Petition for Redress of Grievances to the United States Senate

Particularly Regarding the November 21, 2025 Order on Case No. 25-1276 (arising from 1:23-cv-1248[1]) at the United States Court of Appeals for the Sixth Circuit re (Title short format):

JAMES EDWARD WHITE.

Plaintiff-Appellant

v.

U.S. SUPREME COURT, named as Supreme Court of the United States and employees c/o Chief Justice Roberta, et al.

Defendants-Appellees

And 1:23-cv-01180 at United States District Court for the Western District of Michigan, Southern Division:

JAMES EDWARD WHITE.

Plaintiff-Appellant

v.

Michigan, State of

Defendants-Appellees

The full Title of the first case above additionally includes "United States House of Representatives members and staff" (for which Elisa Slotkin, Jim Jordan, and

[1] See page 26 Exhibit A (PageID.1)

Kevin McCarthy were explicitly footnoted) and "The Executive Branch of the United States and employees." Given the centuries old rule brought into the U.S. Constitution by at least Amendment IX (if not the word "Justice" itself[2]); *nemo judex in causa sua* is a fundamental Latin legal principle meaning "no one can be a judge in their own case."[3] Thus the present case cannot be appealed to either the U.S. Supreme Court or the U.S. House of Representatives leaving the U.S. Senate as the available and appropriate trier.

INTRODUCTION

The cases combined in this petition were commenced at the lowest levels possible, a union member's grievance, a small claims court complaint (moved by Michigan to its Court of Claims), and a Michigan Circuit Court. Unfortunately none of the available tribunals/courts actually made the effort to look at and apply the law or the Constitution. They simply ignored both as will be clearly shown.

In particular the U.S. Supreme Court ignored the very federal/state structure established by at least U.S. Const. Art. III, § 2, Cl. 2 "and those in which a State ***shall*** be Party, the supreme Court ***shall have original Jurisdiction***" which clearly precludes the Supreme Court having denial certiorari "discretion" when a State is a party. The U.S. Supreme Court ignored its responsibility to be an Art. VI, Cl.2 "supreme Law of the Land" check on State (Michigan) U.S. Constitution

[2] The seventeenth word in the U.S. Constitution.

[3] Covered clearly in at least 22-387 Petition for Rehearing, at least pages 12-14, PDF 17-19 (see https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/22-387.html Hereinafter 22-387 Rehear)

violations. And as far as is known, neither the House of Representatives nor the Executive branch took any steps to correct SCOTUS and "guarantee" that the State of Michigan be restored to an Art. IV, § 4 "Republican Form of Government." At a minimum in a Republican Form of Government "the People" elect legislators to make the laws which the Executive enforces with the aid of the Judiciary. As will be clearly shown Michigan has a clear law which neither its Executive branch nor its Judiciary are enforcing against State of Michigan actors. The U.S. Const. Amend. V and/or XIV "due process" requirements were not done in Petitioner's cases at either the State or Federal levels.

FUNDAMENTALS OF JUSTICE

Petitioner provides the following quotes from honorable people, the law, the Constitution, and cases in the firm belief that they are valid constructs essential to Justice (presented in a reasonable order for consideration). Apologies in advance, if it all reads as simple and obvious as Petitioner thinks it is — still, it was not followed by either the State of Michigan or the United States!

> ***It is as much the duty of government to render prompt justice against itself***, in favor of citizens, as it is to administer the same between private individuals. (Abraham Lincoln, Annual Message to Congress, December 3, 1861[4])

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[4] In regard to the federal court of claims and requesting that said court have final say except on questions of law for which appeals to the Supreme Court should be reserved. This Petitioner's initial monetary claims were not against the United States so the U.S. Court of Federal Claims does not apply but Law and Constitutional claims clearly still do and the duty suggested is as right as ever as embodied in Amendment I of the Constitution ("and to petition the Government for a redress of grievances.").

We think its [Supreme Court] decisions on ***Constitutional questions, when fully settled,*** should control … [b]ut when, as it is true we find it [a decision] wanting … it is not even disrespectful, to treat it as not having yet quite established a settled doctrine for the country[.] (Abraham Lincoln made in a speech at Springfield, Illinois June 26, 1857 discussing the US Supreme Court Dred Scott decision)[5]

U.S. Const., Amend I: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; ***or the right of the people*** peaceably to assemble, and ***to petition the Government for a redress of grievances***.

Constitution of the State of Michigan of 1963, Art. I, § 3: The people have the right peaceably to assemble, to consult for the common good, to instruct their representatives ***and to petition the government for redress of grievances.***

U.S. Const., Amend. V: *No person shall* be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; ***nor shall private property be taken for public use, without just compensation.***

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[5] The full quote from which the shortened quote is derived: ***We think its decisions on Constitutional questions, when fully settled, should control***, not only the particular cases decided, but the general policy of the country, subject to be disturbed only by amendments of the Constitution as provided in that instrument itself. More than this would be revolution. But we think the Dred Scott decision is erroneous. We know the court that made it, has often over-ruled its own decisions, and we shall do what we can to have it to over-rule this. We offer no resistance to it.

Judicial decisions are of greater or less authority as precedents, according to circumstances. That this should be so, accords both with common sense, and the customary understanding of the legal profession.

If this important decision had been made by the unanimous concurrence of the judges, and without any apparent partisan bias, and in accordance with legal public expectation, and with the steady practice of the departments throughout our history, and had been in no part, based on assumed historical facts which are not really true; or, if wanting in some of these, it had been before the court more than once, and had there been affirmed and re-affirmed through a course of years, it then might be, perhaps would be, factious, nay, even revolutionary, to not acquiesce in it as a precedent.

But when, as it is true we find it wanting in all these claims to the public confidence, it is not resistance, it is not factious, ***it is not even disrespectful, to treat it as not having yet quite established a settled doctrine for the country***…

U.S. Const., Amend. XIV, Cl.1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; ***nor shall any State deprive any person of*** life, liberty, or ***property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.***

Constitution of the State of Michigan of 1963, Art. I, § 3: ***No person shall*** be compelled in any criminal case to be a witness against himself, nor ***be deprived of*** life, liberty or ***property, without due process of law***. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed.

[I]t is absurd to construe the silence of this [the proposed Constitution], or of our own constitution [State of New York], relative to a great number of our rights, into a total extinction of them—silence and blank paper neither grant nor take away anything. (John Jay, Address to the People of N.Y. in 1787 during debate of the ratification of the Constitution, see 22-387 Rehear PDF 7 n.4)

U.S. Const., Amend. IX: ***The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.***

It [i.e., ***enacted, law] may lastly be notified by writing, printing, or the like***; ... (Sir William Blackstone, Esq., *Commentaries on the Laws of England* 1765 and subsequent editions. Hereinafter Blackstone. https://lonang.com/ V1, see 22-387 Rehear PDF 13)

The fairest and most rational method ***to interpret the will of the legislator, is by exploring*** his intentions at the time when the law was made, by signs the most natural and probable. And these signs are either ***the words***, the context, the subject-matter, the effects and consequence, or the spirit and reason of the law. ... (Blackstone V1, see 22-387 Rehear PDF 13)

> 1. ***Words are generally to be understood in their usual and most known signification***; not so much regarding the propriety of grammar, as their general and popular use. ... terms of art, or technical terms, must be taken according to the acceptation of the learned in each art, trade, and science. (Blackstone V1, see 22-387 Rehear PDF 13-14)
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> 2. ***If words happen to be still dubious***, we may establish their meaning from the context; with which it may be of singular use to compare a word, or a sentence, whenever they are ambiguous, equivocal, or intricate. Thus the proeme, or preamble, is often called in to help the construction of an act … (Blackstone V1, see 22-387 Rehear PDF 14)

3. ***As to the subject-matter, words are always to be understood as having a regard thereto***; for that is always supposed to be in the eye of the legislator, and all his expressions directed to that end. (Blackstone V1, see 22-387 Rehear PDF 14)

One part of a statute must be so construed by another, that the whole may (if possible) ***stand***: *ut res magis valeat, quiarn pereat* [the whole subject matter may rather operate than be annulled]. (Blackstone V1, see 22-387 Rehear PDF 14-15)

For it is a settled and invariable principle in the laws of England, that every right when withheld must have a remedy, and every injury its proper redress. (BlackstoneV2, see 22-387 Rehear PDF 15)

...little courts however communicated with others of a larger jurisdiction, and those with others of a still greater power; ascending gradually from the lowest to the ***supreme courts***, which were respectively ***constituted to correct the errors of the inferior ones***... (Blackstone V3, see 22-387 Rehear PDF 15)

…it is held that judges or justices cannot be challenged. For the law will not suppose a possibility of bias or favor in a judge, who is already sworn to administer impartial justice, and whose authority greatly depends upon that presumption and idea. And should the fact at any time prove flagrantly such, as the delicacy of the law will not presume beforehand, ***there is no doubt but that such misbehavior would draw down a heavy censure from those, to whom the judge is accountable for his conduct.*** (Blackstone V3, see 22-387 Rehear PDF 16)

In taking up this question, we bear an important caution in mind. ***"[I]t's a 'fundamental canon of statutory construction' that words generally should be 'interpreted as taking their ordinary ... meaning*** ... at the time Congress enacted the statute. "'*Wisconsin Central Ltd. v. United States*, 585 U.S... ___, 138 S.Ct. 2067, 2074, 201 L.Ed.2d 490 (2018)_(quoting *Perrin v. United States*, 444 U.S. 37, 42, 100 S.Ct. 311, 62 L.Ed.2d 199 (1979)). See also *Sandifer v. United States Steel Corp*., 571 U.S. 220, 227, 134 S.Ct. 870, 187 L.Ed.2d 729 (2014). After all, if judges could freely invest old statutory terms with new meanings, we would risk amending legislation outside the "single, finely wrought and exhaustively considered, procedure" the Constitution commands. *INS v. Chadha*, 462 U.S. 919, 951, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983). We would risk, too, upsetting, reliance interests in the settled meaning of a statute. Cf. 2B N. Singer & J. Singer, Sutherland on Statutes and Statutory Construction § 56A:3 (rev. 7th ed. 2012). *New Prime, Inc. v. Oliveira*, 139 S. Ct. 532 - **Supreme Court 2019** (see 22-387 Rehear PDF 17

The rules of statutory construction apply to both statutes and administrative rules. (*Appeals & Opinions Benchbook - Second Edition*,

Michigan Judicial Institute, 2023. Hereinafter Benchbook. 1.7.A. 22-387 Rehear PDF 25.)

All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning. (*Benchbook* 1.7.A. 22-387 Rehear PDF 25.)

When construing a statute, [a court's] primary obligation is to ascertain the legislative intent that may be reasonably inferred from the words expressed in the statute. (*Benchbook* 1.7.A. 22-387 Rehear PDF 26.)

Courts must "***construe a statute in light of the circumstances existing at the date of its enactment***, not in light of subsequent developments. . . . The words of a statute must be taken in the sense in which they were understood at the time when the statute was enacted." (*Benchbook* 1.7.A. 22-387 Rehear PDF 26.)

In discerning legislative intent, ***a court must give effect to every word, phrase, and clause in a statute***,... [and] consider both the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme. ***The statutory language must be read and understood in its grammatical context***, unless it is clear that something different was intended. ***If the language of a statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written***. A necessary corollary ... is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself. (*Benchbook* 1.7.A. 22-387 Rehear PDF 26-27.)

A provision of law is ambiguous only if it irreconcilably conflict[s] with another provision or when it is equally susceptible to more than a single meaning. … ***Courts must "avoid an interpretation that would render any part of the statute surplusage or nugatory."*** A court "may not rewrite the plain statutory language or substitute its own policy decisions for those decisions already made by the Legislature." (*Benchbook* 1.7.A. 22-387 Rehear PDF 27.)

Is it to be contended that where the law, in precise terms, directs the performance of an act in which an individual is interested, the law is incapable of securing obedience to its mandate? Is it on account of the character of the person against whom the complaint is made? Is it to be contended that the heads of departments are not amenable to the laws of their country?. . . It is not believed that any person whatever

> would attempt to maintain such a proposition [to deny remedy]. *Marbury v. Madison* 5 U.S. 137. 22-387 Rehear PDF 28-29.

Again, apologies for the length of that set of quotes regarding what is expected in the ordinary course of Justice. But let Petitioner add two more that Petitioner strongly believes are included in the guarantee of U.S. Const. Amend. IX:

> Correct arithmetic[6]. (James White, or any Jury)
> Valid Logic. (James White, or any Jury)

PRELIMINARY ANALYSIS

The United States Court of Appeals for the Sixth Circuit in its September 22, 2025 Order re case 25-1276 stated the following as its primary (and essentially only) rationale for denying Petitioner's (i.e., Plaintiff's) appeal:

> Jurisdiction over a suit against the United States and its agencies requires Congress to waive the government's sovereign immunity. *See FDIC v. Meyer*, 510 U.S. 471, 475 (1994); *Mynatt v. United States*, 45 F.4th 889, 894 (6th Cir. 2022). "Under long-settled law, Congress must use unmistakable language to abrogate sovereign immunity." *Fin. Oversight & Mgmt. Bd. for P.R. v. Centro de Periodismo Investigativo, Inc.*, 598 U.S. 339, 342 (2023).

The gotcha, of course, is whether or not either the statement above or the quote are, in fact, true. Petitioner presented two questions for which the Senate is now being asked to review and decide:

> Question 1. Did the authors of the Constitution intend the Government to be subject to "the People" and did the first Congress under the Constitution – and the People, via the Legislatures of their States – intend the Amendment I right "to petition the Government for a redress of grievances"

[6] Supported by Blackstone in his Introduction, Section 1, On The Study of The Law: … if he [the student in our laws] can reason with precision, and separate argument from fallacy, by the clear simple rules of unsophisticated logic; if he can fix his attention, and steadily pursue truth through any the most intricate deduction, by the use of mathematical demonstrations; … (Blackstone V1)

> text to mean that, in fact, the Government could be petitioned and/or taken to court for wrongs the Government and its members do to individuals?
>
> Question 2. And/or was it alternatively a "power … reserved … to the people" under Amendment X?

Petitioner asserts a strong "Yes"; the Federal Government can (and must) be sued (politely, "petitioned") if the power of "the People" is at all to be maintained. Petitioner's main rebuttal of the above quoted Sixth Circuit's rationale was/is[7]:

> The Court plays a long children's game of Telephone wherein instead of children whispering a (supposedly) received message to the next child, the Court (and its predecessor case decision passers) carry forward misunderstandings (or [deliberate?] misstatements) of the Constitution, law, and precedents with the net effect of ignoring the judges/Justices oaths to the Constitution and easing their own efforts to the detriment of "the People" (Preamble) to whom they are responsible.
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> Ignoring the multiple Telephone (game) citations in *FDIC v. Meyer*, 510 U.S. 471, 475 (1994) we can get directly to the (erroneously feared [and illegitimate?]) threat/crux:
>
> > If we were to recognize a direct action for damages against federal agencies, we would be creating a potentially enormous financial burden for the Federal Government. (at 486)
>
> Um…, why? If the "governors" (i.e., all Government employees and elected and appointed officials) are working according to law/Constitution and for "the People" (Preamble) where does this "financial burden" come from? It can only come from (rare) accident or abuse of power. The latter being exactly what the Colonists were used to from the King (of England) and the English Parliament and which they had also experienced at the hands of various colonial governors and why they wanted first a separate country and then a strong Constitutional Federal government sharing powers between central and State (formerly Colonial) governments.
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> FDIC goes on to say:
>
> > [B]ut decisions involving "federal fiscal policy" are not ours [the Supreme Court's] to make. *Ibid* [*Bivens v. Six Unknown Fed. Narcotics Agents*, 403 US 388 - Supreme Court 1971]. (quoting *United States v. Standard Oil Co. of Cal.*, 332 U. S. 301, 311 (1947)).

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[7] Excerpted from 1:23-cv-01248 Doc.14:8-10.

> We leave it to Congress to weigh the implications of such a significant expansion of Government liability.

We see here the compounding Telephone flaws. SCOTUS, in the *Standard Oil* case quoted, decided that Congress and not SCOTUS should be the government branch to change the rules ***if Congress wished*** *Standard Oil Co. of Cal.*, or ***anyone committing a tort that injured/cost the Government, to be liable*** for compensating the government (something Congress had NOT done for 158 years) – the Constitution contributed no guidance on the issue. I.e., the *Standard Oil* tort injured the USA, the opposite of the present case. But the Constitution absolutely covers the present case where the Government injured the Plaintiff (via ignoring its Constitutional duties) and Plaintiff has the right via Amendment I "to petition the Government [all branches] for a redress of grievances."

In short, "Telephone" (or rascality?) leaped a mere question of Government right to obtain costs/damages *when the Federal Government is injured* to a full Federal Government "sovereign immunity *doctrine*" as courted early in the existence of the United States but not glommed onto full force until around 100 years later. The Founders did not want "sovereign immunity" and, in fact, were well aware that it *did not exist in England* at the time the Constitution and the Bill of Rights became U.S. law. The King of England, Parliament, and all those acting for them were liable for torts as was clearly understood from at least the English *Entick v. Carrington,* 19 Howell's State Trials 1029 (1765) case and which was the basis for U.S. Const. Amend. IV as noted in *Boyd v. United States*, 116 US 616 - Supreme Court 1886.

With a little thought it is obvious that the "sovereign immunity" *doctrine*[8] of the U.S. Supreme Court eased the workload of the Justices – it did not "establish

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[8] Care should be taken anytime "doctrine" appears as a SCOTUS rationale, try, for example, to sort out the "major questions doctrine" and a definitive understanding of "major."

Justice.” For much more discussion of said “*doctrine*” (which itself, for Justice’s sake, foreshadowed the “Bivins doctrine” [cited above] and subsequent U.S. Supreme Court efforts to lay the blame on “Congress” by ***by-pronouncement*** demanding “Congress must use “unmistakable language”) see the prior filings in this case and the reference materials they cite and list. U.S. Const. Art. V spells out how the Constitution is to be amended. It is not by-pronouncement of the Supreme Court which pretends it has nullified “to petition the Government for a redress of grievances” (without mentioning it) via a supposed “sovereign immunity *doctrine*” as it has nullified U.S. Const. Amend. XIV, Cl. 3 “But Congress may by a vote of two-thirds of each House, remove such disability” by pronouncing "responsibility for enforcing Section 3 against federal officeholders and candidates *rests with Congress* and not the States"[9] (*my emphasis*) instead of simply referring Trump’s request to Congress where it Constitutionally and properly belonged. Via a 100% reverse of “[b]ut Congress may … .” SCOTUS grabbed that Congress power for themselves.

