

STATE OF MICHIGAN
UNEMPLOYMENT INSURANCE APPEALS COMMISSION

In the Matter of

████████████████████

████████████████████-25-003560

Claimant,

████████████████████

████████████████████

Employer.

REMAND ORDER

This matter is before the Unemployment Insurance Appeals Commission (Commission) on the Unemployment Insurance Agency’s (Agency) and the claimant’s timely appeals from the Administrative Law Judge’s (ALJ) December 2, 2025 order denying rehearing. The ALJ denied rehearing of her underlying November 13, 2025 decision that had reversed an October 9, 2025 Denial of Request for Redetermination (DRR)¹ issued by the Agency. The ALJ’s November 13, 2025 order also “remanded” the underlying September 23, 2022 redetermination (redetermination) to the Agency to “provide claimant the applicable thirty-day appeal period in which to file a protest.”

As to the underlying DRR, the Agency issued it pursuant to Section 32a(2) of the Michigan Employment Security Act (Act) on grounds that the claimant had filed a late protest of the redetermination. In reversing the DRR, the ALJ relied on the claimant’s testimony that she had not received the redetermination. With respect to the remand, it appears as if the ALJ is directing the Agency to issue yet another redetermination after the claimant’s protest, as the ALJ further stated in part that, “the Agency may consider whether the testimony provided established that claimant’s leaving was involuntary for medical reasons during the onset of the COVID-19 pandemic”² (ALJ Order at p. 1). The underlying redetermination disqualified the claimant under the voluntary leaving provision of Section 29(1)(a) of the Act. The ALJ cited no authority for remanding the redetermination to the Agency.

As explained in this order, we set aside the ALJ’s order denying rehearing and the ALJ’s decision. We remand this matter to the ALJ for a new hearing.

¹ The ALJ referred to the October 9, 2025 DRR as a “Redetermination.” We will refer to it as the DRR throughout this Order.

² In her appeal, the claimant states that it is not clear from the remand order whether the Agency is to reconsider the redetermination and issue a new one or whether she is to submit another appeal in addition to her two previous appeals. We are likewise confused as to that aspect of the ALJ’s order.

We start with the ALJ's rehearing denial. Rehearings are granted at the discretion of the ALJ. Rule 792.11414. The ALJ's December 2, 2025 order denied the claimant's rehearing request on grounds that "the parties had a full opportunity to present witnesses and evidence at the original hearing."

However, the claimant was not sworn at the hearing as required by Rule 792.11411(3), and, thus, her testimony could not be properly utilized by the ALJ for the underlying decision. As the underlying record lacks the claimant's sworn testimony, we find that the ALJ abused her discretion in denying rehearing and the December 2, 2025 order denying rehearing must be set aside.

Before we address the merits of the ALJ's decision to reverse the DRR and remand to the Agency, we must address two matters. First, as noted above, the ALJ proceedings were defective in that the claimant's testimony was not taken under oath as required by Rule 792.11411. Thus, we must set aside the ALJ's November 13, 2025 decision and remand to the ALJ for a new hearing to remedy that defect.

Second, we note that the decision to "remand" the underlying redetermination to the Agency, *an action appealed by both by the Agency and the claimant*, is, as far as this Commission is aware, without precedent prior to late 2025. We are aware that at least one other ALJ has taken this approach under similar circumstances in multiple cases. We, therefore, take up this matter as a full Commission to address whether this approach is consistent with the Act and Rules.

As we show below, it is not. The decision to reverse the DRR and remand to the Agency deprives the claimant of her right under Section 33(1) of the Act to have all matters pertinent to her benefit rights decided by an ALJ. The remand also violates the claimant's rights under Rule 792.11406(2), which sets forth the ALJ's duty to decide good cause issues in relation to DRRs. Moreover, the remand to the Agency results in harmful delay in the resolution of claimant's claim and is thus contrary to the policy of the Act. As set forth in *California Dep't of Human Resources Dev v Java*, 402 US 121, 135; 91 SCt 1347; 28 LEd2d 666 (1971), the congressional objective for unemployment compensation is to get "money into the pocket of the unemployed worker at the earliest point that is administratively feasible."³

The ALJ's approach must be examined against the backdrop of the facts of this case. For purposes of this order, we will presume that the claimant's testimony was true, including the key fact that she had not received the September 23, 2022 redetermination.

