under Section 29(1)(a) of the Act. She is disqualified for benefits under Section 29(1)(b) of the Act.

This matter is referred to the Agency for action consistent with this decision.



Alejandra Del Pino, Commissioner



Andrea C. Rossi, Commissioner




Julie A. Petrik, Chairperson



Lester A. Owczarski, Commissioner



Neal A. Young, Commissioner



William J. Runco, Commissioner

MAILED AT LANSING, MICHIGAN October 28, 2022

This decision shall be final unless EITHER (1) the Unemployment Insurance Appeals Commission RECEIVES a written request for rehearing on or before the deadline, OR (2) the appropriate circuit court RECEIVES an appeal on or before the deadline. The deadline is:

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME. November 28, 2022

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

مهم! نم. كعدئ اوف وأ / و كعدئ ايل وؤس جو كئ اطلبنا تاضريوعت قوقح نع مدم تامول عم ىلع (قئ اتول) قئ يتول هذه ايرتحت ا مهم دن تسمل ا اذ ىف كدراول تامول عمل ا مهفت نأ

(قئ اتول) قئ يتول ا ىف تامول عمل ا مهفو تم جرت ىف كدع اس مل ل 1-866-500-0017 ىلع لصرتا ،رمأل ا مزل اذ: روفلا ىلع اهت يقلت ىتل ا

Spanish

¡IMPORTANTE! Este (s) documento (s) contiene información importante sobre sus derechos, responsabilidades y / o beneficios de compensación por desempleo. Es fundamental que entienda la información de este documento.

INMEDIATAMENTE: Si es necesario, llame al 1-866-500-0017 para obtener ayuda en la traducción y comprensión de la información en el documento (s) que ha recibido.

Mandarin

重要！ 本文件包含有关您的失业补偿权利，责任和/或利益的重要信息。了解本档中的信息至关重要。

立即：如果需要，请致电1-866-500-0017以协助翻译和了解您收到的文件中的信息。

Albanian

E rëndësishme! Ky dokument përmban informacione të rëndësishme për të drejtat, përgjegjësitë dhe / ose përfitimet e papunësisë. Është e rëndësishme të kuptojmë informacionin në këtë dokument.

Menjëherë: Nëse është e nevojshme, telefononi 1-866-500-0017 për të ndihmuar në përkthimin dhe kuptimin e informacionit në dokumentet që keni marrë.