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19 February 2021

Labor and Industry Review Commission  
2nd Floor West 3319 Beltline Highway  
Post Office Box 8126  
Madison WI 53708

Sent via facsimile: 608-267-4409 (6 pp.)

RE: Late appeals after withdrawal of the appeals under mistaken advice from  
Department staffers for  
Initial Determination [redacted] (denial of PUA claim)  
Initial Determination [redacted] (quit issue)  
On behalf of claimant [redacted], SSN ending in [redacted]

Dear Commissioners:

I represent Mr. [redacted] and am requesting that his appeals in the above-referenced matters be reinstated — that the withdrawal of his appeals be retracted — as Mr. [redacted] withdrew his timely appeals of these initial determinations per the mistaken advice of Department staffers. Each determination is addressed below after some basic claimant and claim information is provided.

## Background information

Mr. [redacted] has received SSDI benefits for the last five years and began in late December 2019 the Ticket to Work program to transition to full-time work. Because he receives SSDI benefits in light of his status as a disabled person, Wisconsin state law provides that he is NOT eligible for regular unemployment benefits. Furthermore, disqualifications finding a claimant ineligible for work can affect eligibility for either PUA benefits or regular unemployment benefits if those disqualifications hold that a claimant is not able and available for work in some manner. Quitting a job without good cause after an initial claim is one such disqualification.

Starting around 5/29/2019, Mr. [redacted] began working at a [redacted] store as a sales associate, working around 20 hours a week then and earning \$11.73 per hour.

With the Ticket to Work program, Mr. [redacted] expanded the weekly hours he worked through a new job at [redacted] that started on or about 1/8/2020. That job entailed 40 hours per week on average (in addition to his ongoing work at a [redacted] store) at an hourly wage of \$12.21. This job came to an end with the pandemic on or about 4/16/2020, when the employer temporarily closed because of the pandemic and laid off numerous staff.

Accordingly, Mr. [redacted] only available work was his [redacted] position, though his weekly hours at this job also began declining because of the pandemic.

On or about 10/8/2020, Mr. [redacted] secured a position as a machine operator at a company through a staffing agency, [redacted] that paid him an hourly wage of \$13.25 per hour and which averaged around 45 hours of work per week.

In December 2020, Mr. [redacted] left both his positions at [redacted] and at [redacted] for a delivery position with [redacted] that paid him a higher wage of \$15.60 per hour and which offered him more hours of work, averaging 50+ hours a week (hence, significant over-time pay was available to him). Mr. [redacted]'s last day of work at the [redacted] store was around 12/24/2020,



and his last day of work at [ ] was around 12/16/2020. Mr. [ ] began working at [ ] on or around 12/20/2020.

Given that Mr. [ ] continued to work as best he good, he was exposed to Covid-19 and had to quarantine in September and October for four weeks and again in December for two weeks. As such, he was without any earnings at all during those weeks.

#### **Initial Determination [ ] (denial of PUA claim)**

This initial determination dated 9/5/2020 denies the claimant's PUA claim. Mr. [ ] appealed this initial determination. In a conversation with a Department PUA claims staffer, the staffer told Mr. Major that this PUA appeal was holding up his payment of PUA benefits based on his covered employment — that his appeal was keeping his PUA claim from being processed. Accordingly, on or about 10/21/2020, he withdrew his appeal in this matter.

In November 2020, with no payment of any PUA benefits forthcoming, Mr. [ ] again contacted a Department staffer for PUA claims. That staffer advised Mr. [ ] to file a new initial claim for PUA benefits, and Mr. [ ] understands that such a claim has been filed as of December 2020 (it is my experience that the Department only allows claimants to file one PUA initial claim; if this new PUA claim has been filed, the start date for this claim is unknown). Because he was told to file a new PUA initial claim, Mr. [ ] did not seek to retract the withdrawal of his appeal of the initial determination denying his original PUA initial claim.

