

STATE OF MICHIGAN  
UNEMPLOYMENT INSURANCE APPEALS COMMISSION

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AUG 04 2021

UNEMPLOYMENT INSURANCE  
APPEALS COMMISSION

SM

[REDACTED]

Claimant,

v.

[REDACTED]

Employer,

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I, Deborah Ann Fragel, certify a copy of this Written Argument/Brief has been sent on the day it was signed, to each of the parties at their respective addresses on record.

Submitted by:

Deborah Ann Fragel



08/02/2021

Cc UIA

CC [REDACTED]

CC: UIAC

STATE OF MICHIGAN  
UNEMPLOYMENT INSURANCE APPEALS COMMISSION

[REDACTED]

Claimant,

v.

[REDACTED]

Employer,

---

Deborah Fragel

[REDACTED]

Claimant Advocate

Employer

420 Pine Land DR SE

[REDACTED]

Ada, Michigan 49301

[REDACTED]

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**CLAIMANT'S BRIEF**

**In the Matter**

**UIAC Docket #262736W**

**RE: Appeal Docket No: [REDACTED] 262736W**

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**STATEMENT OF FACT**

On November 6, 2019 the claimant (DOB 09/18/1970), fell several feet from a Stacker to the floor causing serious injury. The claimant was unconscious and rushed to the hospital in [REDACTED] Michigan and was quickly moved to a hospital in [REDACTED] Michigan for treatment of his serious injuries. The claimant was subsequently discharged by the employer on March 11, 2020 and filed for unemployment.

A hearing of the matter was scheduled and heard on November 18, 2020. The ALJ found the claimant disqualified for benefits under the provision of section 29(1)m of the MES Act.

The claimant testified in the hearing that he did not use marijuana on the day of the accident. He admitted that he used marijuana on January 3, 2019, and that was not at work.

The employer did not indicate the claimant appeared to be under the influence of marijuana or any other substance at work on November 6, 2019 at the time of the accident.

The claimant testified that he did not ingest, inhale, or possess marijuana at work, nor was he under the influence of marijuana at the time of the accident.

### QUESTION

**Whether claimant should be disqualified under the provisions of section 29(1)m of the Act.**

### ARGUMENT

The claimant argues that the test was not given in a non-discriminatory matter.

There is no evidence in this matter that the employer requested the drug test, and that the employer had a workplace policy for automatic testing for a workplace accident.

The employer did not indicate the claimant appeared to be under the influence of marijuana or any other substance at work on November 6, 2019, and this would indicate there was not reasonable suspicion for testing.

Under the provisions of section 29(1)m of the MES Act, to be able to use a drug test result

*"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: (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."*

The employer presented policies effective January 1, 2020, stating that they had a meeting with all employees regarding the change in the handbook regarding drug testing pursuant to Michigan's legalization of marijuana.

The claimant was injured on November 6, 2019 and never returned to work. Furthermore, the employer did not present the testing policies in place, prior to January 1, 2020 for the hearing matter.

Furthermore, there is no evidence on the record that the employer requested a drug test at the time of injury. Under the section "Remarks" on claimant's Exhibit A, it is listed "REASON FOR TEST: NOT PROVIDED".

The employer did not indicate the claimant appeared to be under the influence of marijuana or any other substance at work on November 6, 2019.

Under the provisions of section 29(1)m,...

“... 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 must be administered on that sample.”

The claimant testified on the record that he was not aware of the drug test, and only received it at the time the hearing was scheduled on November 18, 2020. He disputed the test result at that time, during the hearing. This was the first time he was aware of the tests and able to place his dispute.

The claimant also argues that the test result that is not accurate. A review of claimant's page 2 of Exhibit A has written in the remarks section "Fentanyl, Ketamine, (illegible) ... unable to sign". The claimant testified that he was in great pain and in and out of consciousness and remembers being given something for his pain in the transport vehicle ambulance, so it is reasonable that these drugs were administered to him. If these drugs were administered, why is the result on page 1 of Exhibit A showing a NEGATIVE for Amphetamines, Barbiturates, Benzodiazepines, Methadone, Methaqualone, Opiates, Phencyclidine, and Propoxyphene.

The claimant objected to the test results during the hearing based that they were not conclusive because there was *substantial evidence to the contrary, of the test results*.

It simply baffles one's mind that these other drugs were not showing in the test results (Exhibit A) as presented, when it is written on the document that the claimant was under the influence of these at the time the sample was taken, and therefore not able to sign.

The claimant stands by his testimony at the hearing and prays the commission will overturn the ALJ Decision in this matter.

