

UIAC Docket # 260176



Docket No.:

Case No.:

Employer:

Claimant:

SSN:

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 June 19, 2019 Adjudication is affirmed.

Claimant is not disqualified from receiving benefits pursuant to Section 29(1)(m) of the Michigan Employment Security Act (Act), and Claimant is not disqualified from receiving benefits pursuant to Section 29(1)(b) of the Act.

Claimant is entitled to benefits for each claimed week following the filing for benefits, if otherwise eligible and qualified.

Decision Date: September 26, 2019

  
LAURA GIBSON  
ADMINISTRATIVE LAW JUDGE

**PARTICIPANTS**

		09-25-19					
		Sworn		Sworn		Sworn	
Claimant	[REDACTED]	X	X				
Representative							
Witness							
Witness							
Witness							
Witness							
Employer	[REDACTED]						
Representative	Frank Shoemaker, Attorney	X					
Witness	[REDACTED]	X	X				
Witness	[REDACTED]	X	X				
Witness	[REDACTED]	X	X				
Witness							
Witness							
Witness							

**EXHIBITS**

NO	SUBMITTED BY			DOCUMENT DATED	FORM NO	DOCUMENT DESCRIPTION
	UIA	E	C			
1		X				Termination Notice
2		X		04/15/2019		Specimen Result Certificate
3		X		04/08/2019		Unusual Collection Form

[REDACTED]

---

---

## JURISDICTION

On July 17, 2019, Employer timely appealed a June 19, 2019 Unemployment Insurance Agency (Agency) Adjudication which held Claimant not disqualified for benefits under Section 29(1)(m) of the Michigan Employment Security Act (Act). The Notice of Hearing further advised the parties that Section 29(1)(b) of the Act was a potential issue for resolution.

## ISSUE

- (1) Is Claimant disqualified from receiving benefits under the illegal drug provision, Section 29(1)(m) of the Act?
- (2) Is Claimant disqualified because of a discharge or suspension for misconduct pursuant to Section 29(1)(b) 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,

19-014546

rule, policy, a verbal or written notice, or a labor-management contract.

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).

Section 29 of the Act further provides:

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

(b) Was suspended or discharged for misconduct connected with the individual's work or for intoxication while at work.

"Misconduct" is not defined in the statute but Courts have defined the term. In *Carter v Michigan Employment Security Commission*, 364 Mich 538 (1961), the Supreme Court adopted the definition of misconduct in *Boynton Cab Company v Neubeck*, 296 NW 636, 640 (Wis 1941) which states as follows:

The term 'misconduct'... is limited to conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not to be deemed 'misconduct' within the meaning of the statute. *Carter, supra*, at 541.

The Employer has the burden of demonstrating misconduct by a preponderance of the evidence. *Fresta v Miller*, 7 Mich App 58, 63-64 (1967).

### **FINDINGS OF FACT**

Claimant began working for Employer on February 12, 2016. At the time of separation, Claimant was working in a full-time facility services maintenance position. Claimant's last day of work for Employer was April 15, 2019. Claimant was fired that day for testing positive for marijuana on a drug screen.

---

---

Claimant was injured at work sometime around April 4, 2019. Claimant reported that injury to Employer on or around April 8, 2019. As part of Employer's procedures relating to when a work related injury occurs, Claimant was required to take a drug screen. Claimant took the drug screen on April 9, 2019, and the results returned positive for marijuana. Claimant denied ever using marijuana while working or coming to work while under the influence of marijuana.

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

Under Section 29(1)(m) of the Act, an individual who is discharged for testing positive for an illegal substance is disqualified for benefits. In this case, Claimant was discharged for testing positive for marijuana on a drug screen. However, pursuant to the recently adopted MCL 333.27954 and 333.27955, consumption of marijuana by an individual 21 years or older is not an unlawful act. There is no indication that Claimant is under 21 years old. Accordingly, Claimant did not possess an illegal controlled substance, and cannot be found disqualified for benefits under Section 29(1)(m) of the Act.

Given the legalization of marijuana, the more appropriate issue for resolution in this case is misconduct under Section 29(1)(b) of the Act. Under Section 29(1)(b) of the Act, Employer bears the burden of proving misconduct. In this case, that burden has not been met.

MCL 333.27954 indicates that the Michigan Regulation and Taxation of Marijuana Act does not prohibit an employer from disciplining or discharging an employee for violation of a workplace drug policy. However, as noted in *Grand Rapids Gravel Company v Appeal Board*, Case Number 46189, Kent County Circuit Court (1960), proof of misconduct must be specific and clear. While the right to discharge an employee rests with the employer, the mere fact that the employer does discharge an employee does not establish that the discharge was for misconduct.

Here, Claimant was discharged for testing positive for marijuana on a drug screen. There was no indication that Claimant used the marijuana on Employer's premises, or was under the influence of marijuana while at work. There was insufficient evidence presented that Claimant's use of marijuana that caused the positive drug screen was connected with his employment. While Employer had the prerogative to discharge Claimant for his positive drug screen, insufficient evidence was presented that Claimant's actions constituted job-related misconduct, as defined above in *Carter*. Accordingly, Claimant must be found not disqualified for benefits under Section 29(1)(b) of the Act.

Claimant is not disqualified for benefits under either Section 29(1)(m) or Section 29(1)(b) of the Act. The Agency's June 19, 2019 Redetermination 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:

**October 28, 2019**

I, T. Hoover, 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، ومسؤولياتك وأثر تخصصاتك، وأذلك فمن المهم جداً أن تفهم البيانات الواردة في هذا المستند.  
على الفور: إذا كنت بحاجة إلى مساعدة اتصل بالرقم 1-866-500-0017 للحصول على مساعدة في ترجمة وفهم المعلومات الواردة في المستند (المستندات) التي تلقيتها."

## Bengali

“ওরুদ্বপূর্ণ এই তথ্যপত্রে আপনার বেকার ভাতা অধিকার, দায়িত্ব এবং/অথবা সুবিধাগুলি সম্পর্কে ওরুদ্বপূর্ণ সূচনা দেওয়া আছে। এটা ওরুদ্বপূর্ণ যে, এই তথ্যপত্রে থাকা সূচনাগুলি আপনি ভালো করে বুঝে নেবেন।  
অবিলম্বেঃ 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，以帮助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 **3024 West Grand Boulevard, 7th Floor, Suite - 7-450, 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.

An appeal to the Commission shall be in writing and signed by the party or his/her agent and **must be RECEIVED** directly by the COMMISSION within 30 days after the mailing of the ALJ's hearing decision or order denying rehearing or reopening. Parties may obtain the Commission appeal form by going online and downloading the form located at: [http://www.michigan.gov/documents/lara/UI\\_Appeal\\_Form\\_602012\\_7.pdf](http://www.michigan.gov/documents/lara/UI_Appeal_Form_602012_7.pdf). A timely appeal 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 - 792.11429 or visit [http://dmbinternet.state.mi.us/DMB/ORRDocs/AdminCode/1742\\_2017-066LR\\_AdminCode.pdf](http://dmbinternet.state.mi.us/DMB/ORRDocs/AdminCode/1742_2017-066LR_AdminCode.pdf)

An appeal **cannot** be requested by telephone. More information about the appeal process to UIAC can be found on Page 21 of "A Guide to Unemployment Insurance Appeals Hearing", located at the following link: [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.

