

UIAC Docket # 262736W



Docket No.: [REDACTED]  
Case No.: [REDACTED]  
Employer: [REDACTED]  
Claimant: [REDACTED]  
SSN: [REDACTED]



This is an important legal document. Please have someone translate the document.

هذه وثيقة قانونية مهمة. يرجى أن يكون هناك شخص ما يترجم المستند.

এটি একটি গুরুত্বপূর্ণ আইনি ডকুমেন্ট। দয়া করে কেউ দস্তাবেজ অনুবাদ করুন।

Este es un documento legal importante. Por favor, que alguien traduzca el documento.

这是一份重要的法律文件，请让别人翻译文件。

Ky është një dokument ligjor i rëndësishëm. Ju lutem, kini dikë ta përktheni dokumentin.

**ORDER**

The Agency's October 7, 2020 Adjudication is affirmed.

The claimant is disqualified from receiving benefits pursuant to Section 29(1)(m) of the Michigan Employment Security Act (Act).

The claimant is disqualified beginning the week ending March 14, 2020.

Decision Date: December 7, 2020

  
DENISE MCNULTY  
ADMINISTRATIVE LAW JUDGE



**PARTICIPANTS**

		11-18-20					
		Sworn		Sworn		Sworn	
Claimant	[REDACTED]	X	X				
Representative	Deborah Fragel	X					
Witness							
Witness							
Witness							
Witness							
Employer	[REDACTED]						
Representative	Janice Daniels	X					
Witness	[REDACTED]	X	X				
Witness	[REDACTED]	X	X				
Observer	[REDACTED]	X					
Witness							
Witness							
Witness							

**EXHIBITS**

NO	SUBMITTED BY			DOCUMENT DATED	FORM NO	DOCUMENT DESCRIPTION
	UIA	E	C			
1		X		01-01-20		Drug and Alcohol Testing Policy, 7 pages
2		X		11-22-19		Laboratory Report

[REDACTED]

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## JURISDICTION

On October 20, 2020, the claimant timely appealed an October 7, 2020 Unemployment Insurance Agency (Agency) Adjudication which held the claimant disqualified for benefits under Section 29(1)(m) of the Michigan Employment Security Act (Act). Requalification was also required under Section 29(3).

## ISSUE

Is the Claimant disqualified from receiving benefits under the illegal drug provision, Section 29(1)(m) of the Act?

## APPLICABLE LAW

Section 29 of the Act provides:

(1) Except as provided in subsection (5), an individual is disqualified from receiving benefits if he or she:

(m) Was discharged for illegally ingesting, injecting, inhaling, or possessing a controlled substance on the premises of the employer; refusing to submit to a drug test that was required to be administered in a nondiscriminatory manner; or testing positive on a drug test, if the test was administered in a nondiscriminatory manner. If the worker disputes the result of the testing, and if a generally accepted confirmatory test has not been administered on the same sample previously tested, then a generally accepted confirmatory test shall be administered on that sample. If the confirmatory test also indicates a positive result for the presence of a controlled substance, the worker who is discharged as a result of the test result will be disqualified under this subdivision. A report by a drug testing facility showing a positive result for the presence of a controlled substance is conclusive unless there is substantial evidence to the contrary. As used in this subdivision and subdivision (e):

(i) "Controlled substance" means that term as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

(ii) "Drug test" means a test designed to detect the illegal use of a controlled substance.

(iii) "Nondiscriminatory manner" means administered impartially and objectively in accordance with a collective bargaining agreement, rule, policy, a verbal or written notice, or a labor-management contract.

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When a claimant is discharged for testing positive for the presence of marijuana, and the claimant held a valid medical marijuana card from the State of Michigan at the time of discharge, the claimant is not disqualified from receiving benefits under Section 29(1)(m) of the Act. *Braska v Challenge Mfg Co*, 307 Mich App 340 (2014).

### **FINDINGS OF FACT**

The claimant began working for the employer on December 31, 2018. He worked full-time as a stacker operator. On November 6, 2019, the claimant fell from the stacker and sustained serious injuries. He was hospitalized for at least one week due to the seriousness of his injuries. The claimant has no recollection of any hospital services on the day of the fall. The employer did not allege the claimant appeared to be under the influence of marijuana or any other substance at work on November 6, 2019.

Due to the work-related injury the claimant was tested for illegal drugs. The urine drug test indicated the claimant was positive for marijuana metabolites. The claimant did not request a retest of the sample because he was unaware of the test. He did not receive a copy of the test until days before the hearing.

The claimant remained off work for several months due to the injuries sustained in the fall from the stacker. On or about March 11, 2020 the claimant contacted the employer so he could return to work and he was advised he was discharged. The claimant was unaware the employer considered marijuana a schedule 1 controlled substance. He was aware the employer had a policy prohibiting the use of illegal substances.

The claimant admitted he used marijuana in November 2019. He denied using it on the day of the accident or for several days prior to the accident. There is no evidence that the claimant ingested, inhaled, or possessed marijuana at work.

The claimant did not have a medical marijuana card at the time of the accident.

### **REASONING AND CONCLUSIONS OF LAW**

Based on the record and the relevant law, it is found that the claimant was discharged. The employer had the burden of proof to demonstrate that drug testing was administered in a nondiscriminatory manner, and that the test results were positive for a controlled substance. The record shows that the employer conducted the testing in a nondiscriminatory manner. The claimant was sustained a serious work-related injury and was tested while at the hospital. The claimant was too injured to consent to the testing. The testing sample was collected at a hospital and on the day of the accident.

Under the Act, a report by a drug testing facility showing a positive result for the presence of a controlled substance is conclusive unless there is substantial evidence to

the contrary. The claimant did not challenge the test results because he was unaware of the test was done. The claimant admitted he used marijuana in November 2019 but indicated he had not used for at least a couple of days prior to the accident. The claimant is disqualified for benefits under the illegal drugs provision, Section 29(1)(m), of the Act.

The Agency Adjudication is affirmed.

**IMPORTANT: TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME**

This Order will become final unless an interested party takes ONE of the following actions: (1) files a written, signed, request for rehearing/reopening to the Administrative Law Judge, or by an office or agent office of the agency OR (2) files a written, signed, appeal to the Unemployment Insurance Appeals Commission at P.O. Box 30475, Lansing, MI 48909-7975 (Facsimile: 517-241-7326); OR (3) files a direct appeal, upon stipulation, to the Circuit Court on or before:

**January 6, 2021**

If you elect to file an appeal with the Unemployment Insurance Appeals Commission, your appeal should be filed within the deadline set forth in my decision/order. **Your appeal may be submitted to the Commission by US mail or fax. Additionally, you may file an appeal electronically by completing a fillable form on the Commission's website.** The website address is <https://www.michigan.gov/uiac> and that website includes instructions on how to file the appeal. Do not use your MiWAM account through the Unemployment Insurance Agency's online system to file an appeal to the Commission.

I, P. Moore, certify a copy of this order has been sent on the day it was signed, to each of the parties at their respective addresses on record.

(SEE ATTACHED SHEET)

## 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

أ. "هام! يحتوي هذا المستند (المستندات) على معلومات هامة عن حقوقك الخاصة بتعويضات البطالة، ومسئولياتك وأثر تخصصاتك، وأذلك فمن المهم جداً أن تفهم البيانات الواردة في هذا المستند.  
على الفور: إذا كنت بحاجة إلى مساعدة لتصل بالرقم 1-866-500-0017 للحصول على مساعدة في ترجمة وفهم المعلومات الواردة في المستند (المستندات) التي تلقيتها."

## Bengali

“গুরুত্বপূর্ণ! এই তথ্যপত্রে আপনার বেকার ভাতা অধিকার, দায়িত্ব এবং/অথবা সুবিধাগুলি সম্পর্কে গুরুত্বপূর্ণ সূচনা দেওয়া আছে। এটা গুরুত্বপূর্ণ যে, এই তথ্যপত্রে থাকা সূচনাগুলি আপনি ভালো করে বুঝে নেবেন।  
অবিলম্বে: আপনি যে তথ্যপত্র(গুলি) পেয়েছেন এতে থাকা সূচনাগুলি বুঝা এবং অনুবাদের ক্ষেত্রে সাহায্য পেতে প্রয়োজনানুসারে 1-866-500-0017 নম্বরে ফোন করুন।”

## Spanish

**¡IMPORTANTE!** Este documento(s) contiene información importante sobre sus derechos, obligaciones y/o beneficios de compensación por desempleo. Es muy importante que usted entienda la información contenida en este documento.

**INMEDIATAMENTE:** Si necesita asistencia para traducir y entender la información contenida en el documento(s) que recibió, llame al 1-866-500-0017.

