

STATE OF MICHIGAN
UNEMPLOYMENT INSURANCE APPEALS COMMISSION

In the Matter of

[REDACTED]

Appeal Docket No.: [REDACTED] 22-001208

Claimant,

UIA Case No.: [REDACTED]

[REDACTED]

Employer.

REMAND ORDER

This case is before the Unemployment Insurance Appeals Commission (Commission) on the Unemployment Insurance Agency's (Agency) timely appeal of an Administrative Law Judge's (ALJ) decision issued on December 9, 2021. The ALJ's decision denied the Agency's request for reopening and found that the ALJ's August 26, 2021 decision remained in full force and effect. The ALJ's August 26, 2021 decision modified a December 28, 2020 Agency redetermination and found the claimant not disqualified for benefits under Section 29(1)(a) of the Michigan Employment Security Act (Act). The ALJ further found that claimant met the leaving to accept requirements under Section 29(5) of the Act.

We received a request from the claimant to submit additional evidence, written argument, and present an oral argument in this matter. As this matter is being remanded for a hearing on the merits, the opportunity to present his evidence and arguments is at an ALJ hearing. Therefore, we deny the claimant's requests.

After reviewing the record, we find the ALJ's December 9, 2021 and August 26, 2021 decisions must be set aside, and the matter remanded for further proceedings. Our reasons are as follows.

The claimant applied for benefits on November 9, 2020. On November 12, 2020, the Agency found the claimant eligible for benefits. On December 28, 2020 the Agency issued a determination which found the claimant disqualified for benefits pursuant to Section 29(1)(a) of the Act. The claimant filed a timely protest, and on June 30, 2021 the Agency issued a Notice of Bypass of Redetermination and sent the matter directly to the Michigan Office of Administrative Hearings and Rules (MOAHR). A hearing was noticed for July 26, 2021.

At the initial hearing the ALJ found that the leaving-to-accept (LTA) provision, Section 29(5), of the Act applied to the claimant's matter. As such, the ALJ adjourned the matter and reissued the notice of hearing and added Section 29(5) to the notice. Further, the ALJ noticed the claimant's LTA employer as to the continued hearing.

The second hearing occurred on August 25, 2021. While the involved employer appeared, the LTA employer did not. On August 26, 2021 the ALJ issued a decision finding the claimant not disqualified under Section 29(1)(a) of the Act. Further the ALJ found that Section 29(5) applied to the claimant's matter. The Agency requested a reopening of the ALJ's August 26, 2021 decision

and on December 9, 2021 the ALJ found no good cause for reopening, in effect affirmed his prior decision. The Agency filed a timely appeal to this Commission, and it is this decision that is now before the Commission.

After reviewing the record, we find that the ALJ's December 9, 2021 and August 26, 2021 decisions must be set aside and this matter be remanded to the Agency to issue an adjudication on the Section 29(5) matter raised the initial July 26, 2021 hearing. Our reasons are as follows.

Section 29(5) states:

(5) Subject to subsection (11), if an individual leaves work to accept permanent full-time work with another employer or to accept a referral to another employer from the individual's union hiring hall and performs services for that employer, or if an individual leaves work to accept a recall from a former employer, all of the following apply:

(a) Subsection (1) does not apply.

(b) Wages earned with the employer whom the individual last left, including wages previously transferred under this subsection to the last employer, for the purpose of computing and charging benefits, are wages earned from the employer with whom the individual accepted work or recall, and benefits paid based upon those wages must be charged to that employer.

(c) When issuing a determination covering the period of employment with a new or former employer described in this subsection, the unemployment agency shall advise the chargeable employer of the name and address of the other employer, the period covered by the employment, and the extent of the benefits that may be charged to the account of the chargeable employer.
[Emphasis added]

Based on the plain language of the statute the Agency must be allowed to adjudicate issues relating to 29(5) before it is heard before the ALJ. Specifically, Section 29(5)(c) requires that the LTA employer receive specific notice from the Agency, which is not cured by the ALJ's reissuance of the Notice of Hearing. As such, we find the ALJ's August 26, 2021 and December 9, 2021 decisions must be set aside, and the matter be sent directly back to the Agency.

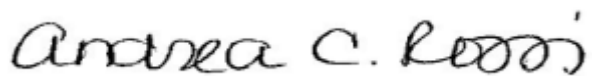
Therefore,

IT IS ORDERED that the ALJ's August 26, 2021 decision is SET ASIDE.

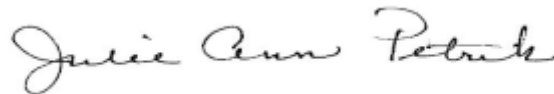
IT IS FURTHER ORDERED that the ALJ's December 9, 2021 decision is SET ASIDE.

IT IS FURTHER ORDERED that this matter is remanded to the Agency to issue an adjudication pursuant to Section 29(5).

The Commission retains no jurisdiction in this matter.



Andrea C. Rossi, Commissioner



Julie A. Petrik, Chairperson



Lester A. Owczarski, Commissioner

DATED AND MAILED AT
LANSING, MICHIGAN, ON

May 27, 2022