

MICHIGAN COMPENSATION APPELLATE COMMISSION*

In the Matter of the Claim of

GINAY Y. JOSEY KYLES,

Appeal Docket No.: B 2010-28689-RM1-220443W

Claimant

A ONE DENTURES, P.C.,

Employer

DECISION OF MICHIGAN COMPENSATION APPELLATE COMMISSION

This case is before the Michigan Compensation Appellate Commission (Commission) as a result of the claimant's February 24, 2011 appeal from a February 10, 2011 Administrative Law Judge (Referee) decision. The Referee's decision modified an October 14, 2010 Unemployment Insurance Agency (Agency) redetermination, which found the claimant ineligible for benefits under the ability provision of the Michigan Employment Security Act (Act), Section 28(1)(c), beginning December 6, 2009. Instead, the Referee found the claimant ineligible for benefits under the ability provision, Section 28(1)(c) of the Act, beginning February 4, 2010.

The Commission received a timely request from the claimant to present oral argument in this matter. We have read and considered the request and conclude oral hearing is not necessary for us to reach a decision. The request is hereby denied.

After reviewing the record, we find the Referee's decision must be modified. We find the claimant ineligible for benefits under the ability provision, Section 28(1)(c) of the Act, beginning week ending February 27, 2010, and continuing until week ending February 10, 2011, the date of the administrative hearing. Our reasons are as follows.

Section 28(1)(c) of the Act provides:

- (1) An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that:
 - (c) The individual is able and available to perform suitable full-time work of a character which 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 commission that such work is available.

In the instant matter, although the record established the claimant experienced complications with Chronic Pulmonary Obstructive Disease (COPD), there is no evidence on this record that the claimant was not able and available under the statutory language of Section 28(1)(c) of the Act. The last two paragraphs in the Referee's Findings of Fact support this conclusion. The Referee loses sight of the fact that the claimant was laid off due to lack of work—not due to a medical condition. The claimant had COPD from 2003 forward, but worked until her lay-off date of December 5, 2009, for lack of work. The claimant continued to look for work, had no children, no one to care for, and had her own transportation. The record offers no basis for the Referee to find ineligibility under Section 28(1)(c) as of February 4, 2010. However, it does offer such a basis as of February 23, 2010, when the claimant applied for Social Security disability benefits.

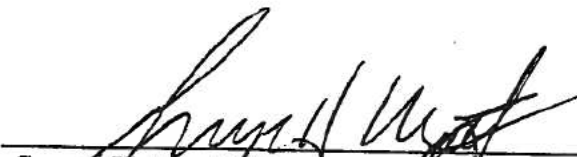
Additionally, we note that, it is beyond the authority of the Referee to decide eligibility prospectively, as eligibility questions, like availability and seeking work, must be considered on a week-by-week basis. Therefore, the Referee could find only that the claimant was ineligible for benefits beginning ending the week of the administrative hearing, which was held on February 9, 2011.

For the reasons stated above, the Referee's February 10, 2011 decision is modified

The claimant is ineligible under the ability provision, Section 28(1)(c) of the Act, beginning week ending February 27, 2010, and continuing until week ending February 10, 2011, the date of the administrative hearing. Claimant's eligibility thereafter is left for further Agency determination.

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


Garry Goelsby, Commissioner


George H. Wyatt, III, Commissioner

JACK WHEATLEY, CHAIR, CONCURRING IN PART:

I agree with the Commission majority's decision to deny the claimant's request to present oral argument; however, I would affirm the Referee's February 10, 2011 decision. My reasons are as follows.

After reviewing the entire record in this matter, I find the Referee's decision is in conformity with the facts as developed at the Referee hearing. I also find the Referee properly applied the law to the facts.

For the reasons stated above, I would affirm the Referee's decision. As the Commission majority has chosen to do otherwise, I must dissent.



Jack Wheatley, Chair

* (By Executive Order 2011-6 effective August 1, 2011, the MES Board of Review was replaced by the Michigan Compensation Appellate Commission.)

MAILED FROM LANSING, MICHIGAN

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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:

DEC 22 2011

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME.