Appeals Policy and Precedent Manual

ABLE AND AVAILABLE

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AA 5.00

General

AA 5.00 General.

Includes cases containing (1) a general discussion of the meaning of the term "able and available" or (2) ability or availability points which do not fall within any specific line in the able and available division of the code.

Appeal No. 2209-CA-78. The fact that a claimant was not available for work on one day of a benefit period does not justify preventing the claimant from receiving benefits for the entire benefit period If evidence shows that the claimant was fully available during the rest of the benefit period. (In this case, the Commission reversed the one-day period of ineligibility by the Appeal Tribunal.)

Appeal No. 1412-CA-78. Although a claimant is unable to work during a weekend due to illness, the claimant will not be **HELD** ineligible under Section 207.021(a)(3) of the Act where weekend work has not normally been required of her in her customary occupation and where appropriate employer personnel offices would have been closed had the claimant been able to search for work. Further, where a claimant is sick on one regular workday during a benefit period but has been able to and available for work on all other days in the benefit period, the claimant will not be held ineligible. (Also digested under AA 235.05.

Appeal No. 4341-CSUA-76. A claimant cannot be held ineligible under Section 207.021(a)(4) of the Act, due to restriction(s) on her availability for work, prior to the time she was advised that such restriction(s) unduly limit her availability for work within the meaning of Section 207.021(a)(4).

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AA 5.00(2)

Appeal No. 3472-CA-76. A late appeal confers on the Appeal Tribunal no jurisdiction over a closed order of ineligibility. An appeal, from an order of ineligibility extending from one certain date through another certain date, if late, must be dismissed for want of jurisdiction.

Appeal No. 1312-CA-76. The Insurance Department is without jurisdiction to issue a determination as to an order of ineligibility for a period of time which has already been ruled on by an Appeal Tribunal decision. Such a determination by the Benefits Department must be set aside.

Appeal No. 79-CA-74. While the Act requires certain determinations to be mailed to the parties, the Act does not require the mailing of call-in cards to claimants. The mailing of such a notice raises no presumption of receipt. An order of ineligibility established for failure to respond to a call-in card, which testimony shows was not received, cannot be sustained.

Appeal No. 343-CA-71. Where a claimant is initially determined to be eligible for benefits and no appeal is filed, an appeal from a subsequent determination on eligibility gives the Appeal Tribunal jurisdiction to consider eligibility only from the earliest date to which the subsequent determination on appeal relates.

Appeal No. 6315-CA-58. A claimant may be considered available for work if he is ready, willing, and able to accept any suitable work and if his employability is reasonably free from handicaps, conditions, or restrictions, self-imposed or otherwise, and there remains after considering such handicaps, conditions, or restrictions, a reasonable expectancy that he might secure and accept such suitable work.

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ABLE AND AVAILABLE

AA 40.00

AA Attendance at School or Training Course-Student

AA 40.00 Attendance at School or Training Course-Students.

Includes cases in which consideration is given to effect upon the claimant's availability of his enrollment or attendance at school, college, or training courses.

Texas Employment Commission, et al vs. Hays (Tex. Sup. Ct., 1962) 360 S.W. 2d 525. A claimant, whether student or non-student, who puts such time or hour restrictions on his availability for work as to effectively detach himself from the labor market, is not available within the meaning of Section 207.021(a)(4) of the Act. The fact that the claimant earned all his wage credits in employment of the sort to which he is restricting his availability, or even that he has secured work within his restrictions, does not make him available under Section 207.021(a)(4).

The following points brought out in this case are considered important:

1. There is no logical basis for favoring those who have earned their Qualifying wage credits in part-time employment over those who have earned theirs in full-time employment.
2. The Act makes special provisions for benefits for partial unemployment but not for part-time workers.
3. It would be difficult to find a student in regular attendance in elementary or secondary schools available for work because of Sections 21.032 and 21.002-21.004 of the Texas Education Code which require that students between 7 and 17 years, inclusive, be in school and that such school be taught not less than seven hours per day, five days per week and twenty days per month.
4. It is the duty of the Commission to adjudicate each claim separately, weighing the time and hour restrictions imposed by the claimant against the demand for workers of claimant's general type.

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ABLE AND AVAILABLE

AA 40.00(2)

Appeal No. 1813-CA-77. A claimant who, since the date of his initial claim, has been willing and able to change his hours of school attendance or to quit school entirely in order to accept full-time work, is not unavailable for work Section 207.021(a)(4) of the Act due to his hours of school attendance.

Appeal No. 1319-CA-76. The claimant, attending school from 7:00 p.m. to 9:00 p.m., Tuesdays and Thursdays, would not quit school or change her hours of school attendance but was available for full-time work on two of the three shifts during her type of work was performed. **HELD:** Available for work and eligible for benefits under Section 207.021(a)(4) of the Act because the claimant's unwillingness to work on one of three possible shifts did not mean that she had no reasonable expectancy of securing work as a nurses' aide.

Appeal No. 3145-CA-75. A claimant who has been held ineligible under Section 207.021(a)(4) of the Act because he is attending school during the normal working hours in his occupation and who initially indicated that he would not change his hours of school attendance or quit school to accept employment will have his ineligibility closed as of the date he notifies a Commission representative that he will change his hours of school attendance or quit school to accept suitable work.

Appeal No. 1992-CA-73. The claimant was filing claims in another state and was attending a county vocational school which was fully accredited and which training was approved under the unemployment law of that state. Benefits should not be denied under Section 207.022 and Rule 26 of the Commission simply because the claimant was not residing in Texas and attending a training course specifically approved by the Commission. The Texas Workforce Commission relies on the other states to act as its agents in matters relating to claims filed by out-of-state claimants.

Appeal No. 1257-CA-73. Under Section 207.022 of the Act, benefits shall not be denied to an individual who is in a Commission- approved training program. In such a case, no ineligibility is in order under Section 207.021(a)(4).

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MC 40.00(3)

Appeal No. 97-008948-10-082498. The claimant completed a one-day temporary job and, because she had enrolled in training, informed the employer she was no longer available for day jobs. The employer, a temporary agency, offered primarily daytime office work during the week. The claimant had enrolled in a computer training class that met 8:30 a.m. to 4:30 p.m., Monday through Friday. The Texas Workforce Commission had approved the claimant's training under Section 207.022. **HELD:** By severely restricting the hours she was willing to work for the employer, and thus eliminating the hours she initially agreed to work for this employer, the claimant, in effect, severed the employment relationship. The claimant left her last work voluntarily so that she could attend a class to receive training in computer work. The claimant's reasons for leaving her last work were personal and were not for good cause connected with the work. Although the claimant's training was approved by the Commission under Section 207.022 of the Act, this section does not protect a claimant from disqualification for having resigned from employment in order to begin training. Rather, Section 207.022 protects a claimant from disqualification for failing to search for work or accept an offer of suitable work after having begun the Commission approved training. Also digested at VL 40.00.