It is, in fact, Congress which the Founders, and generally subsequent amenders, made genuinely more-equal (AKA powerful) than the Executive or Judicial branches of the Federal Government (see at least):

> Article I, § 8, Cl. 14: *To make Rules for the Government* and Regulation of the land and naval Forces;
>
> Article I, § 8, Cl. 18: To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, *and all other Powers vested by this Constitution in the Government of the United States*, or in any Department or Officer thereof.

[9] *Trump v. Anderson*, 144 S. Ct. 662 - Supreme Court 2024 (23-719) The People of Colorado (and Maine, Illinois, etc.) obeyed U.S. Const. Amend. XIV, Cl. 3, then SCOTUS claimed to reinterpret it.

It is the Senate's duty, in cooperation with the House of Representatives, to get the country back to a Constitutional Republic. If that requires impeachments and removals, so be it. Any Justice ignoring the Constitution is not U.S. Const. Art. III, § 1 "good Behaviour" compliant and is therefore subject to impeachment and removal.

DUE PROCESS: FIRST UNDERSTAND THE LAW

Petitioner has previously quoted Blackstone, the Supreme Court, and a Michigan Benchbook that all make clear the obvious, the law must be read and understood in plain English (when not ambiguous). The State of Michigan, on October 9, 2017, while Petitioner was laid off, denied Petitioner a $362 Unemployment insurance claim[10] (law given right) in violation of Michigan law, specifically MCL 421.48(2)[11] and more specifically, its second sentence:

> ***However, payments for a vacation or holiday, or the right to which has irrevocably vested***, after 14 days following a vacation or holiday ***shall not be considered wages or remuneration*** within the meaning of this section.

While that portion of the law was repeatedly quoted by the State of Michigan (including its courts) they never explained how it could be ignored. My query to the Michigan UIA for a specific explanation was ignored.[12] The Administrative Law

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[10] See (in this document) page 27 Exhibit B (PageID.87 of PACER case 1:23-cv-01248)

[11] See page 32 (PageID.102) and 47 (22-387 Petition Appendix PDF 80-82) The parsing of the first sentence could be argued but no variant parsing overcomes the "However" of the second sentence.

[12] See page 28 Exhibit C (PageID.97)

Judge (ALJ)[13] that was appealed to ignored that "However…" sentence twice[14] with no explanation but rather stopping his reading at "All amounts paid to a claimant by an employing unit or former employing unit *for a vacation*" and ignoring the "as the result of the separation" that is a critical part of that first sentence of MCL 421.48(2). Except it was not a "vacation" Petitioner experienced it was a layoff that MSU provided false documentation for in the form of false vacation entries[15], and misrepresentation to the UIA[16]. The lone "Yes" response on page 57 was *not* based on either contract[17] or policy[18] and MSU provided no copy to support the "Yes." MSU's apparent intent was to escape $724 ($362 per week x 2) in unemployment insurance costs by using those falsehoods in conjunction with the layoff letter[19] which attempts a unilateral change to the contract[20] which is in violation of at least MCL 408.473[21], MCL 408.471[22], and MCL 421.31[23]. As already noted in Footnote 14

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[13] See pages 29-46 Exhibit D (PageID.99-113 Note: somehow 2 pages were apparently lost in scanning.) In this Petition the lost pages are at 46 and 49

[14] See Pages 50-54 Exhibit H and Exhibit I (PageID.152-154 and PageID.156-157)

[15] See page 48 Exhibit F (PageID.84) The CHOREYSH entries.

[16] See pages 55-57 Exhibit J (PageID.148-150) In examining this MSU submission to the ALJ Petitioner could not reproduce the $2,356.53 (p. 55) which led to Plaintiff more closely examining the $2,604.26 in the 09/30/2017 Pay Statement (p. 49) which Plaintiff could not reproduce either thus leading to another suit discussed in the Arithmetic (p. 18) section of this Petition.

[17] See page 38, particularly -157 through -159 (PageID.107)

[18] See pages 40-43 particularly Definitions for Layoff and Termination on page 40 (PageID.109). (PageID.109-112)

[19] See page 45 (PageID.113)

[20] See page 39, particularly -171 (PageID.108)

[21] See page 80 (PageID.76)

[22] See page 80 (PageID.76)

[23] See page 81 (PageID.77)

an appeal to the ALJ[24] was also denied without the ALJ showing any indication that he had read the "as the result of the separation" or the "However" sentence.

Petitioner timely appealed[25] to the Michigan Compensation Appeal Commission (MCAC) which had available to it all the material previously provided to the ALJ and the MCAC denied the appeal without any discussion of the law, particularly not the "However" sentence.[26] Unrequested by Petitioner an APA union attorney then requested a rehearing[27] without citing or discussing anything, only notifying Petitioner but without providing Petitioner a copy until nearly a year later in spite of requests. The MCAC denied without citing any law.[28] But note the difference between the "final" paragraphs of the first and second denials. After very careful examination of the MCL 421.34, particularly the "Unless" ending sentence of (7)[29], and its related rule R. 792.11432[30] it was clear to Petitioner that, in violation of the law and the relevant rules, the MCAC was attempting to persuade Plaintiff the MCAC decision was "final" when, in fact, only parties (employee or employer) can make a MCAC decision final by neither appealing it to the MCAC or a circuit court as both the law and rules provide. The second MCAC denial "final" paragraph absolutely violated the three-option notice required by R. 792.11432. Understanding what the law and rules clearly stated, Petitioner again timely appealed for

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[24] See page 53 Exhibit I (PageID.156)
[25] See page 58 (PageID.160)
[26] See pages 59-60 Exhibit L (PageID.162-163)
[27] See page 61 Exhibit M (PageID.165)
[28] See page 62 Exhibit N (PageID.167)
[29] See pages 81-82 (PageID.77-78)
[30] See pages 89-90 (PageID.215-216)

Rehearing or Reopening to the MCAC.[31] Petitioner got no response (other than fax OKs) from MCAC to either that request or a follow-up status query ten months later so Petitioner filed a Superintending Control Complaint[32] with the 30th Circuit Court of Michigan. While Superintending Control was illogically a dismissal[33] its filing did result in kicking loose a response[34] from the Unemployment Insurance Appeals Commission (UIAC) which replaced the MCAC. Please note the UIAC tries to force "final" without themselves being bothered again by omitting two R. 792.11432 options, and they only address "reopening" apparently since that can be denied on "no good cause" grounds, and they provide the "Notice of Request for Reopening" that (along with a "Notice of Request for Rehearing") should have been provided on March 6 or 7, 2019[35]. This ended Petitioner's efforts with regard to the Administrative side of the Layoff Unemployment Insurance issues. The Court side follows but without all the piece-by-piece documentation.

The Michigan 30th Circuit Court dismissal[36] of the case ignores the "However" sentence of MCL 421.48(2), the "Unless" sentence of MCL 421.34(7) and R. 792.11432 derived therefrom, Petitioner's "rehearing" request, and MSU's fraudulent documentation thus never addressing whether the ALJ and the

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[31] See pages 63-65 Exhibit O (PageID.169-171)

[32] See page 66 Exhibit P (PageID.177) When the Court denied Superintending Control and Costs for it in spite of the Complaint causing the MCAC to finally respond that set in motion another suit discussed in the Superintending Control (p. 17) section of this Petition.

[33] See page 78 Exhibit U (PageID.366)

[34] See pages 67-69 Exhibit Q (PageID.179, 181-182)

[35] See "Received" date on page 63 (PageID.169)

[36] See pages 71-75 Exhibit S (PageID.218-222)

MCAC/UIAC were deciding MCL 421.38 “contrary to law” and jumps straight to “good cause” of the UIAC “reopen” denial. Then she accurately quotes a “good cause”:

> R. 421.270(g)[37] If an interested party has been misled by incorrect information from the agency, the office of appeals, or the board of review

Well, then aside from the matter of law, if R. 792.11432 accessed from the Michigan Labor and Economic Opportunity website (where UIAC info resides) clearly states three available appeal routes, not just the UIAC order proffered “circuit court” one, then “(g)” clearly is “good cause.” And besides, “good cause” is irrelevant to “rehearing” which the 30th Circuit Court did not address (apparently since the UIAC had also ignored it). A request to the 30th Circuit Court for reconsideration elicited a copy of a denial[38] from the Superintending Control case discussed under the next heading but with its AS case number crossed out and the AE case number handwritten in. The denial content isn’t even for the correct case. In further appeals up through the Michigan Court of Appeals, the Michigan Supreme Court, and even the U.S. Supreme Court the courts never once addressed due process understanding the law, specifically the “However” sentence of MCL 421.48(2) and the “Unless” sentence of MCL 421.34(7).

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[37] See page 75, 89 (PageID.222, 215)
[38] See pages 76-77 (PageID.234-235)

SUPERINTENDING CONTROL

As noted in footnote 32 and the preceding section of this Petition the MCAC/UIAC failed (apparently intentionally) to respond to Petitioner's second appeal for rehearing/reopening[39] so Petitioner filed a Superintending Control Complaint[40] in the 30th Michigan Circuit Court. The Complaint was illogically dismissed[41] by the 30th Circuit Court noting an existing appeal in the related arithmetic case (discussed in the next heading: Arithmetic) against MSU that in no way could be construed as an appeal of the UIA/UIAC denial of unemployment benefits. Plaintiff filed a Motion to Correct or Reverse the illogical dismissal which the Court treated as a Reconsideration and denied[42] on the illogical grounds that Petitioner had filed the appeal that was only allowed by law and rule *after* the Superintending Control Complaint *caused the UIAC to provide a response* that *Petitioner made final by appealing to the 30th Circuit Court* per MCL 421.34(7) "Unless" and MCL 421.38(1). I.e., invalid circular logic. The Complaint was *not* moot on the date it was filed and the fact the UIAC responded to the Complaint could not retroactively cause it to become moot on that date. The 30th Circuit Court then completely ignored Petitioner's request for Costs[43]. In responses to subsequent appeals to the Michigan Court of Appeals, the Michigan Supreme Court, and the

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[39] See pages 63-65 Exhibit O (PageID.169-171)

[40] See page 66 Exhibit P (PageID.177)

[41] See page 78 Exhibit U (PageID.366)

[42] See pages 76-77 Exhibit T (PageID.234-235 reading the crossed out 20-191-AS rather than the written in 20-301-AE) (Should have been part of PageID.404-405 but apparently the clerk scanning the pages or the scanner missed the first page of the Reconsideration Denial)

[43] See page 70 Exhibit R (PageID.376)

U.S. Supreme Court the Courts used simple unreasoned denials and never once addressed the illogic of denying the fact that the Superintending Control Complaint succeeded (prevailed) in getting a UIAC response. If State of Michigan employees with UIAC responsibilities can ignore citizens when legitimately asked to perform, then only perform via Superintending Control inducement that's arbitrary POWER.

ARITHMETIC

As noted in footnote 16 and the preceding section of this Petition MSU had at least two arithmetic errors which they have not been able to explain or correct. The $2,356.53[44] of documentation sent to Petitioner and ALJ has not been explained but its specifics were part of the stated reason for denying Petitioner's unemployment benefit for the week of September 30, 2017.[45] The $2,604.26 of the 09/30/2017 Pay Statement[46] does not match and neither can be computed on the basis of Petitioner's hourly pay rate of $29.35 for a 2080-hour work year. Using the formula $29.35 x 102 vacation hours deducted[47] yields $2,993.70 due which is a discrepancy of $389.44 from the paid $2,604.26. In part the arithmetic error stems from the fact that only 94 hours of faked vacation entries were made by CHOREYSH[48] but even that number cannot be successfully used to get either the $2,356.53 or $2,604.26.

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[44] See page 55 (PageID.148)

[45] See page 27 Exhibit B (PageID.87)

[46] See page 46 or 49 (The PageID.?? was apparently lost in court scanning but the page 46 ER#2 shows it was introduced as evidence at the ALJ hearing.)

[47] See page 49

[48] See page 48 (PageID.84)

While MSU claimed[49] to partially fix the error, it did not. Federal law 29 U.S.C. § 159[50], Michigan law MCL 423.211[51], and Petitioner's APA union contract Article 10 -58[52] all permit any "individual" to grieve "not inconsistent" issues as Petitioner did for the arithmetic error. But MSU and the Michigan Courts insisted Plaintiff's email noting the error somehow (unexplained) was not sufficient and further that MSU's foot dragging in moving the case from Small Claims to the Michigan Court of Claims somehow removed Petitioner's right to a claim.[53] Michigan Court Rule 2.227 clearly states "(E) Procedure After Transfer. (1) The action proceeds in the receiving court to [sic] as if it had been originally filed there."

No higher court made any apparent attempt at checking the arithmetic or understanding "individual" instead choosing simple denials without substance.

FURTHER ANALYSIS

Who was injured? In these cases Petitioner believes the answer is obvious: Petitioner; denied $362 unemployment benefit (MSU aimed for $724), denied $389.44 in vacation time or payment for it; and denied $177.75 in Costs for the Superintending Control Complaint. Was either Michigan or the United States injured? No; not unless you count their self-inflicted defense of the Michigan errors and legal right failings regarding Petitioner. Was the United States Supreme Court

[49] See page 79 (1:23-cv-01180 PageID.112)
[50] See page 87 (PageID.74)
[51] See page 83 (PageID.79-80)
[52] See page 88 Article 10 -58 (PageID.85)
[53] See pages 91-94 Exhibit AA (1:23-cv-01180 PageID.164-167)

injured? Only in the sense Petitioner's respect for them declined to near 0. How about the U.S. House of Representatives and the U.S. Executive Branch? Again, only injured in the sense that their reputation for high integrity support of "the People" declined precipitously. And if such egregious "errors" can happen with a nobody like Petitioner that means they can happen to anyone — and likely do thousands of times a year across the USA. Petitioner shudders to think of the 7,000 SCOTUS cases ignored annually.

Why is this problem (courts ignoring the law, Constitution, etc. when injured parties are seeking "Justice") occurring? The short answer is that the courts, from the U.S. Supreme Court on down, have persistently taken more and more power into their own hands and willfully blocked "the People" from their appropriate say. Observe that Petitioner demanded a jury trial[54] per U.S. Const. Amend. VII:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

No jury has been convened in any of Plaintiff's cases and particularly not in the cases referred to in the beginning of this Petition, 1180 and 1248, where it was explicitly demanded. Why civil juries are important was spelled out in Federalist No. 83[55] — they can (and would) reduce likelihood of the corruption of judges whether that be by influence, remuneration, or simple exercise (or abuse) of POWER. Much more can be found in the whole of 1248 Document 9. How does it

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[54] See page 26 Exhibit A (PageID.1)

[55] See page 95 Exhibit BB (1:23-cv-01248 Doc. 9:46-47)

happen that a Constitutional right to a demand for a jury can be ignored? The simple creation of a court "rule" which can then be cited in a motion as in Federal Rule of Civil Procedure 12:

> (b) HOW TO PRESENT DEFENSES. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:
>
> (1) lack of subject-matter jurisdiction;
> (2) lack of personal jurisdiction;
> (3) improper venue;
> (4) insufficient process;
> (5) insufficient service of process;
> (6) failure to state a claim upon which relief can be granted; and
> (7) failure to join a party under Rule 19.

Petitioner believes (1) and (6) are likely the most popular as they were cited against Petitioner with references to cases (AKA precedent) rather than Constitution or law itself. When precedent is cited all that is required is that a snippet of text from the cited case state what the defendant wants the court to believe is LAW. E.g., "Congress must use unmistakable language to abrogate sovereign immunity" from the *Meyer* case *debunked above*; Constitutional rights to Amend. IX or VII be dammed. A court can ease its effort requirement by simply accepting that LAW without the verification a jury would likely require when the snippet makes no sense with respect to Justice. Petitioner believes that at least civil cases depending on law can only be "fairly" decided at lower levels (such as rules) when the decision is also correct at higher levels in the hierarchy[56] of applicability. I.e., a mere rule cannot be written by the courts that usurps rights guaranteed in

[56] See lower half of page 96 Exhibit CC (25-1276 Doc.9:12)

the Constitution even if that guarantee is via Amend. IX which includes at least Correct Arithmetic, Valid Logic, and Understanding law (including Constitution) in Plain English. In any event, precedent itself is invalid if it is changing the law (such as ignoring the law and adopting the wishes/beliefs of a judge or panel of judges) rather than disambiguating the law's words or providing Justice where the law has no position. Again, Blackstone covered it. Plaintiff also asserts that included in Amend. IX is Blackstone's "…little courts" (paragraph on page 6) are subject to error correcting by higher courts but neither the Michigan Supreme Court nor the U.S. Supreme Court seem to abide by that Amend. IX right today.

While SCOTUS and other courts have not strictly adhered to the Constitution (and its amendments) since its ratification, such adherence, particularly by SCOTUS, went downhill faster after the 1925 Judges Bill which (according to SCOTUS) gave SCOTUS the right to ignore the Constitution and "discretionally" DENY certiorari even on Article III, § 2, Cl. 1 & 2 Constitutional issue cases, even their "original Jurisdiction" ones (such as Petitioner's) where "a State shall be Party." [57] Neither SCOTUS's actions nor Congress' Judiciary Act of 1925 are actually an Article V Constitutional Amendment thus the Judiciary Act must be interpreted in full light of staying consistent with the Constitution and its higher place in the hierarchy. One other problem is lower court judges no longer believe in adhering to the Constitution because (apparently) they see their best rewards (say

[57] For debunking of the SCOTUS assertion that States cannot be sued in Federal Courts if the State doesn't want to be see the attachment at https://usareset.net/forum/viewtopic.php?t=43. Particularly also read the U.S. Const. Art. III § 2 Cl. 1 & 2.

appointment to SCOTUS) coming from violating their oath to the Constitution and instead making their loyalty to SCOTUS. Here is one retired Federal Circuit Appeals judge's private communication to me:

> I can certainly imagine a system in which the lower federal courts, are free to disregard Supreme Court decisions with which they disagree, but that isn't the system we have. Our system promotes stability and ensures that only the Supreme Court can overrule its own precedent. Although this system obviously isn't perfect, it served us fairly well for over 200 years.