Case Background

On May 14, 2020, the claimant filed a regular claim for benefits. A monetary determination was issued on May 18, 2020. It found the claimant had established a claim, with a benefit-year-beginning date of May 10, 2020 and a benefit-year-ending date of May 8, 2021.

³ 20 CFR 650.1(a) was adopted after *Java*, 402 US 121, "to assure that all administrative appeals affecting [unemployment insurance] benefit rights are heard and decided with the *greatest promptness that is administratively feasible*" (emphasis added). See also Unemployment Insurance Program Letter (UIPL) No. 26-90, issued April 26, 1990, (providing in part that unemployment hearings "must be simple, speedy, and inexpensive").

On March 16, 2022, the Agency issued a non-monetary determination (determination) that disqualified the claimant under Section 29(1)(a). The claimant timely protested the determination. In response, the Agency issued the redetermination on September 23, 2022, that modified the determination as to rework under Section 29(3) of the Act but left the Section 29(1)(a) disqualification undisturbed.

The claimant protested the September 23, 2022 redetermination more than one year later on October 3, 2025. The claimant's protest asserted that the claimant had not received the redetermination within one year of its issuance and requested that the matter be referred to the ALJ under Section 33 of the Act and *McBride v Americana Mobile Home Park, Inc*, 173 Mich App 275; 433 NW2d 336 (1988). In response, and relying upon Section 32a, the Agency issued the DRR on October 9, 2025, on the grounds that the claimant's request had been received more than one year after the date of the mailing of the redetermination. The September 23, 2022 redetermination was, in effect, left in place.

On October 15, 2025, the claimant timely appealed the DRR, and a hearing was held before the ALJ on November 10, 2025. The notice of hearing, as is practice in DRR cases, included Section 32a(2) and the underlying Section 29(1)(a) issue, thus notifying the parties that a late protest and voluntary leaving issue were involved in this matter. After taking evidence on both the late protest and the employment separation issues, the ALJ issued the November 13, 2025 decision discussed above, and which is now before the Commission on appeal. The *Findings of Fact* portion of the ALJ decision details facts relating to both Section 32a(2) and the 29(1)(a) disqualification.

In its appeal, the Agency maintains that the ALJ had the jurisdictional authority to decide the DRR and the underlying issue under Rule 792.11406(2) but erroneously refused to exercise it. The Agency contends, relying on Sections 32 and 32a, that the Agency does *not* have jurisdiction to issue yet another redetermination. In other words, the Agency argues *that the ALJ must decide* whether the claimant established good cause and if so established, decide the underlying disqualification.

The claimant similarly contends that the ALJ is required to decide all issues that affect the claimant's rights under Section 33(1). She further asserts that the ALJ's remand serves no purpose as she has already filed two appeals of the September 23, 2022 redetermination.

In her December 1, 2025 *Request for Amended Order/Rehearing*, the claimant cited Mich Admin Code, R (Rule) 792.11406 for the proposition "that DRRs may be appealed to Administrative Law Judges ("ALJ") and that jurisdiction to decide the underlying issue vests with the ALJ if the ALJ finds there was good cause for a redetermination." The claimant also noted that the Section 29(1)(a) disqualification was properly included in the *Notice of Hearing* and requested that the ALJ make a decision on that issue based on the ALJ's findings of facts and conclusions of law.

As we will elaborate, these points are well taken.