Appeal No. 387-CA-70. A student who is available only for shift work after 2:00 p.m. is not unduly limiting his availability for work if the majority of jobs for which he is qualified require shift work and most employees are hired on the second or third shifts.

Appeal No. 6020-CA-58. A claimant who is in school only two hours a day, three days a week, is not a full-time student and has a reasonable expectancy of finding work.

Appeal No. 605-J-57 (Affirmed by 17-CJ-57). A student who is available for work only during the three-week period between the end of the second summer semester and the beginning of the fall semester is not a bona fide member of the labor market.

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AA 40.00(4)

Appeal No. 54-CA-40. A student who did not quit work to enter school and who is willing to drop out of school to accept suitable work meets the eligibility requirements of the Act. Case sets out the following student availability rules:

1. As a general rule, a full-time student in an educational institution of any type is not available for work and not entitled to draw benefits while such student.
2. When it is established that the claimant was separated from his employment for the purpose of entering, and attending, any type of school requiring attendance during the day, he will be held to be unavailable and not entitled to benefits while so unavailable. (But consider Section 207.052 of the Act)
3. In any case where it is found that separation from employment was for some cause other than entering or attending school, availability must be established by the claimant.
4. To establish availability, the claimant must show that he is ready at once to accept any employment which may be deemed suitable by the Commission that is brought to his attention, regardless of his school duties; and when such proof has been made, claimant will be held to be available until he has failed without good cause to apply for available, suitable employment when so directed by the Workforce Office or the Commission, or to accept suitable work when offered to him

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ABLE AND AVAILABLE

AA 90.00

AA Conscientious Objection

AA 90.00 Conscientious Objection.

Includes cases in which a claimant restricts the employment acceptable to him because of conscientious objection on ethical or religious grounds.

Sherbert vs. Verner, 374 U.S. 398 (U.S. Supreme Court, 1963). A claimant who, because of religious convictions, cannot accept a job requiring her to work on Saturdays, must be deemed available for work and eligible for benefits, notwithstanding such restriction and regardless of its effect on her actual chances of securing work. To hold otherwise would place an unconstitutional burden on her freedom of religion under the First and Fourteenth Amendments to the Constitution of the United States. (Also digested under AA 450.10.)

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AA 150.00 – 150.05

AA Distance to Work

AA 150.00 Distance to Work

AA 150.05 Distance to Work: General.

Includes cases containing (1) a general discussion of distance, (2) points not covered by any other subline under line 150, or (3) points covered by three or more sublines.

Appeal No. 869-CA-77. The claimant was unable to make an effective search for work, or to accept suitable work when it was offered to him, because he depended for transportation upon a municipal bus line which was closed down by a strike from at least December 31, 1976 to January 17, 1977. **HELD:** Unavailable for work and ineligible for benefits during that time under Section 207.021(a)(4) of the Act as he did not have adequate transportation to work.

Appeal No. 4312-CA-76. A claimant who resides in Silsbee and is making an active search for work in the Silsbee area is not required to be available for work in Beaumont, some thirty-five miles distant, in order to be considered eligible for benefits under Section 207.021(a)(4) of the Act.

Appeal No. 675-CA-72. There is no basis for holding a claimant ineligible, who has placed certain restrictions on her availability for work, until such time as the Commission requirement is explained. A claimant who limits her availability to one section of a city will not be held ineligible until it has been explained to her that she must be available in other areas in order to meet Commission requirements

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AA 150.05(2) – 150.10

Appeal No. 1293-CA-71. A claimant's lack of transportation does not unduly limit her availability when the claimant can and will walk to the downtown area where most of the jobs for which she is qualified are located.

Also see Appeal No. 2135-CA-77 under AA 160.05

AA 150.10 Distance to Work: In Transit.

Where a claimant travels to or from the locality of his work or residence and a distant locality or localities, remaining at any one point only a short time.

Appeal No. 3607-CA-75. The claimant had been in transit from July 23 through July 26, 1975, as he was moving from New Mexico to California, had registered for work in California on July 28, 1975, and had been actively seeking work since that date. **HELD:** Unavailable for work and ineligible for benefits from July 20 through July 27, 1975, under Section 207.021(a)(4) of the Act, as he was in transit and not looking for work during that time.

Also see cases under AA 160.05 and AA 510.40.

AA 150.15 Distance to Work: Removal from Locality.

Involves permanent removal to another locality, temporary removal from the locality of work, and willingness to move to another locality to work

Case No. 1129075. The claimant had registered for work at a local Commission office on September 18, 2008. The claimant, however, relocated to Germany when her husband, an active military member, was transferred to Ramstein AFB in Germany on September 22, 2008. The claimant continuously made her required work searches after moving to Germany. The claimant had no legal restrictions on her work in Germany. The claimant searched for work on Ramstein AFB, with a population of approximately 50,000 Americans. The claimant also searched for work at another nearby military base with a total population of approximately 50,000 individuals, and she looked for work in the local area, which included Kaiserslautern, with a population of 99,000. The claimant found work at Ramstein AFB approximately 5 months later.

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ABLE AND AVAILABLE

AA 150.15 – 150.20

HELD: The claimant is available for work under Section 207.021(a)(4) of the Act. Although the claimant was residing outside the United States, the Commission concludes that it is important to consider the totality of the circumstances to determine if there is sufficient evidence of legitimate work opportunities in the area. The claimant continued to make her work searches after her relocation with her husband to a large military base. The claimant presented sufficient evidence of legitimate work opportunities in the area. The claimant had a reasonable expectation of finding work in her local area.

NOTE: The Commission noted that Case 769877-2 (AA 150.15) was not consistent with its goal in encouraging claimants who are military spouses and otherwise have no restrictions in working to seek work in other locales and directed that this precedent be removed from the precedent manual.

Appeal No. 86-CA-76. A claimant who, for a purpose other than seeking work, is out of the geographic area of the Commission local office where she is registered for work, is unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act during such time.