A few gotchas the judge fails to recognize are, 1) as far as Petitioner knows, there is nothing in the Constitution that makes SCOTUS the final word on the Constitution, 2) the court POWER grab has had 200+ years of creep, 3) if a judge disagrees and takes no action is one to expect the victims of the error to spend thousands of dollars for lawyers to attempt to get it fixed (with no guarantee of return of costs), and 4) a defendant that incorrectly wins will *NOT* make appeals to get the error corrected or should the judge (at a non-precedent setting level) decide against them also is very unlikely to appeal[58] and thereby risk losing the opportunity for future invalid wins! The House of Representatives has the Article I, § 2, Cl. 5 impeachment power supported by the Senate Article I, § 3, Cl. 6 & 7 try and removal power on individual Justice failure of "good Behaviour" which failure must certainly be true when a Justice ignores their oath to the Constitution. In fact, see Blackstone's "…it is held" (page 6) position regarding "censure" of judge "misbehavior." Congress is

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[58] As happened in a UIA/MCAC denial of Benefits case overturned and against MSU under similar "vacation" circumstances in the same year as Petitioner's which is documented at PageID.358-364.

presently an utter failure in that regard even though Congress has a Constitutionally mandated check on Justices as stated earlier in this paragraph.

The impeachment, try, and remove powers were provided because the Framers well understood the "*tendency in the subordinate or inferior orbs, by the operation of which there will be a perpetual effort in each to fly off from the common centre*." In the present cases the State of Michigan, its administrative agencies, its courts, and the U.S. Supreme Court are some of those warned about "inferior orbs." It is past time for a correction to get those orbs back in line with the Constitution.

CONCLUSION AND HUMBLE REQUEST

In short Petitioner understands why the courts are losing respect, they are not following due process, particularly in actually reading the laws they are supposedly deciding cases on, and they are not making decisions based on rights guaranteed by at least U.S. Const. Amend. IX such as at least correct arithmetic, valid logic, and understanding law in plain English. Petitioner respectfully requests that the Senate review the provided material and its related material and take sound and meaningful steps to renew the establishment of Justice as the Constitution demands. Petitioner is available for discussion and can supply electronic copies of any of the documents from the cases.

James E. White

/s/ *James E. White* Date 12/22/2025

4107 Breakwater Dr.
Okemos, MI 48864
(517) 381-1960
james-e-white@idearights.com

This document is available in electronic form from the link at the bottom of
https://usareset.net/forum/viewtopic.php?p=252#p252

EXHIBIT A. CASE 1:23-CV-1248 COVER PAGE

FILED - LN
November 28, 2023 4:15 PM
CLERK OF COURT
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
BY: _llo_/_____ SCANNED BY: ___ 11/28

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

James Edward White
4107 Breakwater Dr
Okemos, MI 48864

Plaintiff

Case No._

Hon. ___

1:23-cv-1248

Jane M. Beckering
United States District Judge

v.

Supreme Court of the United States and employees

c/o Chief Justice Roberts, 1 First Street, N. E., Washington, DC 20543

United States House of Representatives members and staff[1]

c/o Speaker Mike Johnson, U.S. House of Representatives, Washington, DC 20515

The Executive Branch of the United States and employees

c/o President Joe Biden, 1600 Pennsylvania Ave NW, Washington, DC 20500

Defendants

c/o Office of the Attorney General, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530

c/o United States Attorney, 5th Floor Law Bldg., 330 Ionia Ave., N.W., Grand Rapids, MI 49503

A JURY TRIAL IS DEMANDED for this COMPLAINT and PETITION

James E. White
4107 Breakwater Dr.
Okemos, MI 48864
(517) 381-1960
james-e-white@idearights.com
Pro Se

[1] Elissa Slotkin (and staff), Jim Jordan (and staff), Kevin McCarthy (and staff)

EXHIBIT B. DENIAL OF UNEMPLOYMENT CLAIM

UIA 1302
(Rev. 11-14)
Rick Snyder
GOVERNOR

State of Michigan
Talent Investment Agency
Unemployment Insurance
Michelle Beebe, Senior Deputy Director
3024 W Grand Blvd, Detroit, MI 48202
www.michigan.gov/uia

Authorized By
MCL 421.1 et seq.
Wanda Stokes
TIA Director

JAMES EDWARD WHITE
4107 BREAKWATER DR
OKEMOS MI 48864-4413

Mail Date: **October 9, 2017**
Letter ID: **L0040400138**
CLM: **C4781329-0**
Name: **JAMES WHITE**

Notice of Redetermination

Case Number:	0-010-634-324	BYB:	September 03, 2017
SSN:	###-##-####	Employer Number:	0800416-000
Claimant:	JAMES WHITE	Involved Employer:	MICH ST UNIVER UNMPL COMP DIV

Issues and Sections of Michigan Employment Security (MES) Act involved: Remuneration and 27(c) & 48.

You received vacation pay for the week(s) and amount(s) shown.

Your vacation pay is greater than or equal to 1.5 times your weekly benefit amount of $362.00.

You are ineligible for benefits under MES Act, Secs. 27(c) and 48 beginning September 24, 2017 through September 30, 2017. You will not receive benefit payments during this period.

Pursuant to Section 20(a) if an employer has established a pattern of failing to provide timely or adequate information in response to Agency requests for the purpose of making proper adjudications of claims/issues; the employer's account will not be credited for benefits paid prior to the date that the protest providing timely or adequate information was received.

Calculation of interest and penalty amount is shown later on this form.

If you disagree with this redetermination, refer to Appeal Rights" on the reverse side of this form.

Benefit Week Paid	Earnings Paid
30-Sep-2017	$2,356.53
	$2,356.53

TIA is an Equal Opportunity Employer/Program.

EXHIBIT C. SPECIFIC QUERY TO MICHIGAN UIA

Department of Labor and Economic Opportunity

UNEMPLOYMENT INSURANCE

View Welcome, JAMES WHITE Settings Help Log Off

My Claims Submissions Claimant Determination Protest/Appeal Mon/Non-Mon Deter. Protest

The denial of benefits for the week of 30-Sept 2017 is being appealed as incorrect.

The reasons stated in the UIA denial (Letter ID L0040400138) merely noted MES Section 27(c) & 48 and claimed that I received "vacation pay" *for* [emphasis added] the week of September 24, 2017 through September 30, 2017. I have twice requested that the UIA provide me with a copy of the informal rules that they use to determine that I received any "vacation pay" *for* said week and, contrary to Michigan law, the UIA has provided no informal rules at all for reaching their decision. It is true that Michigan State University (contrary to their contract [https://hr.msu.edu/contracts/documents/APA2015-2019.pdf subsection 171] with the Administrative Professionals Association (APA) union) did make a "vacation pay" payment to my bank account on September 29, 2017 but it was *for* vacation earned and accrued to my vacation account (though not used) over the period of February 1, 2017 through August 30, 2017 (my last day of work).

MES 27(c) "Subject to subsection (f), all of the following apply to eligible individuals: (1) Each eligible individual must be paid a weekly benefit rate with respect to the week *for* [emphasis added] which the individual earns or receives no remuneration."

Or to state it with the clauses belonging to "earns" and "receives" explicitly applied to them respectively: "Subject to subsection (f [pensions]), all of the following apply to eligible individuals: (1) Each eligible individual must be paid a weekly benefit rate ^with respect to the week *for* which the individual^ earns [no remuneration] or [with respect to the week *for* which the individual] receives ^no remuneration^."

The above is a quote of the law the UIA should be following in making their determination though note that I have again emphasized *for* and I have duplicated in brackets ([]) the caret (^) surrounded clauses to make sure they are understood to be correctly applied to "receives" or "earns" respectively and not just for the "earns" or "receives" the clause falls nearest. It would make no sense to include the "or receives" if the whole "for" clause were not to be applied to it and no sense to mean "earns" without the "no remuneration." The "or receives" [*for* which] clearly is intended to cover *non-earned* things such as severance pay or unearned "vacation", etc. additionally paid to the employee as [from 48.(2)] "remuneration intended by the employing unit as continuing wages or other monetary *consideration as the result of the separation*[emphasis added][…]." In other words, aside from the fact that MSU should not have made the deposit in my account in the first place, the UIA has cited 27(c) but then not followed it in reaching their determination. The deposit to my bank account was certainly *in* the denied week but not *for* the denied week nor was the deposit *consideration as the result of the separation*. There is no way a layoff week is a vacation, try it sometime and you'll quickly see.

MES 48 and in particular from (2) "However, payments for a vacation or holiday, or the right to which has irrevocably vested, after 14 days following a vacation or holiday shall not be considered wages or remuneration within the meaning of this section."

Boiled to its simplest terms, payments for previously earned vacation and vested vacation and earned holiday[s] and vested holiday[s] are not "remuneration" (also see the last word quoted from 27(c) above). "Vesting" in the present case includes earned and "accrue[d] vacation pay credits" as provided in the MSU/APA contact. So it appears to me that the UIA has done the exact opposite of the very law section that it cites for denial of the claim and has provided no rationale for doing so.

I am hoping to receive from the UIA clear statements of their "informal rules" that are being used to override the clear meaning of the law so that I can rebut them too before any hearing that might be scheduled to review the denial.

Close

EXHIBIT D. ADMINISTRATIVE LAW JUDGE ORDER

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

Form 1850

JAMES E WHITE
4107 BREAKWATER DR
OKEMOS, MI 488644413

Docket No.: 17-024033
Case No.: 10634324
Employer: MICH ST UNIVER UNMPL COMP DIV
Claimant: JAMES E WHITE
SSN: XXX-XX-XXXX

Administrative Law Judge: Winston A. Wheaton

ORDER

The Agency's October 9, 2017 Redetermination is affirmed.

Claimant is ineligible for benefits for week ending September 30, 2017, pursuant to the remuneration offset provisions of Sections 27(c) and 48(2) of the Michigan Employment Security Act (Act).

Decision Date: December 4, 2017

Winston A. Wheaton
WINSTON A. WHEATON
ADMINISTRATIVE LAW JUDGE

17-024033

PARTICIPANTS

		11-29-17					
			Sworn		Sworn		Sworn
Claimant	JAMES E. WHITE	X	X				
Representative	EDITH WILLENBRECHT	X					
Witness							
Witness							
Witness							
Witness							
Employer	JUDY MCMANAMAN, Unemployment Compensation Coordinator	X	X				
Representative	AMY HOLDA, Assistant Human Resource Director	X					
Witness							
Witness							
Witness							
Witness							
Witness							
Witness							

EXHIBITS

	SUBMITTED BY			DOCUMENT	FORM NO	DOCUMENT DESCRIPTION
NO	UIA	E	C	DATED		
A1			x	10/1/15-9/30/19		Cover sheet for collective bargaining agreement
A2-3			x			Vacation Pay from CBA
B1-4			x			Layoff policies
1		x		7/7/17		Layoff letter
2		x		9/29/17		Pay record for 9/1/17-9/30/17

17-024033
Page 2 of 8

JURISDICTION

On November 5, 2017, claimant timely appealed an October 9, 2017 Unemployment Insurance Agency (Agency) Redetermination, which held him ineligible for benefits for week ending September 30, 2017 under the remuneration offset provisions of Sections 27(c) and 48 of the Michigan Employment Security Act (Act).

ISSUE

Whether claimant is ineligible for benefits for week ending September 30, 2017 under the remuneration and earning offset provisions of Sections 27(c) and 48(2) of the Act.

APPLICABLE LAW

Section 27(c) of the Act provides:

Subject to subsection (f), all of the following apply to eligible individuals:

> (1) Each eligible individual shall be paid a weekly benefit rate with respect to the week for which the individual earns or receives no remuneration. Notwithstanding the definition of week in section 50, if within 2 consecutive weeks in which an individual was not unemployed within the meaning of section 48 there was a period of 7 or more consecutive days for which the individual did not earn or receive remuneration, that period is considered a week for benefit purposes under this act if a claim for benefits for that period is filed not later than 30 days after the end of the period.
>
> (2) The weekly benefit rate is reduced with respect to each week in which the eligible individual earns or receives remuneration at the rate of 40 cents for each whole $1.00 of remuneration earned or received during that week. Beginning October 1, 2015, an eligible individual's weekly benefit rate is reduced at the rate of 50 cents for each whole $1.00 of remuneration in which the eligible individual earns or receives remuneration in that benefit week. The weekly benefit rate is not reduced under this subdivision for remuneration received for on-call or training services as a volunteer firefighter, if the volunteer firefighter receives less than $10,000.00 in a calendar year for services as a volunteer firefighter.
>
> (3) An individual who receives or earns partial remuneration may not receive a total of benefits and earnings that exceeds 1-3/5 times his or her weekly benefit amount. For each dollar of total benefits and earnings that exceeds 1-3/5 times the individual's weekly benefit amount, benefits shall be reduced by $1.00. Beginning October 1, 2015, the total benefits and earnings for an individual who receives or earns partial remuneration may not exceed 1-1/2 times his or her weekly benefit amount. The individual's benefits are reduced by $1.00 for each dollar by which the total benefits and earnings exceed 1-1/2 times the individual's weekly benefit amount.

(4) If the reduction in a claimant's benefit rate for a week in accordance with subdivision (2) or (3) results in a benefit rate greater than zero for that week, the claimant's balance of weeks of benefit payments shall be reduced by 1 week.

(5) All remuneration for work performed during a shift that terminates on 1 day but that began on the preceding day shall be considered to have been earned by the eligible individual on the preceding day.

* * *

(7) The unemployment agency shall not use prorated quarterly wages to establish a reduction in benefits under this subsection.

Section 48 of the Act provides:

(1) An individual shall be considered unemployed for any week during which he or she performs no services and for which remuneration is not payable to the individual, or for any week of less than full-time work if the remuneration payable to the individual is less than 1-1/2 times his or her weekly benefit rate, except that for payable weeks of benefits beginning after the effective date of the amendatory act that added section 15a and before October 1, 2015, an individual is considered unemployed for any week or less of full-time work if the remuneration payable to the individual is less than 1-3/5 times his or her weekly benefit rate. However, any loss of remuneration incurred by an individual during any week resulting from any cause other than the failure of the individual's employing unit to furnish full-time, regular employment shall be included as remuneration earned for purposes of this section and section 27(c). The total amount of remuneration lost shall be determined pursuant to regulations prescribed by the unemployment agency. For the purposes of this act, an individual's weekly benefit rate means the weekly benefit rate determined pursuant to section 27(b).

(2) All amounts paid to a claimant by an employing unit or former employing unit for a vacation or a holiday, and amounts paid in the form of retroactive pay, pay in lieu of notice, severance payments, salary continuation, or other remuneration intended by the employing unit as continuing wages or other monetary consideration as the result of the separation, excluding SUB payments as described in section 44, shall be considered remuneration in determining whether an individual is unemployed under this section and also in determining his or her benefit payments under section 27(c), for the period designated by the contract or agreement providing for the payment, or if there is no contractual specification of the period to which payments shall be allocated, then for the period designated

> by the employing unit or former employing unit. However, payments for a vacation or holiday, or the right to which has irrevocably vested, after 14 days following a vacation or holiday shall not be considered wages or remuneration within the meaning of this section.

Claimant has the burden of proving his eligibility for benefits. *Dwyer v Unemployment Compensation Comm*, 321 Mich 178 (1948).

FINDINGS OF FACT

Claimant has been and remains employed with the above-employer as an IT Technologist. He was temporarily laid off August 31, 2017, returning to work on October 26, 2017. Claimant filed a claim for unemployment benefits, and established a benefit year commencing September 3, 2017.

On September 29, 2017, without claimant having requested the payment, the employer paid claimant an amount equal to his regular salary, $2,604.26 (minus the regular deductions and tax withholding) into his bank account. The payment was charged against his accrued vacation time.

The Agency has applied the payment to week-ending September 30, 2017, which extinguished claimant's eligibility for unemployment benefits for that week. The employer never protested that application by the Agency.

REASONING AND CONCLUSIONS OF LAW

Claimant has the burden of proving his eligibility for benefits for the week at issue: week ending September 30, 2017.

Claimant argues that the vacation pay was earned and accrued prior to his layoff, and should not be available for offset. The employer argues that it is a wage continuation payment, and is subject to offset.

The employer admits that claimant did not request the payment. It says that it followed a longstanding unwritten practice of paying out vacation pay to laid-off employees at the rate of their regular salary, to tide them over during layoffs.

This is not a wage continuation plan. The employer reduced claimant's accrued vacation bank when it made the payment. Whether that is a violation of the collective bargaining agreement is an issue outside the jurisdiction of this forum.

Claimant argues that because the vacation pay was earned prior to his layoff it cannot be used for offset. That interpretation is contrary to the plain language of the statute. Section 48(2) lists the kind of payments that will offset against unemployment benefits.

Vacation pay is the first in the list. *All* vacation pay is earned prior to a layoff or separation. To eliminate offset for all vacation pay earned prior to layoff or separation would render the section a nullity.

The employer argues that the payment should have been allocated to more than one week. It concedes that it did not protest the Monetary Determination or subsequent Agency adjudications. It is too late to raise the issue for the first time in this hearing.

Based on the record established in this matter, and the applicable law, the Agency's Redetermination is affirmed.

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 by an office or agent office of the agency OR (2) files a written, signed, appeal to the Michigan Compensation Appellate Commission at P.O. Box 30475, Lansing, MI 48909-7975 (Facsimile: 517-241-7326); OR (3) files a direct appeal, upon stipulation, to the Circuit Court on or before:

January 3, 2018

I, Debbie S., certify a copy of this order has been sent on the day it was signed, to each of the parties at their respective addresses on record.

(SEE ATTACHED SHEET)

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 هذا 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.
INMEDIATAMENTE: Si es necesario, llame al 1-866-500-0017 para obtener ayuda en la traducción y comprensión de la información en el documento (s) que ha recibido.

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。

立即：如果需要， 请致电1-866-500-0017以协助翻译和了解您收到的文件中的信息。

Albanian

E rëndësishme! Ky dokument përmban informacione të rëndësishme për të drejtat, përgjegjësitë dhe / ose përfitimet e papunësisë. Është e rëndësishme të kuptojmë informacionin në këtë dokument.
Menjëherë: Nëse është e nevojshme, telefononi 1-866-500-0017 për të ndihmuar në përkthimin dhe kuptimin e informacionit në dokumentet që keni marrë.

