

**Ingham County
30th Judicial Circuit Court**

JAMES EDWARD WHITE,
Plaintiff-Appellant,

Case number: 20-301-AE
Tribunal No. 17-024033-255373WHO
Hon. Wanda M. Stokes

V

MICH ST UNIVER UNMPL COMP DIV
and
Michigan Unemployment Insurance Agency,
Defendant(s)-Appellee(s).

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

MICH ST UNIVER UNMPL COMP DIV
Amanda Moses
Employee Relations Professional
1407 S Harrison, Suite 240
East Lansing, MI 48823
(517) 884-0104
mosesa@msu.edu

Dan Nessel, Attorney General
Rebecca M. Smith (P72184)
Attorney for Agency/Appellee
Michigan Dept. of Attorney General
Labor Division
PO Box 30736
Lansing, MI 48909
(517) 335-1950

APPELLANT'S APPENDIX

Date: 7/30/2020

/s/ James E. White

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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.

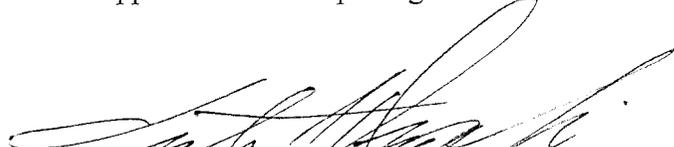
ORDER DENYING APPLICATION FOR REOPENING AND REVIEW

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.

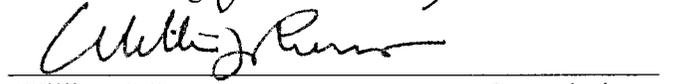
IT IS THEREFORE ORDERED that the claimant’s application for reopening is denied.



 Lester A. Owczarski Commissioner



 Neal A. Young Commissioner



 William J. Runco Commissioner

MAILED AT LANSING, MICHIGAN APR 30 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 01 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.

(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.

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-9834

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
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

NO	SUBMITTED BY			DOCUMENT DATED	FORM NO	DOCUMENT DESCRIPTION
	UIA	E	C			
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

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! انم لكندى اوف وأ / و لكندى اوف و اوس جو كل اطبل تاضى روعت قووق ح نع كدم تامل عم ىلع (قئائول) قوئىول ذه اوتحت ادم دن تامل اذ ه ىف كراول تامل عمل ا هفت ن

(قئائول) قوئىول ىف تامل عمل ا هفت كمرت ىف كدع اس ل 1-866-500-0017 ىلع لصرتا ، رمال ازل اذ! روفل ىلع ا هفت ىل ا

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://www.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.

17-024033
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The transcript file included next is a REVISED version correcting (mainly) errors as noted below. I don't know if the REVISED version was provided to anyone but me.

Unfortunately, not provided as a correction by me because I only noticed it July 27, 2020 is that the "APPEARANCES" section of the first page gets Amy Holda and Judy Mc Manaman as Employer Witness and Employer Representative backwards.

Table of Contents page Witnesses: Claimant should be Mr. James E. White (not Lawrence E. White)

p. 6 l. 15 © should be (c)

p. 18 l. 15 "Your (inaudible)" should be "you agree this"

p. 20 l. 9 "employee" should be "employment"

p. 23 l. 19 (undecipherable) is probably "part is consistent"

p. 24 l. 2 "is not" should be "did not" (it was repeated)

p. 24 l. 10 "there 40 years" is probably correct in the original, rather than "there (undecipherable) years" as in the REVISED. I thought I'd heard Judy say "there near 4 years" at the hearing but I queried Judy McManaman and she had indeed been at MSU 40 years in HR.

p. 26 l. 21 "are" should be "our"

p. 29 l. 19 "employment" should be "unemployment"

p. 29 l.22 © should be (c)

p. 29 l. 25 "site" should be "cite"

MICHIGAN ADMINISTRATIVE HEARING SYSTEM

BUREAU OF HEARINGS

DIVISION OF UNEMPLOYMENT APPEALS

JAMES E. WHITE

CLAIMANT

APPEAL DOCKET NO.: 2017-024033

MICH ST UNIVER UNMPL COMP DIV,
_____ /

EMPLOYER

REVISED

Testimony taken and proceedings had in the above-entitled matter before Administrative Law Judge Winston A. Wheaton at 611 West Ottawa, Second Floor, Lansing, Michigan 48933, on Wednesday, November 29, 2017.

APPEARANCES:

JAMES E. WHITE

CLAIMANT

EDITH WILLENBRECHT

CLAIMANT REPRESENTATIVE

AMY HOLDA

EMPLOYER WITNESS

JUDY MC MANAMAN

EMPLOYER REPRESENTATIVE

TRANSCRIBED BY:

Susan McCave, CER #8605
Theresa's Transcription Service
P.O. Box 21067
Lansing, Michigan 48909-1067
(517) 882-0060

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1 Lansing, Michigan

2 Wednesday, November 29, 2017

3 * * * * *

4 P R O C E E D I N G S

5 ALJ WHEATON: I'm opening the record in the
6 matter of James White, Claimant. The involved Employer is
7 Michigan State University. This is appeal number 17-
8 024033. The first of two cases involving the same
9 parties.

10 RECORDED MESSAGE: Welcome to the tele -- to
11 join the conference -- please enter your -- there are
12 three participants on the call, including you. You are
13 joining your conference as the host. For a menu of
14 available commands, press star, pound.

15 ALJ WHEATON: Good morning, this is Judge
16 Wheaton entering the conference. Mr. White, are you
17 present?

18 MR. WHITE: I am present.

19 ALJ WHEATON: Good morning.

20 MR. WHITE: Good morning.

21 ALJ WHEATON: Ms. Willenbrecht, are you
22 present?

23 MS. WILLENBRECHT: Yes, I am, good morning,
24 Judge.

25 ALJ WHEATON: Good morning. And do you have

1 any other witnesses appearing on behalf of Mr. White?

2 MS. WILLENBRECHT: No, we do not.

3 ALJ WHEATON: All right. Is someone present for
4 MSU? I don't hear anyone. I'll give it just a couple of
5 minutes and see if someone appears. Hello, this is Judge
6 Wheaton speaking, who just joined the conference?

7 MS. HOLDA: Amy Holda with Michigan State
8 University.

9 ALJ WHEATON: Good morning, could you spell your
10 name for me, please?

11 MS. HOLDA: Yes, it's A-M-Y, Holda is, H-O-L, D,
12 as in dog, A.

13 ALJ WHEATON: Thank you. Ms. Holda, what is
14 your position with MSU?

15 MS. HOLDA: Assistant HR Director.

16 ALJ WHEATON: Thank you. Will you be having any
17 witnesses or representation for MSU other than yourself?

18 MS. HOLDA: Yes, your Honor, I have Judy Mc
19 Manaman.

20 ALJ WHEATON: And spell that for me, please?

21 MS. HOLDA: Judy, J-U-D-Y, Mc Manaman, Capital,
22 M-C, capital M-A-N-A-M-A-N, Mc Manaman.

23 ALJ WHEATON: Thank you. Ms. Mc Manaman's
24 position with MSU?

25 MS. MC MANAMAN: Unemployment Compensation

1 Coordinator.

2 ALJ WHEATON: Thank you. Anyone else appearing
3 for MSU?

4 MS. HOLDA: No, your Honor.

5 ALJ WHEATON: All right, give me just a moment
6 to bring up my electronic data file. Before we start I do
7 need to -- just a moment, I do need to confirm mailing
8 addresses. Mr. White I have your address as 4107
9 Breakwater Drive, Okemos, Michigan 48864, is that correct?

10 MR. WHITE: Correct.

11 ALJ WHEATON: And Ms. Willenbrecht, your address
12 remains the same as on your appearance?

13 MS. WILLENBRECHT: Yes, it does.

14 ALJ WHEATON: And for MSU I have 1407 South
15 Harrison Road, Suite 110, East Lansing, Michigan 48823, is
16 that correct?

17 MS. HOLDA: Yes, your Honor.

18 ALJ WHEATON: All right. Who is going to take
19 the lead for MSU today?

20 MS. HOLDA: I am, Sir.

21 ALJ WHEATON: Ms. Holda?

22 MS. HOLDA: Yes.

23 ALJ WHEATON: All right, okay. If everyone will
24 listen for a moment I will go through some preliminary
25 instructions and then ask if you have any questions before

1 I start taking testimony.

2 We are on the record of the matter of James
3 White, the Claimant. The involved Employer is Michigan
4 State University. This is appeal number 17-024033. This
5 is the first of two cases involving the same parties.
6 This case is Mr. White's appeal of an Unemployment Agency
7 Redetermination issued October 8th, 2017, which held him
8 ineligible for benefits for a week ending September 30,
9 2017 on the basis that he received remuneration of
10 vacation pay attributable to that week that exceeded one
11 and a half times his weekly benefit amount of \$362.00.
12 The Agency reports that he received payment of \$2,356.53
13 attributable to that week and that Mr. White is ineligible
14 for benefits for that week under the remuneration offset
15 provisions of sections 27(c) and 48 of the Michigan
16 Employment Security Act.

17 Because we have an issue involving eligibility
18 for benefits, Mr. White, it is your burden of proof to
19 establish your eligibility. All parties are entitled to
20 offer evidence by way of testimony or documentary evidence
21 or a combination of both and to cross examine the witness
22 or witnesses for the opposite party.

23 We are recording this session, your testimony
24 is given under oath or affirmation, I would just ask each
25 participant to keep your voice up nice and loud so we get

1 a good recording. Please try to remember to answer with
2 yes or no, where that is the appropriate response rather
3 than the uh- huhs and the uh-uh's we all do because that
4 sounds a lot alike when it's recorded, so let's avoid
5 those.

6 While you are answering questions, please
7 listen carefully to the question asked and answer only
8 what is being asked you. Don't volunteer a lot of
9 information beyond the scope of the question, that
10 unnecessarily prolongs the hearing and often muddies the
11 issues in the case.

12 Ms. Willenbrecht, have you any questions before
13 we start?

14 MS. WILLENBRECHT: Yes, are both Ms. Holda and
15 Ms. Mc Manaman testifying?

16 ALJ WHEATON: Ms. Holda, will both of you be
17 giving evidence or just one of you?

18 MS. HOLDA: Possibly both.

19 ALJ WHEATON: All right, then I assume then the
20 question was regarding sequestration, Ms. Willenbrecht?

21 MS. WILLENBRECHT: Yes.

22 ALJ WHEATON: Who is going to go first for MSU?
23 Will that be you Ms. Holda or Ms. Mc Manaman?

24 MS. HOLDA: I had intended to ask Ms. Mc Manaman
25 questions and provide additional information if necessary.

1 ALJ WHEATON: Well, I can't have you acting both
2 as a witness and as a questioner.

3 MS. HOLDA: That's fine, then I will not act as
4 a witness.

5 ALJ WHEATON: Okay, then there is no need for
6 sequestration. With that, Ms. Willenbrecht, do you wish
7 to call Mr. White first?

8 MS. WILLENBRECHT: Yes.

9 ALJ WHEATON: Mr. White, do you swear or affirm
10 that the testimony you are about to give in this matter
11 will be the complete truth?

12 MR. WHITE: I do.

13 (At this time, witness is sworn)

14 ALJ WHEATON: And Ms. Mc Manaman, do you swear
15 or affirm that the testimony you're about to give in this
16 matter will be the complete truth?

17 MS. MC MANAMAN: Yes, I do.

18 ALJ WHEATON: Thank you.

19 (At this time, witness is sworn)

20 ALJ WHEATON: Back to you Mr. White, just state
21 your name for the record, please?

22 MR. WHITE: James Edward White.

23 ALJ WHEATON: If I could have you speak up just
24 a little bit louder too, please.

25 MR. WHITE: James Edward White.

1 ALJ WHEATON: Thank you. Ms. Willenbrecht, you
2 may proceed.

3 MR. JAMES E. WHITE

4 (Called as a witness, testified as follows:)

5 DIRECT EXAMINATION

6 BY MS. WILLENBRECHT:

7 Q Mr. White, when did you begin working with MSU?

8 A In 2006.

9 Q And are you still working with MSU?

10 A I am back working with MSU, yes.

11 Q All right, and this particular employment claim refers to
12 a layoff period you had, is that correct?

13 A Correct.

14 Q What were the dates of layoff?

15 A The layoff was starting on August 31st and ran through
16 September, I'm sorry, October 25th.

17 ALJ WHEATON: Of 2017?

18 THE WITNESS: Of 2017, correct.

19 ALJ WHEATON: I'm sorry, October 25th, did you
20 say?

21 THE WITNESS: Correct.

22 ALJ WHEATON: All right, thank you.

23 BY MS. WILLENBRECHT:

24 Q And what is your position with MSU?

25 A I'm an Information Technologist.

1 Q Is that full time?

2 A That's full time, yes.

3 Q Do you get paid salary or hourly?

4 A Salary.

5 Q And is that a Union position?

6 A That is a Union position, yes.

7 Q And what Union is it?

8 A APA, which acronym I don't remember right off the top of
9 my head, Administrative Professionals Association, I
10 believe, maybe that's it. Yes, Administrative
11 Professionals Association.