Appeal No. 610-CA-69. A claimant continues to be available for work even though she leaves the area where she is registered for work if her primary purpose is to seek work and she actively seeks work in the area to which she has gone.

AA 150.20 Distance to Work: Transportation and Travel.

Involves transportation cost, convenience, facilities, and time.

Appeal No. 1719-CA-77. The claimant had no private transportation and no public transportation available in her area, except for taxi cabs which were extremely expensive, and had to walk to the employment office. There were few businesses within walking distance of her home, and she could accept work only within walking distance of her home except for the possibility that, if she found a job outside of walking distance, she might be able to arrange transportation.

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AA 150.20(2)

HELD: Unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act as her lack of transportation substantially diminished the labor market area in which she was able to look for work.

Appeal No. 978-CA-77. A claimant, whose work search has been conducted solely by bicycle will not be deemed unavailable for work under Section 207.021(a)(4) of the Act if his work contacts reflect a continuous, diligent search for work by him.

Appeal No. 3918-CA-76. The claimant did not have his own car available for transportation but was able to make arrangements with relatives for transportation to local communities to look for work. He contacted a number of prospective employers in his search for work and had arrangements for transportation to work in the event he found a job. **HELD:** Available for work and eligible for benefits under Section 207.021(a)(4) of the Act.

Appeal No. 1134-CA-76. A claimant whose relatives provide her with transportation to look for work, and who can and will use public transportation to and from work when she finds a job, is available for work and eligible for benefits under Section 207.021(a)(4) of the Act.

Appeal No. 8091-AT-68 (Affirmed by 49-CA-69). A claimant who worked in Vernon while living in Electra but was no longer willing to commute the twenty-five miles to work in Vernon and had very little chance of securing work in Electra, was unduly limiting her availability for work.

Appeal No. 519-CA-68. A claimant who is available for work only in Canyon because of lack of transportation to other areas is not unduly limiting her availability if she is actively seeking work for which she is qualified and such work exists in the area.

Appeal No. 477-CA-68. Because of transportation difficulties, the claimant is not available for work in Garland where she files her claims or in Dallas, but is available in Farmers Branch where she lives or in Carrollton where she had previously worked, meets the availability requirements when it is shown she is seeking work in those areas.

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AA 150.20(3)

Appeal No. 1294-AT-67 (Affirmed by 1318-CA-67). A claimant who lives in a rural area, has no transportation, and will work only if he can walk to work or if the employer will furnish transportation, is not available to a large enough labor market to be considered available for work within the meaning of Section 207.021(a)(4) of the Act.

Appeals Policy and Precedent Manual
ABLE AND AVAILABLE

AA 155.00 – 155.10

AA Domestic Circumstances

AA 155.00 Domestic Circumstances.

AA 155.05 Domestic Circumstances: General.

Includes cases containing (1) a general discussion of domestic circumstances, (2) points not covered by any other subline under line 155, or (3) points covered by three or more sublines.

Appeal No. 283-CA-77. From August 31 through September 21, 1976, the claimant was involved with family problems and, in preparation for moving to Louisiana, was attempting to sell his home. For those reasons, the claimant was neither actively seeking work, nor ready to accept it. **HELD:** Unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act during that time

AA 155.10 Domestic Circumstances: Children, Care of.

Where claimant places restrictions on acceptance of work because of his need to care for children. Cases involving illness of children are found under the subline "illness or death of other," below".

Appeal No. 1894-CA-77. Due to the necessity of caring for her young child, the claimant had not been actively seeking work since March 15, 1977, was held ineligible for benefits from that date, forward, under Section 207.021(a)(4) of the Act.

Appeal No. 672-CF-77. The claimant brought her small children with her on a visit to a Commission office. However, she did have childcare arranged for them and could have left the children with a neighbor living within one mile of the Commission office and then returned to the office to go out on any referral she might have been given on that day. **HELD:** Available for work and eligible for benefits under Section 207.021(a)(4) of the Act.

AA 155.10(2) – 155.35

Appeal No. 4365-CSUA-76. From the time she filed her initial claim through the date she returned to work, the claimant could work only four hours per day because she needed to care for her children. **HELD:** Unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act from the initial claim date forward.

Appeal No. 458-CSUA-76. Prior to filing her initial claim, the claimant had contacted a day-care center concerning arrangements for the care of her two small children and could have actually placed the children in the day-care center upon one day's notice. **HELD:** Available for work and eligible for benefits under Section 207.021(a)(4) of the Act in view of the fact that she had a childcare arrangement which she could make effective within one day if she found a job.

AA 155.35 Domestic Circumstances: Illness or Death of Others.

Involves restrictions on a claimant's availability for work because of illness or death of others.

Appeal No. 3984-CA-76. Due to a death in his family, the claimant had not been available for work from August 30 through September 3, 1976. **HELD:** Ineligible for benefits under Section 207.021(a)(4) of the Act during that time.

Appeal No. 378-CSUA-76. A claimant who, by reason of the necessity of caring for her sick mother, could accept only part-time work, was held ineligible for benefits under Section 207.021(a)(4) of the Act as being unavailable for work until such time as the claimant indicated to a Commission representative that she was available for full-time work.

Appeal No. 6003-AT-63 (Affirmed by 9770-CA-63). A claimant who leaves the state to attend the funeral of a relative is not available for work during the period of his absence from his locality

AA 155.45

AA 155.45 Domestic Circumstances: Parent, Care of.

Involves restrictions on acceptance of work because of the need to care for a parent who is aged or incapacitated. Cases involving illness of parents are placed under the subline "illness or death of others," above.

Appeal No. 8791-CA-62. A claimant who is devoting her time to caring for her aged mother is not available for work.

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AA 160.00 – 160.05

AA Effort to Secure Employment or Willingness to Work

AA 160.00 Effort to Secure Employment or Willingness to Work.

AA 160.05 Effort to Secure Employment or Willingness to Work: General.

Appeal No. 86-07928-10-050787. The claimant was temporarily laid off for two weeks with a definite recall date. He went to Arkansas on family business for three days during the layoff. **HELD:** A claimant who has been laid off for a temporary period of time and is awaiting a return to his previous job after a specific amount of time, need not search for work during his temporary unemployment. In the present case, since the claimant was laid off for a two-week period, after which he could return to his previous job, he was available for work during the period in question. (Also digested under AA 510.40.)

