NOTICE OF RIGHTS OF APPEAL

Attached is a decision of the Unemployment Insurance Appeals Commission (Commission). This decision **WILL BECOME FINAL** unless further action is taken by you. It is important that you pay attention to all filing deadlines. The mailed date and the filing deadline can be found at the bottom of the last page of the Commission decision.

The Michigan Employment Security Act (The Act) provides three separate options for seeking relief from decisions or final orders of the Commission.

1. APPEALS TO CIRCUIT COURT

You may appeal a final order or decision of the Commission to Circuit Court within **30 days** after the mailed date of the decision.

An appeal of a final decision to Circuit Court can be filed in the county in which the claimant resides or the circuit court of the county in which the claimant's place of employment is or was located, or, if a claimant is not a party to the case, the circuit court of the county in which the employer's principal place of business in this state is located. Application for review shall be made within 30 days after mailing a copy of the order or decision by any method permissible under the rules and practices of the circuit courts of this state. **Circuit court claims of appeal are to be filed with the clerk of the appropriate circuit court.**

2. REHEARING

You may file for rehearing with the Commission within **30 days** after the mailed date of the decision. A party requesting a rehearing shall serve the request on all other parties at the time of filing with the Commission.

The Act provides that the Commission may, either upon application by an interested party for rehearing or on its own motion, proceed to rehear, affirm, modify, set aside, or reverse a prior decision on the basis of the evidence previously submitted or on the basis of additional evidence. An application for rehearing must be submitted within **30 days** of the mailed date by personal service, postal delivery, electronic delivery, or facsimile transmission to the contact information shown at the bottom of the page**.**

3. REOPENING

You may file for reopening with the Commission **after** the 30-day appeal period expires but within 1 year after the date of mailing.

The Act provides that the Commission may, for good cause, reopen and review a prior decision and issue a new decision **after** the 30-day appeal period has expired, but a review shall not be made unless the request is filed with the Commission, or review is initiated by the Commission with notice to the interested parties, within 1 year after the date of mailing of the prior decision. A request for reopening must be submitted by personal service, postal delivery, electronic delivery, or facsimile transmission to the contact information shown at the bottom of this page.

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY
UNEMPLOYMENT INSURANCE APPEALS COMMISSION
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STATE OF MICHIGAN
UNEMPLOYMENT INSURANCE APPEALS COMMISSION

In the Matter of

[redacted] Appeal Docket No.: [redacted]25-002839

Claimant, UIA Case No.: [redacted]

[redacted]

Employer.

DECISION OF UNEMPLOYMENT INSURANCE APPEALS COMMISSION

On July 1, 2025, the Unemployment Insurance Agency (Agency) issued a determination that held the claimant not disqualified for benefits under the controlled substance disqualification provision of the Michigan Employment Security Act (Act), being Section 29(1)(m). The employer filed a timely protest, and, on August 26, 2025, the Agency issued a redetermination that retracked its prior determination, finding the claimant now disqualified under the misconduct provision of the Act, being Section 29(1)(b). The claimant appealed, and the matter was set for hearing before an Administrative Law Judge (ALJ).

This case is now before the Unemployment Insurance Appeals Commission (Commission) pursuant to the claimant's timely appeal from a September 23, 2025 decision by an ALJ. The ALJ's decision affirmed the August 26, 2025 Agency redetermination, finding the claimant disqualified for benefits under the misconduct provision of the Act, being Section 29(1)(b).

The Commission received a request for the admission of additional evidence from the employer. However, the request was not submitted in accordance with Mich Admin Code, R 792.11421. As such, the additional evidence cannot be considered.

After reviewing the record, we find that the Agency's August 26, 2025 redetermination must be set aside and that the ALJ's September 23, 2025 decision must be reversed. As such, **this decision is in the claimant's favor.** Our reasons are as follows.

Under established law, before an issue may be transferred to an ALJ for a hearing, there must be a determination and redetermination adjudicating that issue. See *Dep't of Licensing & Regulatory Affairs/Unemployment Ins Agency v Lucente*, 508 Mich 209, 245; 973 NW2d 90 (2021), citing MCL 421.32a(1) and MCL 421.32a(3). In *Lucente*, *supra*, the issue turned on the Agency's utter failure to issue a determination on a fraud adjudication. *Id*. at 246 ("The MCAC correctly concluded that the Agency must issue a 'determination' before it issues a 'redetermination' and that the failure to do so is grounds for setting aside a determinationless 'redetermination.'"). In the instant matter, a disqualification determination (controlled substance) *was* issued, but it was not issued under the same generic misconduct disqualification provision on which the redetermination would later be prosecuted. Simply put, Section 29(1)(b) redetermination requires an antecedent Section 29(1)(b) determination, and Section 29(1)(m) determination will not suffice. As such, the redetermination is set aside as VOID. See *Lucente*, *supra* at 246.

Even under a misconduct analysis, however, we would find the claimant not disqualified. Our reasons are as follows.
Section 29(1)(b) of the Act 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.