12 Q All right, thank you. Now, after you filed for
13 unemployment benefits did you receive any payments from
14 MSU?

15 A Yes, I did.

16 Q What did you receive?

17 ALJ WHEATON: Excuse me, just a moment. Let's
18 establish the claim here. The information I have in my
19 file indicates Mr. White that you filed a claim for
20 benefits and established a benefit year beginning
21 September 3rd, 2017. The Unemployment Agency customarily
22 starts your benefit year on the Sunday at the start of the
23 week in which you file, does that all sound correct to
24 you?

25 THE WITNESS: That sounds correct to me, yes.

1 ALJ WHEATON: Okay, all right, so we have the
2 claim starting September 3rd. Go ahead then, Ms.
3 Willenbrecht.

4 BY MS. WILLENBRECHT:

5 Q All right. When did you go return back to work, Mr.
6 White?

7 A October 26th of this year.

8 Q All right. Now, and I'm going to repeat my question. You
9 received a payment from MSU while you had an open claim
10 for benefits, unemployment benefits, correct?

11 A Correct.

12 Q And you received vacation pay during that time from MSU,
13 correct?

14 A That's what they have stated that the pay was for, for
15 accrued vacation credits.

16 Q Okay. And when did you receive that payment?

17 A That arrived in my bank account on September 29th.

18 Q All right. And how much was that payment for, if you
19 know?

20 A It was something like \$1900.00 to my account, I don't
21 remember the exact number, like \$1900.00, I don't have the
22 exact number right in front of me.

23 Q All right. Now, prior to filing for unemployment
24 benefits, does, are you able to accrue vacation pay?

25 A Yes. I -- I --

1 Q And how is that?

2 A I accrue vacation pay at the rate of two days per month.
3 Or actually I accrue vacation time credits at the rate of
4 two days per month, it's not really pay, since it doesn't
5 get paid until termination.

6 Q Okay.

7 A If it's not taken prior.

8 Q All right. And where does that -- do you know how much
9 vacation time you had accrued or credits you had accrued
10 prior to filing for unemployment or prior to your layoff?

11 A Prior to the layoff I had accrued 102 hours, one, zero,
12 two.

13 Q All right. And when you were laid off did you ask for
14 vacation pay to be paid during that time?

15 A I did not.

16 Q And if vacation pay was paid to you was that at your
17 request or was that done unilaterally by the employer?

18 A Unilaterally by the employer.

19 Q All right. Now, I want draw your attention to our
20 proposed exhibits and looking at our Exhibit A --

21 ALJ WHEATON: Excuse me, just a moment, Ms.
22 Willenbrecht.

23 MS. WILLENBRECHT: Go ahead.

24 ALJ WHEATON: You'll need to describe it a
25 little bit for me, because unfortunately they don't show

1 up in my electronic data file necessarily in the way that
2 you have marked them, so, in general what are you looking
3 for?

4 BY MS. WILLENBRECHT:

5 Q Oh, I will ask Mr. White to describe what is our Exhibit
6 A?

7 A Our Exhibit A is the cover page of the Administrative
8 Professional Association Collective Bargaining Agreement
9 between Michigan State University and the Association and
10 two pages of that page 52 and 53 specifically concerning
11 Vacation Pay Article 21.

12 ALJ WHEATON: These were then marked, I believe,
13 if I'm looking at the right thing, as previously marked up
14 in the right hand side as Exhibit A and A-2 and A-3, Ms.
15 Willenbrecht?

16 MS. WILLENBRECHT: Yes.

17 ALJ WHEATON: Okay, I have those, thank you. Go
18 ahead.

19 BY MS. WILLENBRECHT:

20 Q Mr. White, what specifically talks about your situation
21 regarding when you receive vacation pay?

22 A The specific clause is the last one on page 53, clause
23 number 171. "An employee will receive payment for unused
24 vacation when terminating employment".

25 Q Now, at any time during the time from August 31st through

1 October 25th, was there a termination of employment?

2 A No, I was simply on layoff status.

3 Q All right. And I'm going to bring your attention to our
4 Proposed Exhibit B, can you describe for the Judge what
5 that is?

6 A Proposed Exhibit B, as in boy, is a print out, is a
7 scanned image of a print out of MSU's posted Support Staff
8 Policy and Procedure for layoff or reduction in force and
9 that has four pages.

10 Q And what specifically is important for your case today?

11 A If you look down in page B-1, identified as page B-1, in
12 definitions, about half way down the page, and then follow
13 down the third definition is "Termination". "Termination
14 is the severance of an employee from the payroll without
15 eligibility for recall". If you'll look at the definition
16 number one, the first one, "Layoff", it says, "The
17 severance of an employee from the payroll due to lack of
18 funds of lack of work with eligibility for recall".

19 Q All right. And were you eligible for recall during your
20 layoff.

21 A Correct.

22 Q And, in fact, you were recalled?

23 A Correct.

24 Q Now, were all the, and I may be repeating myself, were all
25 the vacation credits that you received earned prior to

1 your layoff?

2 A Correct.

3 MS. WILLENBRECHT: All right. Judge, at this
4 time we would like to have for admission into the file our
5 Exhibits, A, 1,2,3 and B, 1,2,3,4.

6 ALJ WHEATON: Any objection, Ms. Holda?

7 MS. HOLDA: No, your Honor.

8 ALJ WHEATON: They are admitted.

9 (At this time, Exhibits A, 1-3, and B 1-4 are admitted)

10 MS. WILLENBRECHT: Thank you, your Honor. And I
11 have no further questions for Mr. White at this time.

12 ALJ WHEATON: Ms. Holda, do you have questions
13 for Mr. White?

14 MS. HOLDA: Yes, just a couple.

15 CROSS EXAMINATION

16 BY MS. HOLDA:

17 Q Mr. White, you received notification of your layoff on
18 July 7th, is that correct?

19 A No, it was actually several days after that, but the
20 letter is dated July 7th, yes.

21 Q Okay, and I'm going to draw your attention to that letter
22 that was submitted as our exhibit, did you receive, get
23 that?

24 A Yes, I have a copy of that letter in front of me.

25 MS. HOLDA: Your Honor, I'm referring to the

1 letter signed or it's from Queen McMiller, dated July 7th.

2 ALJ WHEATON: All right, let me see if I can
3 find that in my exhibits. I believe I have that. Dated
4 July 7th, 2017, basically advising Mr. White that he is
5 going to be laid off and this was authored by Queen
6 McMiller, correct?

7 MS. HOLDA: Yes, that's it, Sir.

8 ALJ WHEATON: You wanted to make that an
9 exhibit?

10 MS. HOLDA: I would, Sir.

11 ALJ WHEATON: I'll mark that as Employer's
12 Exhibit One, since I've already started with A's and
13 alphabet with Claimant. Any objection, Ms. Willenbrecht
14 to admission of Employer's Exhibit One, the letter just
15 referenced?

16 MS. WILLENBRECHT: The only objection I have is
17 that Queen McMiller is not here and so if he's making any
18 statements that would be considered hearsay and so I don't
19 know if there's an exception to that rule. I don't know
20 if there's an exception, so based upon the hearsay nature
21 of it, I do object.

22 ALJ WHEATON: Well, I don't know that there's
23 any hearsay in it that is contrary to what Mr. White is
24 telling us, it's simply telling him that he's gonna be
25 placed on layoff.

1 MS. HOLDA: I agree. This is a standard
2 business document. Yeah, I don't intend to -- yeah, it
3 kind of speaks for itself here.

4 ALJ WHEATON: I'm going to admit this as
5 Employer's Exhibit One. Continue.

6 (At this time Employer's Exhibit One was admitted)

7 BY MS. HOLDA:

8 Q Mr. White, in the first paragraph, you would agree that
9 this tells you that you will be continued on the payroll
10 beyond the date of your vacation, to the extent you have
11 vacation accrual, correct?

12 A It does say that, yes.

13 Q And it also tells you that this may render you ineligible
14 for unemployment benefits during this period, correct?

15 A It does indeed say that I may be rendered ineligible for
16 unemployment benefits because of that, yes.

17 Q And the payment you received on September 29th, would you
18 agree that September 29th is the standard pay date for the
19 month of September?

20 A I have no objections to that particular date, you know, I
21 don't know the exact rules MSU uses to establish those pay
22 dates.

23 Q You would agree you get paid once a month, correct?

24 A Correct.

25 Q And it's usually the last business day of the month?

1 A Okay, if that's the rule, yep.

2 Q Okay. I would like to draw attention to your pay stub you
3 submitted as your exhibit.

4 A Okay.

5 ALJ WHEATON: All right, what am I looking for
6 at this point?

7 MS. HOLDA: It is the Union's ex -- I'm sorry
8 the Employee's Exhibit labeled Michigan State University
9 Employee's Statement of Earnings and Deductions.

10 ALJ WHEATON: All right, that has been pre-
11 marked as Claimant's Exhibit C, it has not been offered,
12 but I do have that in front of me, so, go ahead with your
13 questions.

14 BY MS. HOLDA:

15 Q You agree this says that your pay period salary was
16 \$2604.26, correct?

17 A Ask the question again, please?

18 Q Would you agree that it states your pay period salary as
19 \$2,604.26?

20 A I would certainly agree that it states that.

21 MS. HOLDA: I might be a little unorthodox, but
22 I would like to submit their exhibit as evidence.

23 ALJ WHEATON: I will mark this as Employer's
24 proposed Exhibit two. Any objection to it's admission Ms.
25 Willenbrecht?

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MS. WILLENBRECHT: No.

ALJ WHEATON: It is admitted. Give me just a moment to make a note on this. All right, the pay stub is admitted. Continue.

(At this time Employer's proposed Exhibit Two is admitted)

MS. HOLDA: I have no other questions for Mr. White.

ALJ WHEATON: Ms. Willenbrecht, any re-direct?

MS. WILLENBRECHT: Nope, not at this time.

ALJ WHEATON: All right, then we'll move to the Employer's side of the case. Do you wish to call Ms. Mc Manaman?

MS. HOLDA: I do.

ALJ WHEATON: Ms. Mc Manaman, you've already been sworn, just state your name for the record, please.

THE WITNESS: Judy Mc Manaman.

ALJ WHEATON: Ms. Holda, you may proceed.

MS. JUDY MC MANAMAN

(Called as a witness, previously sworn, testified as follows:)

DIRECT EXAMINATION

BY MS. HOLDA:

Q Ms. Mc Manaman, was Mr. White's employment terminated?

A No, he was on layoff status.

Q And what would the employment record reflect if he were terminated?

1 A It would reflect that he was withdrawn.

2 Q And what did his record reflect?

3 A That he was on layoff status.

4 Q And what is the difference between termination and layoff?

5 A The terminated employee is completely separated from the
6 University whereas a laid off employee is still eligible
7 for recall and considered an active employee.

8 Q Okay. And under the APA Contract, when a person
9 terminates employment how is their vacation paid out?

10 A When they terminate they are paid off in a lump sum
11 payment for their vacation.

12 Q And is that made in a separate check or is that made on a
13 pay date?

14 A Typically on a pay date.

15 Q Okay. And how was Mr. White's vacation time paid?

16 A His pay was continued on the payroll as a, like a, salary
17 continuance until it was exhausted.

18 Q And how is that different from the lump sum payment?

19 A Well, it carries him through the date that the time is
20 actually exhausted, whereas the lump sum is typically
21 that, just a one lump sum payment for the total amount of
22 hours.

23 ALJ WHEATON: I just want to clarify something
24 really quick here. Is it MSU's position that this was not
25 vacation pay that he was paid?

1 THE WITNESS: No, it was vacation, for vacation
2 time.

3 ALJ WHEATON: Why is he paid vacation pay while
4 he's on layoff?

5 THE WITNESS: Well, it's kind of like a salary
6 continuance. All laid off employees are carried on the
7 payroll until their vacation time is exhausted.

8 ALJ WHEATON: Well, they're eating up their
9 vacation pay involuntarily, right?

10 THE WITNESS: Well, the reason is to continue
11 them to receive salary while they are looking to find the
12 employee another position.

13 ALJ WHEATON: Okay, but it's really not a wage
14 continuation plan, they're eating up their vacation
15 otherwise it would still be sitting there available to
16 them to use for vacation or if they're terminated paid out
17 in a lump sum.

18 THE WITNESS: That's true. They are notified,
19 however, that they will be continued on the payroll for
20 their extended vacation accruals.

21 ALJ WHEATON: Next question, Ms. Holda.

22 BY MS. HOLDA:

23 Q Ms. Mc Manaman, are you aware of Mr. White contacting
24 anyone at the University asking not to be paid out his
25 salary continuance?

1 A I'm not aware of that.

2 Q I'm sorry, my phone is -- is the salary continuance a
3 contractual arrangement?

4 A No.

5 MS. WILLENBRECHT: I'm going to object on the
6 question. I think it mischaracterizes the payment.

7 ALJ WHEATON: I agree with you. They may have
8 decided to pay him out vacation pay, but it's not salary
9 continuation that would leave his vacation accruals in
10 tact. It's not salary continuation, it's eating up his
11 vacation accrual.

12 MS. HOLDA: Okay, I will re-state.

13 BY MS. HOLDA:

14 Q Is the payment of the vacation a contractual arrangement?

15 A No.

16 Q And was Mr. White made aware that he would be continued by
17 receiving vacation payment?

18 A Yes.

19 Q And is that through the letter that we submitted earlier?

20 A Correct, his layoff letter dated July 7th.

21 Q Okay. I have no other questions.

22 ALJ WHEATON: Cross examine?

23 MS. WILLENBRECHT: Thank you.

24 CROSS EXAMINATION

25 BY MS. WILLENBRECHT:

1 Q Ms. Mc Manaman, you would agree that the proposed Exhibit
2 A is the Collective Bargaining Agreement that Mr. White is
3 a part of, correct?