Appeal No. 1039-CF-79. Following her separation from work with the U.S. Postal Service, the claimant had secured two successive, temporary jobs through her husband's union. Although she was not a union member, the claimant had been issued a union permit and had secured and performed work on the basis of that permit. Her application for full union membership was to be voted on six days after the Appeal Tribunal hearing. Although the claimant had made use of the Commission's placement service and had made a few individual contacts seeking work, she had focused most of her activities in gaining employment on checking with the union's hiring hall on a weekly basis.

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AA 160.05(2)

HELD: The claimant's personal contacts seeking work did not establish an active, independent search for work. Accordingly, the Commission was compelled to decide whether the claimant fit into the union member exception to the general requirement of an active, independent search for work set out in the policy statement on work search under AA 160.05. The Commission held that, although the claimant had obtained work through the union on a permit basis, because she was not a union member in good standing and thus was not entitled to all the opportunities afforded by full union membership, she did not come within the exception to the general work search requirement. Accordingly, she was held ineligible under Section 207.021(a)(4) of the Act. (Also digested under AA 475.05.)

Appeal No. 1023-CA-79. The claimant had been a bus driver with an interurban passenger carrier and was laid off. He was awaiting recall by that employer and thus had conducted no search for work. The claimant was a union member in good standing; however, his union did not operate a hiring hall and had been of no assistance to the claimant in finding work during past periods of temporary layoff. **HELD:** Because the claimant's union did not operate a hiring hall, he did not come within the union member exception to the general requirement of an active, independent search under AA 160.05. Accordingly, the claimant's failure to engage in an active, independent search for work rendered him ineligible under Section 207.021(a)(4) of the Act. (Also digested under AA 475.05.)

Appeal No. 2135-CA-77. The claimant at no time personally contacted any representatives of prospective employers limiting her work search to telephone calls and to inquiries of friends. She wanted work only in a museum and would have worked only in a fairly restricted part of Houston, **HELD:** Unavailable for work and excluding the downtown area. ineligible for benefits under Section 207.021(a)(4) of the Act from the initial claim date, forward, as not having made a personal search for work when, in view of her geographical and occupational limitations, an intensive personal search for work might reasonably be expected of her.

Also see cases digested under AA 510.40.

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AA 160.10 Effort to Secure Employment or Willingness to Work: Application for Work.

Where claimant's application or failure to apply for work is considered in determining his availability for work.

Case No. 693452-2. The claimant had been advised by the Commission that she was required to make a minimum of three work search contacts each week in order to maintain eligibility to receive benefits. During the week in question, she applied for work at two businesses and visited a workforce center, where she performed a computerized job search. **HELD:** Available for work. Rule 28 does not limit work search contacts to in-person interviews or physical visits to job locations. Instead, the rule provides a non-exhaustive list of examples of activities that will suffice. Specifically provided in that list is the utilization of the resources available at workforce centers.

Stella M. Redd vs. Texas Employment Commission, 431 S.W. 2d 16 (Tex. Civ. App.-Corpus Christi, 1968, writ ref'd n.r.e.). The court HELD there was substantial evidence before the Commission to justify its conclusion that the claimant did not meet the availability requirement of the Act. The claimant had been held ineligible because she had made only four applications for work in the three-month period following her retiring on June 1, 1965.

Texas Employment Commission vs. Anton F. Holberg, et al, 440 S.W. 2d 38 (1969). A claimant who does not make a reasonably diligent search for work is not available for work.

Appeal No. 2494-CA-77. A claimant who, from June 15 to July 23, 1977, had made no active personal search for work was held unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act during that time.

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AA 160.10(2)- 160.20

Appeal No. 142-CA-67. A claimant must be specific as to employers contacted in his search for work in order to establish that he is making an active search for work.

Also see Appeal No. 978-CA-77 under AA 150.20.

AA 160.15 Effort to Secure Employment or Willingness to Work: Attitude or Behavior.

Applies to cases where claimant's attitude or behavior indicates willingness or unwillingness to work.

Appeal No. 15-CA-64. A claimant who dresses improperly for a job interview, smokes, chews gum, and understates her qualifications, takes affirmative action to ensure she will not be accepted for the job to which she was referred. **HELD:** The claimant is ineligible to receive benefits.

AA 160.20 Effort to Secure Employment or Willingness to Work: Employment.

Where performance or acceptance of work is discussed as evidence of ability and availability for work, as where claimant obtained work subsequent to filing.

Appeal No. 4267-CA-76. The fact that a claimant, through her own efforts, is able to secure work within her restrictions, is evidence that such restrictions did not constitute an undue limitation on the claimant's availability for work. (Cross-referenced under AA 510.10)

Appeal No. 2963-CA-75. A claimant who is employed part time but who seeks, and ultimately finds and accepts, full-time work thereby demonstrates her attachment to the labor market and meets the active search for work requirement of Section 207.021(a)(4) of the Act.

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AA 160.30

AA 160.30 Effort to Secure Employment or Willingness to Work: Registration and Reporting.

Registration and reporting, failure to register and report, or failure to register or report in the proper locality, or in the proper form.

Appeal No. 681-CA-77. On December 30, 1976, the claimant had been instructed to report to the placement section of her Commission local office; however, she did not do so until January 20, 1977, because she did not consider it necessary to report. **HELD:** Ineligible for benefits under Section 207.021(a)(1) of the Act from December 30, 1976, through January 19, 1977, as she had not, after registering for work, continued to report at an unemployment office in accordance with such regulations as the Commission may prescribe.

Appeal No. 3027-CF-76. The claimant was scheduled to report to file a claim at 8:30 a.m. on a Monday but did not report until about 11:00 a.m. on that day, due to his having had a flat tire on his automobile. **HELD:** Eligible for benefits Section 207.021(a)(1) of the Act, in view of the fact that the claimant had a reasonable excuse for not having reported on time.

Appeal No. 371-CA-76. The claimant had failed to register for work with the office of an agent state's employment service due to her having been told that work registration was not necessary in her case because she was sixty-five years old. An agent state claims representative certified that the claimant met the agent state's registration requirements.

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AA 160.30(2)

HELD: The claimant could not be held ineligible under Section 207.021(a)(1) of the Act for failing to register for work with the agent state's local office because Section 2(a) of Rule 21 of the Texas Workforce Commission provides that a claimant's registration for work in the agent state shall be accepted as meeting Texas work registration requirements.