REQUEST FOR REHEARING OR REOPENING BEFORE AN ADMINISTRATIVE LAW JUDGE

When the appeal to the Administrative Law Judge (ALJ) 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 ALJ, the party may request rehearing in writing before the ALJ instead of appealing to the Michigan Compensation Appellate Commission (Commission). A request for rehearing must be signed by the requesting party or their agent, and RECEIVED by the Michigan Administrative Hearing System (MAHS) at **611 West Ottawa, 2nd Floor, Lansing, MI 48933** or by an office or agent office of the agency, within 30 calendar days after the date of this decision. The party requesting rehearing must also serve the request on the opposing party. A rehearing request received (as described above) more than 30 days after the decision is mailed, shall be treated as a request for reopening.

The ALJ may, for good cause, reopen and review this decision and issue a new decision or issue a denial of rehearing/reopening.

If a request for rehearing or reopening is not received by MAHS, and an appeal to the Commission is not submitted, the hearing decision becomes final.

If the Agency fails to comply with an ALJ decision or order more than 30 days, but within 1 year, after the date of mailing of the decision, you may request, in writing, that the ALJ reopen the matter. You must serve a copy of the request to reopen on the other party.

APPEAL TO THE MICHIGAN COMPENSATION APPELLATE COMMISSION

The Michigan Compensation Appellate Commission (Commission) consists of up to nine members appointed by the governor and is not part of the Unemployment Insurance Agency (UIA).

An appeal to the Commission shall be in writing and signed by the party or his/her agent and must be RECEIVED directly by the COMMISSION within 30 days after the mailing of the ALJ's hearing decision or order denying rehearing or reopening. Parties may obtain the Commission appeal form by going online and downloading the form located at: http://ww.michigan.gov/documets/lara/UI_Appeal_Form_602012_7.pdf. A timely appeal may be made by personal service, postal delivery **(P.O. Box 30475, Lansing, MI 48909-7975)**, facsimile transmission **(517.241.7326)**, or other electronic means as prescribed by the Commission.

The timely appeal/request may also seek to present additional evidence in connection with the appeal or request an oral argument before the Commission. The Commission may consider written argument only if all parties are represented; by agreement of the parties; the Commission orders oral argument; or the Commission orders evidence be produced before it. For additional information, please review the Mich Admin Code, Rules 792.11416 - 792.11429 or visit http://dmbinternet.state.mi.us/DMB/ORRDocs/AdminCode/1742_2017-066LR_AdminCode.pdf

An appeal cannot be requested by telephone. More information about the appeal process to MCAC can be found on Page 21 of "A Guide to Unemployment Insurance Appeals Hearing", located at the following link: http://www.micigan.gov/docmens/uia_UC1800_7644_7.pdf.

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

A party may by-pass appealing to the Commission and appeal a decision or final order of an ALJ directly to a circuit court in the county in which the Claimant resides or in the county in which the Claimant's place of employment is (or was) located, or if the Claimant is not a party to the case, the circuit court in the county in which the employer's principal place of business in this state is located, if the parties (Claimant and Employer), or their respective authorized agents/attorneys, sign a timely written stipulation agreeing to the direct appeal to the circuit court. **The stipulation must be mailed to the Michigan Administrative Hearing System, 3026 W. Grand Blvd, 2nd Floor Annex, Suite 2-700, Detroit, Michigan 48202.** Application for review to a circuit court must be made within 30 days after the mailing date decision or final order by any method permissible under the rules and practices of the circuit court. The responsibility for properly and timely filing an appeal with the clerk of the circuit court rests with the party filing the appeal.

CL#A1

Wednesday, November 29, 2017 7:47 AM

Administrative Professional Association

MICHIGAN STATE
UNIVERSITY

COLLECTIVE BARGAINING AGREEMENT

Between

MICHIGAN STATE UNIVERSITY

and

MICHIGAN STATE UNIVERSITY ADMINISTRATIVE-PROFESSIONAL ASSOCIATION

October 1, 2015 – September 30, 2019

PAGE 2/10 * RCVD AT 11/28/2017 7:59:45 PM [Eastern Standard Time] * SVR:HC5391ERFXPA901/38 * DNIS:7630138 * CSID:2487269602 * ANI:2487269602 * DURATION (mm-ss):05-09

CL#A2

Wednesday, November 29, 2017 7:47 AM

(A-2)

ARTICLE 21

VACATION PAY

-157 Accrued Vacation Leave Carryover

Service Months	Earning Rate	Annual Accrual	Maximum Accrual
Grade levels 8, 9, 10, 11, 12, 13, 14 & 15			
Completion of first 6 months of service	48 hours		
7th month through 60th month	8 hrs/month	96 hrs.	240 hrs.
61st month through 120th month	12 hrs/month	144 hrs.	240 hrs.
121st month	16 hrs/month	192 hrs.	240 hrs.
Grade Level 16			
Completion of first 6 months service	96 hrs.		
7th month	16 hrs/month	192 hrs.	240 hrs.

-158 Employees accrue vacation pay credits at the rate shown above for each completed month of service. Service includes work time and "Leave of Absence with Pay" time, but does not include:

1. Leave of absence without pay.
2. Regular Workers' Compensation.
3. Layoff.
4. Disciplinary suspension.

Usage Requirements

-159 An Employee may take vacation at any time during the year with permission of the supervisor and in accordance with departmental requirements.

-160 Vacation is to be taken and reported in full hour increments.

-161 A maximum of eight (8) hours pay may be made for each day of vacation. This may vary for persons on a flexible appointment.

-162 Each hour paid to an Employee shall be paid at the base rate of pay, and shall not include shift premium or other premium payments.

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-163 University designated holidays falling within the Employee's vacation will not be charged to accrued vacation.

-164 While on vacation, an Employee may not change usage for time taken for other forms of paid leave, except for a documented illness.

-165 The Employee will normally use all vacation before commencing a leave of absence without pay, except for sickness or disability.

-166 Vacation may be used to supplement Workers' Compensation up to a maximum of eight (8) hours total pay for each day of absence.

-167 Part-time Employees scheduled to work at least 26 hours per week but less than 36 shall be credited with 75% of the vacation accruals shown above for full-time Employees.

-168 Part-time Employees scheduled to work at least 20 hours per week but less than 26 shall be credited with 50% of the vacation accruals shown above for full-time Employees.

-169 Part-time Employees will be paid only for the hours scheduled to work but not worked because of the vacation.

-170 Employees are expected and encouraged to take their annual vacation accrual each year. An Employee may continue to accrue vacation up to the Maximum Accrual shown under the Accrual Schedule section. Further accrual beyond this Maximum Accrual is not possible, and the Employee will receive no further vacation credit for months of service completed until the Employee reduces vacation credits.

-171 An Employee will receive payment for unused vacation when terminating employment.

CL#B1

Wednesday, November 29, 2017 7:47 AM

11/28/2017 08:58PM 2487269602 WILLENBRECHT LAW PAGE 05/10

Support Staff Policies & Procedures

Support Staff Policy & Procedure for Layoff or Reduction in Force

Policy

Applies to: All employees unless abridged by Collective Bargaining Agreements

It is the policy of the University to endeavor to provide continuing employment. Reduction in the work force which may be necessary due to lack of funds, lack of work or other reasons will be accomplished through normal attrition whenever possible.

In addition to normal attrition, layoff due to lack of work and/or funds will be utilized as deemed necessary by the University.

An employee who is subject to layoff or who has been laid off shall be afforded a reasonable number of interviews for any position at the same or lower levels if MSU Human Resources deems the employee is qualified.

Eligibility for layoff and recall:

- Must be a regular employee without "off-date" designation (see Policy and Procedure for Employment Status).
- Must be scheduled to work half-time or more.
- Must have completed a probationary period.

Definitions:

Layoff - the severance of an employee from the payroll due to lack of funds and/or lack of work, with eligibility for recall. To be eligible, the employee must satisfy eligibility requirements.

Recall - the reinstatement of a laid-off employee to active status within a period which is the lesser of the employee's length of service before layoff or 2 years. In the event of recall the employee will retain the original service date but does not receive service credits for the period of layoff. Accrued sick leave will be reinstated when the recalled employee returns to work (**VARIES** for APA and APSA).

Termination - the severance of an employee from the payroll without eligibility for recall.

Order of layoff: Due to the nature of the work performed, the ability of the employee to fulfill the requirements of the work remaining shall be the prime factor in determining who in the department is to be laid off.

Where ability to perform the work remaining is equal, the University will follow these priorities for reduction in force as much as practicable:

- temporary before permanent,
- probationary before non-probationary, and
- employees with short service before employees with long service.

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CL#B2

Wednesday, November 29, 2017 7:47 AM

Recall:

- Employees with the greatest length of service will be recalled first, provided they can perform the duties of the position.
- Employees recalled from layoff may be eligible to receive specified pay adjustments.

Continuation of optional benefits: Optional benefits may be continued by employees on layoff status by direct payment to MSU Human Resources for the duration of the layoff.

For APSA, APA, CTU, 1585, 274, FOP and NURSES, the employer will make its regular contribution toward the cost of the health care coverage premium through the end of the month of layoff.

Termination:

- An employee on layoff status will lose all recall rights and be terminated upon the occurrence of any of the following:
  - refusal to be available for interview,
  - refusal to accept a position offered if the salary offered is equivalent to 80% or more of the employee's salary before layoff, or
  - expiration of the recall eligibility period.
- Layoff status and attendant recall rights are also terminated should the employee accept other regular employment with the University.

Procedure

Request/approval of layoff:
Department:

1. Notifies MSU Human Resources Solutions Center, in writing, of the proposed layoff. This information is to be provided in advance of the required employee Notice of Layoff described in #3.
2. If the employee selected for layoff is not the least senior employee, submits the reasons for such action, in writing to MSU Human Resources Solutions Center (including whether work of laid-off employee will be reassigned or eliminated).
3. Notice of Layoff to employees:
   - Employees represented by APSA and confidentials are to receive 45 calendar days notice of layoff, not to be offset by accrued vacation.
   - Employees represented by APA and Nurses are to receive 45 calendar-days notice of layoff, not to be offset by accrued vacation.
   - In an effort to reduce "bumping" in the CTU, 1585 and 999 bargaining groups, MSU Human Resources Solutions Center is to receive 45 calendar days administrative notice, plus the following contractual notice: CTU = 15 working days; 1585 and 999 = 14 calendar days.
   - Members of the FOP are to receive 21 calendar days notice.
   - Members of 324 are to receive 7-14 days notice.

MSU Human Resources Solutions Center:

CL#B3

Wednesday, November 29, 2017 7:47 AM

1. Verifies information provided by department and approves layoff by preparing Reduction in Force letter. Copies are provided for the employee, department and president of the applicable union/association.
2. Provides assistance in determining sequence of layoff as necessary.

B3

Notification to employee:
Department:

1. After receipt of the approved Reduction in Force letter, gives the employee the Reduction in Force letter.
2. Advises the employee to contact MSU Human Resources Solutions Center for possible reassignment, and MSU Human Resources to discuss continuation of optional benefits.

Recall/reassignment:
MSU Human Resources Solutions Center:

1. Reviews position vacancies and refers eligible employees for reassignment who have received layoff notice or who are on layoff.
2. Processes the placement in the new department using the Comprehensive Automated Staffing System (COMPASS).

Department:

1. Accepts the employee for the vacancy or submits written reasons for non-selection to MSU Human Resources Solutions Center for its approval.
2. Other:
    - CTU employees subject to layoff and reassigned to a vacant position serve a training period of 256 working hours. CTU employees recalled from layoff serve a requalification period of 256 working hours.
    - AP employees who are recalled or reassigned serve a 90-day evaluation period.
    - Employees covered by 999 or 1585 contracts serve a trial period if recalled or reassigned to a different classification.

MSU Human Resources Employee Records: Inputs into SAP the placement in the new department.

Miscellaneous:

1. Employees may not be selected for layoff based upon:
    - race, sex, age, religion or other illegal discrimination, or
    - higher wages earned, or
    - performance problems.
2. Employees may be assigned to perform duties of laid-off employees if the work is appropriate for their classification.
3. Reduction in force should be avoided when possible by using alternative methods including:
    - flexible voluntary appointments,
    - mutual agreement leaves (both the employee and department agree on granting the leave; departments are required to hold the position for employee's return,
    - on-call or temporary staffing,
    - voluntary hours reduction, and
    - attrition.

4. Layoff notices may not be given to employees while on leave of absence.
5. Source of funding is not a criteria for determining which employee is to be laid off except for employees who have been designated as project technicians or off-date employees.
6. When an employee on layoff or leave of absence (including illness and/or disability leaves due to Workers' Compensation) accepts a work assignment (half-time or greater), the original ending date of the leave may be extended by the number of days employed. The employee's record will indicate both the leave of absence or layoff status (primary) and the temporary employment status (multi-assignment).

Termination:
MSU Human Resources Solutions Center: Will notify department of procedure to be followed in the event of termination of employee at the end of layoff period.

Human Resources Employee Records: Processes the termination of employee in EBS.

Refer questions to: MSU Human Resources Solutions Center (telephone 517-353-4434, e-mail)

Back to Support Staff Policies and Procedures

©

B4

ER#1

Wednesday, November 15, 2017 2:45 PM

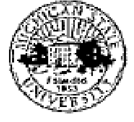
MICHIGAN STATE
UNIVERSITY

July 7, 2017

James White
International Studies and Programs Dean

Dear James:

It is with regret that I am writing to inform you that your department has notified Human Resources that it will be necessary to initiate a layoff for your position, resulting in your being placed on layoff status effective August 31, 2017. Your last day of work in your current position will be Wednesday, August 30, 2017. You will be continued on the payroll beyond that date to the extent of your vacation accrual. Please note that your continuation on the payroll may render you ineligible for unemployment benefits during the period of this continuation.



Please contact Ms. Kristie Sova in Human Resources at 517-884-0117, who will schedule an appointment to meet with you to explain layoff procedures and to discuss your options for possible reassignment at MSU.

Human Resources

Michigan State University
Nisbet Building
1407 S. Harrison, Suite 110
East Lansing, MI 48823

517-353-4434
Fax: 517-432-3862
hr.msu.edu

We regret the necessity of this action and urge you to contact us immediately so that we can begin to explore reassignment possibilities. Our office is committed to providing active support and assistance to you in this process.

Sincerely,

Queen McMiller
Sr. Human Resources Professional/S
MSU Human Resources

cc: Administrative Professional Association

MSU is an affirmative-action, equal-opportunity employer.

PAGE 2/6 * RCVD AT 11/15/2017 2:33:03 PM [Eastern Standard Time] * SVR:HCS391ERFXPA001/4 * DNIS:7630138 * CSID:5173559631 * ANI:5173559631 * DURATION (mm-ss):02-08

ER#2

Wednesday, November 29, 2017 7:47 AM

11/28/2017 09:58PM 2487269602 WILLENBRECHT LAW PAGE 09/10

EMPLOYEE STATEMENT OF EARNINGS AND DEDUCTIONS

MICHIGAN STATE UNIVERSITY

East Lansing, Michigan

Name James Edward White
SSN [redacted]
ID 9749

Pay Period 09/01/2017 - 09/30/2017
Pay date 09/29/2017
Deliv. Code 1P54474100

W-4 Information			
Fed	Add $$	State	Add $$
MO1	0.00	391	0.00

Current	2,604.26	647.27	1,956.99	2,454.46
YTD	43,309.38	12,042.11	31,261.27	40,778.52

00009749 Pay Period Salary		2,604.26
00009749 Unpaid Salary-S	2.00	80.56
Total Earnings		2,604.26

MSU MN Mich Fidelity ER	260.42	4,530.34
Blue Care Network ER	0.00	3,046.32
Caremark ER	0.00	998.88
Delta Dental Employer	19.59	333.03
FICA ER	160.21	2,462.51
Medicare ER	37.47	622.68
Total Contributions	477.72	11,993.76

Total Taxable Benefits	0.00	0.00

Mn Bso Fidelity EE	130.21	2,165.17
Parking Pre-tax		340.00
Delta Dental EE Pre-Tax	19.59	19.59
Total Pre Tax Deductions	149.80	2,624.76

APA Dues	70.00	630.00
Total Post Tax Deductions	70.00	630.00

Federal Withholding	FED	[redacted]
FICA EE	FED	[redacted]
Medicare EE	FED	[redacted]
State Withholding	MI	[redacted]
Total Employee Tax		[redacted]

		Sick	Personal	
Starting Balance	102.00	802.50	8.50	60.00
Accruals	0.00	3.20	0.00	0.00
Adjustments	0.00	0.00	0.00	0.00
Time Taken	- 102.00	0.00	0.00	0.00
Ending Balance	0.00	805.70	8.50	60.00
Vacation Service Months	129.50			

[redacted]	LAFCU	PY Direct Deposit (ACH)	1,956.99

PAGE 9/10 * RCVD AT 11/28/2017 7:59:15 PM [Eastern Standard Time] * SVR:HC63915RFXPA001/38 * DNIS:7650138 * CSID:2487269602 * ANI:2487269602 * DURATION (mm-ss):05-03

EXHIBIT E. PARSED MCL 421.48(2)

APPENDIX QQQ
STRUCTURAL DIAGRAM OF MCL 421.48(2)

(From A118. Nuances in Petitioner's parsing could be argued but the essential structure seems obvious.)

All amounts paid to a claimant by an employing unit or former employing unit
    for
        a **vacation**
        or
        a holiday,
and
amounts paid
    in the form of retroactive pay, pay in lieu of notice, severance payments, salary continuation,
    or
    other remuneration
        intended by the employing unit as continuing wages
or
other monetary consideration

as the result of the separation,

excluding SUB payments as described in section 44,

shall be considered remuneration in determining whether an individual is unemployed under this section and also in determining his or her benefit payments under section 27(c),

for

    the period designated by the contract or agreement providing for the payment,
    or
        if there is no contractual specification of the period to which payments shall be allocated,
        then for
        the period designated by the employing unit or former employing unit.

However,
    payments for a **vacation** or holiday,
    or
    the right to which has irrevocably **vested**,
        after 14 days following a vacation or holiday
    shall **not** be considered wages or remuneration within the meaning of this section.