4 A Yes.

5 Q And you would agree that the provision that Mr. White had
6 read is that is 171, page, is Provision 171 where it says,
7 "An employee will receive payment for unused vacation when
8 terminating employment", correct?

9 A That's correct.

10 Q And as a review of that document pages 52 and 53 no where
11 does it say that the company will take vacation pay and
12 pay it out upon lay off?

13 A It's not in the contract it's just University practice and
14 we notify the employees of this practice when they're
15 given their layoff letter.

16 Q All right. And you would agree then, if that's true, that
17 that practice violates the Bargaining Agreement?

18 A No, because they are paid off upon termination for unused
19 vacation, so that (undecipherable) with the contract.

20 Q All right, but the pay out of vacation pay when it's not
21 requested by the employee at layoff time violates the
22 Bargaining Agreement?

23 A No, I don't agree that it does.

24 Q All right, now, looking at the support staff policies and
25 procedures our Exhibit B, you would agree that the

1 Claimant, well, I guess, for the definitions, that the
2 Claimant was not terminated therefore did not, did not
3 need to get the vacation pay unless he requested it?

4 A Employees don't have an option, upon layoff they're
5 notified that they will be paid off for their vacation
6 continuing on the salary until it's exhausted.

7 Q All right, and that option is based on your discretion or
8 somebody else's discretion?

9 A It's University practice. We've been doing it for as long
10 as, I've been there (Undecipherable) years.

11 Q All right, now, you would agree also, Ms. Mc Manaman that
12 the Claimant, Mr. White, had accrued that vacation pay or
13 credits prior to the layoff?

14 A Yes.

15 Q All right, thank you. I have no further questions, Judge.

16 ALJ WHEATON: Ms. Holda, any further questions
17 for Ms. Mc Manaman?

18 MS. HOLDA: Not a question for Ms. Mc Manaman,
19 but we do however have a question about the Notice of
20 Redetermination that I think Ms. Mc Manaman could clarify.

21 ALJ WHEATON: I'm sorry, the phone is kind of
22 breaking up a little bit. Could you repeat that, please?

23 MS. HOLDA: I'm sorry. We have -- we would like
24 to discuss with you and the Employee's attorney the Notice
25 of Redetermination, to clarify a matter here.

1 ALJ WHEATON: You're talking about the Agency's
2 Adjudication?

3 MS. HOLDA: Yes.

4 ALJ WHEATON: What is it that you want to
5 address?

6 MS. MC MANAMAN: Your Honor, it's Judy Mc
7 Manaman. The Adjudication that's dated October 9th, holds
8 the employee ineligible just for one week of benefits, and
9 that's for the calendar week ending September 30th, the
10 Agency treated this as a lump sum payment and that was the
11 week it was made. When we did our initial protest we
12 protested the weeks ending September 9th and September 16th
13 as those were the two weeks where the vacation pay was
14 allocated and continued. So, there is a little
15 discrepancy there in that he was paid during the week of
16 September 30th, but the time was actually allocated to the
17 weeks of September 9th and September 16th.

18 ALJ WHEATON: Where did the allocation take
19 place?

20 MS. MC MANAMAN: I'm sorry, what?

21 ALJ WHEATON: In what form and how did the
22 allocation take place?

23 MS. MC MANAMAN: Well, the University, the
24 Employer, allocated the vacation hours to those first two
25 weeks of September.

1 ALJ WHEATON: Where does that show up?

2 MS. MC MANAMAN: I'm sorry?

3 ALJ WHEATON: Is that something in the July 7th
4 letter?

5 MS. MC MANAMAN: No, and the letter says he will
6 be continued on the payroll through the extent of your
7 vacation accruals.

8 ALJ WHEATON: Well, ordinarily, it has to occur
9 by way of contract or some other arrangement that they
10 employer allocates and it sounds to me like what you're
11 doing now is attempting to allocate retroactively. The
12 common practice of the agency is where there has not been
13 an allocation to apply it to the week in which it is
14 received and so I'm wondering at what point the MSU
15 advised the agency that this payment was allocated to in a
16 period other than it was paid in?

17 MS. MC MANAMAN: Well, we notified the Agency in
18 September that his pay was allocated for those two weeks.

19 ALJ WHEATON: Do you have a document that
20 supports that statement?

21 MS. MC MANAMAN: In our exhibits that we sent
22 there was the, well, at the top it says titled "Other
23 Protests", it has a letter I.D. number on it and it has a
24 chart where you can put in the time it's allocated, the
25 amount, the date, and it's signed on the bottom by me on

1 September 18th.

2 ALJ WHEATON: I don't believe I have that
3 document. Let me look down -- did you send it in for this
4 hearing?

5 MS. MC MANAMAN: Yes, it should be in with the
6 exhibits. There was also --

7 ALJ WHEATON: Well, let's, I like one issue at
8 a time, please.

9 MS. MC MANAMAN: Okay.

10 ALJ WHEATON: You say you have a document that
11 you think is part of the exhibits that were sent in or
12 proposed exhibits that shows an allocation and so that's
13 what I'd like to look at.

14 MS. MC MANAMAN: That page is a Monetary
15 Determination, like up at the top it just says "Other
16 Protest", it has the Claimant's name and Social Security
17 number and then boxes where you can report earnings,
18 severance.

19 ALJ WHEATON: Okay, maybe this is what I have.

20 (Phone beeping)

21 ALJ WHEATON: Did somebody just drop off?

22 MR. WHITE: I am still here.

23 ALJ WHEATON: Ms. Willenbrecht, are you still
24 here?

25 MS. WILLENBRECHT: Yes, I am.

1 ALJ WHEATON: Ms. Holda, are you still there?

2 Ms. Holda? Well, I guess she's dropped out somehow. Ms.

3 Mc Manaman are you still there?

4 (Phone Beeping)

5 ALJ WHEATON: Is that you Ms. Holda?

6 MS. HOLDA: It is. I'm not sure what happened I
7 wasn't even touching my phone.

8 ALJ WHEATON: I don't know. Well, glad to have
9 you back. I think maybe I have found the document that
10 you were referring to, it just says "Other Protests" up at
11 the top, but I guess I didn't realize that was connected
12 with the Monetary Determination.

13 MS. MC MANAMAN: Yes, it is on the back side of
14 the Monetary Determination to allow the Employers to
15 report any type of payments after the benefit year begins.

16 ALJ WHEATON: All right, so this document that
17 I'm looking at says pay period from September 3rd to
18 September 15th, 2017.

19 MS. MC MANAMAN: Correct.

20 ALJ WHEATON: Did you ever file a protest of the
21 Agency's Adjudication, that this only applied to one week?

22 MS. MC MANAMAN: No, your Honor, it was not
23 caught, until this hearing issue came up and we realized
24 that the Agency had not adjudicated it correctly, but we
25 were beyond the 30 day protest date.

1 ALJ WHEATON: All right, Ms. Willenbrecht,
2 response?

3 MS. WILLENBRECHT: To the document?

4 ALJ WHEATON: Well -- to, to, to,

5 MS. WILLENBRECHT: Well, my thought is if they
6 missed the 30 days, you know, it's a good cause issue.

7 ALJ WHEATON: I agree with you. Anything
8 further on behalf of MSU?

9 MS. HOLDA: No, your Honor.

10 ALJ WHEATON: Ms. Willenbrecht, anything further
11 by way of evidence?

12 MS. WILLENBRECHT: No.

13 ALJ WHEATON: Closing?

14 MS. WILLENBRECHT: I have a quick closing your
15 Honor.

16 ALJ WHEATON: Go ahead.

17 MS. WILLENBRECHT: The Michigan Compensation
18 Appellate Commission has affirmed that a Claimant is not
19 ineligible for unemployment because of vacation payout.
20 The claims -- this, our Claimant, we believe Mr. White is
21 not ineligible for benefits under the Remuneration and
22 Earnings Offset Provision of the Act, Section 27(c) and
23 48, because the vacation pay was for paid, for vacation
24 time he had earned prior to his separation. Thank you.

25 ALJ WHEATON: Could you give me a cite on that?

1 MS. WILLENBRECHT: You know I don't have the
2 appeal number, but I will give that to you and the
3 employer, I will look it up right after the hearing.

4 ALJ WHEATON: All right. I'm not sure what the
5 circumstances were in that case whether it lines up with
6 this one or not, but I'd be glad to read that, but seems a
7 little different than the usual.

8 MS. WILLENBRECHT: I will do that, because it
9 was Steven Washington case and it was affirmed by the
10 Commission, so I will get that.

11 ALJ WHEATON: All right.

12 MS. HOLDA: Your Honor, I'm familiar with that
13 case and in that case, cause it was a Michigan State
14 University case and in that case the employee was not
15 notified that they were going to be continued on the
16 payroll.

17 ALJ WHEATON: If somebody would just give me the
18 case number or name of the case I'd be glad to read it on
19 my own.

20 MS. HOLDA: I have the appeal docket number.

21 ALJ WHEATON: That will help, give me that.

22 MS. HOLDA: 17-007597-253113. There was a
23 second one, as well, in that same matter, same employee.
24 That was 17-012285-253658.

25 ALJ WHEATON: Thank you. I can dig that out on

1 my own, but that helps me, thank you.

2 MS. WILLENBRECHT: Thank you.

3 ALJ WHEATON: Ms. Willenbrecht, anything
4 further?

5 MS. WILLENBRECHT: Nothing further, Judge.

6 ALJ WHEATON: And Ms. Holda, anything further?

7 MS. HOLDA: No, your Honor, we believe that we
8 provided ample notification that his salary would be
9 continued by using accrued vacation time. He did not
10 object or even ask for that to not happen. And we believe
11 he should be denied benefits.

12 ALJ WHEATON: Thank you, that concludes this
13 matter. We do have one other case, let me just stop this
14 recording and --

15 (Hearing concluded.)

16 (Tape off.)

17

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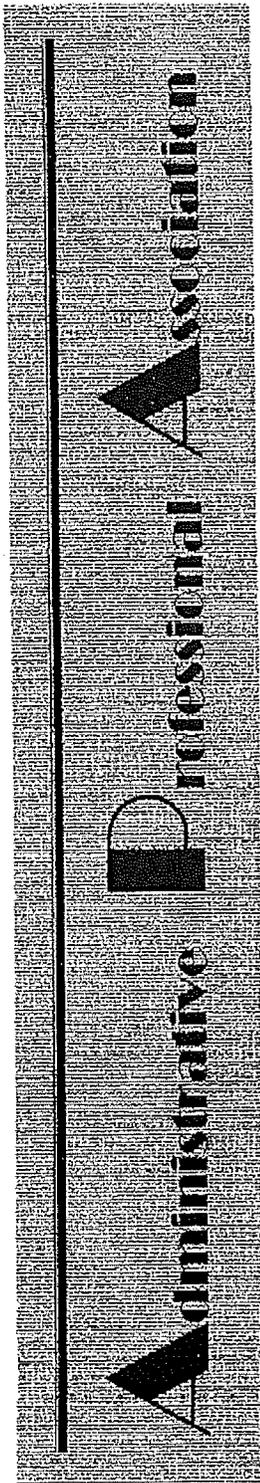
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**MICHIGAN STATE
UNIVERSITY**

(A) 1

COLLECTIVE BARGAINING AGREEMENT

Between

MICHIGAN STATE UNIVERSITY

and

**MICHIGAN STATE UNIVERSITY
ADMINISTRATIVE-PROFESSIONAL
ASSOCIATION**

October 1, 2015 – September 30, 2019

A-2

ARTICLE 21

VACATION PAY

-157 Accrued Vacation Leave Carryover

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

A-3

-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.

(B1)

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.

B2

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 APFA, 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 APFA 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:

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)

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

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.

Michigan State University
Nisbet Building
1407 S. Harrison, Suite 120
East Lansing, MI 48823

Sincerely,

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

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

cc: Administrative Professional Association

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

11/28/2017 08:58PM 2487269602

WILLENBRECHT LAW

PAGE 09/10



EMPLOYEE STATEMENT OF EARNINGS AND DEDUCTIONS
MICHIGAN STATE UNIVERSITY
East Lansing, Michigan

(C)

Name James Edward White
SSN XXX-XX-X834
ID 9749

Pay Period 09/01/2017 - 09/30/2017 W-4 Information
Pay date 09/29/2017 Fed Add \$\$ State Add \$\$
Ded. Code 1P54474100 MD1 0.00 S01 0.00

Current	2,604.26	647.27
YTD	43,303.38	12,042.11

Federal Taxable Gross	1,956.99	2,454.46
Total	31,261.27	40,778.82

00009749 Pay Period Salary		2,604.26
00009749 Unpaid Salary-S	2.00	60.58
Total Earnings		2,604.26

Min Bsa 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

MSU Care Network ER	260.42	4,330.34
Blue Care Network ER	0.00	3,046.32
Caremark ER	0.00	998.00
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

APA Dues	70.00	630.00
Total Post Tax Deductions	70.00	630.00

Total Taxable Benefits	0.00	0.00
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Federal Withholding	FED	139.81	3,996.57
FICA EE	FED	160.24	2,662.51
Medicare EE	FED	37.47	622.68
State Withholding	MI	90.15	1,606.59
Total Employee Tax		427.47	8,887.35

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			

0000974900187001	LAFU	PY Direct Deposit (ACH)	1,956.99
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(Link to clearer version at page 128)

(C)



Date Mailed: November 08, 2017
Appeal Number: 17-024033
Case Number: 10634324
Claimant SSN: XXX-XX-9834
Employer No.: 0800416

NOTICE OF TELEPHONE HEARING

On November 05, 2017, the claimant appealed an Unemployment Insurance Agency (Agency) Adjudication issued on October 09, 2017.