#### **Initial Determination [ ] (quit issue)**

This initial determination dated 1/21/2021 finds that Mr. [ ] quit from [ ] in December 2020 without good cause. Mr. [ ] spoke to a Department staffer who informed him that he should appeal if he disputed the disqualification, and so Mr. [ ] filed an appeal.

He later spoke to Department staffers for regular unemployment claims and PUA claims, and both staffers advised him to withdraw his appeal, as the initial determination only applied to regular unemployment benefits and would not affect his claim for PUA benefits. Given that advice, Mr. [ ] subsequently withdrew his appeal of this initial determination, and that withdrawal was confirmed in an appeal tribunal decision for Hearing No. [ ] dated 14 Jan. 2021 (appeal due no later than 4 Feb. 2021).

#### **Argument**

The Commission holds that a claimant has good cause for reinstating an appeal of an initial determination when a claimant withdraws that appeal based on mistaken advice from a Department staffer which was relied upon to the detriment of the claimant. Lexi Schroeder v. BWW Resources LLC, UI Hearing No. 20601748MW (21 Aug. 2020). Mistaken Department advice on which a claimant has relied to his or her detriment is also a reason beyond his or her control for providing good cause for a late appeal or petition for Commission review. Santner v. Cherry Hills Lodge & Golf, UI Hearing No. 09402999AP (29 Jan. 2010), Brice v. Z Harvest Cafe LLC, UI Hearing No. 99001904MD (25 Aug. 1999). See also Garner v. Professional Services Group Inc., UI Hearing No. 11602744MW (22 July 2011).

In both initial determinations, the claimant withdrew a timely appeal based on mistaken advice from a Department staffer. Only after he contacted me a few days ago has this process been instituted to retract Mr. [ ] prior withdrawals of these appeals. Mr. [ ] is only eligible for PUA benefits because he receives SSDI benefits. As such, Initial Determination

[redacted] is preventing him from receiving PUA benefits after he lost his job at [redacted] because of the pandemic.

While the quit disqualification at issue in Initial Determination [redacted] may not matter given Mr. [redacted] current job at [redacted] (his weekly earnings from [redacted] probably disqualify him from receiving any PUA benefits, and he likely has already earned the \$1608 in wages from the [redacted] job needed to remove this disqualification), the disqualification in substance is also likely without merit. See Wis. Stat. § 108.04(7)(L) (employee has good cause for quitting one job for another job when that other job offers higher wages, more hours of work, longer term work, or an improved commute to that job). At the very least, Mr. [redacted] would like the opportunity to consult with counsel on whether he actually needs to go forward with this matter, and he can only get that opportunity with his appeal being reinstated.

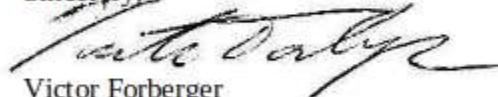
**Because the appeals of these initial determinations were withdrawn based on mistaken advice from Department staffers, I ask that the Commission reinstate Mr. [redacted] appeals of these initial determinations and remand these matters for hearings on the merits.**

I am filing this petition with the Commission because I fear that, if filed directly with the hearing office, the current hearing backlog will mean that this late appeal action will take months just to be acknowledged. If the Commission deems that this action must be filed at the hearing office, I ask that the Commission directly refer this late appeal matter to the hearing office for a decision by an appeal tribunal as quickly as possible. As is all too common of late with SSDI recipients, Mr. [redacted] has been waiting for three-quarters of a year for any kind of unemployment benefit.

Furthermore, to get by during the summer months when his only income was from his part-time but steadily declining employment at [redacted], he turned to payday lenders for needed funds to cover his rent and groceries. The interest on those pay day loans has led now to financial penalties that he cannot keep up with despite his current employment at [redacted] without still more payday loans.

If you have questions or need additional information, please contact me via the information above. Thank you.

Sincerely,



Victor Forberger  
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enc Two initial determinations (2 pp.)  
Information release (1 p.)