EXHIBIT F. FAKED VACATION ENTRIES

Name	Date	ID		Code	Hours	Unit	Pay Code	Type	Entered	By
White, James (Jim) Edward	08/06/2018	9749		M1	8	H	2900	Vacation	07/18/2018	WHITEJ71
	07/17/2018			M1	1	H	2960	Personal	07/18/2018	WHITEJ71
	06/27/2018			M1	3.500	H	2960	Personal	06/19/2018	WHITEJ71
	06/26/2018			M1	1.500	H	2905	Sick	06/19/2018	WHITEJ71
	06/25/2018			M1	8	H	2900	Vacation	06/19/2018	WHITEJ71
	06/22/2018			M1	8	H	2900	Vacation	05/21/2018	WHITEJ71
	05/29/2018			M1	1	H	2905	Sick	05/21/2018	WHITEJ71
	05/14/2018			M1	3	H	2960	Personal	05/21/2018	WHITEJ71
	05/03/2018			M1	1	H	2905	Sick	05/11/2018	WHITEJ71
	04/30/2018			M1	2	H	2960	Personal	04/30/2018	WHITEJ71
	03/05/2018			M1	8	H	2900	Vacation	02/19/2018	WHITEJ71
	02/22/2018			M1	2	H	2905	Sick	02/19/2018	WHITEJ71
	01/23/2018			M1	1	H	2905	Sick	01/22/2018	WHITEJ71
	01/08/2018			M1	8	H	2900	Vacation	01/22/2018	WHITEJ71
	01/05/2018			M1	8	H	2900	Vacation	01/22/2018	WHITEJ71
	01/04/2018			M1	8	H	2900	Vacation	01/22/2018	WHITEJ71
	01/03/2018			M1	8	H	2900	Vacation	01/22/2018	WHITEJ71
	09/15/2017			M1	6	H	2900	Vacation	09/01/2017	CHOREYSH
				M1	2	H	2990	Excused Unpaid	09/14/2017	CHOREYSH
	09/14/2017			M1	8	H	2900	Vacation	09/01/2017	CHOREYSH
	09/13/2017			M1	8	H	2900	Vacation	09/01/2017	CHOREYSH
	09/12/2017			M1	8	H	2900	Vacation	09/01/2017	CHOREYSH
	09/11/2017			M1	8	H	2900	Vacation	09/01/2017	CHOREYSH
	09/08/2017			M1	8	H	2900	Vacation	09/01/2017	CHOREYSH
	09/07/2017			M1	8	H	2900	Vacation	09/01/2017	CHOREYSH
	09/06/2017			M1	8	H	2900	Vacation	09/01/2017	CHOREYSH
	09/05/2017			M1	8	H	2900	Vacation	09/01/2017	CHOREYSH
	09/04/2017			M1	8	H	2900	Vacation	09/01/2017	CHOREYSH
	09/01/2017			M1	8	H	2900	Vacation	09/01/2017	CHOREYSH
	08/31/2017			M1	8	H	2900	Vacation	09/01/2017	CHOREYSH
	08/30/2017			M1	0	H	2900	Vacation	01/16/2018	CHOREYSH
	08/23/2017			M1	4	H	2960	Personal	08/18/2017	WHITEJ71
	08/22/2017			M1	8	H	2900	Vacation	08/18/2017	WHITEJ71
	08/21/2017			M1	8	H	2900	Vacation	08/18/2017	WHITEJ71
		9749			• 228	H				
					•• 228	H				

EXHIBIT G. 09/30/2017 PAY STATEMENT

EMPLOYEE STATEMENT OF EARNINGS AND DEDUCTIONS

MICHIGAN STATE UNIVERSITY

East Lansing, Michigan

Name	James Edward White
SSN	XXX-XX-XXXX
ID	9749

Pay Period	09/01/2017 - 09/30/2017
Pay date	09/29/2017
Deliv. Code	1P54474100

W-4 Information			
Fed	Add $$	State	Add $$
M01	0.00	S01	0.00

	Gross Pay	Deductions & Taxes	Net Pay	Federal Taxable Gross
Current	2,604.26	647.27	1,956.99	2,454.46
YTD	43,303.38	12,042.11	31,261.27	40,778.62

Gross Pay	Rate	Hours	Current
00009749 Pay Period Salary			2,604.26
00009749 Unpaid Salary-S		2.00	60.56
Total Earnings			2,604.26

MSU Contributions	Current	YTD
MSU MN Mtch Fidelity ER	260.42	4,330.34
Blue Care Network ER	0.00	3,046.32
Caremark ER	0.00	998.88
Delta Dental Employer	19.59	333.03
FICA ER	160.24	2,662.51
Medicare ER	37.47	622.68
Total Contributions	477.72	11,993.76

Taxable Benefits	Current	YTD
Total Taxable Benefits	0.00	0.00

Pre Tax Deductions	Current	YTD
Mn Bse Fidelity EE	130.21	2,165.17
Parking Pre-tax		340.00
Delta Dental EE Pre-Tax	19.59	19.59
Total Pre Tax Deductions	149.80	2,524.76

Post Tax Deductions	Current	YTD
APA Dues	70.00	630.00
Total Post Tax Deductions	70.00	630.00

Taxes	Authority	Current	YTD
Federal Withholding	FED	139.61	3,996.57
FICA EE	FED	160.24	2,662.51
Medicare EE	FED	37.47	622.68
State Withholding	MI	90.15	1,605.59
Total Employee Tax		427.47	8,887.35

Quota Overview	Vacation	Sick	Personal	Family Sick
Starting Balance	102.00	802.50	8.50	80.00
Accruals	0.00	3.20	0.00	0.00
Adjustments	0.00	0.00	0.00	0.00
Time Taken	- 102.00	0.00	0.00	0.00
Ending Balance	0.00	805.70	8.50	80.00
Vacation Service Months	129.50			

Check Information	Bank Name	Payment Method	Amount
0000974900187001	LAFCU	PY Direct Deposit (ACH)	1,956.99

EXHIBIT H. REQUEST FOR ALJ REHEAR/RECONSIDERATION

Request for Rehearing

JAMES E WHITE
4107 BREAKWATER DR
OKEMOS, MI 48864-4413

Docket No.: 17-024033
Case No.: 10634324
Employer: MICH ST UNIVER UNMPL COMP DIV
Claimant: JAMES E WHITE
SSN: XXX-XX-XXXX

Administrative Law Judge: Winston A. Wheaton

Dear Judge Wheaton:

This request for a rehearing of the above stated case is respectfully submitted as a courtesy due to the convoluted and complex nature of a law which apparently makes bold statements in one sentence only to nearly nullify them in a subsequent sentence and in which the correct (or incorrect) bearing of a single word can unfortunately result in opposite interpretations.

The reasoning in the December 4 Order stating that James White is ineligible for benefits for the week ending September 30, 2071 might be correct if *only* the first sentence of Section 48 paragraph (2) existed, however, there is also a second sentence in paragraph (2) which is applicable in this case and incorporating it into the reasoning should result in the opposite conclusion. Other specifics in the law also apply and including them in the reasoning should also result in the conclusion that James White *is eligible* for unemployment benefits for the week of September 30 as is shown in the following.

The full paragraph (2) of section 48 (underlining emphasis added):

(2) All amounts paid to a claimant by an employing unit or former employing unit for a vacation or a holiday, and amounts paid in the form of retroactive pay, pay in lieu of notice, severance payments, salary continuation, or other remuneration intended by the employing unit as continuing wages or other monetary consideration as the result of the separation, excluding SUB payments as described in section 44, shall be considered remuneration in determining whether an individual is unemployed under this section and also in determining his or her benefit payments under section 27(c), for the period designated by the contract or agreement providing for the payment, or if there is no contractual specification of the period to which payments shall be allocated, then for the period designated by the employing unit or former employing unit. However, payments for a vacation or holiday, or the right to which has irrevocably vested, after 14 days following a vacation or holiday shall not be considered wages or remuneration within the meaning of this section.

Paragraph (2) reduced to just its essence with regard to vacation pay:

(2 simplified) Amounts paid for a vacation or a holiday intended by the employing unit as monetary consideration as the result of the separation shall be considered remuneration, however, payments for a vacation the right to which has irrevocably vested, after 14 days following a vacation or holiday shall not be considered wages or remuneration.

As can be seen from the Pay date 9/29/17 paystub submitted as Employer Exhibit 2 (as provided for the hearing as Claimant document C), toward the lower right the accrued and fully vested Starting Balance on September 1, 2017 in the Vacation column is 102 hours. Per clause 158 on Claimant's Exhibit A-2, those credits were accrued before September 1 and no vacation was accrued for the month of September 2017. The underlined portion of the second sentence (or in the "however" part when simplified) clearly states that, contrary to the first sentence's inclusion of "vacation pay," vacation pay paid, after 14 days following its vesting "shall not be considered wages or remuneration." The vacation pay was all accrued and vested before September 1 and regardless the payment ostensibly for that accrued vacation time was made on September 29 well over 14 days after accrual, hence the payment cannot make James White ineligible for unemployment for the week ending September 30. The second sentence of paragraph (2) is clearly intended to trump the first. The net result is the opposite of the December 4 conclusion.

Further, when understanding the second sentence and its intent it becomes much easier to fully understand the first sentence. The first sentence is intended, as can be seen following the underlined parts presented in the above quoted paragraph (2), to count as remuneration any [extra] consideration *due to the layoff separation*. The first such type [extra] consideration is identified as "vacation pay" precisely because such a "forced, paid vacation" is often provided as such consideration. To quote the relevant words from the sentence succinctly: "amounts paid for a vacation intended by the employing unit as monetary consideration as the result of the separation." The vacation pay in the current instance *is not* a "monetary consideration as the result of the separation" but instead is a payment of accrued vacation earnings (that occurred and were vested more than 14 days before). Thus the conclusion should be that James White *is* eligible for unemployment compensation for the week of September 30, 2017. Again, the net result is the opposite of the December 4 conclusion.

Also, per 27 (c) (1) "Each eligible individual must be paid a weekly benefit rate with respect to the week for which the individual earns or receives no remuneration." (Note the explicit "for which" not "in which".) In this case the vacation pay received September 29 was clearly *not for* the week ending September 30, 2017 but instead a payment *for prior earned vacation time*. Thus the UIA errored in denying the unemployment payment and James White is eligible for an unemployment payment for the week of September 30, 2017. This being a third instance where, with a full reading of the law, the net result is the opposite of the December 4 conclusion. It is agreed that whether or not the vacation payment "is a violation of the collective bargaining agreement is an issue outside the jurisdiction of" the UIA Administrative Hearing System and a process is being pursued separately in that regard. Regardless of whether or not the payment was made in error, its existence should not have resulted in the UIA denial of unemployment benefits *for* the week of September 30, 2017 because there was no remuneration "earn[ed] or receiv[ed}" *for* that week from MSU as is shown earlier in this paragraph.

Effectively, the proof of eligibility is all in the 09/29/17 paystub, the 102 hours of accrued vacation available on September 1 evaporated and payment for it was simply called "Pay Period Salary" and is properly described in the fourth paragraph of the "Reasoning and Conclusions of Law" portion of the December 4 Order.

The issue (denial of unemployment benefits for the week ending September 30, 2017) is being returned for rehearing as a courtesy rather than immediately appealed because it appears that a complex and convoluted law may inadvertently not have been applied in its entirety. In that light I respectfully request that the statements and conclusions in the first three lines of page 6 of the December 4, 2017 Order, and the conclusions above the signature on the first page, be considered for a rewrite that justifies and orders reversal of the UIA denial of the unemployment payment.

Your rehearing and reconsideration of this case is much appreciated.

Sincerely,

James E. White

Copies mailed to:

Michigan Administrative Hearing System
611 West Ottawa, 2nd Floor
Lansing, MI 48933

And

Judy McManaman, Unemployment Compensation Coordinator
Michigan State University, Human Resources
Nisbet Building
1407 S Harrison, Suite 255
East Lansing, MI 48823-5239

EXHIBIT I. ALJ DENIAL OF REHEAR/RECONSIDERATION

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

Form 1850

JAMES E. WHITE
4107 BREAKWATER DR
OKEMOS, MI 48864

MICH ST UNIVER UNMPL COMP
DIV
1407 S HARRISON RD, STE 110
EAST LANSING, MI 48823

ADMINISTRATIVE LAW JUDGE: WINSTON A. WHEATON

SSN: XXX-XX-XXXX

Docket No.: 17-024033
Case No.: 10634324

ORDER DENYING REQUEST FOR REHEARING

On December 15, 2017, claimant requested rehearing of a decision by the undersigned mailed on December 4, 2017.

This matter began as claimant's appeal of an Unemployment Insurance Agency (Agency) Redetermination issued on October 9, 2017. The Redetermination held claimant ineligible for benefits for week ending September 30, 2017 under the remuneration offset provisions of Sections 27(c) and 48(2) of the Act. A telephone hearing was held from Lansing Michigan on November 29, 2017.

The decision affirmed the Redetermination and held the claimant ineligible for benefits for week enidng September 30, 2017.

Section 33 of the Act provides that, upon application of an interested party, an appeal may be reheard, affirmed, modified, set aside, or reversed on the basis of the evidence previously submitted in the case, or on the basis of additional evidence, provided that the application is filed within 30 days of the decision date. Mich Admin Code, R 792.11414, provides that granting a rehearing is within the discretion of the administrative law judge. Upon a showing of good cause, a matter may be reopened or reviewed and a new decision issued after the 30 day appeal period has expired, provided that a request for review shall be made within one year after the date of mailing of the prior decision, pursuant to Section 33 of the Act and R 792.11415.

It is found that the parties had a full opportunity to present witnesses and evidence at the original hearing.

Upon review of the request for rehearing, the file, and the applicable law on the issue, it is found that no new or additional information has been alleged that was not available at the time of the original hearing.

Claimant's request for rehearing is denied.

DATED: December 18, 2017

WINSTON A. WHEATON
ADMINISTRATIVE LAW JUDGE

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 by **January 17, 2018.**

APPEAL TO THE MICHIGAN COMPENSATION APPELLATE COMMISSION - To be filed on time, an appeal to the Michigan Compensation Appellate Commission must be RECEIVED directly by the Michigan Compensation Appellate Commission, P.O. Box 30475, Lansing MI 48909-7975, (Facsimile: 517-241-7326), within 30 calendar days after the mailing date of this decision (as indicated). Appeals must be in writing and signed by the appealing party or his/her agent; or APPEAL TO THE CIRCUIT COURT - Upon stipulation in writing, between claimant and employer (or Agents and Attorneys) this decision may be appealed directly to the Circuit Court within 30 calendar days of the date of mailing of the decision or Order, pursuant to Section 38(2) of the MES Act [MCL 421.38(2)].

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

Debbie S.	Saginaw	December 18, 2017
Name	City Mailed	Date Mailed

(SEE ATTACHED)

EXHIBIT J.MSU OTHER DOCUMENTS

UIA 1575E
(Rev. 10-13)

Letter ID: L0039437144

Other Protests
In addition to specifically protesting this determination, you may also use the charts below to notify the UIA of any other circumstances regarding possible disqualification of ineligibility for benefits using the same "How to Protest" rules shown earlier.

Claimant Name: JAMES WHITE

Social Security Number: [redacted]

If you are making ***special payments*** to the claimant ***after*** the Benefit Year Beginning (BYB) date, complete the information below.

		Gross dollar Amount	Period From (month/day/year)	Period To (month/day/year)	Date Paid (month/day/year)
☐	Earnings				
☒	Accrued ~~Holiday~~/Vacation Pay	$2,356.53	9-3-17	9-15-17 @ 2:00 p.m.	9-29-17
☐	Severance				
☐	Pay in Lieu of Notice				
☐	Sick Pay				
☐	Lost Earnings				
☐	Sales commission or Consultation fee				
☐	Short Work Week or On-Call Pay				

If you are paying the claimant a ***retirement pension,*** complete the information below.

Monthly Amount	Effective Date	Date of First Payment

Check the box below that reflects the amount the claimant contributed to his/her retirement.

☐ Did not contribute ☐ Contributed less than 1/2 the cost ☐ Contributed 1/2 or more of cost

Additional Information:

Separation Information
The claimant indicated the seperation reason with you as laid off. If you are reporting a different separation reason that is possibly disqualifying, please complete the information below. Check the box that applies to the claimant's separation with you.

☐ Discharged/Fired ☐ Voluntary Quit ☐ Voluntary Retirement ☐ Labor Dispute ☐ Other

Judy McNamara, MSU HR UC Coor, (517) 884-0104 9-18-17

UIA is an Equal Opportunity Employer/Program.

Page 3 of 4 0000371

PAGE 3/6 * RCVD AT 11/15/2017 2:33:03 PM [Eastern Standard Time] * SVR:HCB391ERFXPA901/4 * DNIS:7630138 * CSID:5173559631 * ANI:5173559631 * DURATION (mm-ss):02-08

Home - My Accounts » Account: 0800416 030 » Determinations/Decisions » **Non-Monetary Fact Finding**

Log Off

Vacation Pay - [illegible]

ISSUE DETAIL	
Issue	Remuneration
Circumstance	Vacation Pay

ASSOCIATED CLAIMANT DETAIL	
Claimant Name	JAMES WHITE
Claimant ID	[illegible]

QUESTIONNAIRE:

Question	Answer
What date was the vacation pay issued?	29-Sep-2017
What was the beginning date of the vacation pay?	03-Sep-2017
What was the ending date of the vacation pay?	15-Sep-2017
Was the vacation payment issued based on a contract or other agreement, such as, company policy? If so, provide a copy.	**Yes** / No
What was the gross dollar amount of the vacation pay?	2356.93
Did the claimant have the option of receiving vacation pay instead of taking time off?	Yes / **No**
Did the claimant request a vacation for this period of time?	Yes / **No**
Are other employees receiving vacation pay to cover the same time period?	Yes / **No**

Submit | Save and finish later | Cancel

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Submitted 10-2-17 ; Confirmation # 1-035-519-168

PAGE 4/6 * RCVD AT 11/15/2017 2:33:03 PM [Eastern Standard Time] * SVR:HCS391ERFXPA001/4 * DNIS:7630138 * CSID:5173559631 * ANI:5173559631 * DURATION (mm-ss):02-08

☰ Home - My Accounts » Account: 0800416 000 » Determinations/Decisions » **Non-Monetary Fact Finding**

Attachments

VACATION PAY - QUESTIONNAIRE

ISSUE DETAIL		ASSOCIATED CLAIMANT DETAIL	
Issue	Remuneration	Claimant Name	JAMES WHITE
Circumstance	Vacation Pay	Claimant ID	***-**-9834

QUESTIONNAIRE:

Question	Answer
What date was the vacation pay issued?	29-Sep-2017
What was the beginning date of the vacation pay?	03-Sep-2017
What was the ending date of the vacation pay?	15-Sep-2017
Was the vacation payment issued based on a contract or other agreement, such as, company policy? If so, provide a copy.	Yes
What was the gross dollar amount of the vacation pay?	2368.53
Did the claimant have the option of receiving vacation pay instead of taking time off?	No
Did the claimant request a vacation for this period of time?	No
Are other employees receiving vacation pay to cover the same time period?	No

Submit | Save and finish later | Cancel

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Submitted 10-17-17; Confirmation # 1-035-519-168

EXHIBIT K. APPEAL TO

MICHIGAN COMPENSATION APPEAL COMMISSION

APPEAL TO THE

MICHIGAN COMPENSATION APPELLATE COMMISSION

Mail to: **P.O. Box 30475**
Lansing, MI 48909

Fax to: **517-241-7326**

Also faxed to: Jody McManaman, MSU HR, 517-355-9631

* *

Appealing Party (check one): [X] Claimant [ ] Employer [ ] UIA

Claimant: James E. White SS#: [redacted] (last 4 digits)

Claimant Address: [redacted] Okemos, MI 48864

Employer(s): MICH ST UNIVER UNMPL COMP DIV

Employer Address: 1407 S. Harrison, Suite 255, East Lansing, MI 48823-5239

Docket No.	Case No.	Decision Date:
17-024033	10634324	Dec. 4, 2017
17-024033	10634324	Dec. 18, 2017

(If appealing multiple Administrative Law Judge Decisions and/or Orders, please list all Docket (Appeal) Nos, Case Nos, & Decision Dates)
(attach additional pages/documents if necessary)

Reason(s) for Appeal:
ALJ Wheaton has twice failed to apply all applicable portions of the Michigan Employment Security Act in reaching a decision and the UIA has failed three times to, per 421.4(2), provide its informal rules for its decision.