Under Michigan Statutes, MCL 421.33, a hearing will be held before Administrative Law Judge **Winston A. Wheaton**. This hearing will be held by telephone conference call with the Judge as the host. In order to participate, follow the instructions below. Failure to call in at 08:30 AM may result in you not being able to participate, which may result in an unfavorable decision against you.

Date: Wednesday, November 29, 2017
Time: 08:30 AM Eastern Time
Dial In: 888-204-5984
Access Code: 7249069#
After the prompt, press # to connect

The hearing is scheduled for 60 minutes.

Issues to be considered at this hearing:

Section 27(c) & 48	Whether claimant is eligible for benefits under the remuneration, earnings offset provision.
Section 20(a)	Credit to employer; Section 62(a) Restitution/Improper payments may apply.

Please contact the Michigan Administrative Hearing System if you require accommodation for the hearing, such as a sign language interpreter, reader, or any assistive equipment.

Front

File Copy

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Phone: (517) 373-9845 | Fax: (517) 763-0138

Interested Parties that were so mailed this notice:

Appellant JAMES E WHITE
4107 BREAKWATER DR
OKEMOS, MI 488644413

Respondent MICH ST UNIVER UNMPL COMP DIV
1407 S HARRISON RD
STE 110
EAST LANSING, MI 48823-5239

Additional Hearing Information

RECORDS AND WITNESSES: If you wish to offer any papers or records relevant to the case, including any previous papers or records sent to the Unemployment Insurance Agency. YOU MUST FAX OR MAIL THEM TO THE JUDGE AND THE OTHER PARTY in time to ensure the documents are received before the date of the scheduled hearing. You may present witnesses to testify on your behalf. A witness is a person who has direct knowledge of the issue in dispute.

ADVOCACY PROGRAM: The Advocacy Program is operated by the Unemployment Insurance Agency (UIA) and provides advocacy assistance to the unemployed worker or employer. If you do not have an Advocate by the time of this hearing, that in and of itself will not entitle you to an adjournment. For more information please call 1-800-638-3994.

INFORMATION: If you want additional information regarding the appeal process, please visit the following website http://www.michigan.gov/documents/uia_UC1800_76144_7.pdf or refer to your unemployment guide book. Additional questions may be directed to MAHS at:

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
611 West Ottawa
2nd Floor
Lansing, MI 48933
Phone: (517) 373-9845 | Fax: (517) 763-0138

Back

Contact Information

Appellant:

JAMES WHITE
4107 BREAKWATER DR
OKEMOS, MI
Ph: 5173811960

Respondent:

MICH ST UNIVER UNMPL COMP DIV
1407 S HARRISON RD
STE 110
EAST LANSING, MI 48823
Ph: 5178840116

Nonmonetary Issue

JAMES WHITE

Work Date: 06-Oct-2017

Owner: And

Employee Id: And

Received History Issue Closed, Level 2 Redetermination Issued Appeal Received Appeal Submitted

ATTRIBUTES CASE SUMMARY TASKS STAGES REASONABLE ATTEMPTS ITEMS RESTITUTION CORRESPONDENCE

NONMONETARY ISSUE

Case Study History

MANAGE CASE ISSUES REMUNERATION - VACATION PAY REMUNERATION - OTHER PAYMENTS PROTESTS AND APPEALS

Summary Record 1

Record 1

APPEAL INFORMATION

Protest/Appeal Type	Appeal	Appellant	Claimant	Date Filed	05-Nov-2017	Active
Original Issue	Remuneration		Appeal Closing Issue	Remuneration		
Original Circumstance	Vacation Pay		Appeal Closing Circumstance	Vacation Pay		
Original Determination Date	09-Oct-2017		Appeal Issued			
Original Period From	30-Sep-2017		Appeal Period From			
Original Period To	30-Sep-2017		Appeal Period To			

Original Separation

Appellant Comments

Prior Result

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

Restitution From Appeal

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 17.1] 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).

Appellant Comment

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.

HEARING INFORMATION

Docket Number

Hearing Date

Hearing Type

Hearing Building Name

Hearing Building Address

Hearing Street

Hearing City

Hearing State

Hearing Zip

Hearing Phone

Hearing Fax

Hearing Message

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 "accrued" vacation pay credits" as provided in the MSU/APA contract. 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

(A cleaner copy of this page's box content is at page 129.)

RECEIVED

DEC 15 2017

MICHIGAN ADMINISTRATIVE HEARING SYSTEM

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-9834

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, 2017 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 erred 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

UIA 1575C
(Rev. 08-17)
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: September 6, 2017
Letter ID: L0039437143
CLM: C4781329-0
Name: JAMES WHITE

UIA
PO Box 169
Grand Rapids MI 49501-0169
(517) 636-0427

MONETARY DETERMINATION

Dear JAMES WHITE,

Your claim for unemployment insurance benefits was filed on 09/05/2017. Your claim has been processed to determine if you meet the requirements and are monetarily eligible to receive benefits.

Based on the wages reported by your employer(s), it is determined that you are able to establish a claim for unemployment benefits. You earned enough wages during your base period and you meet the monetary requirements. You are entitled to receive benefits as long as you are not disqualified or held ineligible for other reasons.

This determination is effective beginning 09/03/2017.

Claim Information

- * Benefit Year Beginning (BYB): Your claim begins on 09/03/2017.
- * Benefit Year Ending (BYE): Your claim year ends on 09/01/2018.
- * Your weekly benefit amount: \$362.00.
- * You claimed 0 dependents.
- * You are eligible for 20.00 weeks of benefits.
- * Base Period: The time period used to look at your wages to determine your eligibility begins 04/01/2016 and ends 03/31/2017.
- * Separation from employment reasons (provided by you):

Laid Off MICH ST UNIVER UNMPL COMP DIV - separating employer

To Claim Benefits

You must certify online with MiWAM or by phone with MARVIN to claim your unemployment benefits for the previous two weeks. Your first appointment day and time is:

Tuesday, 9/19/2017 from 8:00 AM to 9:00 AM

MARVIN: 1-866-638-3993



TIA is an Equal Opportunity Employer/Program.

UIA 1675C
(Rev. 08-17)

Letter ID: L0039437143

MiWAM: www.michigan.gov/uia. Click on "Michigan Web Account Manager for Claimants and Employers".

Register for Work

You must register for work to be eligible for unemployment benefits. **To register, you must create your profile on MiTalent Connect** on the internet no later than three business days before your first contact with MARVIN or MARVIN Online to claim benefits. You may create your profile directly on the internet at www.mitalent.org. Free access to the internet is available at any Michigan Works! Agency (MWA) service center. Call 1-800-285-WORK (9675) to be connected with the MWA nearest you.

Even if you register for work on the internet, **you must also report in person to a MWA service center** after your benefit year begin date (shown on page 1), but no later than three business days before your first certification with MARVIN. MWA staff will validate your profile for the UIA.

Failure to register may prevent the payment of your unemployment benefits.

Searching for Work

You are required to search for work each week you claim benefits and provide proof that you looked for work.

You must seek work with at least two employers each week. You must report your record of work search at least once a month using one of the following methods:

- Submit work search information on your MiWAM account.
- Submit Form UIA 1583, Monthly Record of Work Search, via mail or fax.
- Appear at a Michigan Works! Agency location to file a work search form.

The Unemployment Insurance Agency will verify your proof of work search. If you have not completed and submitted proof that you have looked for a job, you may have to repay benefits received for that week, plus interest and/or penalties.

For more information on the Registration and Seeking Work requirements, please review your *Unemployment Benefits in Michigan* booklet. You may receive the booklet in the mail or it is available online at www.michigan.gov/uia.

Monetary Determination Calculations

[These are your base period quarterly wages as reported to the UIA by your employer(s):]

	Q1, 2017 Jan-Mar, 2017	Q4, 2016 Oct-Dec, 2016	Q3, 2016 Jul-Sep, 2016	Q2, 2016 Apr-Jun, 2016	Base Period Totals
MICH ST UNIVER UNMPL COMP DIV	\$15,262.17	\$15,678.86	\$15,111.06	\$15,462.95	\$61,515.04
	\$15,262.17	\$15,678.86	\$15,111.06	\$15,462.95	\$61,515.04

Weekly Benefit Rate (WBA)

Your WBA is determined by multiplying your highest quarterly total of wages (\$15,678.86) by



Mail Date: October 9, 2017

Letter ID: L0040400138

CLM: C4781329-0

Name: JAMES WHITE

JAMES EDWARD WHITE
4107 BREAKWATER DR
OKEMOS MI 48864-4413

Notice of Redetermination

Case Number: 0-010-634-324 BYB: September 03, 2017
SSN: ###-##-9834 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.

Nov 15 17 03:01p

Judy M / HR of MSU

5173559631

p.1

**MICHIGAN STATE
UNIVERSITY**

November 15, 2017

Judge Winston Wheaton
MAHS
611 W. Ottawa
Lansing, MI 48933

RE: James White
Appeal Number: 17-024033

Dear Judge Wheaton,

Enclosed please find copies of documents that the employer may wish to enter as exhibits in the above referenced unemployment hearing scheduled for November 29, 2017, @ 8:30 a.m. Copies of these documents have also been sent to the claimant. Thank you.

Sincerely,



Judy McManaman, UC Coordinator
Michigan State University
Human Resources/UC Division

Enclosures/pages (5)



**Human
Resources**

**Unemployment
Compensation**

Nisbet Building
Michigan State University
1407 S. Harrison, Ste. 240
East Lansing, MI 48823

517-884-0104
Fax: 517-355-9631
hr.msu.edu

MSU is an affirmative action,
equal opportunity employer

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: 340-44-9834

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)
<input type="checkbox"/> Earnings				
<input checked="" type="checkbox"/> ^{Allocated} Holiday/Vacation Pay	\$2,356.53	9-3-17	9-15-17 @ 3:00 pm	9-29-17
<input type="checkbox"/> Severance				
<input type="checkbox"/> Pay in Lieu of Notice				
<input type="checkbox"/> Sick Pay				
<input type="checkbox"/> Lost Earnings				
<input type="checkbox"/> Sales commission or Consultation fee				
<input type="checkbox"/> 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 separation 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 McNameer, MSU HR UC Coord, (517) 884-0104 9-18-17



TIA is an Equal Opportunity Employer/Program.



Michigan Unemployment Insurance Agency
Department of Talent and Economic Development | Talent Investment Agency



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VACATION PAY QUESTIONNAIRE

ISSUE DETAIL		ASSOCIATED CLAIMANT DETAIL	
Issue	Remuneration	Claimant Name	JAMES WHITE
Circumstance	Vacation Pay	Claimant ID	MUM9534

QUESTIONNAIRE

What date was the vacation pay issued?

What was the beginning date of the vacation pay?

What was the ending date of the vacation pay?

Was the vacation payment issued based on a contract or other agreement, such as company policy? If so, provide a copy. No

What was the gross dollar amount of the vacation pay?

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

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

(Link to a cleaner copy on page 134.)

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Display Working Times



Last name	First name	Date	Pers.No.	Status	F/S	Area	Rate	Number	MU	A/A type	A/A type text	ValBasis	WT	Long text	Amount	Re
White, James (Jim)	Edward	09/15/2017	9749			M1		2	H	2990	Excused Unpaid					
		09/14/2017				M1		6	H	2900	Vacation					
		09/13/2017				M1		8	H	2900	Vacation					
		09/12/2017				M1		8	H	2900	Vacation					
		09/11/2017				M1		8	H	2900	Vacation					
		09/08/2017				M1		8	H	2900	Vacation					
		09/07/2017				M1		8	H	2900	Vacation					
		09/06/2017				M1		8	H	2900	Vacation					
		09/05/2017				M1		8	H	2900	Vacation					
		09/04/2017				M1		8	H	2900	Vacation					
		09/01/2017				M1		8	H	2900	Vacation					
		08/31/2017				M1		8	H	2900	Vacation					
			9749						*	96	H					
									**	96	H					

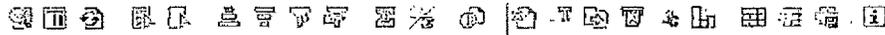


Prints window contents

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Labor Distribution Report



Michigan State University

Labor Distribution Detail Report for period 08/31/2017 to 09/30/2017

Program Name: ZHPYE_LABOR_DIST
 Run By: MCMANAMA
 Client: 100
 Run Date: 11/13/2017
 Time: 16:14:52

Selection Criteria

Posting Date	For Pay End	Hours	Summarized Amount	Wage Type Description	Last Name	First Name	Org Unit Description	Person ID
08/31/2017	08/31/2017		5,087.39	Pay Period Salary	White	James	INTERNATIONAL STUDIES AND	00009749
09/29/2017	09/30/2017		2,604.26	Pay Period Salary		James		00009749
			7,691.65					

Prints window contents

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

Form 1850

MICH ST UNIVER UNMPL COMP DIV
1407 S HARRISON RD
STE 110
EAST LANSING, MI 48823-5239

Docket No.: 17-024033
Case No.: 10634324
Employer: MICH ST UNIVER UNMPL
COMP DIV
Claimant: JAMES E WHITE
SSN: XXX-XX-9834

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
ADMINISTRATIVE LAW JUDGE

PARTICIPANTS

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

EXHIBITS

NO	SUBMITTED BY			DOCUMENT DATED	FORM NO	DOCUMENT DESCRIPTION
	UIA	E	C			
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

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 $1\frac{3}{5}$ times his or her weekly benefit amount. For each dollar of total benefits and earnings that exceeds $1\frac{3}{5}$ 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 $1\frac{1}{2}$ 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 $1\frac{1}{2}$ times the individual's weekly benefit amount.