The Act does not define misconduct, but the Michigan Supreme Court in *Carter v Employment Security Comm*, 364 Mich 538; 111 NW2d 817, 819 (1961), adopted the following definition of misconduct [from the Wisconsin Supreme Court]:

> '[T]he 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.'

Id. at 541, quoting *Boynton Cab Co v Neubeck*, 237 Wis 249; 296 NW 636, 640 (1941).

Furthermore, when the issue is misconduct, the employer bears the burden of proof. See *Bell v Employment Security Comm*, 359 Mich 649, 651; 103 NW2d 584 (1960). To meet that burden, the employer must introduce evidence that establishes by a preponderance that the claimant engaged in misconduct. *Id*.; see also generally *Miller v FW Woolworth Co*, 359 Mich 342, 344-345; 102 NW2d 728 (1960).

While employers may terminate a claimant for many reasons or for no reason at all, termination, in and of itself, does not disqualify a claimant from unemployment insurance benefits. The conduct that led to the termination must be deemed misconduct under the Act to disqualify a claimant from benefits.

The burden of proof in cases involving discharge for absenteeism ultimately lies with the claimant to provide a legitimate reason for the absences, but only once the employer "submits evidence of a number of absences which, if unsupported by sufficient reasons, are so excessive as to constitute misconduct" under the Act. *Veterans Thrift Stores, Inc v Krause*, 146 Mich App 366, 368; 379 NW2d 495 (1985). Furthermore, "absences resulting from events beyond the employee's control

or which are otherwise with good cause cannot be considered" misconduct. *Washington v Amway Grand Plaza*, 135 Mich App 652, 658; 354 NW2d 299 (1984), citing *Carter, supra*.

Applying these principles, the employer failed to meet its burden because it did not meet the threshold of providing sufficient, competent evidence of a number of absences excessive enough as to constitute misconduct. Also, it does not matter if the alleged twelve points accrued were not disputed by the claimant. The employer must, nevertheless, establish evidence of the circumstances that led to the accruing those twelve points. The mere accumulation of twelve points, whether in violation of a written attendance policy or not, does not automatically become misconduct under Section 29(1)(b) of the Act.

Next, we need to note a repeated pattern involving the application of the business records exception of the hearsay rule, being MRE 803(6). For starters, the ALJ impermissibly allowed an employer witness to read from the claimant's personnel file without ever invoking MRE 803(6). In addition, even if the ALJ had invoked or laid the foundation for said hearsay exception, this act requires that the record at issue *be* ultimately admitted into evidence; indeed, this is the sole reason for the exception's existence. See e.g., *People v Dingee*, ___ Mich App ___ ; ___ NW2d ___ (2025), slip op *2 ("Ordinarily, **for a record** to be admissible under this exception, the record must be authenticated by a custodian of the records."), citing *People v Fackelman*, 489 Mich 515, 536 n 15; 802 NW2d 552 (2011). However, no records were admitted into evidence in this matter.[1]

Lastly, the employer's exhibits attached to its protest of the determination were improperly admitted *sua sponte* by the ALJ (36:30). The claimant stated he had not received the proposed exhibits, and the employer offered no documentary proof of its transmittal. Thus, we strike these exhibits admitted on the record but, ultimately, not reflected in the ALJ's decision.[2]

On this record, we find that the employer failed to meet its burden of proof.

Therefore,

IT IS ORDERED that the ALJ's decision is REVERSED.

The claimant is not disqualified for benefits under the misconduct provision of the Act, being Section 29(1)(b).

The claimant may receive benefits if otherwise eligible and qualified.

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[1] Stated plainly, even if foundationally invoked, this hearsay exception is not satisfied by merely *reading* the contents of the documents/records into the record.

[2] We are cognizant of the well-established principle that "a court speaks through its written orders and judgments, not through its oral pronouncements." *In re Contempt of Henry*, 282 Mich App 656, 678; 765 NW2d 44 (2009) (citation omitted). However, we furnish this analysis, nonetheless, in case the omission from the decision was unintended.

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

George Wyatt III, Commissioner

Mikhail Albuseiri, Commissioner

William J. Runco, Commissioner

MAILED AT LANSING, MICHIGAN January 14, 2026

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. February 13, 2026

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

مهم! تحتوي|هذه الوثيقة (الوثائق) على معلومات مهمة عن حقوق تعويضات البطالة ومسؤولياتك و / أو فوائدك. من المهم أن تفهم المعلومات الواردة في هذه المستند.
على الفور: إذا لزم الأمر، اتصل على 1-866-500-0017 للمساعدة في ترجمة وفهم المعلومات في الوثيقة (الوثائق) التي تلقيتها.

Spanish

¡IMPORTANTE! Este (s) documento (s) contiene información importante sobre sus derechos, responsabilidades y / o beneficios de compensación por desempleo. Es fundamental que entienda la información de este documento.
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Mandarin

重要！本文件包含有关您的失业补偿权利，责任和/或利益的重要信息。 了解本文档中的信息至关重要。

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Albanian

E rëndësishme! Ky dokument përmban informacione të rëndësishme për të drejtat, përgjegjësitë dhe / ose përfitimet e papunësisë. Eshtë e rëndësishme të kuptojmë informacionin në këtë dokument.
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