Appeal No. 257-CF-76. On August 28, 1975, the claimant had been mailed a notice directing him to report to a specific Commission local office, but he did not so report until September 23, 1975, following the mailing of a second call-in notice. He did not report more promptly because he had been attempting to arrange a particular self-employment venture. **HELD:** Ineligible to receive benefits under Section 207.021 (a)(1) of the Act, from August 28 through September 22, 1975, for not having reported to an employment office in accordance with such regulations as the Commission may prescribe. Such regulation, Rule 20 of the Texas Workforce Commission Rules, provides that a claimant shall do those things requested by a Commission representative that are reasonably designed to inform the claimant of his rights and responsibilities in filing a claim for benefits.

Appeal No. 47540-AT-67 (Affirmed by Appeal No. 998-CA-67). A claimant who lives in Mexico and has a correspondence address in Texas must check his mail daily in person or have someone check in his behalf in order to meet the availability requirements of the Act.

Appeal No. 9900-CA-63. A claimant who lives in suburban Dallas but registers and files claims in Garland and demands a wage she can expect to receive only in Dallas, is not unduly limiting her availability where it is shown that she is actively seeking work in Dallas and that the Dallas office occasionally fills job orders with registrants from the Garland office.

Also see Appeal No. 79-CA-74 under AA 5.00.

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AA 160.35 Effort to Secure Employment or Willingness to Work: Voluntary Leaving or Suspension of Work.

Where the fact that the claimant left or suspended work voluntarily, or his reasons for doing so, are considered in determining his availability for work.

Appeal No. 3729-CA-76. At the time she filed her initial claim, the claimant had been unable to continue working for her last employer, and since that date, had not established what work, if any, she was able to do and had not engaged in an active work search. **HELD:** Ineligible for benefits Sections 207.021(a)(3) and 207.021(a)(4) of the Act.

Appeal No. 1154-CA-76. A claimant who left her last work on the advice of a doctor, having been advised to cease working for medical reasons, and who filed her initial claim immediately, thereafter, was held unable to work and ineligible for benefits under Section 207.021(a)(3) of the Act from the initial claim date, forward.

Also see Appeal No. 2431-CA-77 under AA 235.05.

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AA 165.00 – 165.05

AA Employer Requirements.

AA 165.00 Employer Requirements.

AA 165.05 Employer Requirements: General.

Includes cases containing (1) a general discussion of employer's requirements, (2) points not covered by any other subline under 165, (3) points covered by three or more sublines

Appeal No. 3225-CA-77. The claimant had last worked for seven years as a bus driver and dispatcher/starter for an airport transportation company but could no longer do heavy lifting because of arthritis and mild heart trouble. Since filing his initial claim, he had made numerous telephone contacts for work but very few personal contacts. Most of his contacts had been for work as a security guard although he had also been interested in work as a dispatcher. He had not wanted to accept security work which involved the use of a weapon, and he had no clerical skills. **HELD:** Unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act from the initial claim date, forward, since the testimony of a Commission placement representative established that eighty percent of the dispatcher jobs in the claimant's area required clerical skills and ninety percent of the security jobs in the area required the employee to handle some sort of weapon.

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AA 190.00 – 190.05

AA Evidence

AA 190.00 Evidence.

AA 190.05 Evidence: General.

Discussion of evidence, or of specific points of evidence, not covered by either of the other sublines under line 190.

Appeal No. 87-1400-10-081087. Two of the three required work search contacts listed on the claimant's continued claim form fell outside the claim period. At the Appeal Tribunal hearing, the claimant presented testimony and other evidence of five additional contacts made during the claim period but omitted from the continued claim form. **HELD:** Available for work and eligible for benefits under Section 207.021(a)(4) of the Act because the claimant established, by competent evidence of a diligent work search, a genuine attachment to the labor force. The issue was not whether the claimant had properly completed his claim form but, rather, whether he established his availability for work during the period in question.

Also see Appeal No. 87-06792-10-042287 under AA 190.15

Appeal No. 2568-CA-76. A claimant who was physically unable to perform her usual work of inspector in a garment factory and who presented no evidence that she was able to do any other type of work, was **HELD** unable to work and ineligible for benefits under Section 207.021(a)(3) of the Act from the initial claim date, forward.

Appeal No. 2098-CA-76. The only medical evidence available indicated that the claimant was to have been placed on a medical leave of absence on March 3, 1976. The claimant made no attempt to continue in employment with her last employer after that date and presented no medical statement affirmatively establishing her ability to work since March 3, 1976. **HELD:** Unable to work and ineligible for benefits from March 18, 1976, the initial claim date, forward, under Section 207.021(a)(3) of the Act.

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AA 190.05(2) – 190.10

Appeal No. 371-CA-76. The claimant had inadvertently stated that she was not available for full-time work because her husband was disabled. The claimant's husband had had a stroke in 1967 but could adequately care for himself. **HELD:** Available for work and eligible for benefits under Section 207.021(a)(4) of the Act, since her claims for the weeks with respect to which she had said she was not available for work reflected seven work contacts in the two-week period in question in an occupation in which she had ten years' work experience.

Appeal No. 330-CUCX-76. The claimant contended that, during the period of time in question, she had actually made more work contacts than she had listed on her eligibility questionnaire; however, she was unable to name any specific work contacts other than those listed on the form. **HELD:** Ineligible as not available for work under Section 207.021(a)(4) of the Act during the period in question because she failed to establish that she had made an adequate search for work during that period.

Appeal No. 183-CA-76. A claimant who left her last work because of an uncontrollable diabetic condition and who presented no evidence to show that she has been or is presently able to control her diabetic condition, is unable to work and ineligible for benefits under Section 207.021(a)(3) of the Act.

Also see Appeal No. 4267-CA-76 under AA 160.20.

AA 190.10 Evidence: Burden of Proof and Presumptions.

Applies to discussions of which party has burden of proof when ability to work or availability for work is at issue; or of legal adequacy of particular evidence to overcome presumptions concerning ability to work or availability for work.

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AA 190.10(2) – 190.15

Appeal No. 2011-CUCX-76. The claimant, a former student, asserted that he had been able and available for work since the end of the school term. However, he did not describe the extent of his work search since school ended. **HELD:** Ineligibility under Section 207.021(a)(4) continued despite the fact that the claimant had ceased attending school. To be considered available for work and eligible for benefits the Act requires that a claimant must not only be available for work during the normal working hours in his customary occupation but also that he be engaged in an active, independent search for work for each week for which he is claiming benefits.

Appeal No. 1721-CA-76. A claimant who offered no evidence that he had made an active search for work was held unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act. To establish availability for work under Section 207.021(a)(4), a claimant must give specific proof of the contacts he has made for employment. The claimant in this case had not met that burden of proof.