Date: 1/15/18 Filing Party: [signature] Signature (Required)

Print Name: James E. White

Your appeal must be received at Michigan Compensation Appellate Commission (MCAC) within 30 days from the Mailed Date of the Administrative Law Judge's (ALJ) Decision or Order. Please mail or fax your appeal to the address or fax number listed at the top of this form. Questions - contact MCAC at 1-800-738-6372.

LARA is an equal opportunity employer/program.

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JAN 16 2018
MICHIGAN COMPENSATION APPELLATE COMMISSION

MCAC-09/20/17

Received Time Jan. 15. 2018 7:54PM No. 6469

EXHIBIT L. MCAC DENIAL OF FIRST APPEAL

MCAC 1852

STATE OF MICHIGAN
MICHIGAN COMPENSATION APPELLATE COMMISSION

In the Matter of

JAMES E. WHITE, Appeal Docket No.: 17-024033-255373W

Claimant, Social Security No.: XXX-XX-XXXX

MICHIGAN STATE UNIVERSITY
UNEMPLOYMENT COMP DIVISION,

Claimant.

DECISION OF MICHIGAN COMPENSATION APPELLATE COMMISSION

This case is before the Michigan Compensation Appellate Commission (Commission) on the claimant's timely appeal from a December 18, 2017 Administrative Law Judge (ALJ) order denying a request for rehearing.

Under Section 33(1) of the Michigan Employment Security Act[1], rehearings are granted or denied at the discretion of the ALJ. Michigan Administrative Code, Rule 792.11414.

After reviewing the record, the Commission finds that there has not been an abuse of discretion. Therefore, the ALJ's December 18, 2017 order should be affirmed.

The Commission has reviewed the ALJ's December 4, 2017 decision in light of the evidence appearing in the record made prior to the claimant's request for rehearing. It is our opinion that the decision is in conformity with the law and facts and should be affirmed.

In accordance with MCL 421.34, we conclude that no modification or alteration of the ALJ's decision is necessary.

Therefore,

IT IS ORDERED that the ALJ's order denying the claimant's request for rehearing is hereby affirmed.

98 [1] MCL 421.1 *et seq.*

81

IT IS FURTHER ORDERED that the ALJ's decision is hereby affirmed.

Jack F. Wheatley	Commissioner
Duncan A. McMillan	Commissioner
Lester A. Owczarski	Commissioner

MAILED AT LANSING, MICHIGAN MAR 07 2018

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:

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME APR 06 2018

EXHIBIT M. UNSOLICITED APA UNION ATTORNEY REQUEST FOR REHEARING

RECEIVED
APR 05 20[illegible]
MICHIGAN COMPENSATION APPELLATE COMMISSION

STATE OF MICHIGAN
MICHIGAN COMPENSATION APPELLATE COMMISSION

In the Matter of

JAMES E. WHITE,

Claimant,

Appeal Docket No.: 17-024033-255373W

Social Security No.: XXX-XX-XXXX

MICHIGAN STATE UNIVERSITY
UNEMPLOYMENT COMP DIVISION,

Claimant.

REQUEST FOR REHEARING OF DECISION OF MICHIGAN COMPENSATION APPELLATE COMMISSION'S DECISION

Pursuant to Michigan Administrative Code, Rule 792.11430, Claimant respectfully requests a rehearing on the Commission's March 7, 2018 decision affirming the Administrative Law Judge's December 18, 2017 order denying Claimant's request for a rehearing.

Respectfully submitted,

MICHIGAN EDUCATION ASSOCIATION
Attorneys for Claimant James E. White

Dated: April 2, 2018

Daniel J. Zarimba (P62149)
1216 Kendale Boulevard, PO Box 2573
East Lansing, Michigan 48823-2573
(517) 332-6551

CERTIFICATE OF SERVICE

I, Joan M. Summers, hereby certify that on April 2, 2018, I provided a copy of the above document to: Michigan State University, Unemployment Comp Division, 1407 S. Harrison Road, Ste. 110, East Lansing, MI 48823, by placing in the inter-departmental mailbox for pick-up by the U.S. Postal Service, with first-class postage properly affixed.

Joan M. Summers

100

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EXHIBIT N. MCAC DENIAL OF SECOND APPEAL

MCAC-1852

STATE OF MICHIGAN
MICHIGAN COMPENSATION APPELLATE COMMISSION

In the Matter of

JAMES E. WHITE, Appeal Docket No.: 17-024033-255373W

Claimant, Social Security No.: XXX-XX-XXXX

MICHIGAN STATE UNIVERSITY,

Employer.

ORDER DENYING APPLICATION FOR REHEARING

This case is before the Michigan Compensation Appellate Commission (Commission) upon application of the claimant for a rehearing by the Commission with respect to its decision dated March 7, 2018. The Commission, having read and considered said application, and having reviewed the record in this matter, is of the opinion that said application should be denied.

IT IS THEREFORE ORDERED that said application shall be and the same is hereby denied.

Jack F. Wheatley Commissioner

Duncan A. McMillan Commissioner

Lester A. Owczarski Commissioner

MAILED AT LANSING, MICHIGAN FEB 06 2019

This order will become final unless a written appeal therefrom is RECEIVED by the clerk of the appropriate circuit court on or before MAR 08 2019

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME.

101

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EXHIBIT O. PETITIONER REHEARING/REOPEN APPEAL TO MCAC

Request for MCAC Reopening and/or Request for MCAC Rehearing

Request that the MCAC Permit this Further Appeal to the MCAC (if needed)

Request that the MCAC Order Additional Evidence

Request that the Claimant's Attorney be Withdrawn

JAMES E WHITE
4107 BREAKWATER DR
OKEMOS, MI 48864-4413
517-381-1960
Fax: 517-347-0189

Appeal Docket No.: 17-024033-255373W
Employer: MICH ST UNIVER UNMPL COMP DIV
Claimant: JAMES E WHITE
SSN: XXX-XX-XXXX

Pursuant to at least MCL 421.34 (7) and (8) (including: "or permit a party to the decision or order to initiate further appeals before it") and at least LARA Administrative Hearing Rules 792.11430 and 11431 Claimant respectfully requests reopening on MCAC's March 7, 2018 decision affirming the Administrative Law Judge's December 18, 2017 order denying Claimant's requests for rehearing to overturn denial of unemployment benefits for the week ending September 30, 2017. Alternatively and/or under the same law and rules Claimant respectfully requests that the MCAC's February 6, 2019 decision to deny application for rehearing be reheard per this rehearing request or by permitting this further appeal to the MCAC for a thorough review of the case and the law.

I have asked Daniel J. Zarimba (P62149) who filed the April 2, 2018 request for MCAC rehearing on my behalf (but without consulting me) to withdraw from the case and notify the MCAC, Michigan State University, and myself (thus reverting it to me to represent myself). Should Daniel Zarimba not provide such a withdrawal statement I ask that the MCAC simply declare his removal from the case on my behalf and notify me, MSU, and Daniel Zarimba.

I request that "good cause" per 792.11402 (d) be found to honor this petition for reopening, rehearing, and/or further appeal due to the following facts:

1. Neither Daniel Zarimba nor my MSU Administrative Professional Association (APA) point of contact, in spite of repeated requests, informed me of exactly what was filed (without consulting me) on my behalf or what actions were taken until just this past January 29, 2019 upon a new request by me. Only a request to overturn the ALJ's rehearing denial was requested by Daniel Zarimba on April 2, 2018, no requests for oral or written argument were made. In the timeframe in which requests could be made the union I belong to (APA, affiliated with the Michigan Education Association [MEA]) did not

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MICHIGAN COMPENSATION APPELLATE COMMISSION

103
Received Time Mar. 6. 2019 7:50PM No. 0635

respond to my pleas to know what was being done. In other words, my representative did not live up to my trust and advance the case but merely repeated my prior unsuccessful simple request for rehearing.

2. The obvious (to me anyway) ignoring of the law (i.e., 421.48(2) "... However, payments for a vacation or holiday, or the right to which has irrevocably vested ... shall not be considered wages or remuneration") even though brought to the attention of the ALJ and MCAC.
3. The ALJ in a prior MSU case, Docket No: 17-012285 (Case No: 9393117), explicitly noting the "However..." sentence of the law clearly stated, among other considerations, "the claimant's pay was not continued wages, but instead a payment of her accrued earned vacation pay, which was established before her separation" and overturned an Agency Ineligibility determination. The ALJ was upheld by the MCAC (Appeal Docket No.: 17-012285-253658).
4. The lack of evidence that MSU provided to the UIA any copy of contract or agreement or policy to the effect that MSU could make a "vacation payment" as they did. In fact very clear evidence to the contrary was provided to the ALJ and MCAC showing MSU's payment was against policy and contract. The ALJ and MCAC have failed to address that evidence.
5. The utter inability of the UIA to produce any rules the UIA uses in making its case decisions. How, for example, do they weigh the lack of MSU's contract, etc., evidence, or MSU's question responses regarding the "vacation pay" versus the laid off worker's question responses regarding the same when the responses differ?

Rest assured that a subsequent request for at least written argument will be filed by me within 14 days of receiving the notice of receipt of further appeal/reopening/rehearing (whatever it is called) resulting from this appeal petition so that the issues above can be clearly addressed as the law intends via the ALJ and MCAC processes before bothering the courts. In other words, on MCAC reopening, rehearing, or further appeal I fully intend to advance this case as was not done on my behalf.

In light of MSU's representation that they have contract, agreement, or policy support for the vacation pay they made I explicitly request that the MCAC order both MSU and the UIA to independently provide clear documentation that shows the contract, agreement, or policy that was provided by MSU to the UIA under the rules of the UIA "vacation questionnaire" which clearly states "Was the vacation payment issued based on a contract or other agreement, such as a company policy? If so, provide a copy."

I regret to have to resort to this step but I see no reasonable alternative to make the best use of the law and rules that I can given that I feel that the APA/MEA union has let me down with

wholly inadequate representation given the clarity of the law and the facts. Certainly if this petition fails to get a rehearing, or reopening, with argument, or goes against me with the "However, payments for a vacation or holiday, or the right to which..." portion of the law still being ignored, I will appeal to the courts.

Faxed from 517-347-0189 to:
517-241-7326, Michigan Compensation Appellate Commission, P.O. Box 30475, Lansing, MI 48909
517-355-9631, Judy McManaman, MSU HR, 1407 S. Harrison Rd, East Lansing, MI 48823-5239
Also emailed to Daniel Zarimba (dzarimba@mea.org) on the same date.

Also I certify that this was faxed/communicated as stated above on March 6, 2019.

Respectfully submitted,

James E. White

James E. White
4107 Breakwater Dr
Okemos, MI 48864
517-381-1960

Received Time Mar. 6. 2019 7:50PM No. 0635

EXHIBIT P. SUPERINTENDING CONTROL COMPLAINT

Ingham County
30th Judicial Circuit Court

In re James E White
4107 Breakwater Dr
Okemos, MI 48864
517-381-1960
james-e-white@idearights.com

Type-code: AS

RECEIVED
MAR 3 0 2020
UNEMPLOYMENT INSURANCE
APPEALS COMMISSION

Complaint

The Michigan Compensation Appellate Commission (MCAC), now operating as UIAC (Unemployment Insurance Agency Commission) per Governor Whitmer Executive Order 2019-13, has not, for over one (1) year, responded per LARA R 792.11431(2) to timely filed plaintiff requests in the case of MCAC Appeal Docket No. 17-024033-255373W for Reopening/Rehearing, Oral/Written Argument, etc., filed per MCL 421.34(7), (8), and (4) therefore plaintiff requests the Ingham County 30th Judicial Circuit Court exercise Superintending Control per MCR 3.302(E)(1).

Should it be relevant, the layoff for which this case arose also had a pay calculation error for which the following is noted: A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in the Court of Claims, where it was given case number 18-000219-MZ and was assigned to Judge Michael J. Kelly. The Court of Claims action is no longer pending, however, that matter is now in the Court of Appeals as case number 349812 with no judges assigned.

This complaint is submitted via email attachment to CircuitCourtRecords@ingham.org (Per 30th Judicial Circuit Court Local Administrative Order 2020-03) on March 27, 2020.

Proof of Service

I certify that copies have been provided via both USPS First Class mail and email on March 27, 2020 to:

- Unemployment Insurance Appeals Commission, P.O. Box 30475, Lansing, MI 48909-7975 LEO-UIAC-Info@michigan.gov
- Amanda Moses, Employee Relations Professional, Michigan State University, 1407 S Harrison, Suite 240, East Lansing, MI 48823-5239 mosesa@msu.edu

I declare under the penalties of perjury that this complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

James E. White

/s/ James E. White

Replaces Complaint mailed 3/19/20

EXHIBIT Q. UIAC "NO GOOD CAUSE" DENIAL

UIAC 1852

STATE OF MICHIGAN
UNEMPLOYMENT INSURANCE APPEALS COMMISSION

In the Matter of

JAMES E. WHITE, Appeal Docket No.: 17-024033-255373W

Claimant, UIA Case No.: 10634324

MICHIGAN STATE UNIVERSITY,

Employer.

ORDER DENYING APPLICATION FOR REOPENING AND REVIEW

This matter is before the Unemployment Insurance Appeals Commission (Commission) upon the application of the claimant for reopening and review by the Commission of its decision dated March 7, 2018. In an order dated February 6, 2019, the Commission denied the claimant's request for rehearing.

Under Section 34 of the Michigan Employment Security Act, the Commission may reopen and review the decision dated March 7, 2018, only if "good cause" has been demonstrated.

The Commission, having read and considered the claimant's application for reopening, is of the opinion that "good cause" for reopening and review has not been demonstrated.

IT IS THEREFORE ORDERED that the claimant's application for reopening is denied.

Lester A. Owczarski, Commissioner

Neal A. Young, Commissioner

William J. Runco, Commissioner

MAILED AT LANSING, MICHIGAN APR 3 0 2020

This order will become final unless a written appeal therefrom is RECEIVED by the clerk of the appropriate circuit court on or before JUN 0 1 2020

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME.

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

P.O. Box 30475
Lansing, MI 48909-7975
1-800-738-6372 or (517) 284-9300
Fax: (517) 241-7326

IMPORTANT NOTICE TO PARTIES

Attached is an order of the Unemployment Insurance Appeals Commission (Commission) which will become final unless further action is taken by you.

The Michigan Employment Security Act provides for the following method of recourse from final orders of the Commission.

APPEALS TO CIRCUIT COURT

Sec. 38. The circuit court of 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, may review questions of fact and law on the record made before the administrative law judge and the Commission involved in a final order or decision of the Commission, and may make further orders in respect thereto as justice may require, but the court may reverse an order or decision only if it finds that the order or decision is contrary to law or is not supported by competent, material, and substantial evidence on the whole record. 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.

NOTE

IF AN APPEAL IS MADE UNDER THE ABOVE SECTION, THE APPEAL MUST BE FILED WITH THE OFFICE OF THE CIRCUIT COURT CLERK OF THE COUNTY WHERE THE APPEAL IS TAKEN.

THE RESPONSIBILITY FOR PROPERLY AND TIMELY FILING SUCH AN APPEAL RESTS WITH THE PARTY INVOLVED. THE COMMISSION DOES NOT HAVE THE AUTHORITY TO FILE AN APPEAL ON BEHALF OF ANY PARTY.

TIME FOR AND FILING OF APPEALS

Your attention is directed to the time for filing a claim of appeal to circuit court. Filing means the date on which the claim of appeal is **RECEIVED** in the office of the clerk of the court in which the action is taken.

UIAC 9008 B.O.# 00--NA

(08/19)
Authority: M.E.S. ACT. SECTIONS 34-36

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

NOTICE OF REQUEST FOR REOPENING

UIAC Docket No.: 255373WHO

Date of UIAC Decision/Order: 03/07/2018

Date of Petition: 03/06/2019

Appellant: Claimant

IN THE MATTER OF:

Claimant: James E. White
4107 Breakwater
Okemos, MI 48864-4413

Employer: Michigan State University
Unemployment Comp. Division
1407 South Harrison Road
Suite 110
East Lansing, MI 48823-5239

UIA Case Number: 10634324

Registration No.: 0800416

A request for reopening has been filed in the case identified above.

You are not required to do anything at this time. After the case is reviewed, you will receive an order from the Unemployment Insurance Appeals Commission (UIAC) and further appeal rights.