Law and Analysis

To get to the crux of the ALJ's error in the decision, we must examine the appeal provisions of the Act. Section 32a(1) provides the parties with a 30-day period in which to appeal an Agency (re)determination or else that (re)determination becomes final. An appeal filed after the 30-day period but within 1 year after the mailing date of the determination, must be reconsidered by the Agency provided that "good cause" has been established. Section 32a(2). Good cause for purposes of Section 32a(2), is defined under Mich Admin Code, R 421.270. This rule sets forth a non-exclusive list of good cause circumstances, which includes, in relevant part, the following:

- (d) If an interested party has a legitimate inability to act sooner.
- (e) If an interested party fails to receive a reasonable and timely notice, order, or decision.

Because the claimant filed her appeal more than one year after the September 23, 2022 redetermination, it would appear that the claimant should have been precluded from a Section 32a reconsideration. However, the ALJ, on page 3 of the decision, cited the tolling provisions of *McBride* as follows:

When there is no proof of service of a determination on a party, the 30-day period in which to protest the determination is tolled, and even if the protest is filed more than 1 year later, Section 32a does not bar the Commission from considering and ruling upon it. *McBride v Americana Mobile Home Park, Inc.*, 173 Mich App 275 (1988).

The ALJ went on to state in her *Reasoning and Conclusion of Law* that the claimant had credibly testified that she had not received the September 23, 2022 redetermination and that there had been no evidence to rebut it. We agree with the ALJ that *McBride* tolling is applicable under these circumstances.⁴ **Because tolling is applied, reconsideration is not precluded by the one-year time limit of Section 32a(2).**

It is at her next step that the ALJ erred by reversing the DRR and remanding the redetermination back to the Agency to provide claimant the "applicable thirty-day appeal period in which to file a protest." Presumably after yet another protest by the claimant, the Agency was to issue yet another redetermination. The ALJ cited no authority for taking this course - and we have found none.⁵

Rather, Section 33 and Rule 792.11406(2) dictate the ALJ's course in this situation, and those provisions do not permit the ALJ to remand the case to the Agency. As we explain below,

⁴ This presupposes that the claimant's testimony under oath, on remand, will, in fact, establish non-receipt of the September 23, 2022 redetermination. The ALJ may also consider the reference to tolling principles in *Scott v Unemployment Ins Agency*, ___ Mich ___; 983 NW2d 417 (2023) (adopting the dissent in 341 Mich App 87, 104; 989 NW2d 260 (2022)).

⁵ An ALJ is authorized under R 792.11410(5) to return a matter to the agency if the ALJ discovers "new, additional, or corrected information or administrative clerical error before or during the course of a hearing, which could affect the agency's position on a case." The ALJ did not cite this rule nor set forth any facts under which a remand could be justified under this rule.

the ALJ is required to take up the matter of whether the party had good cause for the late appeal – and if the ALJ so finds – decide the underlying issue.

Indeed, the process is the same as in any other case in which a party filed a late appeal of a determination or redetermination.⁶ The Act and the administrative rules do not permit any deviation from this course of action, which is outlined as follows:

Section 33(1) of the Act provides, in relevant part:

An appeal from a redetermination issued by the agency in accordance with section 32a or a matter transferred for hearing and decision in accordance with section 32a shall be referred to the Michigan administrative hearing system for assignment to an administrative law judge. **If the agency transfers a matter, or an interested party requests a hearing before an administrative law judge on a redetermination, all matters pertinent to the claimant's benefit rights or to the liability of the employing unit under this act shall be referred to the administrative law judge.** The administrative law judge shall afford all interested parties a reasonable opportunity for a fair hearing and, unless the appeal is withdrawn, **the administrative law judge shall decide the rights of the interested parties and shall notify the interested parties of the decision, setting forth the findings of fact upon which the decision is based, together with the reasons for the decision.** With respect to an appeal from a denial of redetermination, if the administrative law judge finds that there was good cause for the issuance of a redetermination, the denial shall be a redetermination affirming the determination and the appeal from the denial shall be an appeal from that affirmance. [Emphasis added.]