Appeal No. 886-CA-76. Where a claimant introduced in evidence at the Appeal Tribunal hearing a statement from his physician certifying that the claimant was able to return to work as of October 1, 1975, the previously imposed order of ineligibility Section 207.021(a)(3) of the Act was lifted as of October 1, 1975.

Also see Appeal No. 2336-CA-77 under AA 235.05.

AA 190.15 Evidence: Weight and Sufficiency.

Discussion of the weight and sufficiency of the evidence concerning a claimant's ability to work or his availability for work.

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AA 190.15(2)

Appeal No. 87-06792-10-042287. On her continued claim form, the claimant listed two work search contacts during the claim period and three falling outside the claim period. At the Appeal Tribunal hearing, the claimant merely testified that she had listed in error the date of the contacts outside the claim period. With her appeal to the Commission, the claimant submitted copies of two applications indicating the corresponding contacts actually were made within the claim period and not as listed on the claim form. The claimant was required to make three contacts each week. **HELD:** Available for work and eligible for benefits under Section 207.021(a)(4) of the Act because the sworn testimony and physical evidence were sufficient to establish a reasonable work search during the claim week in question.

Also see Appeal No. 87-1400-10-081087 under AA 190.05.

Appeal No. 532-CF-78. The failure of a claimant to appear and offer evidence to show that he has been available for work or to rebut a theory or allegation of unavailability put forth by his former employer, is not a basis for holding the claimant ineligible, in the absence of specific evidence presented by the employer.

Appeal No. 1917-CA-77. A claimant who presents as evidence, in conjunction with her Commission appeal, a statement from her physician certifying that she has been able to work at all times material to the appeal is eligible for benefits Section 207.021(a)(3) of the Act.

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AA 190.15(2)

Appeal No. 1485-CA-76. On March 4, 1976, the claimant stated that he was limiting his availability for work to the day shift because his chronically ill daughter had to be taken to the hospital three nights a week for continuing treatment. The claimant's daughter had to be at the hospital from 2:00 p.m. to 8:00 p.m. or 9:00 p.m. When the claimant made these statements, he was confused and upset because he had recently lost a job, he had held for 19 years. He actually meant only that he preferred day-shift work. He was willing to accept work on any shift. In fact, the claimant was not the only one who could take his daughter to the hospital. The claimant's wife or some other person could take the child to the hospital if claimant was unable. The claimant never indicated to the Placement Department of the Commission any limitation on his availability for work and had accepted a number of referrals to jobs requiring availability for work at all hours, two of such referrals shortly before he made the statement of March 4, 1976. **HELD:** Claimant was available for work, and eligible for benefits under Section 207.021(a)(4) of the Act. The claimant's statement of March 4, 1976, was made while he was under stress about having lost his job, and did not, under the circumstances shown by the evidence in the record, actually establish that the claimant was unduly limiting the hours he was willing to work.

Appeal No. 19-CA-77. The claimant, a clerk-typist, first presented a doctor's statement advising her to avoid any lifting, stooping or squatting. Because it appeared to the Appeal Tribunal unlikely that the claimant could obtain employment requiring none of the activities prohibited by her physician, she was held unable to work from the initial claim date, forward. On appeal to the Commission, the claimant presented a doctor's statement to the effect that she had been told to avoid only excessive stooping, bending, squatting or standing. There were numerous jobs available for which the claimant was qualified, which she was seeking, and which she could perform within the physical limitations described in conjunction with her appeal to the Commission.

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AA 190.15(3)

HELD: The claimant presented evidence that she had at all times been able to perform work which was available to her in her area and which she was actively seeking. (Also digested under AA 235.05)

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AA 235.00 – 235.05

AA Health or Physical Condition

AA 235.00 Health or Physical Condition.

AA 235.05 Health or Physical Condition: General.

Includes cases containing (1) a general discussion of physical ability to work, (2) points concerning physical ability which are not covered by any other subline under line 235, or (3) points covered by three or more sublines.

Appeal No. 1412-CA-78. A claimant who is unable to work during a weekend due to illness will not be held ineligible Section 207.021(a)(3) of the Act where weekend work has not normally been required of her in her customary occupation and where appropriate employer personnel offices would have been closed had the claimant been able to search for work. Further, a claimant who is sick on one regular workday during a benefit period but is able to and available for work on all other days in the benefit period, will not be held ineligible. (Also digested under AA 5.00.)

Appeal No. 2452-CA-77. Due to the medical condition of her feet and ankles, the claimant was required to wear either "slaps" or "thongs". **HELD:** Available for work and eligible for benefits under Section 207.021(a)(4) of the Act, in the absence of evidence that prospective employers would be reluctant to hire her because of the type of footwear that she has to wear. Furthermore, even if there were evidence of such employer reluctance, the claimant would be held available for work and eligible for benefits because her restrictions on the type of footgear that she could wear were, in the light of her medical condition, reasonable.

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AA 235.05(2)

Appeal No. 2431-CA-77. The claimant was medically retired from his last work and since then has been under a doctor's care. His work search efforts were unsuccessful because he had been rejected for medical reasons. **HELD:** Unable to work and ineligible for benefits under Section 207.021(a)(3) of the Act, from the initial claim date, forward.

Appeal No. 2336-CA-77. The claimant testified at the hearing that she had not been able to work since filing her initial claim. She furnished no medical evidence tending to establish the contrary. **HELD:** Unable to work and ineligible for benefits from the initial claim date, forward, under Section 207.021(a)(3) of the Act.

Appeal No. 1846-CA-77. The claimant was able to do only light work and was precluded by her physical condition from accepting work in any of the occupations in which she had prior work experience. Her work search had been almost exclusively in occupations in which she was precluded by her physical condition from accepting work, and she was too ill to work from March 8, to March 22, 1977. **HELD:** Unable to work from March 8, to March 22, 1977, under Section 207.021(a)(3) of the Act. Further, she was unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act, as, under the circumstances, the claimant's work search did not reflect a genuine attachment to the labor market.

Appeal No. 1687-CA-77. The claimant, unable to do the type of work which he last did, was seeking other types of work which he could do. **HELD:** Able to work and eligible for benefits under Section 207.021(a)(3) of the Act.

