

STATE OF MICHIGAN  
MICHIGAN COMPENSATION APPELLATE COMMISSION

In the Matter of the Claim of

SHU LIU,

Appeal Docket No.: 14-032454-244075W

Claimant

Social Security No.: 030-13-2054

R & E AUTOMATED SYSTEMS LLC,

Employer

DECISION OF MICHIGAN COMPENSATION APPELLATE COMMISSION

This case is before the Michigan Compensation Appellate Commission pursuant to the claimant's May 20, 2015 appeal from an April 24, 2015 order denying reopening by an Administrative Law Judge (ALJ). The claimant requested reopening of the ALJ's March 12, 2015 amended decision. The ALJ issued the amended decision to correct the dates of ineligibility in her February 27, 2015 decision, which found good cause for reconsideration, reversed a November 18, 2014 Unemployment Insurance Agency (Agency) redetermination, affirmed (actually modified) a September 26, 2014 Agency determination, and found the claimant ineligible for benefits under the availability provision of the Michigan Employment Security Act (Act), Section 28(1)(c), from September 22, 2013 through September 28, 2013. The ALJ's amended decision indicated the claimant is ineligible beginning September 21, 2014 and continuing until she has a TN Visa.

The ALJ's amended decision does not mention that an Agency representative contacted the ALJ, apparently verbally, after the Agency received the ALJ's February 27, 2015 decision from the claimant and the Agency's staff noted that the dates of ineligibility did not match the Agency's September 26, 2014 determination. The Agency then faxed information to the ALJ to have the dates in the decision corrected to match the Agency's determination. The Agency should have filed a rehearing request pursuant to the administrative rules (including providing a copy of the rehearing request to the claimant) rather than engaging in *ex parte* communications in order to correct the dates in the ALJ's original decision. (In the alternative, the ALJ could have reheard the matter on her own motion for the purpose of correcting the dates of ineligibility.) We also note that the amended decision reflects that the ALJ signed it on March 12, 2015 and it was mailed on April 13, 2015 (which is apparently incorrect), and it does not include a deadline for appeal.

With regard to the order denying reopening, the claimant requested rehearing on April 10, 2015, which is less than 30 days after the apparent mailing date (March 12, 2015) of the ALJ's amended decision. The ALJ's order denying reopening repeatedly refers to the date of the original decision, rather than the date of the amended decision. The ALJ should have allowed rehearing, if only to correct the errors and omission in the signature and mailing dates in the amended decision. Because of the many issues with the ALJ's April 24, 2015 order, we find it should be set aside.

Further, after reviewing the entire record in this matter, we find the ALJ's amended decision must be modified. Because the claimant is the appealing party, we have reviewed only that part of the ALJ's decision that is adverse to the claimant. Thus, we leave undisturbed the portion of the ALJ's decision finding the claimant established good cause for reconsideration of the Agency's September 26, 2014 determination.

As to the underlying issue of the claimant's eligibility, the Agency's September 26, 2014 determination in this matter framed the issue as follows:

Your non-citizen documentation confirming you are lawfully present in the United States expired on September 17, 2014.

Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), you must provide confirmation you are legally present in the United States and authorized to perform work for an employer. You have not provided new documentation to establish you are lawfully permitted in the United States. You do not meet the availability requirements of the MES Act.

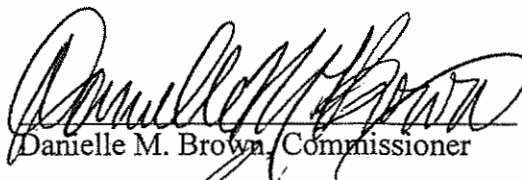
However, once the hearing began on February 10, 2015, the Agency representative admitted the determination was incorrect and the issue was actually that the claimant's *work* visa had expired. This is a completely different issue than that which is set forth in the determination. The Agency cannot set forth one explanation for ineligibility in a determination, then appear at a hearing on appeal of the determination and proceed on an alternate theory of ineligibility. A claimant cannot be expected to foresee and prepare for an issue other than that which the Agency set forth in its determination. This is contrary to basic due process.

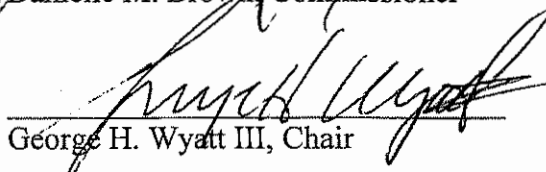
It is our opinion that the ALJ's amended decision must be modified. We leave undisturbed the portion of the ALJ's decision finding the claimant established good cause for reconsideration of the Agency's September 26, 2014 determination. We reverse the portion of the ALJ's decision that found the claimant ineligible for benefits under Section 28(1)(c) of the Act. The claimant is not ineligible under Section 28(1)(c).

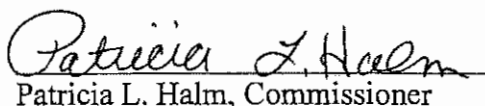
The ALJ's order denying reopening is actually an order denying rehearing and is SET ASIDE.

The ALJ's amended decision is MODIFIED.

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

  
Danielle M. Brown, Commissioner

  
George H. Wyatt III, Chair

  
Patricia L. Halm, Commissioner

MAILED AT LANSING, MICHIGAN

OCT 28 2015

This decision shall be final unless EITHER (1) the Michigan Compensation Appellate 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:

NOV 30 2015

**TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME.**

Attached is a decision of the Michigan Compensation Appellate 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. Your request must be received within 30 days after the mailed date by personal service, postal delivery or facsimile transmission to the contact information shown at the bottom of this page. 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 an underlying decision on the basis of the evidence previously submitted or on the basis of additional evidence.

## 3. REOPENING

You may file for reopening with the Commission after the 30-day appeal period expires but within 1 year after the mailed date of the underlying decision. A request for reopening must be received by personal service, postal delivery or facsimile transmission to the contact information shown at the bottom of this page.

The Act provides that the Commission may, for good cause, reopen and review the underlying 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 received by the Commission, or review is initiated by the Commission with notice to the interested parties, within 1 year after the mailed date of the underlying decision.

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