The first sentence of Section 33(1) requires the Agency to transfer appeals from redeterminations to the administrative hearing system, in this case: the Michigan Office of Administrative Hearings and Rules (MOAHR). It further requires that “*all matters pertinent to the claimant's benefit rights or to the liability of the employing unit under this act*” shall be referred to the administrative law judge (emphasis added). Finally, the ALJ is required to “*decide the rights*” of the interested parties by issuing a decision setting forth the findings of facts and the reasons for the decision.

Next, we turn to Rule 792.11406(2), the administrative rule governing appeals from DRRs:

A party who receives a denial of redetermination because his or her request for review was not filed with the agency within 30 days after the date of mailing or personal service of the underlying determination or redetermination may appeal the denial of redetermination to an administrative law judge. The administrative law judge shall take evidence on whether there was good cause for issuing a redetermination. If the administrative law judge finds good cause, the administrative law judge shall inform the parties of that fact and shall then proceed to take testimony on, and decide, the underlying issue or issues, pursuant to R 792.11424.

⁶ This analysis set forth herein is also applicable in instances where a party appeals a *determination* beyond the one-year period.

The first sentence of Rule 792.11406(2) governs DRRs in cases where the party's request for review was not filed within the 30-day appeal period. By the terms of the first sentence, parties who receive a denial for such a reason are entitled to appeal to the ALJ. Once an ALJ receives the appeal, the ALJ is afforded no discretion. **The ALJ “shall take evidence on whether there was good cause for issuing a redetermination”** *Id.* (emphasis added). Furthermore, the ALJ must make a decision on good cause in accordance with Section 33(1), and, if the ALJ so finds, Rule 792.11406(2) provides that they are to inform the parties and “then proceed to take testimony on, **and decide, the underlying issue or issues,** pursuant to [Rule] 792.11424” (emphasis added).⁷

In this case, the claimant timely appealed the DRR, and the matter was appropriately referred to the ALJ under Rule 792.11406(2). The DRR was preceded by claimant's untimely appeal of the underlying redetermination, and, thus, this redetermination was also correctly referred to the ALJ for disposition under Section 33(1). The notice of hearing properly included Sections 32a(2) and 29(1)(a) of the Act, thus clearly notifying the parties that the matter involved issues of late protest and voluntary leaving.

Because a DRR had been issued in this case due to the claimant's late protest, Section 33(1), together with Rule 792.11406(2), required the ALJ to take evidence and determine whether good cause existed for issuing a redetermination. And if the claimant established good cause, the ALJ was required to decide the underlying issue on the merits. By contrast, Rule 792.11406(2) does not permit a remand of this issue back to the Agency for yet another redetermination.

Turning to the good cause criteria set forth in Rule 421.270 (see above), the claimant could have established good cause under either Rule 421.270(d) (legitimate inability to act sooner) or Rule 421.270(e) (interested party fails to receive a reasonable and timely notice, order or decision).

Indeed, the criteria for tolling under *McBride* (non-receipt of the determination), overlaps with the criteria set forth in Rule 421.270(d) and Rule 421.270(e). If the ALJ determines that the claimant established the criteria for tolling under *McBride*, then the claimant also establishes the good cause criteria under Rule 421.270 (d) and (e). By holding that *McBride* tolling was applicable, the ALJ effectively found that claimant had established good cause for her late appeal. But in lieu of adjudicating the underlying issue, the ALJ remanded to the Agency in violation of Rule 792.11406(2). In so doing, the ALJ erred.

As noted above, the ALJ's duty to decide the case is also set forth in Section 33. Section 33(1) provides that if the ALJ finds good cause for the redetermination, the DRR “shall be a redetermination affirming the determination and the appeal from the denial shall be an appeal from that affirmance.” Here, the claimant timely appealed the October 9, 2025 DRR. **A finding of good cause means that the DRR becomes a redetermination.**⁸ **This places the redesignated October 9, 2025 redetermination properly before the ALJ under Section 33, and the ALJ**

⁷ We recognize that ALJs have authority to take the good cause issue under advisement during the hearing, and while proceeding to take testimony on the underlying issue(s).