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AA 235.05(3) – 235.25

Appeal No. 19-CA-77. A claimant who has been told by her doctor to avoid excessive stooping, bending, squatting, or standing but who has been actively seeking the numerous available jobs for which she is qualified and which she is capable of performing, is able to work and available for work within the meaning Sections 207.021(a)(3)and 207.021(a)(4) of the Act. (Also digested under AA 190.15.)

Appeal No. 4184-CA-76. A claimant who is not physically able to work full-time is ineligible for benefits Section 207.021 (a) (3) of the Act.

Appeal No. 1772-CA-76. A claimant who for medical reasons can no longer perform work requiring heavy lifting but who can perform other work for which he is qualified, is able to work and eligible for benefits under Section 207.021(a)(4) of the Act.

Appeal No. 858-CA-76. A claimant who, prior to the date of her initial claim, has been released by her physician as being able to work, meets the ability to work requirements Section 207.021(a)(3) of the Act.

Also see Appeal No. 1154-CA-76 under AA 160.35.

AA 235.25 Health of Physical Condition: Illness or Injury.

Types of illness or injury not covered by the specific sublines under line 235.

Appeal No. 87-12632-10-071787. The claimant suffered a broken leg and was not able to run, lift, or put pressure on it. While unable to return to his usual work as a machine operator, the claimant was able to work and was actively seeking work in dispatching, bookkeeping, and sales, areas in which he had experience. to work and eligible for benefits under Section 207.021(a)(3) of the Act despite the temporary disability of his broken leg because the claimant was able and qualified to do work outside his usual occupation and was, in fact, actively seeking such work. Hence, the claimant had a reasonable expectancy of securing suitable work.

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AA 235.30 – 235.40

AA 235.30 Health or Physical Condition: Loss of Limb (or Use of).

Where loss of limb, or loss of adequate use thereof, has a bearing on availability.

Appeal No. 2111-CA-77. A claimant who, in spite of certain physical limitations on the use of her hands, has a sincere interest in obtaining work, has applied for numerous jobs, and is able to work as a hostess or receptionist, is not ineligible as unable to work or unavailable for work.

AA 235.40 Health or Physical Condition: Pregnancy.

Where a pregnant woman's availability for work is an issue.

Appeal No. 426-CA-75. The claimant had presented evidence from her doctor that she was physically able to work and that the doctor had recommended that claimant continue to work. The claimant had also presented evidence to establish a diligent effort to find work. Claimant had become unemployed for reasons unrelated to her pregnancy. **HELD:** The Commission's duty in determining a claimant's eligibility for benefits, whether pregnant or not, is to decide whether the claimant is physically able to work, ready and willing to accept suitable work, and genuinely attached to the local labor market. In determining whether a claimant is genuinely attached to the local labor market, the Commission necessarily must consider, along with other factors, the job applications made by the claimant relative to her previous employment and should consider whether the claimant's efforts to secure work are in the same general area of experience as her former employment. Applying these criteria to the present case, the Commission found that the claimant met the requirements of Sections 207.021(a)(3) and 207.021(a)(4) of the Act.

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AA 250.00

AA Incarceration or Other Legal Detention

AA 250.00 Incarceration or Other Legal Detention.

Applies to cases involving imprisonment or detention of a worker.

Appeal No. 869-CA-77. A claimant who is confined in jail or in a penitentiary is unavailable for work under Section 207.021(a)(4) of the Act during the period of such confinement.

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AA 295.00

AA Length of Unemployment

AA 295.00 Length of Unemployment.

Effect of length of claimant's unemployment upon his availability for work.

Appeal No. 2190-CF-77. The claimant voluntarily quit his last work without good cause when continued work was available to him. Three weeks thereafter, he filed his initial claim. During the four-month period from the date of his initial claim until the claimant's motion for rehearing and the Commission's final decision, the claimant demanded a wage in excess of the wage most commonly paid in his locality for the work he was seeking. However, the wage demanded by the claimant was only slightly more than 76% of the wage earned in his last employment. **HELD:** The Commission recited the policy first established in Appeal No. 2282-CA-77 (see above and under AA 500.00) and held the claimant eligible under Section 207.021(a)(4) of the Act. It also advised the claimant that, if his unemployment continued, he would be required to lower his wage demand or be held ineligible for an excessive wage demand. (Cross-referenced under AA 500.00.)

NOTE: For a complete description of the Commission's policy regarding wage demand and the effect thereon of, the length of unemployment, among other things, see Appeal No. 2282-CA-77 under AA 500.00.

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AA 295.00(2)

Appeal No. 1865-CA-76. During the five-month period from the date of her initial claim until the AT hearing, the claimant sought work only in an occupation in which the employment prospects were extremely limited. **HELD:** Unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act. A claimant who has been unemployed and filing claims for a substantial period of time must modify her job and wage demands to realistically conform to the job market. The claimant's continued unemployment and failure to find work of the type she desired indicated that the limitations on her availability and her negligible work search precluded her from having a reasonable expectancy of securing employment. (Cross-referenced under AA 510.10.)

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AA 315.00

AA New Work

AA 315.00 New Work.

Only used in cases which discuss whether a given employment constitutes new work within the meaning of that term as used in section 1603(a)(5) of the internal revenue code, as amended (effective august 5, 1954, section 3304(a)(5) of the federal unemployment tax act).See Unemployment Insurance Program Letter No. 9-84 under VL 315.00.

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AA 350.00

AA Period of Ineligibility

AA 350.00 Period of Ineligibility.

Includes those cases where a claimant was ill for one or more days or absent from the area one or more days and where his eligibility for that particular week is in question

Appeal No. 3812-CSUA-76. A claimant who places a restriction on her availability for work is not to be held unavailable for work and ineligible for benefits prior to the time that she is informed that her availability for work is deemed to be unduly restricted and that such undue restriction might render her ineligible for benefits.

Appeal No. 3626-CA-76. An order of ineligibility is to be removed as of the date the claimant first notified the Commission (i.e. a Commission representative) that the claimant's availability for work is no longer unduly restricted.

Appeal No. 3291-CA-75. The claimant was out of the area where he was seeking work for one day, a Sunday. **HELD:** Available for work and eligible for benefits under Section 207.021(a)(4) of the Act for the benefit period in which that day occurred, because most employers do not have offices open to take applications for work on Sundays. Thus, the claimant's absence from the area where he was seeking work did not materially affect his availability for work.

Also see Appeal No. 1412-CA-78 under AA 5.00.

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AA 360.00

AA Personal Affairs

AA 360.00 Personal Affairs.