17-024033
Page 3 of 8

(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! إن هذا الوثيقة أو / و لغتي أو في موضوعات و توقعات مع قدم كاجول عميل مع (قوائم العمل) قوائم العمل هذه أو في وقت إمام
دون كسجلنا اذ في كسراولنا كاجول عميلنا مهفت نأ
(قوائم العمل) قوائم العمل في كاجول عميلنا مهفتي كجرت في كدع كسجلنا 1-866-500-0017 في كصننا، كمالا كزل اذ: بوقنا في كع
اهت في قلمات في كمالا

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://www.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.

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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-9834

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 ending 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.

17-024033
Page 1

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.



WINSTON A. WHEATON
ADMINISTRATIVE LAW JUDGE

DATED: December 18, 2017

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)

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#: 9834 (last 4 digits)

Claimant Address: 4107 Breakwater Dr, 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. 17-024033 Case No. 10634324 Decision Date: Dec. 4, 2017

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

Docket No. Case No. Decision Date:

(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: James E. White 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.

RECEIVED

JAN 16 2018

MCAC-09/20/17

MICHIGAN COMPENSATION APPELLATE COMMISSION

86

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-9834

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 ending 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.



WINSTON A. WHEATON
ADMINISTRATIVE LAW JUDGE

DATED: December 18, 2017

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)

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

Form 1850

MICH ST UNIVER UNMPL COMP DIV
1407 S HARRISON RD
STE 110
EAST LANSING, MI 48823-5239

Docket No.: 17-024033
Case No.: 10634324
Employer: MICH ST UNIVER UNMPL
COMP DIV
Claimant: JAMES E WHITE
SSN: XXX-XX-9834

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
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

NO	SUBMITTED BY			DOCUMENT DATED	FORM NO	DOCUMENT DESCRIPTION
	UIA	E	C			
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

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.

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Page 3 of 8

(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)

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Page 6 of 8

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 جداً نتم. إندى أوقف وأ / و إندى أوقف أوقف كل باطيل ا تاضن يوعت ووق ح نع كدم تامل عم يل ع (قوى اتبول) قوى اتبول ا هذه اىوت حت ا مهم دن تسرمل ا اذه يف كراول ا تامل عم اءا مهنت نا

(قوى اتبول) قوى اتبول ا يف تامل عم ا ا مهنت و قمرت يف كدع اسرمل ال 1-866-500-0017 يل ع ل صرنا برمال ا بزل اذ ا بوقل ا يل ع اسرمل ا يف ا

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.

Mënyjëherë: 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://www.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.

17-024033
Page 8 of 8

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-9834

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 Act¹, 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.

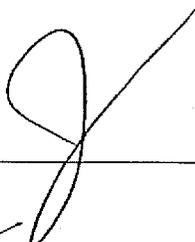
The Commission has reviewed the ALJ's December 4, 2017 decision in light of the evidence appearing in the record made prior to the claimant's request for rehearing. It is our opinion that the decision is in conformity with the law and facts and should be affirmed.

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

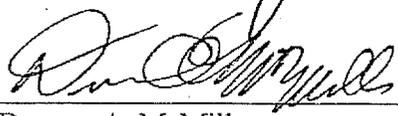
Therefore,

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

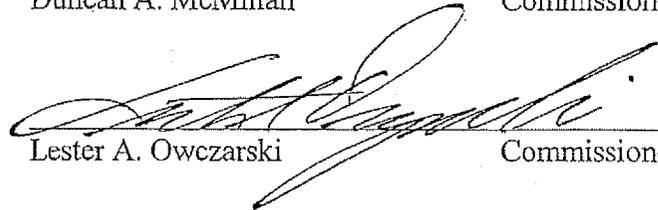
IT IS FURTHER ORDERED that the ALJ's decision is hereby affirmed.



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

RECEIVED

APR 05 2018

STATE OF MICHIGAN
MICHIGAN COMPENSATION APPELLATE COMMISSION

MICHIGAN COMPENSATION APPELLATE COMMISSION

In the Matter of

JAMES E. WHITE,

Claimant,

Appeal Docket No.: 17-024033-255373W

Social Security No.: XXX-XX-9834

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



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

Dated: April 2, 2018

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

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-9834

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.

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-9834

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



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:

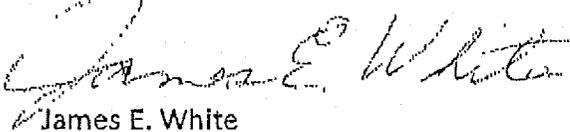
517-241-7326, Michigan Compensation Appellate Commission, P.O. Box 30475, Lansing, MI 48909

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
4107 Breakwater Dr
Okemos, MI 48864
517-381-1960

**MICHIGAN STATE
UNIVERSITY**

March 13, 2019

State of Michigan
Department of Licensing and Regulatory Affairs
Michigan Compensation Appellate Commission
P.O. Box 30475
Lansing, MI 48909-7975

RECEIVED

MAR 14 2019

Michigan Compensation
Appellate Commission

RE: James E. White
SSN: 340-44-9834
Appeal Docket No.: 17-024033-255373W

The Employer wishes to respond to the "Request for MCAC Reopening and/or Request for MCAC Rehearing" sent by James White, claimant (received by the Employer on March 7, 2019). The Employer opposes the requests submitted.

The Employer believes that the Administrative Law Judge correctly applied the facts of this case and determined the vacation pay, per Section 48(2) of the law, will be offset against unemployment benefits, and benefits were properly denied for that week. The Employer does not believe that the claimant has established "good cause", as mandated in Rule 1431(2) of the Michigan Administrative Hearing Systems Administrative Hearing Rules, to have a reopening of this case.

For these reasons, the Employer requests the following:

- 1.) That the request for a reopening be denied.
- 2.) That the request to present additional evidence be denied.
- 3.) That the appeal to the Michigan Compensation Appellate Commission be denied.
- 4.) That any future request for written argument be denied.
- 5.) That the Commission conduct its thorough and independent review by relying on the transcript of the hearing and the exhibits marked and received at the hearing; and that this review be conducted without consideration of the information submitted by Mr. White.

Sincerely,

Amanda Moses
Employee Relations Professional
Michigan State University

cc: James White



Human Resources

Employee Relations

Michigan State University
Nesbit Building
07 S. Harrison, Suite 240
East Lansing, MI
48823-5239

517-353-5510
Fax: 517-353-3523
www.hr.msu.edu

Application for MCAC Oral Argument and/or for MCAC Written Argument**(Re)Request that the MCAC Order Additional Evidence**

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

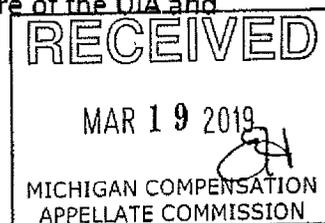
Appeal Docket No.: 17-024033-255373W
 Employer: MICH ST UNIVER UNMPL
 COMP DIV
 Claimant: JAMES E WHITE
 SSN: XXX-XX-9834

Pursuant to at least MCL 421.34 (4) Claimant respectfully requests MCAC grant oral and/or written, preferably written, argument on the denial of unemployment benefits to Claimant for the week ending September 30, 2017. Permitting (oral and/or) written argument should best enable a thorough review of the facts of this case and the law and (perhaps via a subsequent MCAC written decision) should clarify, if not settle, at least:

1. The MCAC position on 421.48's "However, payments for a vacation or holiday, or the right to which has Irrevocably vested ... shall not be considered wages or remuneration" sentence.
2. That the people of Michigan can expect the above statement in law to hold without explicit contract repetition.
3. That the absence of evidence itself (required by UIA's "provide a copy" request) that MSU has by contract or agreement a right to ignore the above sentence is evidence that was ignored by UIA.
4. That all facts (and law clauses) relevant to this case are being considered by the MCAC.
5. That the MCAC can establish a decision rule for the UIA and ALJs to follow rather than leaving each claim processor and ALJ to make whatever decision they happen to choose.
6. That all ALJs must read and account for all applicable clauses of the law.

I will continue to seek legal support from The APA/MEA unions' legal staff but should they not assist in presenting my case I waive any need/requirement for legal representation in presenting written argument.

Again, in light of MSU's representation that they have contract, agreement, or policy support for the vacation pay they made I explicitly re-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." Further I request that failure of the UIA and



MSU to provide such documentary evidence be treated by the MCAC as clear evidence that there is no such contract or agreement evidence.

Faxed from 517-347-0189 to:

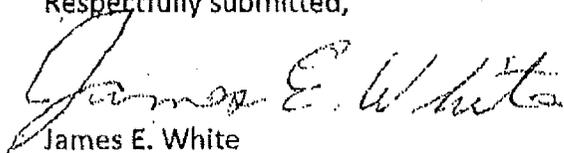
517-241-7326, Michigan Compensation Appellate Commission, P.O. Box 30475, Lansing, MI 48909

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 19, 2019.

Respectfully submitted,



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

MICHIGAN STATE
UNIVERSITY

March 27, 2018

State of Michigan
Department of Licensing and Regulatory Affairs
Michigan Compensation Appellate Commission
P.O. Box 30475
Lansing, MI 48909-7975



RE: James White
SSN: XXX-XX-9834
Appeal Docket No.: 17-024033-255373W

The Employer wishes to respond to the claimant's "Application for MCAC Oral Argument and/or for MCAC Written Argument" sent by the Claimant, James White (received by the Employer on March 19, 2019). The Employer opposes the request submitted.

In the "Application for MCAC Oral Argument...", Mr. White asserts that MCAC's decision for an order denying application for rehearing mailed February 6, 2019 should be reversed; in effect Mr. White is presenting a written argument to the Commission. The Employer disagrees with this assertion and with the procedure used to submit it to the Commission.

The Employer does not agree to written arguments regarding the above referenced appeal due to untimeliness. Per 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."

For this reason alone, the Employer believes that the request for oral and/or written argument should not be granted. The Employer does not believe that there is "good cause" for MCAC to review the prior decision after the 30 days. "Good Cause" is defined in the Michigan Administrative Hearing System Administrative Hearing Rules R 792.11402(d):



Human Resources
Employee Relations

Michigan State University
Nesbit Building
407 S. Harrison, Suite 240
East Lansing, MI
48823-5239

517-353-5510
Fax: 517-353-3523
www.hr.msu.edu

"Good cause" includes, but is not limited to, any of the following:

- (i) Newly discovered material evidence that, through no fault of the party, had not previously been available to the party.
- (ii) A legitimate inability to act sooner.
- (iii) A failure to receive a reasonable and timely notice, order, or decision through no fault of the party.
- (iv) Untimely delivery of a protest, appeal, or an agency document by a business or governmental agency entrusted with delivery of mail.
- (v) Relying on incorrect information from the agency, administrative law judge, the hearing system or the Michigan compensation appellate commission.

The Claimant, Mr. White, is not presenting newly discovered evidence, is not presenting an inability to act sooner, received the notice timely (as he had sent a previous appeal for reopening of the hearing on March 7, 2019), is not presenting a reason for untimely delivery by a business or government agency (as he faxed the appeal) and has not stated that he received incorrect information from the agency, administrative law judge, the hearing system for MCAC as it pertains to appeal dates.

However, should the Commission determine that there was good cause for a late filing, the Employer still opposes the request submitted. The Employer does not believe that the necessary conditions have been met for a written argument to be granted. Rule 11423, subsection 4 of the Michigan Administrative Hearing System Administrative Hearing Rules states,

"The Michigan compensation appellate commission may consider a party's written argument only if any of the following conditions exist: (a) All parties are represented by an attorney or other agent of record. (b) All parties agree that the Michigan compensation appellate commission may consider written argument. The agreement must be in writing, signed by each party, and received by the Michigan compensation appellate commission not later than 14 days after the mailed date of the notice of receipt of appeal."

In this case, the Employer was not represented by an attorney or agent. The representative was an employee of the University. It has been clarified for the Employer at previous hearings that being an employee of the University is different than being an advocate as recognized under the Advocacy Program. Further, the Notice of Request for Rehearing, with a Date of Petition of 04/05/2018, also indicates whether you are represented by an attorney or agent.

The applicable Notice of Request for Rehearing lists the Employer as "Michigan State University Unemployment Compensation Division". It does NOT list an attorney or agent for the University. In contrast, it does list the Claimant's Attorney as Daniel Zarimba. Mr. Zarimba has since withdrawn his representation for Mr. White as stated in a fax sent to MCAC and the Employer on March 7, 2019. Thus, requirement one has not been met. Regarding

requirement two, neither party submitted a signed written consent to allow written arguments for this case.