Respectfully submitted,



8/2/2021

Deborah A. Fragel

Claimant Advocate

## Claimant's Exhibits

Exhibit A (2 pages) Lab test results/ Quest Diagnostics

exhibit A 142

FAX  
LABORATORY REPORT  
**Quest**  
Diagnostics



DONOR ID		DONOR NAME		SPECIMEN ID	
PAGE REQUESTION NO/ACCESSION NO.		COLLECTION DATE & TIME		LOG-ON DATE	REPORT DATE & TIME
1		11/02/01 10:30PM		11/02/01	11/22/01 11:56AM

REMARKS CLIENT SITE LOCATION  
REASON FOR TEST: NOT PROVIDED  
DONOR ID VERIFIED: EMPLOYER REPRESENTATIVE

REPORT STATUS	TEST	RESULTS		UNITS	REFERENCE RANGE	SITE CODE
		IN RANGE	OUT OF RANGE			
REPORT FOR:						
Seals Intact:	Yes	*** POSITIVE/ABNORMAL REPORT ***				
Tests Ordered:	35544N (SAP 10-100/300)					
Urine Substance Abuse Panel				Initial Test Level	MS Confirm Test Level	
AMPHETAMINES	Negative			1000 ng/mL	500 ng/mL	
BARBITURATES	Negative			300 ng/mL	200 ng/mL	
BENZODIAZEPINES	Negative			300 ng/mL	200 ng/mL	
COCAINE METABOLITES	Negative			300 ng/mL	150 ng/mL	
MARIJUANA METABOLITES	POSITIVE			100 ng/mL	15 ng/mL	
METHADONE	Negative			300 ng/mL	200 ng/mL	
METHAQUALONE	Negative			300 ng/mL	200 ng/mL	
OPiates	Negative			300 ng/mL	300 ng/mL	
PROPRYCLIDINE	Negative			25 ng/mL	25 ng/mL	
PROPOXYPHENE	Negative			300 ng/mL	200 ng/mL	
Urine Quantitative Results						
MARIJUANA METABOLITE	223 ng/mL					
CERTIFYING TECHNICIAN/SCIENTIST: [REDACTED]						
SPECIMEN RECEIVED AND PROCESSED IN THE LENEXA DHHS CERTIFIED LABORATORY.						
LAB	Quest Diagnostics-Lenexa 10101 Renner Blvd Lenexa KS 66219					
>> END OF REPORT <<						

exhibit A 292

410895:51 5532979 SPECIMEN ID NO.

STEP 1: COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE LAB ACCESSION NO.

A. Employer Name, Address, I.D. No. B. MRO Name, Address, Phone and Fax No.

C. Donor SSN or Employee I.D. No. D. Donor Name: Last First E. Donor ID Verified: F. Reason for Test: G. Drug Tests to be Performed:

H. Collection Site Name: Address: City, State and Zip: Collection Site Code: Collector Phone No.: Collector Fax No.:

STEP 2: COMPLETED BY COLLECTOR Lead specimen temperature within 4 minutes. Specimen Collection: Observed (Enter Remark)

EMARKS: Parkway, Kermarie, it was a... Miller gave pin mats unable to sign

STEP 3: Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s). Donor completes STEP 5. STEP 4: CHAIN OF CUSTODY - INITIATED BY COLLECTOR AND COMPLETED BY LABORATORY

Time of Collection: 2:30 AM Date: 11/16/19 SPECIMEN BOTTLE(S) RELEASED TO: Quest Diagnostics Courier

STEP 5: COMPLETED BY DONOR certify that I provided my specimen to the collector; that I have not adulterated it in any manner; each specimen bottle used was sealed with a tamper-evident seal in my presence; and that the information and numbers provided on this form and on the label affixed to each specimen bottle is correct.

Signature of Donor: (PRINT) Donor's Name (First, MI, Last): Date (Mo./Day/Yr.): 11/16/19

STEP 6: COMPLETED BY MEDICAL REVIEW OFFICER - PRIMARY SPECIMEN In accordance with applicable requirements, my determination/verification is:

NEGATIVE POSITIVE TEST CANCELLED REFUSAL TO TEST BECAUSE: ADULTERATED SUBSTITUTED

STEP 7: COMPLETED BY MEDICAL REVIEW OFFICER - SECONDARY SPECIMEN In accordance with applicable requirements, my determination/verification for the split specimen (if tested) is:

RECONFIRMED FAILED TO RECONFIRM - REASON Signature of Medical Review Officer: (PRINT) Medical Review Officer's Name (First, MI, Last): Date (Mo./Day/Yr.): 1/1