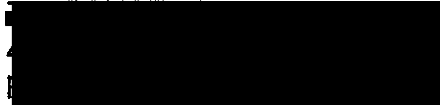


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

DECISION

IN THE MATTER OF THE CLAIM OF:



EMPLOYER INVOLVED:
POWERS DISTRIBUTING CO INC
3700 GIDDINGS ROAD
LAKE ORION, MI 48359-1306

ADMINISTRATIVE LAW JUDGE: J.R. WHEATLEY

S.S. NO. [REDACTED]

APPEAL NO. B2013-03309

JURISDICTION

On March 19, 2013, the Claimant timely appealed a February 19, 2013 Unemployment Insurance Agency (Agency) Adjudication which held the Claimant disqualified for benefits under Section 29(1)(b) of the Michigan Employment Security Act (Act). Requalification by rework was also required under Section 29(3).

APPEARANCES

A hearing was held in Southfield, Michigan, on April 15, 2013, at which appeared:

[REDACTED]	Claimant
Matthew Zeigler	Claimant's Attorney

ISSUE

Is the Claimant disqualified because of a discharge or suspension for misconduct pursuant to Section 29(1)(b) of the Act?

APPLICABLE LAW

MCL 421.29 provides in part:

- (1) 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. *Frøsta v Miller*, 7 Mich App 58, 63-64 (1967).

FINDINGS OF FACT

In a written communication of April 26, 2012, General Manager [REDACTED] placed the claimant on probation, during the pendency of a performance improvement plan, furnished to him on that date. One of the requirements was that the automobiles he used in connection with promotions be returned to the employer each at the end of last promotion that day. [REDACTED] discharged the claimant because he had retained a vehicle, during the weekend of September 22 and 23, 2012.

REASONING AND CONCLUSIONS OF LAW


The employer has not carried its burden. The undersigned finds equally credible the testimonies of the claimant and [REDACTED]; the claimant's he had secured permission to use the Dodge Charger and that of [REDACTED] he had not. Accordingly, the employer has not demonstrated misconduct by a preponderance of the evidence.

ORDER

The Agency's February 19, 2013 Adjudication is reversed.

The Claimant is not disqualified for benefits beginning the week ending October 27, 2012 under Section 29(1)(b) of the Act.

The Claimant is entitled to benefits.



J.R. WHEATLEY
ADMINISTRATIVE LAW JUDGE

Mailed at Southfield, MI April 16, 2013

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 (2) files a written, signed, appeal to the Michigan Compensation Appellate Commission, OR (3) files a direct appeal to the Circuit Court on or before:

May 16, 2013.

I hereby certify that I personally mailed envelopes, properly addressed to each of the parties at their respective addresses as listed on the face of this document. In each envelope a true copy of the Administrative Law Judge Decision or Order was enclosed.

K. Gunder

Name

April 16, 2013

Date Mailed

(SEE ATTACHED SHEET)

REQUEST FOR REHEARING OR REOPENING BEFORE AN ADMINISTRATIVE LAW JUDGE

Where the appeal to the Administrative Law Judge 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 Administrative Law Judge, it is more sensible for the dissatisfied party to request a rehearing before the Administrative Law Judge instead of appealing to the Michigan Compensation Appellate Commission (MCAC). A request for rehearing before the Administrative Law Judge must be **RECEIVED** by the **MICHIGAN ADMINISTRATIVE HEARING SYSTEM (MAHS), 25660 WEST EIGHT MILE ROAD, SOUTHFIELD, MI 48033**, or by any of the Agency's branch offices, within 30 calendar days after the date of this decision. (PLEASE INDICATE THE NAME OF THE ADMINISTRATIVE LAW JUDGE ISSUING THE DECISION.)

If no appeal to the Michigan Compensation Appellate Commission (MCAC) or request for rehearing is received within 30 calendar days after the date of this decision, the law provides that this decision may be reopened and reviewed by an Administrative Law Judge, only for "good cause", and only if such request for reopening is **RECEIVED** by the Division of Unemployment Appeals or by any of the Agency's branch offices within 1 year after the date of the mailing of this decision.

APPEAL TO THE MICHIGAN COMPENSATION APPELLATE COMMISSION (MCAC)

The Michigan Employment Security Michigan Compensation Appellate Commission (MCAC) consists of five members appointed by the governor. It is not part of the Unemployment Agency.

An appeal to be Michigan Compensation Appellate Commission (MCAC) can be filed by mail or in person. An appeal cannot be filed by telephone, but information about the appeal process can be obtained by calling (800) 738-6372.

To be filed on time, a written appeal to the Michigan Compensation Appellate Commission (MCAC) must be **RECEIVED** by the Michigan Compensation Appellate Commission (MCAC) at 611 West Ottawa, Box 30475, Lansing, MI 48909-7975 or at any branch office, or at any agent office of the Agency outside of Michigan, within 30 calendar days after the mailing date of the attached decision (as indicated on the last page of the decision).

BY-PASS OF BOARD/DIRECT APPEAL TO THE CIRCUIT COURT

Normally a party dissatisfied with an Administrative Law Judge decision or order can appeal to circuit court only after first appealing to the Michigan Compensation Appellate Commission (MCAC) and then appealing the resulting Board decision, if unfavorable, to the state circuit court.

But, according to Section 38 of the M.E.S. Act (M.C.L.A. 421.38), under limited circumstances a party may "bypass" the Michigan Compensation Appellate Commission (MCAC) and appeal directly to a circuit court. Section 38(2) provides that a by-pass will occur if a written stipulation agreed to by the claimant and employer (or their agents and attorneys) is filed within 30 calendar days of the mailing of the Administrative Law Judge decision or order.

The stipulation must be mailed to the Division of Unemployment Appeals, 3024 W. Grand Blvd, Ste 13-450, Detroit, Michigan 48202. It is suggested that a copy of the stipulation also accompany the appeal filed with the circuit court.

The appeal to circuit court must be filed with the clerk of the appropriate circuit court within 30 calendar days of the mailing of the Administrative Law Judge order or decision.

If a claimant is a party to the case, the appropriate circuit court is the circuit court of the county in which the claimant resides or of the county in which the claimant's place of employment is or was located.

If a claimant is not a party to the case, the appropriate circuit court is the circuit court of the county in which the employer's principle place of business in this state is located.

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