Additionally, no oral or written argument is necessary as both determinations from the Administrative Law Judge Winston A. Wheaton and the MCAC were correct. The Administrative Law Judge stated that that Mr. White "was ineligible for benefits for week ending September 30, 2017, pursuant to the remuneration offset provisions of Section 27(c) and 48(2) of the Michigan Employment Security Act". The MCAC stated that the ALJ did not "abuse discretion" on December 18, 2017 and that the ALJ's decision "is in conformity with the law and facts and should be affirmed". The Administrative Law Judge correctly applied the facts of this case and determined benefits were properly denied.

For all of these reasons, the Employer requests the following:

- 1.) That the request for oral and/or written argument be denied.**
- 2.) That the appeal to the Michigan Compensation Appellate Commission be denied.**
- 3.) That any future request for oral and/or written argument be denied.**

Sincerely,



Amanda Moses
Employee Relations Professional
Michigan State University

cc: James White

5
MICHIGAN STATE
UNIVERSITY

*The People of Human
 Resources at MSU
 Value*

SERVICE

- Excellence in customer service
- Accessibility with a commitment to outreach
- Friendly, efficient, professional atmosphere
- Individual accountability

PEOPLE

- Ethics and integrity above all
- Compassion and fairness in treating others as they want to be treated
- Meet the needs of the people and the needs of the organization will follow
- Respect for differences

LEARNING

- Learn to question – question to learn
- Encourage continuous personal and professional development
- Seek new knowledge to maintain technical expertise

INNOVATION

- Intelligent risk taking is encouraged and mistakes are allowed
- Creative problem solving with the use of appropriate technology
- Vision to break out of paradigms, anticipating new and powerful directions

TEAMWORK

- Leadership that supports collaboration through a coaching attitude
- Mutual respect and commitment in a caring atmosphere
- A sense of purpose that recognizes member contributions
- Accountability and sharing that facilitates efficient work process

*Human Resources:
 People Making People Matter*

HUMAN RESOURCES
 Nisbet Building
Unemployment Compensation
 1407 S Harrison Rd Ste 240
 East Lansing MI 48823-5239
 517-884-0104
 Fax: 517-355-9631
 www.hr.msu.edu

RECEIVED

MAR 29 2019

MICHIGAN COMPENSATION
 APPELLATE COMMISSION

Date: 3/29/2019 **Pages:** 4 Including cover sheet

To: Michigan Compensation Appellate Commission
Fax: (517) 241-7326

From: Amanda Moses

E-Mail: mosesa@hr.msu.edu **Phone ext:** (517) 884-0104

Message:

RE: Appeal Docket No. 17-024033-255373W

FACSIMILE TRANSMITTAL

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via the US Postal Service. Thank you.

Status Query for:

March 6, 2019 Request for MCAC Reopening/Rehearing (etc.)

March 19, 2019 Application for MCAC Oral/Written Argument (etc.)

December 23, 2019

Michigan Compensation Appellate Commission
Unemployment
P.O. Box 30475
Lansing, MI 48909-7975

RE:

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-9834

To Whom It May Concern:

As noted at the top of this page a request for Reopening/Rehearing (etc.) of the above case was filed with the MCAC on March 6, 2019 and an additional request for Oral/Written Argument (etc.) was filed with the MCAC on March 19, 2019. I am hopeful that the Commission has had an opportunity to review the case and these requests and will issue a decision in the near future. I would appreciate a reply indicating the current status of these requests and/or some estimate of the date I might expect to receive their results. I look forward to hearing from you.

Respectfully submitted,



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

RECEIVED
DEC 26 2019
ETH
UNEMPLOYMENT INSURANCE
APPEALS COMMISSION

Ingham County
30th Judicial Circuit Court

RECEIVED

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

MAR 23 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.

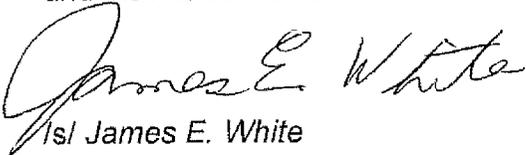
This complaint is submitted via email attachment to CircuitCourtRecords@ingham.org (Per 30th Judicial Circuit Court Local Administrative Order 2020-03) on March 19, 2020.

Proof of Service

I certify that copies have been provided via both USPS First Class mail and email on March 19, 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.


/s/ James E. White

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.

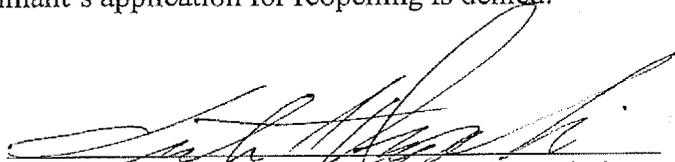
ORDER DENYING APPLICATION FOR REOPENING AND REVIEW

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.

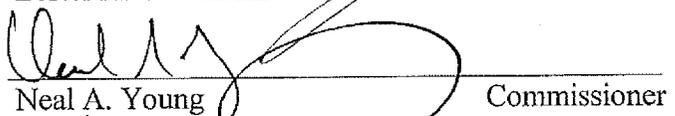
Under Section 34 of the Michigan Employment Security Act, the Commission may reopen and review the decision dated March 7, 2018, only if "good cause" has been demonstrated.

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.

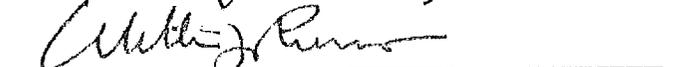
IT IS THEREFORE ORDERED that the claimant's application for reopening is denied.



Lester A. Owczarski Commissioner



Neal A. Young Commissioner



William J. Runco Commissioner

MAILED AT LANSING, MICHIGAN APR 30 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 01 2020.

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME.

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! هذه الوثيقة (التي أتيت بها) تحتوي على معلومات هامة عن حقوقك ومسئولياتك و/أو مزايا تعويض البطالة. من الضروري أن تفهم المعلومات في هذه الوثيقة.

فورا: إذا كنت بحاجة إلى مساعدة في الترجمة وفهم المعلومات في الوثيقة (التي أتيت بها) التي تلقيتها، يرجى الاتصال بـ 1-866-500-0017 للحصول على المساعدة. يمكنك الاتصال بـ 1-866-500-0017 للحصول على المساعدة في الترجمة وفهم المعلومات في الوثيقة (التي أتيت بها) 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.

1	2011 421.48 "Unemployed" explained; amounts considered wages or remuneration; leave of absence; elected layoff.				
2	Sec. 48. Current law since December 19, 2011.				
3	(1) An individual shall be considered unemployed				
4	for any week				
5	1 during which he or she performs no services	TRUE	TRUE	TRUE	
6	and				
7	for which remuneration is not payable to the individual,	FALSE	TRUE	FALSE	0, nada, zip. So this for ¹ applies. "and" = both must be true in this pair Note "for" and "payable" not "paid"
8		FALSE	TRUE	FALSE	Yellow background = "First belief" but hold in abeyance for the current case.
9	or				
10	for any week				Purple background: White or ALJ differ fr/MSU.
11	2 of less than full-time work	FALSE	FALSE	FALSE	But work > 0 none-the-less (i.e., not ¹ "no services") for work remuneration to be payable for. ("payable" not "paid")
12	if the remuneration payable to the individual is less than 1-1/2 times his or her weekly benefit rate,	FALSE	FALSE	FALSE	
13	except that for payable weeks of benefits				This section of the law has expired because it is outside of its own set time constraints.
14	beginning after	TRUE			
15	the effective date of the amendatory act that added section 15a				
16	and				
17	before	FALSE			Since this is FALSE for this case (and all future cases), this is FALSE
18	October 1, 2015,				
19		FALSE			
20	an individual is considered unemployed				
21	for				
22	any week				
23	or				
24	less of full-time work				
25					
26					
27	if the remuneration payable to the individual is less than 1-3/5 times his or her weekly benefit rate.				and therefore none of this "except" applies to the current case (or any future case).
28		FALSE	FALSE	FALSE	
29		FALSE	TRUE	FALSE	
30	However,				i.e., unemployed from ¹ above.
31	any loss of remuneration incurred by an individual during any week resulting				The above remuneration (of both ¹ and ²) can be overridden if this "However" applies!
32	from				← Block not applicable to plaintiff's case.
33	any cause	FALSE	FALSE	FALSE	None, such as the leave of absence of 48(3).
34	other than				
35	the failure of the individual's employing unit to furnish full-time, regular employment	TRUE	TRUE	TRUE	Laid off thus TRUE.
36		FALSE	FALSE	FALSE	Because no loss of remuneration from any other cause than layoff.
37	shall be included as remuneration earned for purposes of this section and section 27(c).				
38	The total amount of remuneration lost shall be determined pursuant to regulations prescribed by the unemployment agency.				Continues the "However..." as tied in by "remuneration lost" so not an independent sentence like the next sentence.
39		FALSE	FALSE	FALSE	The "However..." falls therefore 48(1) "remuneration" ¹ clause remains in effect.
40	For the purposes of this act, an individual's weekly benefit rate means the weekly benefit rate determined pursuant to section 27(b).				[Benefit rate calculation without (f) retirement.]
41		FALSE	TRUE	FALSE	i.e., unemployed if TRUE.
42					
43					

1 MSU? White ALJ?

45	(2) All amounts <u>paid</u> to a claimant by an employing unit or former employing unit					
46	for					
47	3 a vacation	TRUE	FALSE	TRUE		Time – though <u>paid</u> as money
48	or					
49	a holiday,	FALSE	FALSE	FALSE		Time – though <u>paid</u> as money
50		TRUE	FALSE	TRUE		
51	and					"And" means "or," both are "amounts paid."
52	amounts paid					Other parsing won't overcome the "However..."
54	in the form of retroactive pay, pay in lieu of notice, severance payments, salary continuation,	FALSE?	FALSE	FALSE		Money, Money, Money, Money
55	or					
56	other remuneration	TRUE?	FALSE	FALSE		Money An outside the contract "vacation payout" does not become "continuing wages" because MSU "intended" to get the UIA to believe it.
57	intended by the employing unit as continuing wages	TRUE?	FALSE	FALSE		
58	or	TRUE?	FALSE	FALSE		
59	other <u>monetary consideration</u>	FALSE	FALSE	FALSE		Money
60		TRUE	FALSE	FALSE		
61	as the result of the separation,	TRUE?	FALSE	TRUE?		FALSE if already owed, TRUE if paid new amount
62		TRUE?	FALSE	TRUE?		"as the result of the separation," not MSU wish.
63	excluding SUB payments as described in section 44,	FALSE	FALSE	FALSE		[Supplemental Unemployment Benefit, 44(1)(b)]
64		TRUE?	FALSE	TRUE?		
65	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),	TRUE?	FALSE	TRUE?		Therefore "the period..." maybe is applicable?
66	for					[Benefit rate calculation without (f) retirement.]
68	4 the period designated by the contract or agreement providing for the payment,	FALSE	FALSE	FALSE		The MSU/APA contract -171 calls for unused vacation payout on termination, not layoff.
69	or					TRUE/FALSE correctly stated but grant abeyance.
70	if there is no contractual specification of the period to which payments shall be allocated,	TRUE?	FALSE	TRUE?		Contract calls for vacation pay at termination so not a contract payment, thus should be FALSE.
71	then for	TRUE?	FALSE?	TRUE?		But irrelevant due to "However..." below.
72	the period designated by the employing unit or former employing unit.	TRUE?	FALSE	FALSE-		Designated and paid timing solely intended to flummox UIA into reducing MSU's unemployment obligation by robbing from the employee's earned and future owed vacation.
73		TRUE?	FALSE	FALSE-		
74		TRUE?	FALSE	FALSE-		
76			FALSE	FALSE		
77		TRUE?	FALSE	TRUE-		- ALJ effect, MSU missed 30 day protest limit.
80	However,					If vacation and "However" applies, (2) ^{3,4} don't.
81	payments for a <u>vacation</u> or holiday,		TRUE			The inclusive "or" comma separated clause adds in "irrevocably vested rights" within the meaning of "vacation or holiday."
82	or					
83	the right to which has irrevocably vested,		TRUE			
84			TRUE			
85	after 14 days following a vacation or holiday		TRUE			Because payment was >14 days after vesting the August 2017 16 hours of vacation rights.
86			TRUE			
87	shall not be considered wages or remuneration within the meaning of this section.		TRUE			for week in question Section 48 (1) "unemployed" & ¹ "no remuneration" hold & (2) ^{3,4} /
89						row 65 "remuneration" fall. "However" wins.

