STATE OF MICHIGAN
UNEMPLOYMENT INSURANCE APPEALS COMMISSION

In the Matter of

BETHANY A. AYALA, Appeal Docket No.: 19-014484-259989W

Claimant, UIA Case No: 14359172

SHAW SYSTEMS & INTEGRATION INC.,

Employer.

DECISION OF UNEMPLOYMENT INSURANCE APPEALS COMMISSION

This case is before the Unemployment Insurance Appeals Commission (Commission) as a result of the claimant's timely September 30, 2019 appeal from a September 3, 2019 Administrative Law Judge (ALJ) order which denied the claimant's application for rehearing. In the underlying August 5, 2019 decision, the ALJ affirmed a June 17, 2019 Unemployment Insurance Agency (Agency) adjudication and found the claimant disqualified for benefits under the voluntary leaving provision of the Michigan Employment Security Act (Act), Section 29(1)(a).

A telephonic hearing on the disqualification was held on August 1, 2019. The claimant appeared. The employer did not. After reviewing the record, the Commission finds that the while the ALJ's order should be affirmed the ALJ's decision should be reversed.

The claimant, Bethany A. Ayala, began working for the involved employer, Shaw Systems & Integration, Inc., in September of 2018. The claimant was employed as an installation technician. The claimant last performed services for the employer on March 11, 2019. Thereafter, on March 20, 2019, the claimant was separated from her employment. At the heart of the separation, were workplace safety and health hazards.

Claimant began her project for this employer at the Beaumont Trenton work site in December of 2018. When she started at that site, her employer told her that all the asbestos had previously been removed from the site. After returning to the site for a different project, claimant discovered that an asbestos abatement crew was removing asbestos from the area where she had previously worked. Claimant spoke to an asbestos worker and was told there was asbestos throughout the hospital. Claimant was alarmed and reported this information to her foreman.

On March 11, 2019, claimant became aware of a discussion between the asbestos abatement team and the safety management team pertaining to closing off another area of the hospital. Claimant inquired if there was anything to be concerned about in the area that she was going to be working. She was told there was asbestos present in the fire spray where she had previously drilled. As soon as learning of the hazard, claimant and her co-workers left the site to let their foreman know about the situation and they were moved to a different location. Up to this point, the claimant had not been offered safety equipment by the employer. Claimant was advised by the employer that it was

going to speak with safety management about the issue. After claimant found out about the asbestos issue on March 11, 2019, and even though she was moved to another site, she was no longer comfortable working in this environment because the employer had known about the asbestos and it had not tested or given employees any training. Claimant did not return to work on March 12, 2019, and on March 20, 2019, she advised the employer she wanted to leave her employment.

Between March 11, 2019 and March 20, 2019, claimant communicated with the employer several times regarding her return to work. She was seeking information about test results, training, why she had been permitted to work where there was asbestos without being told, what was shared by the customer prior to the job, and whether the company had known about asbestos prior to the job. In addition, there were discussions about a safety meeting that was to take place. During this period, claimant also discovered that employees were exposed to asbestos at another hospital so before going to another site she wanted to know how the employer was testing for asbestos and informing employees of the test results. Claimant did not want to be sent to another site without being informed as to how the employees would know that they were not being exposed to asbestos and be protected.

Claimant indicated the employer could have satisfied her safety concerns by testing the air and the materials before assigning employees to work in an area. Ultimately, claimant did not feel comfortable with the situation and advised the employer on March 20, 2019 that she was not willing to return to work.

The employer has the burden of proof to establish that the claimant falls within the expressed terms of the one of the disqualifications in the Act. *Ackerberg v Grant Community Hospital*, 138 Mich App 295 (1984). In this case, the employer failed to establish that the claimant is disqualified. Even if the separation could be characterized as a quit, the claimant had good cause attributable to her employer to quit. Good cause exists when the circumstance which prompted the claimant's leaving would have caused a reasonable, average and otherwise qualified employee to leave. See *Carswell v Share House, Inc.*, 151 Mich App 392 (1986).

The employer's failure to address the claimant's well-founded health and safety concerns provided her with good cause for her leaving. Consequently, the claimant is not disqualified for benefits under the voluntary leaving provision of the Act, Section 29(1)(a) and the ALJ's decision will be reversed.

With respect to the ALJ's order denying rehearing, rehearings are granted or denied at the discretion of the ALJ. See Section 33(1) of the Act and Michigan Administrative Code, Rule 792.11414(4). After reviewing the record, the Commission finds that there has not been an abuse of discretion. The ALJ's order will be affirmed.

As a final matter, it should be noted that the claimant's attorney has requested permission to submit written argument in accordance with MCL 421.34(4) and R 792.11423. The Commission denies this request.
Therefore,

IT IS ORDERED that the ALJ's September 3, 2019 order denying rehearing is affirmed.

IT IS FURTHER ORDERED that the ALJ's August 5, 2019 decision is reversed.

IT IS FURTHER ORDERED that the claimant is not disqualified for benefits under the voluntary leaving provision of the Act, Section 29(1)(a).

IT IS FURTHER ORDERED that the claimant may receive benefits if otherwise eligible and qualified.

IT IS FURTHER ORDERED that this matter is referred to the Agency for action consistent with this decision.

IT IS FURTHER ORDERED that the Commission retains no jurisdiction in this matter.

Julie A. Petrik — Chairperson

William J. Runco — Commissioner

NEAL A. YOUNG, COMMISSIONER, CONCURRING IN PART AND DISSENTING IN PART:

I have also reviewed the record in this matter. Having done so, I agree with the Commission majority that the ALJ's order denying rehearing should be affirmed. However, with respect to the underlying merits, the ALJ's findings of fact accurately reflect the evidence in the record and the ALJ properly applied the law to those facts. Accordingly, I would affirm the ALJ's decision. As the Commission majority has chosen to do otherwise, I respectfully dissent.

Neal A. Young — Commissioner

MAILED AT LANSING, MICHIGAN DEC 30 2019

This decision shall be final unless EITHER (1) the Unemployment Insurance Appeals 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. JAN 29 2020