

CIRCUIT COURT ORDER/OPINION  
Stephine Gwin, Circuit Court CLERK

Appeal Docket No: 160533

Please enter and distribute along with Board of Review Decisions/Orders and Referee Decision/Orders.

Board Member and assigned attorney to case (Individual Copies)

Single copy/routing slip

Other:


*Affidavit*

Potential Digest Case

32a Section of the Act

Date: 2/23, 2009

*ANOTHER OLD  
DECISION THAT  
we just  
received*

  
\_\_\_\_\_  
R. Douglas Daligga, Director  
MES - Board of Review

STATE OF MICHIGAN

31<sup>ST</sup> CIRCUIT COURT FOR THE COUNTY OF ST. CLAIR

STATE OF MICHIGAN, UNEMPLOYMENT  
AGENCY, DEPARTMENT OF CONSUMER AND  
INDUSTRY SERVICES,

Appellant,

v.

Case No. 01-003178-AE  
HON. PETER E. DEEGAN

STEVEN D. DESILETS,

Claimant-Appellee,

And

METZEN E. B. INC.,

Employer-Appellee.

ORDER AND OPINION

At a session of said Court, continued and held in the County  
Building, in the City of Port Huron, State and County aforesaid,  
On this 26<sup>th</sup> day of June, 2002.

Claimant-Appellee Steven Desilets was employed with E.B. Metzen up until  
December 13, 1999, at which time he was laid off. Claimant applied for unemployment  
benefits and benefit checks were issued during January and February 2000. In October  
2000 the Agency-Appellant requested information from the employer regarding pay  
received by Claimant for the period during which he was receiving benefit checks. The  
Agency sent an inquiry to the Claimant on December 13, 2000 to which Claimant  
submitted a response dated December 26, 2000.

On May 3, 2001 and May 4, 2001 the Agency issued a redetermination and found  
that based on some holiday pay received from the Employer, the Claimant had been  
overpaid by the Agency a total of \$684. Claimant filed an appeal of the redetermination  
on May 17, 2002.

RECEIVED  
JUN 28 2002  
LEGAL DEPT.

The Administrative Law Judge (Referee) issued a decision dated June 15, 2001 in which it was found that the Agency was without authority to issue a redetermination more than one year after its initial determination. The Agency's request for a rehearing was denied August 8, 2001. The Board of Review issued a decision dated October 23, 2001 affirming the decision of the Referee.

The Agency filed a Claim of Appeal with this Court on November 21, 2001 and filed its brief on appeal on February 1, 2002. Neither Claimant nor Employer have filed an appearance or brief on appeal.

Under MCL 421.38(1), the Circuit Court may review questions of fact and law on the record made before the referee and the board of review involved in a final order or decision of the board. 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 substantive evidence on the whole record.

Both the Referee and the Board of Review rely upon language found in MCL 421.32a. The statute provides that the commission may, for good cause, reconsider a prior determination or redetermination after the 30 day period has expired and after reconsideration issue a redetermination or transfer the matter to a referee for a hearing. A reconsideration shall not be made unless the request is filed with the commission or reconsideration is initiated by the commission with notice to the interested parties within one year from the date of the original determination on the disputed issue.

In this case, the issuance of the benefit checks is considered the original determination. MCL 421.32(d). The redetermination by the Agency was not issued until May of 2001, some 15 months after the original determination. The Agency asserts that because it requested further information from the Claimant in December 2000, it had satisfied the statutory language regarding initiation of reconsideration within the one year period.

However, as noted by the Referee, the Agency failed to establish good cause for reconsideration prior to the issuance of the redetermination. The employer in this case did not file a request for reconsideration with the Agency, thereby placing the burden on the Agency to show good cause. The Court is also in agreement with the Board's finding that beginning an investigative process is insufficient to satisfy the initiation requirement.

After reviewing the record as a whole, the Court finds that the decision of the Board in affirming the decision of the Referee is not contrary to law and is supported by competent evidence on the record.

SO ORDERED.

  
PETER E. DEEGAN (P12619)  
Circuit Judge