P.O. Box 30475
Lansing, MI 48909-7975
(517) 284-9300 or 1-800-738-6372
Fax: (517) 241-7326

*Pursuant to Executive Order 2019-13 effective August 11, 2019, the Michigan Compensation Appellate Commission was replaced by the Unemployment Insurance Appeals Commission.

EXHIBIT R. COSTS FOR SUPERINTENDING CONTROL COMPLAINT

Ingham County
30th Judicial Circuit Court

Case number: 20-000191-AS
Judge: Hon. Wanda Stokes

In re James E White
4107 Breakwater Dr
Okemos, MI 48864-4413
517-381-1960
james-e-white@idearights.com

Employer: MICH ST UNIVER UNMPL COMP DIV
1407 S Harrison, Suite 240
East Lansing, MI 48823-5239
mosesa@hr.msu.edu (Amanda Moses)
and
Unemployment Insurance Appeals Commission
Jason D. Hawkins (P71232)
Michigan Department of Attorney General
Labor Division
P.O. Box 30736
Lansing, MI 48909
(517) 335-7641
hawkinsj@michigan.gov

As the *de facto* prevailing party in the present case given that the Unemployment Insurance Appeals Commission promptly upon receipt of their copies of plaintiffs filed requests for Superintending Control in the Ingham County 30th Judicial Circuit Court proceeded to process and issue a notice of request and an order regarding plaintiffs request for Reopening, etc., the following bill of costs is tendered.

Certified Bill of Costs

Date	Amount	For
3/19/2020	$ 1.10	Postage to UIAC & MSU
3/27/2020	$ 1.10	Postage to UIAC & MSU
3/27/2020	$ 175.00	Complaint for Superintending Control filing with Ingham County 30th Judicial Court
3/28/2020	$ 0.55	Postage for check mailing to 30th Circuit.
Total	$ 177.75	

Submitted via email attachment to CircuitCourtRecords@ingham.org

I declare under the penalties of perjury that this bill of costs has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date: May 26, 2020 /s/ *James E. White*

EXHIBIT S. 30TH CIRCUIT COURT ORDER AND OPINION

STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT FOR INGHAM COUNTY

JAMES EDWARD WHITE,

Appellant,

ORDER AND OPINION

v.

CASE NO. 20-301-AE

HON. WANDA M. STOKES

MICHIGAN STATE UNIVERSITY UNEMPLOYMENT COMPENSATION DIVISION,

Appellee.

At a session of said Court
held in the city of Mason, County of Ingham,
this 22 day of January, 2021.

This matter comes before the Court on Appellant's claim of appeal from the Michigan State University Unemployment Compensation Division's decision to deny Appellant unemployment benefits for the week ending on September 30, 2017 because the Appellant had been paid out for vacation time. Though the parties requested oral argument, in accordance with MCR 7.114(A) this Court finds that the briefs and record adequately present the facts and legal arguments and the court's deliberation would not be significantly aided by oral argument. Thus, this Court having reviewed the parties' written briefs, and the Court being otherwise fully advised in the premises; **AFFIRMS** the decision of the Appellee and dismisses the case.

FACTS

Appellant is an employee with Michigan State University. In 2017, he was briefly laid off by the University, only to be rehired several months later. Appellant was paid $2,604.26 for his

accrued vacation time. During that same period, Appellant applied for unemployment benefits through the Michigan State Unemployment Compensation Division. Appellant was informed that he was eligible for $362 per week. Appellant was then informed that he would not be eligible to receive the weekly benefit for the week of September 30, 2017, because his vacation accrual payout made him ineligible. Appellant appealed.

An administrative hearing was held on the matter on November 5, 2017. After weighing the evidence, the Administrative Law Judge ("ALJ") affirmed the decision of the agency, holding that Appellant's vacation accrual payment made him ineligible for unemployment benefits the week of September 30, 2017 under Section 27(c) and 48(2) of the Michigan Employment Security Act. Appellant appealed to the UAIC on January 15, 2018. UIAC affirmed the ALJ's decision on March 7, 2018. A rehearing was denied on April 2, 2018. The UIAC informed the Appellant that its decision would become final if he did not appeal to the Circuit Court by March 8, 2019. Thus, the case became a "closed case." To reopen a closed case, Appellant must establish "good cause" for the case to be reopened. Appellant then appealed to this Court.

STANDARD OF REVIEW

"The review [of an agency decision] shall include. . . the determination whether such final decisions, findings, rulings and orders are <u>authorized by law</u>; and, in cases which a hearing is required, whether the same are supported by ***competent, material and substantial evidence on the whole record.***" Const 1963, art 6, § 28 (emphasis added); *see Union Bank & Trust Co v First Michigan Bank & Trust Co*, 44 Mich App 83; 205 NW2d 54 (1972). "Evidence is competent, material, and substantial if a reasoning mind would accept it as sufficient to support a conclusion." *City of Romulus v Mich Dep't of Environmental Quality*, 260 Mich App 54, 63 (2003). The

evidence must be "more than a scintilla of evidence, [but] it may be substantially less than a preponderance." *In re Payne*, 444 Mich 679, 692 (1994).

> Th[e] standard [with respect to agency interpretations] requires 'respectful consideration' and 'cogent reasons' for overruling an agency's interpretation. Furthermore, when the law is 'doubtful or obscure,' the agency's interpretation is an aid for discerning the Legislature's intent. However, the agency's interpretation is not binding on the courts, and it cannot conflict with the Legislature's intent as expressed in the language of the statute at issue.

In re Complaint of Rovas Against SBC Michigan, 482 Mich 90, 103; 754 NW2d 259, 267 (2008).

A court should not superimpose its judgment on that of the administrative agency, view questions of fact and weigh evidence, or determine whether the probabilities preponderate one way or the other but should determine whether the evidence justifies the findings of the agency. *Regents of Univ of Michigan v Michigan Employment Relations Comm*, 389 Mich 96, 103; 204 NW2d 218, 221 (1973). A reviewing Court must not substitute its opinion even if it would have reached a different decision had it been in the position of the agency. *Knowles v Civil Service Comm*, 126 Mich App 112, 118; 337 NW2d 247 (1983). Deference *must* be given to an agency's findings of fact, and "great deference should be given to an agency's administrative expertise." *Huron Behavioral Health v Dep't of Community Health*, 293 Mich App 491, 497 (2011).

I. Appellant is time-barred from appealing the UIAC's Final Order.

Appellant is time barred from appealing the UIAC's final order to this Court. The UIAC's final order on this matter was issued on March 7, 2018. Appellant had until March 8, 2019 to appeal to this Court. Appellant was informed of this in the UIAC's Final Order. Appellant failed to file an appeal with this Court until January 27, 2020.

Thus, this Court's jurisdiction is limited to whether there is "good cause" to reopen the case before the UIAC.

II. Appellant did not establish the requisite "good cause" to reopen his case before the UIAC.

For the case to be reopened before the UIAC the Appellant must establish the requisite "good cause" under MCL 421.34. The Michigan Administrative Rules set out what is considered "good cause" under Michigan law.

(1) In determining if good cause exists under sections 32a, 33, and 34 of the act, after the 30-day protest or appeal period has expired, for reconsideration of any prior determination or redetermination or for reopening and review, good cause shall include, but not limited to, any of the following situations:

a. If an interested party has newly discovered material facts which, through no fault of the party, were not available to the party at the time of the determination, redetermination, order, or decision. However, a request for reconsideration of a determination or redetermination or for reopening a decision or order made after the expiration of the statutory 30-day period solely for the purpose of evading or avoiding such statutory period is not for good cause.

b. If the agency has additional or corrected information.

c. If an administrative clerical error is discovered in connection with a determination, redetermination, order, or decision.

d. If an interested party has a legitimate inability to act sooner.

e. If an interested party fails to receive a reasonable and timely notice, order, or decision.

f. If an interested party is prevented from acting sooner due to an untimely delivery of a protest, appeal, or agency document by a business or governmental agency entrusted with delivery of mail.

g. If an interested party has been misled by incorrect information from the agency, the office of appeals, or the board of review.

(2) If, before the start of an initial hearing before the office of appeals, the agency receives new, additional, or corrected information or discovers an administrative clerical error in the claim, the matter may be returned to the agency for reconsideration and redetermination.

Michigan Admin. Code R. 421.270.

Appellant did not address MCL 421.34 in his appeal. He did not attempt to establish "good cause" under the Michigan Administrative Code. Rather, Appellant attempted to draw this Court's attention to the factual determinations made by the UIAC. Such a review is improper because the Appellant's appeal is limited to determining whether "good cause" to reopen his case has been established. Appellant has failed to do so.

CONCLUSION

For the aforementioned reasons, the Court finds that the Appellant's appeal is time barred and that Appellant has failed to establish the requisite good cause to reopen his appeal before the UIAC.

THEREFORE, IT IS ORDERED that is the decision of the Appellee is **AFFIRMED** and Appellant's Appeal is **DISMISSED**.

In accordance with MCR 2.602(A)(3), the Court finds that this Order disposes of the last pending claim and closes this case.

Jan 22, 2021
Date

Wanda M. Stokes
Hon. Wanda M. Stokes
Circuit Court Judge

EXHIBIT T. 30TH CIRCUIT COURT

UIAC "RECONSIDERATION" DENIAL

STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT FOR INGHAM COUNTY

JAMES EDWARD WHITE,

Appellant,

ORDER DENYING APPELLANT'S MOTION FOR RECONSIDERATION

v.

CASE NO. ~~20-191-AS~~ 20-301-AE

HON. WANDA M. STOKES

MICHIGAN STATE UNIVERSITY UNEMPLOYMENT COMPENSATION DIVISION,

Appellee.

At a session of said Court
held in the city of Mason, County of Ingham,
this 12 day of February, 2021

This matter comes before the Court on Appellant's Motion to Reverse or Correct Dismissal. Appellant filed a Complaint with this Court in March of 2020, asking this Court for an Order of Superintending Control over the Unemployment Insurance Appeals Commission (hereafter, "UIAC"). On May 24, 2020 this Court entered an Order of Dismissal pursuant to MCR 3.302, which provides that, where an appeal is available, a complaint for Superseding Control must be dismissed. Appellant seeks to have the dismissal reversed.

Appellant argues that the UIAC did not issue a final decision and that without said final decision, he is without means to appeal. This is not correct as this Court has a copy of the final decision by the UIAC regarding the Appellant's unemployment payment.

Nothing presented before this Court indicates that an appeal was not available to the Appellant. In fact, an appeal was filed in this Court on the same facts as 20-301-AA. Thus, this Court's original dismissal pursuant to MCR 3.302 is **AFFIRMED**.

THEREFORE, IT IS ORDERED that Appellant's Motion to Reverse or Correct Dismissal is **DENIED**.

In accordance with MCR 2.602(A)(3), the Court finds that this Order disposes of the last pending claim and closes this case.

2/17/2021
Date

Wanda M. Stokes
Hon. Wanda M. Stokes
Circuit Court Judge

EXHIBIT U. SUPERINTENDING CONTROL ORDER OF DISMISSAL

STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT FOR INGHAM COUNTY

In re: James White Complaint for Order of Superintending Control

ORDER OF DISMISSAL

CASE NO. 20-191-AS

HON. WANDA M. STOKES

At a session of said Court
held in the city of Mason, county of Ingham,
this 26 day of May, 2020.

This matter comes before the Court on Petitioner James E White's Complaint for Order of Superintending Control, filed March 27, 2020.

Orders for superintending control are governed by MCR 3.302, which provides that such orders supplant various writs in the context of one court exercising its superintending control power over a lower court. Pertinently, MCR 3.302(D)(2) provides that where an appeal is available, a complaint for superintending control must be dismissed.

Here, an appeal arising from the same dispute is currently pending before the Court of Appeals, Docket No. 349812. The docket listing indicates the case is open, and no disposition of the matter is apparent.

THEREFORE IT IS ORDERED that this matter is **DISMISSED** for lack of subject-matter jurisdiction.

In accordance with MCR 2.602(A)(3), the Court finds that this order resolves the last pending claim between the parties and closes the case.

5-26-2020
Date

Wanda M. Stokes
Hon. Wanda M. Stokes
Circuit Court Judge

EXHIBIT V. MSU PROMISE TO FIX ARITHMETIC (FROM CASE 1:23-CV-01180)

H4. MSU Acknowledges 8 Hour Error, Holda to White, January 15, 2018

From: Holda, Amy
Sent: Monday, January 15, 2018 4:49:55 PM
To: White, James (Jim)
Cc: McManaman, Judy; [redacted] Koffman, Maurice; [redacted]
Subject: RE: James White Vacation Pay

Mr. White,
It appears that August 30, 2017 was recorded as vacation in error. I apologize and will make sure that error is corrected and that those eight hours of vacation are returned to your vacation leave bank. The University is still not interested in having you buy back other vacation that was paid out to you.

Regards,

Amy B. Holda, MLRHR
Assistant Director
Office of Employee Relations
MSU Human Resources
517-884-0116
[redacted]

[https://www.legislature.mi.gov/(S(hz25y5fut155rhv1o5i3xp0c))/mileg.aspx?page=getObject&objectName=mcl-8-3l] (where the 8-3l [3 ell] can be replaced by, say 408 hyphen 473 to retrieve any current Michigan law by Chapter hyphen Section)

MCL 8.3l "Person" defined.

The word "person" may extend and be applied to bodies politic and corporate, as well as to individuals.

MCL 24.306

(1) Except when a statute or the constitution provides for a different scope of review, the court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:

(a) In violation of the constitution or a statute.

(b) In excess of the statutory authority or jurisdiction of the agency.

(c) Made upon unlawful procedure resulting in material prejudice to a party.

(d) Not supported by competent, material and substantial evidence on the whole record.

(e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.

(f) Affected by other substantial and material error of law.

(2) The court, as appropriate, may affirm, reverse or modify the decision or order or remand the case for further proceedings.

MCL 408.473

An employer shall pay fringe benefits to or on behalf of an employee in accordance with the terms set forth in the written contract or written policy.

MCL 408.471

(e) "Fringe benefits" means compensation due an employee pursuant to a written contract or written policy for holiday, time off for sickness or injury, time off for personal reasons or vacation, bonuses, authorized expenses incurred during the course of employment, and contributions made on behalf of an employee.
(f) "Wages" means all earnings of an employee whether determined on the basis of time, task, piece, commission, or other method of calculation for labor or services except those defined as fringe benefits under subdivision (e) above.

MCL 421 MICHIGAN EMPLOYMENT SECURITY ACT, Act 1 of 1936 (Ex. Sess.)
AN ACT *to protect the welfare of the people of this state* through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof; to create certain other funds; to create the Michigan employment security commission, and to prescribe its powers and duties; *to provide for the protection of the people of this state from the hazards of unemployment*; …

MCL 421.4

(1) The bureau may promulgate rules and regulations that it determines necessary, and that are *not inconsistent with this act*, to carry out this act.

MCL 421.27

(1) Each eligible individual shall be paid a weekly benefit rate with respect to the week ***for which*** *the individual earns or receives no remuneration*.

MCL 421.31

No agreement by an individual to wave, release, or commute his rights to benefits or any other rights under this act from an employer shall be valid. No agreements by an individual in the employ of any person or concern to pay all or any portion of the contributions of an employer, required under this act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from the remuneration of any individual in his employ to finance the contributions of the employer required from him, or require or accept any waiver of any right hereunder by any individual in his employ.

No individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the commission or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the commission or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the commission.

Any employer may be represented in any proceeding before the commission by counsel or other duly authorized agent.

MCL 421.34

(7) The Michigan compensation appellate 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 in that case, or on the basis of additional evidence if the application or motion is made within 30 days after the date of mailing of the prior decision. The Michigan compensation appellate commission may, for good cause, reopen and review a prior decision of the Michigan compensation appellate commission 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 Michigan compensation appellate

commission, or review is initiated by the Michigan compensation appellate commission with notice to the interested parties, within 1 year after the date of mailing of the prior decision. *Unless an interested party*, within 30 days after mailing of a copy of a decision of the Michigan compensation appellate commission or of a denial of a motion for a rehearing, *files an appeal from the decision or denial, or seeks judicial review as provided in section 38, the decision shall be final.*
(8) *The Michigan compensation appellate commission may* on its own motion affirm, modify, set aside, or reverse a decision or order of an administrative law judge on the basis of the evidence previously submitted in the case; direct the taking of additional evidence; *or permit a party to the decision or order to initiate further appeals before it.* The Michigan compensation appellate commission shall permit a further appeal by a party interested in a decision or order of an administrative law judge or by the Michigan compensation appellate commission if its initial ruling has been overruled or modified. The Michigan compensation appellate commission may remove to itself or direct the Michigan administrative hearing system to transfer to another administrative law judge the proceedings on appeal, rehearing, or review pending before an administrative law judge. The Michigan compensation appellate commission shall promptly notify the interested parties of its findings and decisions.

MCL 421.38

(1) The circuit court in the county in which the claimant resides or the circuit court in 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 in the county in which the employer's principal place of business in this state is located, may review questions of fact and law on the record made before the administrative law judge and the Michigan compensation appellate commission involved in a *final order or decision of the Michigan compensation appellate commission*, and may make further orders in respect to that order or decision as justice may require, but the court may reverse an order or decision only if it finds that the order or decision is contrary to law or is not supported by competent, material, and substantial evidence on the whole record. Application for review shall be made within 30 days after the mailing of a copy of the order or decision by any method permissible under the rules and practices of the circuit court of this state.

