

STATE OF MICHIGAN
 UNEMPLOYMENT INSURANCE APPEALS COMMISSION

In the Matter of

[REDACTED]

[REDACTED]-23-003787

Claimant,

[REDACTED]

[REDACTED]

[REDACTED]

Employer.

ORDER ALLOWING REHEARING

This matter is before the Unemployment Insurance Appeals Commission (Commission) on the Unemployment Insurance Agency’s (Agency) July 29, 2024 request for rehearing by the Commission of its June 28, 2024 decision.

The Commission has jurisdiction to rehear a prior Commission decision or order on a party’s application made within 30 days after the date of the mailing of the prior decision. MCL 421.34(7). Under Mich Admin Code, R 792.11430(3), the Commission has discretion to grant a rehearing.

The Agency seeks rehearing for two reasons. First, it requests that the Commission “strike its legal analysis and fact finding regarding restitution under Section 62(a) from its Order, and affirm the December 9, 2022 redetermination in full.” The Agency did not assert any persuasive authority or argument for this position, and therefore, this Commission rejects this basis for rehearing the case. The finality provisions of Section 32a of the Michigan Employment Security Act (Act) apply only to the issues adjudicated in the underlying determinations, which in this case was the Section 29(1)(a) voluntary quit disqualification. This Commission’s decision correctly limited the determination to Section 29(1)(a) of the Act and precluded its use as a vehicle for Section 62(a) recovery of overpayments.

Second, the Agency seeks clarification as to the impact of the following portion of this Commission’s holding, set forth at page 9 of the decision:

The claimant is not subject to restitution under Section 62(a) of the Act on the basis of the May 31, 2022 determination. The Agency may not use it, even combined with the 1301 Form, to employ any of the tools set forth in Section 62(a) to collect against the claimant.

Specifically, the Agency seeks clarification that the *en banc* decision does not impede the Agency’s statutory obligation to issue a restitution determination under Section 62(a) “as a result of the finality of the December 9, 2022 redetermination.”

This Commission allows the Agency's rehearing request for the sole purpose of addressing this issue.

Section 62(a) of the Act establishes the Agency's authority to recover overpayments. The mechanism for recovery is the restitution determination. As noted in the Commission's underlying decision (page 4, footnote 6), there are different deadlines (or limitations periods) for issuing restitution determinations. These periods differ depending on whether the Agency has issued a previous finding of benefit entitlement. Where the Agency has *not* made a previous finding of benefit entitlement, the Agency must issue the restitution determination within 3 years from the date *the claimant first received benefits* in the benefit year in which the issue arose.

Except in the case of benefits improperly paid because of suspected identity fraud, the unemployment agency shall issue a restitution determination on an issue within 3 years from the date the claimant first received benefits in the benefit year in which the issue arose, . . . [Section 62(a).]¹

The Agency has a longer period where its previous finding of benefit entitlement is later reversed. In that case, the Agency must issue the determination within 3 years after the date of *finality of the reversal*.

The unemployment agency shall issue a determination requiring restitution within 3 years after the date of finality of a determination, redetermination, or decision *reversing a previous finding of benefit entitlement*. [*Id.*] [Emphasis added.]

In this case, there is no evidence that the Agency made a previous finding of benefit entitlement. The first determination on the claimant's entitlement was on May 31, 2022, and in it, the Agency found the claimant disqualified and *not* entitled to benefits. The December 9, 2022 redetermination was a denial of reconsideration (the claimant appealed late), and thus, was an affirmation of the previous determination of no entitlement.

As such, the limitations period is measured from the date the claimant first received benefits in the benefit year in which the issue arose. The issue in the May 31, 2022 determination is the claimant's April 6, 2020 separation from her employer (benefit year beginning April 5, 2020). As to that issue, based on the May 31, 2022 Weeks of Overpayment Statement, **the claimant first received benefits for the week ending April 11, 2020**. Presuming the claimant first received benefits on or around that date, the three years for issuing a restitution determination expired sometime in April 2023. As such, as of this date, it would appear the Agency cannot issue a timely restitution determination under Section 62 of the Act.

IT IS THEREFORE ORDERED that the Agency's application for rehearing shall be and the same is hereby ALLOWED, for the sole purpose of addressing the issue noted herein.

¹ In cases of fraud in this category, the restitution determination must be issued within 3 years *after* the receipt of improperly paid benefits.

IT IS FURTHER ORDERED that the Commission’s June 28, 2024 decision remains in full force and effect.

Alejandra Del Pino

Alejandra Del Pino, Commissioner

George Wyatt III

George Wyatt III, Commissioner

Julie Ann Petrik

Julie A. Petrik, Chairperson

Lester A. Owczarski

Lester A. Owczarski, Commissioner

Mikhail Albuseiri

Mikhail Albuseiri, Commissioner

William J. Runco

William J. Runco, Commissioner

ANDREA C. ROSSI COMMISSIONER, CONCURRING:

I agree with the majority in allowing rehearing, but find rehearing warranted on different bases.

I would allow rehearing and order a remand for the reasons stated in my partial concurrence/partial dissent in the Commission’s June 28, 2024 decision. I would grant rehearing and find that remand is warranted. On remand, I would require the Administrative Law Judge to secure additional Agency evidence to (i) determine which overpayment weeks from the Weeks of Overpayment notice are a direct result of this case, and (ii) adjudicate whether the claimant is entitled to a waiver of restitution for those weeks under Section 62(a)(iii) of the Act.

Andrea C. Rossi

Andrea C. Rossi, Commissioner

MAILED AT LANSING, MICHIGAN September 23, 2024

This order 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. October 23, 2024