

STATE OF MICHIGAN
MICHIGAN COMPENSATION APPELLATE COMMISSION

In the Matter of the Claim of

BRIAN D. PROULX,

Appeal Docket No.: 14-006880-241108

Claimant

Social Security No.: [REDACTED]

HORIBA SUBSIDIARY INC,

Employer

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REMAND ORDER

This case is before the Michigan Compensation Appellate Commission (Commission) pursuant to a July 21, 2014 appeal by the Unemployment Insurance Agency (Agency) from a July 10, 2014 order by an Administrative Law Judge (ALJ). The claimant did not appear at the July 10, 2014 hearing scheduled in this matter. Consequently, the ALJ's order dismissed the claimant's appeal of a March 28, 2014 Agency redetermination (under case number 0-000-488-422) that found the claimant ineligible for benefits under Sections 27(c) and 48 of the Michigan Employment Security Act (Act) and subject to restitution under Section 62(a). The ALJ's order also referred another March 28, 2014 Agency redetermination (under case number 0-000-488-423) - regarding Sections 54(b) and 62 of the Act - to the Agency for reconsideration on the grounds that said redetermination contains no fact-finding. **Having reviewed the record, we find the ALJ's order must be modified and this matter remanded to the ALJ for additional proceedings.** Our reasons are as follows.

In its appeal to the Commission, the Agency asserts that "the ALJ lacked jurisdiction to take any action affecting the Redetermination as the appealing party failed to appear to prosecute the appeal." However, Section 33(1) of the Act provides, "[i]f the appellant fails to appear or prosecute the appeal, the administrative law judge may dismiss the proceedings or take other action considered advisable." As such, the ALJ had broad discretion to address the matter. We find no abuse of discretion in his referral to the Agency of the March 28, 2014 redetermination regarding Sections 54(b) and 62. **We agree that the Agency's redetermination is insufficient; it merely provides a conclusory statement with no fact-finding to support it. We affirm the ALJ's remand to the Agency. The Agency should reconsider the redetermination in case number 0-000-488-423 as the ALJ ordered.**

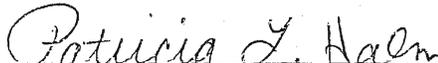
As to the ALJ's dismissal of the claimant's appeal in case number 0-000-488-422, we note that the notice of hearing in this matter did not comport with Michigan Administrative Code (MAC) Rule 421.1110(1). That rule requires as follows: "[a] hearing of employer or claimant fraud under section 54, 54a, 54b, 54c, or 62(b), (c), (d) of the act shall be preceded by a written notice of the penalties and issues involved." The notice of hearing in this matter stated, "SECTION

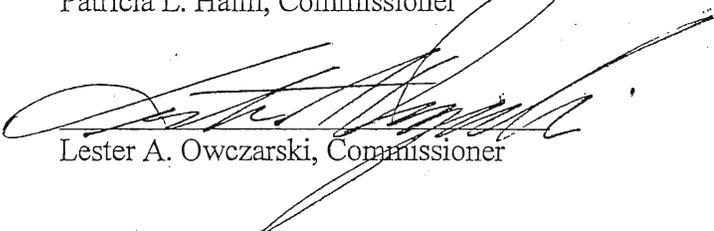
27(c) & 48 – WHETHER OR NOT CLAIMANT IS ELIGIBLE FOR BENEFITS UNDER THE REMUNERATION, EARNINGS OFFSET PROVISION. CLAIMANT MUST PAY RESTITUTION/DAMAGES TO AGENCY UNDER SECTION 54(b)-INTENTIONAL MISREPRESENTATION. SECTIONS THAT MAY APPLY ARE: 62(a), 62(b), 20(a).”

Since the notice of hearing was insufficient under MAC Rule 421.110(1), we set aside the ALJ’s dismissal of the claimant’s appeal of the March 28, 2014 redetermination involving case number 0-000-488-422. We remand this matter to the ALJ for a hearing on that issue. As the ALJ retained jurisdiction over case number 0-000-488-423, he may elect to wait for the reconsideration to be done in that case and hear the matters together.

IT IS THEREFORE ORDERED that for the reasons stated above the ALJ's order is modified. We set aside the ALJ’s dismissal of the claimant’s appeal of the March 28, 2014 redetermination involving case number 0-000-488-422 and that issue is remanded to the ALJ for a new hearing. The notice of hearing shall comport with MAC Rule 421.110(1).

The Commission retains no jurisdiction in this matter.

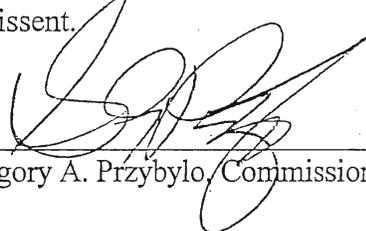

Patricia L. Halm, Commissioner


Lester A. Owczarski, Commissioner

GREGORY A. PRZYBYLO, COMMISSIONER, DISSENTING:

I disagree with the Commission majority. After reviewing the record, I find the ALJ’s findings of fact accurately reflect the evidence introduced during the hearing. The ALJ properly applied the law to those facts.

Based on the foregoing, I find the ALJ’s decision should be affirmed. As the Commission majority has chosen to do otherwise, I must respectfully dissent.


Gregory A. Przybylo, Commissioner

DATED AND MAILED
FROM LANSING, MICHIGAN

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