MCL 421.48

(1) An individual shall be considered unemployed for any week during which he or she performs no services and for which remuneration is not payable to the individual, or for any week of less than full-time work if the remuneration payable to the individual is less than 1-1/2 times his or her weekly benefit rate, except that for payable weeks of benefits beginning after the effective date of the amendatory act that added section 15a and before October 1, 2015, an individual is considered

unemployed for any week or less of full-time work if the remuneration payable to the individual is less than 1-3/5 times his or her weekly benefit rate. However, any loss of remuneration incurred by an individual during any week resulting from any cause other than the failure of the individual's employing unit to furnish full-time, regular employment shall be included as remuneration earned for purposes of this section and section 27(c). The total amount of remuneration lost shall be determined pursuant to regulations prescribed by the unemployment agency. For the purposes of this act, an individual's weekly benefit rate means the weekly benefit rate determined pursuant to section 27(b).
(2) All amounts paid to a claimant by an employing unit or former employing unit for a vacation or a holiday, and amounts paid in the form of retroactive pay, pay in lieu of notice, severance payments, salary continuation, or other remuneration intended by the employing unit as continuing wages or other monetary consideration as the result of the separation, excluding SUB payments as described in section 44, shall be considered remuneration in determining whether an individual is unemployed under this section and also in determining his or her benefit payments under section 27(c), for the period designated by the contract or agreement providing for the payment, or if there is no contractual specification of the period to which payments shall be allocated, then for the period designated by the employing unit or former employing unit. *However, payments for a vacation or holiday,* ***or the right to which has irrevocably vested****, after 14 days following a vacation or holiday shall not be considered wages or remuneration within the meaning of this section.*

MCL 421.54 Sanctions; penalties.
(a) A person, including a claimant for unemployment benefits, an employing entity, or an owner, director, or officer of an employing entity, who willfully violates or intentionally fails to comply with any of the provisions of this act, or a regulation of the unemployment agency promulgated under this act for which a penalty is not otherwise provided by this act is subject to the following sanctions, notwithstanding any other statute of this state or of the United States: …

MCL 423.211

Representatives designated or selected *for purposes of collective bargaining* by the majority of the public employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the public employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment, and shall be so recognized by the public employer: *Provided, That any individual employee at any time may present grievances to his employer and have the grievances adjusted*, without intervention of the bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect, provided that the

bargaining representative has been given opportunity to be present at such adjustment.

MCL 600.308

(1) The court of appeals has jurisdiction on appeals from all final judgments and final orders from the circuit court, court of claims, and probate court, as those terms are defined by law and supreme court rule, except final judgments and final orders described in subsections (2) and (3). A final judgment or final order described in this subsection is appealable as a matter of right.

(2) The court of appeals has jurisdiction on appeal from the following orders and judgments that are reviewable only on application for leave to appeal granted by the court of appeals:

(a) A final judgment or final order of the circuit court under any of the following circumstances:

(i) In an appeal from a final judgment or final order of the district court appealed to the circuit court under section 8342.

(ii) In an appeal from a final judgment or final order of a municipal court.

(b) A final judgment or final order from the circuit court based on a defendant's plea of guilty or nolo contendere.

(c) Any other judgment or interlocutory order from the circuit court, court of claims, business court, or probate court as determined by supreme court rule.

MCL 600.309

Except as provided in section 308, all appeals to the court of appeals from final judgments or decisions permitted by this act shall be a matter of right. All other appeals from other judgments or orders to the court of appeals permitted by statute or supreme court rule shall be by right or by leave as provided by the statute or the rules promulgated by the supreme court.

MCL 600.1701

The supreme court, circuit court, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:[]

> (c) All attorneys, counselors, clerks, registers, sheriffs, coroners, and all other persons in any manner elected or appointed to perform any judicial or ministerial services, for any misbehavior in their office or trust, or for any willful neglect or violation of duty, for disobedience of any process of the court, or any lawful order of the court, or any lawful order of a judge of the court or of any officer authorized to perform the duties of the judge.[]
>
> (m) All other cases where attachments and proceedings as for contempts have been usually adopted and practiced in courts of record to enforce the civil remedies of any parties or to protect the rights of any party.

MCL 600.2421c

(1) The court that conducts a civil action brought by or against the state as a party, except for a civil infraction action, shall award to a prevailing party other than the state the costs and fees incurred by that party in connection with the civil action, if the court finds that the position of the state to the civil action was frivolous. To find that the state's position was frivolous, the court shall determine that at least 1 of the following conditions has been met:

(a) The state's primary purpose in initiating the action was to harass, embarrass, or injure the prevailing party.

(b) The state had no reasonable basis to believe that the facts underlying its legal position were in fact true.

(c) The state's legal position was devoid of arguable legal merit.

(2) If the parties to an action do not agree on the awarding of costs and fees under sections 2421a to 2421f, a motion may be brought regarding the awarding of costs and fees and the amount thereof. The party seeking an award of costs and fees under sections 2421a to 2421f shall establish all of the following:

(a) That the position of the state was frivolous.

(b) That the party was the prevailing party.

(c) The amount of costs and fees sought including an itemized statement from any attorney, agent, or expert witness who represented the party showing the rate at which the costs and fees were computed.

(d) That the party is eligible to receive an award of costs and fees under sections 2421a to 2421f. For good cause shown a party may seek a protective order regarding the financial records of that party.

MCL 600.2591

(1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.

(2) The amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.

(3) As used in this section:

(a) "Frivolous" means that at least 1 of the following conditions is met:

(i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

(ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.

(iii) The party's legal position was devoid of arguable legal merit.

(b) "Prevailing party" means a party who wins on the entire record.

MCL 600.6404

(3) *Beginning on the effective date of the amendatory act that added this subsection, any matter within the jurisdiction of the court of claims described in section 6419(1) pending* ***or later filed*** *in any court* must, upon notice of the state or a department or officer of the state, be transferred to the court of claims described in subsection (1). The transfer shall be effective upon the filing of the transfer notice. The state or a department or officer of this state shall file a copy of the transfer notice with the clerk of the court of appeals, who shall act as the clerk of the court of claims, for assignment to a court of appeals judge sitting as a court of claims judge pursuant to section 6410.

MCL 600.6419

(7) As used in this section, "the state or any of its departments or officers" means this state or any state governing, legislative, or judicial body, department, commission, board, institution, arm, or agency of the state, or an officer, employee, or volunteer of this state or any governing, legislative, or judicial body, department, commission, board, institution, arm, or agency of this state, *acting, or who reasonably believes that he or she is acting, within the scope of his or her authority while engaged in or discharging a government function* in the course of his or her duties.

EXHIBIT X. FEDERAL LAW

29 U.S.C. § 159

Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment. (Emphasis in original)

42 U.S. Code § 1983 Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

28 U.S. Code §1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

EXHIBIT Y. COLLECTIVE BARGAINING AGREEMENT APA/MSU

Purpose and Intent

To these ends, *the Employer and the Administrative-Professional Association encourage to the fullest degree friendly and cooperative relations between the respective representatives at all levels and among all Employees*. The parties are mutually committed to promoting respect, civility, teamwork and empowerment in the work place.

Article 10 Settlement of Disputes

-58 *The parties agree that any individual Employee at any time may present grievances to the Employer and have the grievances adjusted, without intervention of the Association*, if the adjustment is not inconsistent with the terms of this Collective Bargaining Agreement now in effect, providing that the Association has been given the opportunity to be present at such adjustment.

-74 The following grievance procedure is established for use by Administrative Professional Employees and the Association who feel they have a grievance or complaint alleging a violation, misinterpretation, or a misapplication of this Agreement.

Step 4

-83 If the Office of Employee Relations' answer is unacceptable, settlement may be determined by a decision of an arbitrator selected by the parties. The Association will notify the Office of Employee Relations within twenty-one (21) calendar days after the receipt of the Step 3 answer *if the Association wishes to appeal the grievance to arbitration*, indicating why the Office of Employee Relations' answer is not satisfactory.

Article 21 Vacation Pay

Usage Requirements

-159 An Employee may take vacation at any time during the year with permission of the supervisor and in accordance with departmental requirements.

-171 An Employee will receive payment for unused vacation when terminating employment.

EXHIBIT Z.MICHIGAN ADMINISTRATIVE CODE RULES

R 421.270 Good cause for reconsideration and reopening. Rule 270.
(1) In determining if good cause exists under sections 32a, 33, and 34 of the act, *after the 30-day protest or appeal period has expired, for reconsideration of any prior determination or redetermination or for reopening and review, good cause shall include, but not limited to, any of the following situations:*

(a) If an interested party has newly discovered material facts which, through no fault of the party, were not available to the party at the time of the determination, redetermination, order, or decision. However, a request for reconsideration of a determination or redetermination or for reopening a decision or order made after the expiration of the statutory 30-day period solely for the purpose of evading or avoiding such statutory period is not for good cause.

(b) If the agency has additional or corrected information.

(c) If an administrative clerical error is discovered in connection with a determination, redetermination, order, or decision.

(d) If an interested party has a legitimate inability to act sooner.

(e) If an interested party fails to receive a reasonable and timely notice, order, or decision.

(f) If an interested party is prevented from acting sooner due to an untimely delivery of a protest, appeal, or agency document by a business or governmental agency entrusted with delivery of mail.

(g) If an interested party has been misled by incorrect information from the agency, the office of appeals, or the board of review.

R 792.11431
(5) If the Michigan compensation appellate commission denies a request for reopening, *both the denial of reopening and the initial decision* may be appealed to the appropriate circuit court under section 38 of the act, MCL 421.38.

R 792.11432 Notice of rights of appeal. Rule 1432
(1) Each Michigan compensation appellate commission decision or final order shall notify the parties of all of the following:

(a) A party has the right to make a timely appeal of a decision or final order of the Michigan compensation appellate commission to a circuit court.

(b) A party may make a timely request to the Michigan compensation appellate commission to rehear a decision.

(c) A party may make a timely request to the Michigan compensation appellate commission, subject to a showing of good cause, to reopen and review a decision.

(2) Each Michigan compensation appellate commission decision or final order shall state the deadlines and places of receipt of the alternatives in subrule (1) of this rule. It shall also state in boldface type: "TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME."

EXHIBIT AA. ARITHMETIC CASE ORDER AND OPINION (FROM 1:23-CV-01180)

STATE OF MICHIGAN

COURT OF CLAIMS

JAMES EDWARD WHITE,

Plaintiff,

v

MICHIGAN STATE UNIVERSITY,

Defendant.

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OPINION AND ORDER

Case No. 18-000219-MZ

Hon. Michael J. Kelly

Pending before the Court is defendant's motion for summary disposition pursuant to MCR 2.116(C)(7). For the reasons that follow, the motion is GRANTED.

I. BACKGROUND

Plaintiff was formerly employed by defendant Michigan State University in the International Studies and Programs Department. Plaintiff was represented by the Administrative Professionals Union and was subject to the Union's Collective Bargaining Agreement (CBA) with defendant. Plaintiff's employment was terminated in August 2017, and pursuant to the terms of the CBA, he was given a payout of his unused vacation time on or about September 29, 2017. Shortly thereafter, plaintiff was re-hired by defendant in a different department.

After starting his new position, plaintiff protested the payout of his vacation pay, alleging that it was inadequate. Plaintiff communicated his concerns; however, he did not follow available grievance procedures—discussed in more detail below—set forth in the CBA. Unable

to obtain the resolution he sought, plaintiff filed an affidavit and claim against defendant in the small claims division of the 54B District Court in East Lansing. Defendant removed the case to the Court of Claims on or about October 12, 2018. It is undisputed that plaintiff did not file a signed and verified notice of intent in this Court. Nor is there any meaningful dispute that this action commenced in this Court more than one year after the allegedly deficient vacation payout occurred.

Defendant now moves this Court for summary disposition. Defendant first argues that plaintiff's claim should be dismissed for his failure to follow the grievance procedures—which included submission to binding arbitration—outlined in the CBA. Defendant's second argument is that this case should be dismissed for plaintiff's failure to comply with the notice-and-verification requirements set forth in MCL 600.6431(1) of the Court of Claims Act. The Court agrees with defendant on both fronts.

II. ANALYSIS

Turning first to the CBA, Article 10, § III, ¶ 74 of the CBA establishes a grievance procedure for employees such as plaintiff "who feel they have a grievance or complaint alleging a violation, misinterpretation, or a misapplication of this Agreement[.]" The CBA continues at ¶ 76 of the same section, stating that "Any employee having a dispute over the interpretation or application of the terms of this Agreement shall present it to the employer" by submitting it to the CBA's grievance procedures. Plaintiff did not follow any of the available procedures. Moreover, despite his protestations, his dispute falls within the ambit of the grievance procedures because it pertains to how his unused vacation pay was disbursed following his termination. Indeed, article 21 of the CBA details vacation pay and mandates at ¶ 171 that "An Employee will receive payment for unused vacation when terminating employment." Plaintiff's dispute

concerning his payment for unused vacation time plainly involves the application of ¶ 171 of the CBA.

As is apparent from the plain language of the CBA provisions cited above, plaintiff was required to follow the CBA and the grievance procedures set forth therein. His failure to do so bars his claim. *Mollett v City of Taylor*, 197 Mich App 328, 337; 494 NW2d 832 (1991); *Bonneville v Mich Corrections Org, Serv Employees Intern Union, Local 526M, AFL-CIO*, 190 Mich App 473, 476; 476 NW2d 411 (1991).

Moreover, plaintiff failed to adhere strictly to the notice-and-verification requirements articulated in MCL 600.6431(1). In that regard, MCL 600.6431(1) required, "within 1 year after such claim has accrued," that plaintiff file with this Court either a written notice of intent or his claim. Compliance with MCL 600.6431 is "an unambiguous condition precedent to sue the state," and "a claimant's failure to comply strictly with this notice provision warrants dismissal of the claim, even if no prejudice resulted[.]" *Rusha v Dep't of Corrections*, 307 Mich App 300, 307; 859 NW2d 735 (2014) (citations and quotation marks omitted). In this case, plaintiff alleges that the deficient vacation-time payout occurred on September 29, 2017. Applying MCL 600.6431(1) to this case, plaintiff had until September 29, 2018 to file written notice or his claim in this Court. As noted above, plaintiff failed to take either of these actions by September 29, 2018. Plaintiff has not advanced a meritorious argument that would excuse his non-compliance, and his failure to comply strictly with MCL 600.6431(1) is fatal to his maintenance of this action. *Fairley v Dep't of Corrections*, 497 Mich 290, 293; 871 NW2d 129 (2015); *Rusha*, 307 Mich App at 307.

III. CONCLUSION

IT IS HEREBY ORDERED that defendant's motion for summary disposition is GRANTED pursuant to MCR 2.116(C)(7).

This order resolves the last pending claim and closes the case.

Dated: May 15, 2019

Michael J. Kelly, Judge
Court of Claims

EXHIBIT BB. CIVIL JURIES, FEDERALIST NO. 83 EXCERPT

The excellence of the trial by jury in civil cases appears to depend on circumstances foreign to the preservation of liberty. The strongest argument in its favor is, that it is a security against corruption. As there is always more time and better opportunity to tamper with a standing body of magistrates than with a jury summoned for the occasion, there is room to suppose that a corrupt influence would more easily find its way to the former than to the latter. The force of this consideration is, however, diminished by others. The sheriff, who is the summoner of ordinary juries, and the clerks of courts, who have the nomination of special juries, are themselves standing officers, and, acting individually, may be supposed more accessible to the touch of corruption than the judges, who are a collective body. It is not difficult to see, that it would be in the power of those officers to select jurors who would serve the purpose of the party as well as a corrupted bench. In the next place, it may fairly be supposed, that there would be less difficulty in gaining some of the jurors promiscuously taken from the public mass, than in gaining men who had been chosen by the government for their probity and good character. *But making every deduction for these considerations, the trial by jury must still be a valuable check upon corruption. It greatly multiplies the impediments to its success.* As matters now stand, it would be necessary to corrupt both court and jury; for where the jury have gone evidently wrong, the court will generally grant a new trial, and it would be in most cases of little use to practice upon the jury, unless the court could be likewise gained. *Here then is a double security; and it will readily be perceived that this complicated agency tends to*

preserve the purity of both institutions. By increasing the obstacles to success, it discourages attempts to seduce the integrity of either. The temptations to prostitution which the judges might have to surmount, must certainly be much fewer, while the co-operation of a jury is necessary, than they might be, if they had themselves the exclusive determination of all causes.

EXHIBIT CC. HIERARCHY OF LAW

STATEMENT OF THE CASE

This appeal seeks 1) to restore to everyone in the USA the full right to a Jury trial in Civil cases, 2) the return of Michigan to a "Republican Form of Government" where the courts of the State understand they must adhere to the U.S. Constitution and the constitution and laws of Michigan, 3) recognition that *Amend. IX* is not a hollow nullity which the judiciary can ignore in favor of judicial rules, precedent, or on any other excuse, and 4) recognition that Justice can only be achieved when the courts properly understand that cases can only be decided "fairly" at lower levels in the following hierarchy when fairness and Justice is true from the top all the way down the hierarchy to the decision level:

- Fundamental rights and people, lawyer, and judicial ethics,[7]
- Due process including law as written, clarify ambiguity, and error correction,
- U.S. Constitution. (which references but does not define due process),
- United States Laws,
- Michigan (or relevant State) Constitution,
- (Relevant-) State Laws,
- (Relevant-) State Administrative Rules Authorized by State Law,
- Federal and State Judicial Doctrine applicable to Justice,
- Applicable Precedent,
- Judicial Procedural Rules applied with Justice in mind. (PageID.2)

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[7] Incorporated via *Amend. IX* and others in the Constitution.

EXHIBIT DD. FEDERALIST NO. 15: INFERIOR ORBS

STATEMENT OF ISSUES FOR REVIEW

The overriding issue is a continuous string of abuses of power[3] in which the courts, including the District Court, mistake rules for law and grants of powers as opportunities to thwart "Justice" by placing said rules and powers above the "supreme Law of the Land" as designated by *Art. VI, Cl. 2* of the United States Constitution. The District Court's apparent overriding sticking point (i.e., reason for Complaint dismissal) is that all of the United States Government somehow has "sovereign immunity,[4]" ignoring the plain wording of the Constitution and

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[3] *Federalist No. 15*: In addition to all this, there is, in the nature of sovereign power, an impatience of control, that *disposes those who are invested with the exercise of it*, to look with an evil eye upon all external attempts to restrain or direct its operations. From this spirit it happens, that in every political association which is formed upon the principle of uniting in a common interest a number of lesser sovereignties, *there will be found a kind of eccentric tendency in the subordinate or inferior orbs, by the operation of which there will be a perpetual effort in each to fly off from the common centre*. This tendency is not difficult to be accounted for. It has its origin in the love of power. Power controlled or abridged is almost always the rival and enemy of that power by which it is controlled or abridged. This simple proposition will teach us how little reason there is to expect, that the persons intrusted with the administration of the affairs of the particular members of a confederacy will at all times be ready, with perfect good-humor, and an unbiased regard to the public weal, to execute the resolutions or decrees of the general authority. The reverse of this results from the constitution of human nature.

[4] *Federalist No. 80*:

> Still less need be said in regard to the third point. *Controversies between the nation and its* members or *citizens*, can only be properly referred to the national tribunals. Any other plan would be contrary to reason, to precedent, and to decorum.