1 MSU? White ALJ?

92	(3) An individual shall not be considered to be unemployed during any leave of absence from work				Ties to ¶ (1) "However... any cause..." (row 31...)
93	granted by an employer				Interpretation A.
94	either				
95	at the request of the individual	FALSE	FALSE	FALSE	← Block (3) not applicable to plaintiff's case.
96	or				
97	pursuant to an agreement with the individual's duly authorized bargaining agent,	FALSE	FALSE	FALSE	
98		∴FALSE	∴FALSE	∴FALSE	
99	or				
100	in accordance with law.	FALSE	FALSE	FALSE	
101		∴FALSE	∴FALSE	∴FALSE	
102	granted by an employer				Interpretation B.
103	either				
104	at the request of the individual	FALSE	FALSE	FALSE	
105	or				
106	pursuant to an agreement with the individual's duly authorized bargaining agent,	FALSE	FALSE	FALSE	
107		∴FALSE	∴FALSE	∴FALSE	
108	or				
109	in accordance with law.	FALSE	FALSE	FALSE	
110		∴FALSE	∴FALSE	∴FALSE	
111	in accordance with law	FALSE	FALSE	FALSE	Unambiguous Interpretation A.
112	or				
113	granted by an employer				
114	either				
115	at the request of the individual	FALSE	FALSE	FALSE	The question is, does the law, outside the employer decision arena, make any decisions as to leave? I suspect it does.
116	or				
117	pursuant to an agreement with the individual's duly authorized bargaining agent.	FALSE	FALSE	FALSE	In this current case we always get the same answer covered by the same law regardless because it's all "or" conjunctions and no leave of absence thus (1) "unemployed" stands.
118		∴FALSE	∴FALSE	∴FALSE	
119		∴FALSE	∴FALSE	∴FALSE	
120					
121	An individual shall				
122	neither				
123	be considered not unemployed	FALSE	FALSE	FALSE	i.e., employed. Eliminates (1) "An individual... any week during..."
124	nor				
125	on a leave of absence	FALSE	FALSE	FALSE	Eliminates (1) "However... any cause..."
126		∴FALSE	∴FALSE	∴FALSE	
127	solely because the individual <u>elects</u> to be laid off,				i.e., the individual's election is required but can still perhaps be trumped.
128	pursuant to an option provided under a collective bargaining agreement	FALSE	FALSE	FALSE	
129	or				
130	written employer plan that permits an <u>election</u> ,	FALSE	FALSE	FALSE	Note that "elect" ties together everything after "solely."
131		∴FALSE	∴FALSE	∴FALSE	
132	if there is a temporary layoff because of lack of work	TRUE	TRUE	TRUE	
133	and				
134	the employer has consented to the <u>election</u> .	FALSE	FALSE	FALSE	Presumably for a specific employee elected instance, not just in the contract.
135		∴FALSE	∴FALSE	∴FALSE	
136		∴FALSE	∴FALSE	∴FALSE	Thus (1) "unemployed" stands.
137					
138	if there is a temporary layoff because of lack of work				The two commas for the clause before the "if" clause tell us this block to the left belongs to the "solely" but for this sentence we would get the same result if it were a comma set off clause between "shall" and "neither" at the beginning of the sentence.
139	and				
140	the employer has consented to the <u>election</u> .				
141					
142					



Special Payments (Vacation Pay, Holiday Pay, Severance Pay, Separation Pay, Wage Continuation Payment, Payment in Lieu of Notice, Bonus)

What the law says: This issue is covered by Sections 48(2), 27(c), and 50(c)(4) of the *Michigan Employment Security Act*, and the Unemployment Insurance Agency (UIA) Administrative Rule 302. The law says that if the unemployed worker is entitled to vacation pay, holiday pay, severance pay, or any of the other payments mentioned in the title of this Fact Sheet, these kinds of payments may be used to reduce a worker's unemployment benefits. However, to reduce an unemployed worker's unemployment benefits, the employer must "allocate" (assign) the vacation pay, holiday pay, severance pay, or any other payments mentioned, to a specific period, or the employment contract must do so. See the Fact Sheet "The Effect of Severance Pay on Unemployment Benefits" for more information about severance pay.

If an employer gives no notice to a worker before layoff, but gives the worker payment instead ("in lieu" of the notice), then that payment would reduce the worker's unemployment benefits.

A Supplemental Unemployment Benefit (SUB) payment by the employer will not be used to reduce unemployment benefits. However, a bonus, and a severance, separation, or wage continuation payment will be used to reduce unemployment benefits in the week paid, or over a series of weeks if so allocated by the employer. Severance, separation, and wage continuation payments, as well as holiday pay, vacation pay, bonuses and payments in lieu of notice, will also be used as qualifying wages in determining monetary eligibility for benefits.

What the Attorney General and the Courts have said: The Attorney General has said that if a worker receives a vacation payment but has the choice and does not choose to take a vacation, then the vacation pay will be considered a bonus. If the employee did not take vacation, but did not have the choice of receiving the vacation payment, then the vacation pay would reduce unemployment benefits if the employer allocates the pay to a week or weeks.

Courts have said that if a worker has the right to receive vacation pay, and the worker actually takes vacation time off of work, then unless otherwise specified by the contract the employer can assign the vacation pay to any future period of time. However, the employer must notify the worker in writing, and the worker's union representative, if any, of the designation.

Examples: If a worker becomes entitled to three weeks of vacation pay on his or her anniversary date on March 1, the worker does not have the option of receiving the payment without taking vacation, and the employer has a plant shutdown scheduled for three weeks in July, the employer can designate the vacation pay to the period in July (unless the contract specifies otherwise), regardless of when the vacation payment is actually paid to the worker (unless the contract specifies otherwise). However, the written notice required under Administrative Rule 302 must be given in advance of the plant shutdown.

The designation in this way will likely prevent unemployment benefits from being payable to the worker for the period of the plant shutdown.

Proof at the Hearing: The employer has the burden to prove that a particular kind of special payment was made, and that the payment meets the requirements of the law and the Administrative Rule, in order to reduce unemployment benefits.

For Further Help: The UIA Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994, Item 2.

The information on this sheet is intended to provide a general understanding of the subject matter.

It does not have the force or effect of law or regulation.

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Form UIA 1982-K

MICHIGAN EMPLOYMENT SECURITY ACT (EXCERPT)
Act 1 of 1936 (Ex. Sess.)

421.28 Eligibility to receive benefits; conditions.

Sec. 28. (1) An unemployed individual is eligible to receive benefits with respect to any week only if the unemployment agency finds all of the following:

(a) The individual has registered for work and has continued to report pursuant to unemployment agency rules and is actively engaged in seeking work. The requirements that the individual must report, must register for work, must be available to perform suitable full-time work, and must seek work may be waived by the unemployment agency if the individual is laid off and the employer who laid the individual off notifies the unemployment agency in writing or by computerized data exchange that the layoff is temporary and that work is expected to be available for the individual within a declared number of days, not to exceed 45 calendar days following the last day the individual worked. This waiver is not effective unless the notification from the employer is received by the unemployment agency before the individual has completed his or her first compensable week following layoff. If the individual is not recalled within the specified period, the waiver ceases to be operative with respect to that layoff. Except for a period of disqualification, the requirement that the individual shall seek work may be waived by the unemployment agency if it finds that suitable work is unavailable both in the locality where the individual resides and in those localities in which the individual has earned wages during or after the base period. This waiver does not apply to a claimant enrolled and attending classes as a full-time student. An individual is considered to have satisfied the requirement of personal reporting at an employment office, as applied to a week in a period during which the requirements of registration and seeking work have been waived by the unemployment agency pursuant to this subdivision, if the individual has satisfied the personal reporting requirement with respect to a preceding week in that period and the individual has reported with respect to the week by mail pursuant to the rules promulgated by the unemployment agency.

(b) The individual has made a claim for benefits pursuant to section 32 and has provided the unemployment agency with all of the following:

(i) His or her Social Security number.

(ii) His or her driver license number, and the state that issued the license, or state identification card number, and the state that issued the identification card, or copies of the acceptable documents as provided in the Form I-9.

(iii) If the unemployment agency has requested them, copies of the acceptable documents as provided in the Form I-9. As used in this subdivision, "Form I-9" means the employment verification form that fulfills the employment verification obligations under 8 CFR 274a.2.

(c) The individual is able and available to appear at a location of the unemployment agency's choosing for evaluation of eligibility for benefits, if required, and to perform suitable full-time work of a character that the individual is qualified to perform by past experience or training, which is of a character generally similar to work for which the individual has previously received wages, and for which the individual is available, full time, either at a locality at which the individual earned wages for insured work during his or her base period or at a locality where it is found by the unemployment agency that such work is available. An individual is considered unavailable for work under any of the following circumstances:

(i) The individual fails during a benefit year to notify or update a chargeable employer with telephone, electronic mail, or other information sufficient to allow the employer to contact the individual about available work.

(ii) The individual fails, without good cause, to respond to the unemployment agency within 14 calendar days of the later of the mailing of a notice to the address of record requiring the individual to contact the unemployment agency or of the leaving of a telephone message requesting a return call and providing a return name and telephone number on an automated answering device or with an individual answering the telephone number of record.

(iii) Unless the claimant shows good cause for failure to respond, mail sent to the individual's address of record is returned as undeliverable and the telephone number of record has been disconnected or changed or is otherwise no longer associated with the individual.

(d) In the event of the death of an individual's immediate family member, the eligibility requirements of availability and reporting are waived for the day of the death and for 4 consecutive calendar days thereafter. As used in this subdivision, "immediate family member" means a spouse, child, stepchild, adopted child, grandchild, parent, grandparent, brother, or sister of the individual or his or her spouse. It shall also include the spouse of any of the persons specified in the previous sentence.

(e) The individual participates in reemployment services, such as job search assistance services, if the

individual has been determined or redetermined by the unemployment agency to be likely to exhaust regular benefits and need reemployment services pursuant to a profiling system established by the unemployment agency.

(2) The unemployment agency may authorize an individual with an unexpired benefit year to pursue vocational training or retraining only if the unemployment agency finds all of the following:

(a) Reasonable opportunities for employment in occupations for which the individual is fitted by training and experience do not exist in the locality in which the individual is claiming benefits.

(b) The vocational training course relates to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable employment opportunities.

(c) The training course has been approved by a local advisory council on which both management and labor are represented, or if there is no local advisory council, by the unemployment agency.

(d) The individual has the required qualifications and aptitudes to complete the course successfully.

(e) The vocational training course has been approved by the state board of education and is maintained by a public or private school or by the unemployment agency.

(3) Notwithstanding any other provision of this act, an otherwise eligible individual is not ineligible for benefits because he or she is participating in training with the approval of the unemployment agency. For each week that the unemployment agency finds that an individual who is claiming benefits under this act and who is participating in training with the approval of the unemployment agency, is satisfactorily pursuing an approved course of vocational training, it shall waive the requirements that he or she be available for work and be seeking work as prescribed in subsection (1)(a) and (c), and it shall find good cause for his or her failure to apply for suitable work, report to a former employer for an interview concerning suitable work, or accept suitable work as required in section 29(1)(c), (d), and (e).

(4) The waiver of the requirement that a claimant seek work under subsection (1)(a) is not applicable to weeks of unemployment for which the claimant is claiming extended benefits and to which section 64(7)(a)(ii) applies, unless the individual is participating in training approved by the unemployment agency.

(5) Notwithstanding any other provisions of this act, an otherwise eligible individual must not be denied benefits solely because the individual is in training approved under section 236(a)(1) of the trade act of 1974, 19 USC 2296, nor shall the individual be denied benefits by reason of leaving work to enter such training if the work left is not suitable employment. Furthermore, an otherwise eligible individual must not be denied benefits because of the application to any such week in training of provisions of this act, or any applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work. For purposes of this subsection, "suitable employment" means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the trade act of 1974, 19 USC 2101 to 2497b, and wages for that work at not less than 80% of the individual's average weekly wage as determined for the purposes of the trade act of 1974, 19 USC 2101 to 2497b.

(6) Except as otherwise provided in subsection (7), for purposes of this section, for benefit years beginning on or after January 1, 2013, to be actively engaged in seeking work, an individual must conduct a systematic and sustained search for work in each week the individual is claiming benefits, using any of the following methods to report the details of the work search:

(a) Reporting at monthly intervals on the unemployment agency's online reporting system the name of each employer and physical or online location of each employer where work was sought and the date and method by which work was sought with each employer.

(b) Filing a written report with the unemployment agency by mail or facsimile transmission not later than the end of the fourth calendar week after the end of the week in which the individual engaged in the work search, on a form approved by the unemployment agency, indicating the name of each employer and physical or online location of each employer where work was sought and the date and method by which work was sought with each employer.

(c) Appearing at least monthly in person at a Michigan works agency office to report the name and physical or online location of each employer where the individual sought work during the previous month and the date and method by which work was sought with each employer.