⁸ As such, the ALJ erred in reversing the DRR.

must “decide the rights of the interested parties.”⁹ By remanding the issue to the Agency, the ALJ infringed upon the claimant’s rights under Section 33 to have “all matters pertinent” in this case decided by the ALJ.

The remand also imposes additional procedural hurdles by requiring the claimant to appeal *for a third time*. If we were to leave the ALJ’s decision undisturbed, the claimant would then have to await a new redetermination by the Agency, appeal again if it is adverse, and await a new hearing. This could extend the resolution of this case by months or more, in direct conflict with the congressional objectives of *Java*, 402 US 121, and 20 CFR 650.1(a). Instead, consistent with Section 33(1) and Rule 792.11406(2), this case should have been resolved at the November 10, 2025 hearing.

Based on the foregoing, we must set aside the ALJ’s December 2, 2025 order denying rehearing and the ALJ’s November 13, 2025 decision, and we remand this matter to the ALJ for a new hearing.

Therefore,

IT IS ORDERED that the ALJ’s December 2, 2025 order denying rehearing is SET ASIDE.

IT IS FURTHER ORDERED that the ALJ’s November 13, 2025 decision is SET ASIDE.

IT IS FURTHER ORDERED that this matter is remanded to the assigned ALJ for a new hearing on the claimant’s timely appeal of the October 9, 2025 DRR. The notice of hearing shall include Sections 32a(2), 29(1)(a), and 29(1)(b) of the Act.

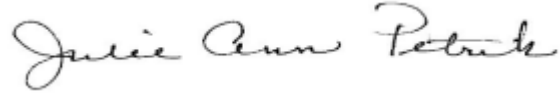
At the new hearing, the ALJ shall take evidence on the threshold tolling issue, the late protest issue under Section 32a(2) of the Act, and on the voluntary leaving issue under Section 29(1)(a) of the Act. The ALJ shall then issue a decision or order consistent with the Commission’s order in this case.

⁹ If the ALJ determines that the claimant’s testimony is not credible as to her non-receipt of the September 23, 2022 redetermination, the ALJ would not have jurisdiction to make a decision on the underlying voluntary leaving issue, but she should still proceed to take the claimant’s testimony on that issue to ensure a complete record.

The Commission retains no jurisdiction in this matter.



George Wyatt III, Commissioner



Julie A. Petrik, Chairperson



Mikhail Albuseiri, Commissioner



Sheryl McGrath, Commissioner



William J. Runco, Commissioner

ANDREA C. ROSSI AND ALEJANDRA DEL PINO COMMISSIONERS, CONCURRING:

We agree with the Commission majority to set aside the December 2, 2025 order denying rehearing due to procedural error in this case, being the ALJ's failure to administer the oath. We also agree with the Commission majority to set aside the ALJ's November 13, 2025 decision, as the ALJ failed to provide legal authority or rationale for remanding this case back to the Agency.

We write separately, as we would limit our analysis to the ALJ's failure to make a finding on the underlying issue as any other analysis is premature. In this case, putting aside the procedural error of failing to swear the claimant, the ALJ made a finding that *McBride*, 173 Mich App 275, applied. At that point, the ALJ had an obligation to decide the underlying issue in accordance with Rule 792.11406(2) and 20 CFR 650.1(a) and failed to do so.

Lastly, we note that we *would* also limit the order portion to the following:

IT IS ORDERED that the ALJ's December 2, 2025 order denying rehearing is SET ASIDE.

IT IS FURTHER ORDERED that the ALJ's November 13, 2025 decision is SET ASIDE.

IT IS FURTHER ORDERED that this matter is remanded to the assigned ALJ for a new hearing. The ALJ must take evidence on Section 32a(2) as it relates to claimant's appeal of the September 23, 2022 Redetermination. The ALJ must also take evidence on Sections 29(1)(a) and 29(1)(b) of the Act.

Andrea C. Rossi

Andrea C. Rossi, Commissioner

Alejandra Del Pino

Alejandra Del Pino, Commissioner

Dated and mailed at
Lansing, Michigan on February 27, 2026