## Mandarin

重要提示! 这份文件包含有关失业补偿的权利、责任和/或利益的重要信息。您需要理解本文件中的信息，这一点至关重要。立即: 如果需要, 请拨打1-866-500-0017, 可获得帮助, 以利您翻译和理解所收到的文件中的信息。

## Albanian

1. “E RËNDËSISHME! Ky dokument (dokumente) përmban informacion të rëndësishëm mbi të drejtat, përgjegjësitë dhe/ose përfitimet tuaja nga kompensimi i papunësisë. Është shumë e rëndësishme që ta kuptoni informacionin në këtë dokument.
2. **MENJËHERË:**Nëse është e nevojshme, telefononi në numrin 1-866-500-0017 për t'ju ndihmuar me përkthimin dhe kuptimin e informacionit të dokumentin (dokumenteve) që keni marrë.”

## REQUEST FOR REHEARING OR REOPENING BEFORE AN ADMINISTRATIVE LAW JUDGE

When the appeal to the Administrative Law Judge (ALJ) has been dismissed for lack of prosecution or a party is in possession of newly discovered material information not available when the case was heard by the ALJ, the party may request rehearing in writing before the ALJ instead of appealing to the Unemployment Insurance Appeals Commission (Commission). A request for rehearing must be signed by the requesting party or their agent, and RECEIVED by the Michigan Office of Administrative Hearings and Rules (MOAHR) at **3026 West Grand Boulevard, 2nd Floor Annex, Ste 2-700, Detroit, MI 48202** or by an office or agent office of the agency, within 30 calendar days after the date of this decision. The party requesting rehearing must also serve the request on the opposing party. A rehearing request received (as described above) more than 30 days after the decision is mailed, shall be treated as a request for reopening.

The ALJ may, for good cause, reopen and review this decision and issue a new decision or issue a denial of rehearing/reopening.

If a request for rehearing or reopening is not received by MOAHR, and an appeal to the Commission is not submitted, the hearing decision becomes final.

**If the Agency fails to comply with an ALJ decision or order more than 30 days, but within 1 year, after the date of mailing of the decision, you may request, in writing, that the ALJ reopen the matter. You must serve a copy of the request to reopen on the other party.**

## APPEAL TO THE UNEMPLOYMENT INSURANCE APPEALS COMMISSION

The Unemployment Insurance Appeals Commission (Commission) consists of up to seven members appointed by the governor and is not part of the Unemployment Insurance Agency (UIA).

An appeal to the Commission shall be in writing and signed by the party or his/her agent and RECEIVED directly by the COMMISSION within 30 days after the mailing of the ALJ's hearing decision or order denying rehearing or reopening. A timely appeal or request for rehearing/reopening may be made by personal service, postal delivery (**P.O. Box 30475, Lansing, MI 48909-7975**), facsimile transmission (**517.241.7326**), or other electronic means as prescribed by the Commission.

The timely appeal/request may also seek to present additional evidence in connection with the appeal or request an oral argument before the Commission. The Commission may consider written argument only if all parties are represented; by agreement of the parties; the Commission orders oral argument; or the Commission orders evidence be produced before it. For additional information, please review the Mich Admin Code, Rules 792.11416 through 792.11429 or visit <http://www.michigan.gov/lara/0,4601,7-154-35738--,00.html>.

An appeal cannot be requested by telephone, but information about the appeal process can be obtained by calling (800) 738-6372 or visiting [http://www.michigan.gov/documents/uia\\_UC1800\\_76144\\_7.pdf](http://www.michigan.gov/documents/uia_UC1800_76144_7.pdf).

## BY-PASS OF COMMISSION/DIRECT APPEAL TO THE CIRCUIT COURT

A party may by-pass appealing to the Commission and appeal a decision or final order of an ALJ directly to a circuit court in the county in which the Claimant resides or in the county in which the Claimant's place of employment is (or was) located, or if the Claimant is not a party to the case, the circuit court in the county in which the employer's principal place of business in this state is located, if the parties (Claimant and Employer), or their respective authorized agents/attorneys, sign a timely written stipulation agreeing to the direct appeal to the circuit court. **The stipulation must be mailed to the Michigan Office of Administrative Hearings and Rules, 3026 W. Grand Blvd, 2nd Floor Annex, Suite 2-700, Detroit, Michigan 48202.** Application for review to a circuit court must be made within 30 days after the mailing date decision or final order by any method permissible under the rules and practices of the circuit court.

The responsibility for properly and timely filing an appeal with the clerk of the circuit court rests with the party filing the appeal.