(7) For purposes of this section, beginning on the effective date of the amendatory act that added this subsection, to be actively engaged in seeking work, an individual must conduct a systematic and sustained search for work in each week the individual is claiming benefits and must report to the unemployment agency the details of the work search at least once every 2 weeks or, if the unemployment agency prescribes a shorter reporting period, the reporting period prescribed by the unemployment agency. An individual may conduct a systematic and sustained search for work by doing any of the following:

(a) Using resources available at a Michigan works agency office to do any of the following:

- (i) Participate in reemployment services and eligibility assessment activities.
- (ii) Identify the skills the individual possesses that are consistent with target or demand occupations in the local workforce development area.
- (iii) Obtain job postings and seek employment for suitable positions needed by local employers.
- (b) Attending job search seminars or other employment workshops that offer instruction in improving an individual's skills for finding and obtaining employment.
- (c) Creating a user profile on a professional networking site or using an online career tool. Creating duplicate user profiles or resubmitting or reuploading the same resume to the same professional networking site does not satisfy the requirements of this subdivision.
- (d) Applying for an available position with, submitting a resume to, or interviewing with employers. Applying for the same position within a 4-week period or contacting an employer to determine whether a position is available does not satisfy the requirements of this subdivision, unless the individual uses his or her union hiring hall to conduct a search for work.
- (e) Registering for work with a private employment agency or, if it is available to the individual in his or her occupation or profession, the placement facility of a school, college, or university.
- (f) Taking an examination that is required for a position in the state civil service.
- (8) The work search conducted by the claimant is subject to audit by the unemployment agency.
- (9) The unemployment agency shall request but shall not require an individual who is applying for benefits to submit his or her base period employer's unemployment agency account number and federal employer identification number.
- (10) The unemployment agency shall use all of the documentation and information provided by an individual applying for benefits to verify the identity of the individual before making an initial payment on the individual's claim.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936;—Am. 1939, Act 324, Imd. Eff. June 22, 1939;—Am. 1941, Act 364, Imd. Eff. July 1, 1941;—Am. 1942, 2nd Ex. Sess., Act 18, Imd. Eff. Feb. 27, 1942;—Am. 1943, Act 246, Imd. Eff. June 1, 1943;—Am. 1944, 1st Ex. Sess., Act 9, Imd. Eff. Feb. 19, 1944;—Am. 1947, Act 360, Imd. Eff. July 8, 1947;—CL 1948, 421.28;—Am. 1949, Act 282, Imd. Eff. June 11, 1949;—Am. 1951, Act 251, Imd. Eff. June 17, 1951;—Am. 1954, Act 197, Imd. Eff. May 7, 1954;—Am. 1955, Act 281, Eff. July 15, 1955;—Am. 1965, Act 281, Eff. Sept. 5, 1965;—Am. 1967, Act 254, Imd. Eff. July 19, 1967;—Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972;—Am. 1974, Act 11, Imd. Eff. Feb. 15, 1974;—Am. 1974, Act 104, Eff. June 9, 1974;—Am. 1980, Act 358, Eff. Mar. 1, 1981;—Am. 1981, Act 107, Imd. Eff. July 17, 1981;—Am. 1982, Act 247, Imd. Eff. Sept. 23, 1982;—Am. 1982, Act 535, Eff. Jan. 2, 1983;—Am. 1983, Act 164, Imd. Eff. July 24, 1983;—Am. 1985, Act 197, Imd. Eff. Dec. 26, 1985;—Am. 1989, Act 227, Eff. Dec. 21, 1989;—Am. 1994, Act 162, Imd. Eff. June 17, 1994;—Am. 1994, Act 422, Imd. Eff. Jan. 6, 1995;—Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011;—Am. 2017, Act 228, Eff. Mar. 21, 2018;—Am. 2020, Act 83, Imd. Eff. Apr. 2, 2020.

Administrative rules: R 421.10 et seq. of the Michigan Administrative Code.

A Guide To

*Unemployment Insurance
Appeals Hearing*



Refusal of Suitable Work Cases

In a refusal of suitable work case, the burden of proof is on the **employer** to show:

- (1) That the **employer** made an offer of work to the unemployed worker;
- (2) That the work offered was **suitable**;
- (3) That the offer was **for a job that really existed**;
- (4) That the offer was **specific**; and
- (5) That the unemployed worker **refused the offer**.

Elements of suitability of a job include wages, distance from the worker's residence, length of unemployment, and risk to the unemployed worker's health, safety, or morals.

The burden then shifts to the unemployed worker to show that he or she had **good cause** to refuse the offered suitable work.

Eligibility for Benefits

In an eligibility case, the burden of proof is always on the **unemployed worker** to prove that he or she filed a claim and, for every week he or she is claiming benefits, he or she was:

- (1) Able to work;
- (2) Available for full-time, suitable work;
- (3) Actively seeking work, unless this requirement has been excused; and
- (4) Reporting for benefits as directed by the UIA, or had good cause for not reporting or filing as directed.

It is a good idea for the unemployed worker to keep notes about where he/she looked for work each week, and to take these notes to the hearing.

Liability/Tax Issues

An employer's liability/tax issues may include, but are not limited to, the following:

- The employer believes that he/she should not have been determined liable to pay unemployment taxes
- The employer believes that he/she should not have been determined a successor of another employer's business
- The employer disagrees with the tax rate.

If appealing these issues, the employer must bring supporting documents to the hearing, as well as appropriate witnesses.

Some Final Words

*T*he best advice for parties appearing before an ALJ is to be prepared for the hearing:

1. Know what the issue (question) before the ALJ is. It is indicated in the Notice of Hearing. Also, read the important information on the back of the Notice of Hearing.
2. Know who has the burden of proof.
3. Know what has to be proved in order to carry that burden of proof.
4. Review the file in advance, so that you can plan the major points you wish to make, and can plan the questions you wish to ask the other party.

MIWAM will time out after 15 minutes of inactivity.

VACATION PAY - QUESTIONNAIRE:

ISSUE DETAIL

Issue Remuneration
Circumstance Vacation Pay

ASSOCIATED EMPLOYER DETAIL

Name MICH ST UNIVER UNMPL COMP DIV
Address 1407 S HARRISON RD STE 110 EAST LANSING MI 48823-5239

QUESTIONNAIRE:

What date was the vacation pay issued? 29-Sep-2017

What is the beginning date of the period the vacation pay covers? 01-Feb-2017

What is the ending date of the period the vacation pay covers? 30-Aug-2017

Was the vacation payment issued based on a contract or other agreement, such as, company policy? If so, provide a copy. Yes No

Did your employer post or deliver a written notice to you or your bargaining unit (union) prior to your last day of work before the vacation period that your vacation pay is allocated and could make you ineligible for unemployment benefits for a specific time period? Yes No

What was the gross dollar amount of the vacation pay? 1,956.99

Did you have the option of receiving vacation pay instead of taking time off? Yes No

Did you request a vacation for this period of time? Yes No

Are other employees receiving vacation pay to cover the same time period? Yes No

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(From UIA and available to ALJ for use in decision per MCL 421.33.)



**EMPLOYEE STATEMENT OF EARNINGS AND DEDUCTIONS
MICHIGAN STATE UNIVERSITY
East Lansing, Michigan**

Name James Edward White
SSN XXX-XX-X834
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
Current	2,604.26	647.27
YTD	43,303.38	12,042.11

	Net Pay	Federal Taxable Gross
Current	1,956.99	2,454.46
YTD	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

	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

	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

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

	Taxable Benefits	Current	YTD
Total Taxable Benefits		0.00	0.00

	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	LAFUCU	PY Direct Deposit (ACH)	1,956.99

(Link back to copy of page 59.)



View

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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 contract. 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

(Link back to the content box of page 63.)

(The following 4 pages are plaintiff notes to UIA available to ALJ per MCL 421.33.)



RE: Vacation Certification Questionnaire

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RE: Vacation Certification Questionnaire

Message

[JAMES E WHITE](#)
***_**-9834
[UI Claim](#)
C4781329-0
Closed: 21-Oct-2017
09-Sep-2017
Message

I Want To

[Reply](#)
[Delete](#)

Message

Received: Thursday, Sep 28, 2017 7:50:00 AM
Subject: RE: Vacation Certification Questionnaire

You must report gross earnings of any vacation, holiday, Bonus and /or severance payments. These payments may reduce your unemployment benefits. An investigation must be completed to determine if and how the payment(s) affect your unemployment benefit payments. Please continue to certify using your MiWAM account or you can still call MARVIN on your scheduled day and time.

Thank you for using MiWAM!

Sent: Monday, Sep 25, 2017 4:37:45 PM
Subject: Vacation Certification Questionnaire

New message since I cannot see and edit the prior message. After some more experimenting I withdrew the vacation pay questionnaire certification since it is completely impossible at this time to answer its first required date question. Maybe it will be possible within the 10 days, maybe not. In any event, I'm now certain that MSU has not paid any vacation benefits yet. Whether they will or not is a different question. I can see that they have zeroed my vacation hours balance. MSU states their policy is to pay immediately (but not too immediately I gather) after the layoff but the union contract, as I read it, requires delay until actual termination occurs and that a lay off is not a termination.

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RE: Regarding Vacation Pay

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RE: Regarding Vacation Pay

Message

JAMES E WHITE

***_**-9834

[UI Claim](#)

C4781329-0

Closed: 21-Oct-2017

09-Sep-2017

Message

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- Message

Received: Thursday, Sep 28, 2017 7:50:33 AM

Subject: RE: Regarding Vacation Pay

An investigation must be conducted regarding your eligibility for benefits and, once completed; a (re)determination will be issued. Form 1713 was sent to you and must be completed and returned. You can do this through your MiWAM account or mail to the address listed on the form.

Please continue to certify using your MiWAM account or you can still call MARVIN on your scheduled day and time.

Thank you for using MiWAM!

Sent: Monday, Sep 25, 2017 4:11:59 PM

Subject: Regarding Vacation Pay

I've yet to receive or see a posting of MSU's vacation pay computation though I did find online a mystery posting of the amount stated in the response I gave but now that I think about it could that have been you folks?

ACH Deposit: UIA PRE-PAID CAR TYPE: UI BENEFIT ID: 1382538297 CO: UIA PRE-PAID CAR Entry Class Code: PPD ACH Trace Number: 051000011117064

That looks like you so I probably messed up my certified response?

Not yet clear when or how for MSU or even the number of vacation hours they will be paying. Also, as I read the current union contract it pretty clearly states that vacation pay is to be paid on employment termination and that layoff is only considered separation for up to 2 years. I've got a query out to the union on the issue too.

And again, your system does not work correctly. It is totally impossible to accurately answer the questions in the vacation pay screen using the only available answer options in it. For example, the dates of "vacation" are a total guess.

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RE: Vacation Pay - Supplemental Infor...

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RE: Vacation Pay - Supplemental Information

Message

JAMES E WHITE
 ***_**-9834
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 C4781329-0
Closed: 21-Oct-2017
 30-Sep-2017
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Received: Wednesday, Oct 4, 2017 11:02:24 AM
 Subject: RE: Vacation Pay - Supplemental Information

Your information has been received and is being reviewed. You may be contacted if additional information is required. A determination will be issued. Please allow time for processing and continue to report to MARVIN on your scheduled day and time.

Thank you for using MiWAM!

Sent: Tuesday, Oct 3, 2017 9:52:31 AM
 Subject: Vacation Pay - Supplemental Information

I can't pretend I know how to put yes or no answers correctly to some of the questions in the Vacation Pay Questionnaire. I've done the best I could with my memory, the facts available to me, and any logic skills for understanding that I possess. Per the APA union contract with MSU vacation pay is earned each month and, in my case, at the rate of 16 hours a month. Also per the APA union contract vacation pay is to be paid in cash only upon employee termination, not on separation due to layoff. In other words, MSU should not be using a vacation-pay-on-layoff policy with APA represented members. MSU did give me a paper in relation to the layoff that states that their policy is to pay for unused vacation at the time of layoff at the time of layoff. They DO NOT state in that policy that it is to be used to reduce the employee's eligibility for unemployment or that it is an attempt to reduce their obligation to pay for unemployment insurance. The complete statement I received (on the paper I have and I recall seeing no other) is "Vacation time accrued as of layoff date, will be paid out during the period immediately following the last day worked."

Also I note that the "Unemployment Benefits in Michigan: A Handbook for Unemployed Workers" (http://www.michigan.gov/documents/uia_UC1901_76146_7.pdf?20141104082801) very explicitly states that any earnings noted for unemployment certification must be for the period being certified. The vacation "pay" was clearly earned prior to the September date on which a payment was made.

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RE: Informal rules request

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RE: Informal rules request

Message

JAMES E WHITE
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 UI Claim
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 Message

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Received: Tuesday, Oct 10, 2017 3:55:21 PM
 Subject: RE: Informal rules request

Remuneration / Vacation Pay is discussed in the MES Act Section 27(c) & 48. You can find the MES Act at [http://www.legislature.mi.gov/\(S\(zosss4kppq2lsrmkxowfk0pd1\)\)/documents/mcl/pdf/mcl-chap421.pdf](http://www.legislature.mi.gov/(S(zosss4kppq2lsrmkxowfk0pd1))/documents/mcl/pdf/mcl-chap421.pdf)

Advocacy fact sheet regarding Special Payments can be found here http://www.michigan.gov/documents/uia/Special_Payment_2012_383574_7.pdf?20171010152509

UIA Fact Sheet 140 regarding how earning affect your weekly benefit amount can be found here http://www.michigan.gov/documents/uia/140_-_Claiming_Underemployment_Benefits_in_Michigan_392272_7.pdf

Thank you for using MiWAM!

Sent: Monday, Oct 9, 2017 9:10:32 AM
 Subject: Informal rules request

Per Letter ID: L0040400138 (https://miwam.unemployment.state.mi.us/mip/webdoc/_/Retrieve/0/f/_uJxVBu1ifPomY_CYe24xQ__?FILE__=TAPVIEWMAIL) I've been informed that benefits for the week of September 30 have been denied. I find nothing in the law ([http://www.legislature.mi.gov/\(S\(zosss4kppq2lsrmkxowfk0pd1\)\)/documents/mcl/pdf/mcl-chap421.pdf](http://www.legislature.mi.gov/(S(zosss4kppq2lsrmkxowfk0pd1))/documents/mcl/pdf/mcl-chap421.pdf)) or the published rules (http://www.michigan.gov/documents/uia/Administrative_Rules_505959_7.pdf) that support that denial therefore I would much appreciate it if you would, as required by Michigan Law 421.4. (2), provide me with a complete copy of the UIA's "informal rules" ASAP so that I can fully understand the rejection and thereby properly prepare my appeal.

Thanks

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Attachments

VACATION PAY - QUESTIONNAIRE

ISSUE DETAIL

Issue Remuneration
Circumstance Vacation Pay

ASSOCIATED CLAIMANT DETAIL

Claimant Name JAMES WHITE
Claimant ID ***-**-9834

QUESTIONNAIRE:

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? 2,356.53

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

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

(Link back to the copy of page 72.)