

STATE OF MICHIGAN  
UNEMPLOYMENT INSURANCE APPEALS COMMISSION

In the Matter of

██████████,

Appeal Docket No.: ██████████263576W

Claimant,

Agency Case No.: ██████████

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Employer.

DECISION OF UNEMPLOYMENT INSURANCE APPEALS COMMISSION

This case is before the Unemployment Insurance Appeals Commission (Commission) pursuant to the claimant's timely appeal from a March 14, 2021,<sup>1</sup> decision by an Administrative Law Judge (ALJ). The ALJ's decision affirmed a January 5, 2021 Unemployment Insurance Agency (Agency) redetermination and found the claimant disqualified for benefits under the illegal drug provision of the Michigan Employment Security Act (MES Act), Section 29(1)(m) and under the misconduct provision of the MES Act, Section 29(1)(b).

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

The claimant began working for the employer on January 6, 2020 until his date of termination on July 30, 2020. The relevant issues began on July 13 when the claimant called into work indicating he did not feel well. The claimant was advised to get a Covid-19 test and a drug screen was conducted at the same time. When the claimant returned to work on July 20, 2020 he was called into a meeting with human resources. The employer's former HR generalist testified that the claimant was sweaty, slurring his words, and unable to sit up on his own at this meeting so the employer sent him to Lansing Urgent Care via Uber for a drug screen. The claimant testified that he had no recollection of this meeting but that it was possible he met with her and did not remember doing so. The employer received the drug screen results from Quest Diagnostics, a company that partners with Lansing Urgent Care, on July 30, 2020. The employer testified that the drug screen results came back positive and as a result, the employer terminated the claimant

At hearing, the ALJ admitted the drug screen results into evidence over the objection of the claimant's attorney. The Michigan Rules of Evidence, including the hearsay rule applicable in courts of law, govern proceedings for unemployment compensation benefits. *Miller v F.W.*

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<sup>1</sup> This date appears to be a clerical error as the second hearing took place on April 12, 2021. Claimant submitted his appeal to the UIAC on April 19, 2021. Based on the date of the last hearing, we find this appeal to be timely.

*Woolworth Co.*, 359 Mich 342; 102 NW2d 728 (1960). In the instant case, the employer did not provide a witness from Quest Diagnostics to establish this as a business record. Accordingly, the employer's document can only be considered inadmissible hearsay and it was improper for the ALJ to rely upon it to find the claimant disqualified under Section 29(1)(m).

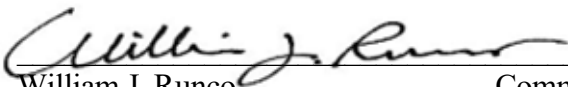
However, the record does substantiate that the claimant committed misconduct because he was found to be visibly intoxicated at work. The ALJ found that the claimant's impairment could cause serious injury to himself or others and is thus disqualified under 29(1)(b) of the MES Act. We agree with this assessment and partly affirm the decision on these grounds.

IT IS ORDERED that the ALJ's decision is hereby MODIFIED.

The claimant is **not disqualified** for benefits under the illegal drug provision of the Act, Section 29(1)(m).

The claimant is **disqualified** for benefits under the misconduct provision of the Act, Section 29(1)(b).

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

  
William J. Runco Commissioner

  
Lester A. Owczarski Commissioner

JULIE A. PETRIK, CHAIRPERSON, CONCURRING IN PART /DISSENTING IN PART:

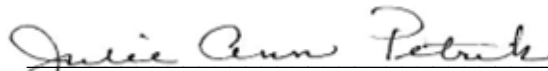
I agree with the panel majority that the purported drug test results are inadmissible hearsay and that the ALJ improperly admitted the employer's submission into evidence. I further agree with the majority that the claimant should not be disqualified under Section 29(1)(m).

However, write separately to express that I respectfully disagree with the majority's decision to affirm the ALJ's disqualification under Section 29(1)(b). My reasons are as follows.

The employer's witness testified that she witnessed the claimant slurring his words, sweating, and unable to sit up in his chair during their meeting. Notably, she did not state she smelled alcohol on his person nor did she connect his impairment with the use of a prohibited substance. Without that connection, a policy violation cannot be established. The claimant did not admit to using a prohibited substance and his symptoms could have been consistent with a medical

condition. While the claimant may have exercised poor judgment in coming to work impaired, a single instance of poor judgment does not rise to the level of misconduct under the MES Act.

Based on the foregoing, it is my opinion that the ALJ's decision should be reversed, and the claimant found not disqualified for benefits under the misconduct provision of the Act, Section 29(1)(b). As the Commission majority has chosen to do otherwise, I must respectfully dissent.



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Julie A. Petrik

Chairperson

MAILED AT LANSING, MICHIGAN July 29, 2021

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. August 30, 2021**

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### Arabic

مهم! نم. لهدئ اوف و / و لعتاي لوؤس جو كل اطلبنا تاضريوعت قوقح نع كدم تامول عم ىلع (قئائول) قئيتولا هذه ابروتحت ادم دنسمل اذه يف كراول تامول عمل اهدف ن.

(قئائول) قئيتولا يف تامول عمل اهدفو تمجرت يف كدعاسمل 1-866-500-0017 ىلع لصرتا، رمأل ازل اذ: روفلا ىلع اهتقيلت يتلا.

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