Includes cases which discuss the availability of a claimant who is engaged in such matters as settling an estate or attending to financial or casual affairs which cannot strictly be classified as domestic circumstances (line 155), health or physical condition (line 235), or self-employment or other work (line 415).

Appeal No. 2715-CSUA-77. A claimant who makes no contacts for work because of personal responsibilities, is unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act.

Appeal No. 650-CA-67. A claimant who is under indictment on a criminal charge, but whose trial date is indefinite and who is making a concerted effort to find work, meets the availability requirement of Section 207.021(a)(4) of the Act.

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AA 365.00

AA Prospects of Work

AA 365.00 Prospects OF Work.

Includes cases which discuss a claimant's prospects for work of the type, and under the conditions, acceptable to him.

See Appeal No. 1865-CA-76 under AA 295.00.

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AA 370.00 – 370.10

AA Public Service

AA 370.00 Public Service

AA 370.10 Public Service: Jury Duty.

Availability of a claimant while serving as a juror.

No precedent cases

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AA 375.00 – 375.25

AA Receipt of Other Payments

AA 375.00 Receipt of Other Payments.

AA 375.25 Receipt of Other Payments: Old Age and Survivor's Insurance.

Where the filing for, or receipt of, such benefits is considered in determining claimant's availability. (Note: cases discussing the reduction or cancellation of unemployment insurance benefits because of receipt of old age or retirement payments are covered in the miscellaneous division of the code.)

Appeal No. 1769-CF-77. A claimant who is unwilling to accept full-time work because of the adverse effect the earnings from such work would have on his entitlement to Social Security benefits will be held ineligible under Section 207.021(a)(4) until he is willing to make himself available for full-time work.

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AA 415.00 – 415.05

AA Receipt of Other Payments

AA 415.00 Self-Employment or Other Work.

AA 415.05 Self-Employment or Other Work: General.

Includes cases containing (1) a general discussion of self-employment, (2) points not covered by any other subline under line 415, or (3) points covered by three or more sublines.

Appeal No. 3673-CA-75. The claimant worked only eight and one-half hours during the benefit period as an independent contractor painting a house. **HELD:** Eligible for benefits under Section 207.021(a)(4) of the Act since his self-employment was not so substantial as to preclude his being available for work.

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AA 450.00 – 450.151

AA Time

AA 450.00 Time

AA 450.10 Time: Days of Week.

Where claimant will not work on certain days because of religious beliefs, domestic circumstances, or other reasons

Sherbert vs. Verner, 374 U.S. 398 (Supreme Court, 1963). A claimant who, because of religious convictions, cannot accept a job requiring her to work on Saturdays, must be deemed available for work and eligible for benefits, notwithstanding such restriction and regardless of its effect on her actual chances of securing work. To hold otherwise would place an unconstitutional burden on her freedom of religion under the First and Fourteenth Amendments to the Constitution of the United States. (Also digested under AA 90.00.)

AA 450.15 Time: Hours.

AA 450.151 Time: Hours: General

Appeal No. 1021-CA-77. On her previous job as a cook, the claimant had worked from 8:00 a.m. to 5:00 p.m., Monday through Friday. She had childcare arranged for her minor children from 8:00 a.m. to 6:00 p.m. By limiting her availability for work to the hours of 8:00 a.m. to 6:00 p.m., she eliminated approximately 35% of the potential jobs for which she was qualified. **HELD:** Available for work and eligible for benefits under Section 207.021(a)(4) of the Act. In light of the claimant's previous work experience, her restrictions on her hours of work were reasonable.

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AA 450.153 – 450.154

AA 450.153 Time: Hours: Long or Short.

The Texas Supreme Court held in **TEC, et al, vs. Hays,** 360 S.W. 2d 525 that it would be difficult to find a student in regular attendance in elementary or secondary schools available for work because of Arts. 2906 and 2892, Vernon's Texas Civil Statutes, which require that students between seven and sixteen years be in school and that such schools be taught not less than seven hours per day.

AA 450.154 Time: Hours: Night.

Appeal No. 3877-CA-76. The claimant limited her availability to daytime jobs in a labor market area in which about two-thirds of the jobs in the claimant's occupation required only daytime hours. **HELD:** The claimant's limitation did not unduly limit her availability for work since most of the jobs in her field were available during daytime hours and she had actually obtained some work within her limitation.

Appeal No. 2210-CA-76. A claimant who is looking for full- time work as a receptionist or a PBX operator, but who is not willing to work nights, is available for work within the meaning of Section 207.021(a)(4) of the Act in the absence of evidence that the usual hours of work for a receptionist or a PBX operator include night hours.

Appeal No. 1480-CA-76. A claimant who will not work nights but is available for work during the customary (daytime) hours in two of the three occupations in which she is registered for and seeking work (including her primary registered occupation of receptionist), is not unduly restricting her availability for work.

Appeal No. 1006-CA-77. By limiting her availability to work on the day shift, the claimant eliminated 50% to 60% of the available jobs in her occupation in her labor market area. **HELD:** Unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act. The claimant's hourly restrictions, which eliminated 50% to 60% of the available jobs in her occupation in her area, unduly limited her availability for work.

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AA 450.154(2) – 450.155

Appeal No. 2697-CA-76. The claimant was registered for work as a nurse's aide, in which work she had only a few months' experience, and as a general office clerk, in which work she had several years' experience. She was actively seeking work as a general office clerk, the normal hours for which work were 8:00 a.m. to 5:00 p.m. She could not work evening hours, which restricted her availability for work as a nurse's aide. **HELD:** Available for work and eligible for benefits under Section 207.021(a)(4) of the Act as the claimant's unwillingness to work night hours did not restrict her availability for work in the occupation in which she had her primary work experience and in which she was actively seeking work.

AA 450.155 Time: Hours: Prevailing Standard, Comparison With.

Appeal No. 766-CA-77. A claimant who is not available for work during the normal working hours in her occupation and who wants to be paid time and one-half for overtime work (such overtime pay most commonly being paid by only the largest employers in her occupational field), is not to be **HELD** unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act unless the evidence shows that she knows, or should know, that the conditions which she is imposing constitute an undue limitation on her availability for work. (Cross-referenced under AA 500.00.)

Also see Unemployment Insurance Program Letter No. 9-84 under VL 315.00

AA 450.157 Time: Hours: Customary.

Appeal No. 4366-CSUA-76. A claimant who restricts her availability to certain daytime hours is not unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act where the claimant's restriction is not out of line with the working hours on similar jobs she has previously **HELD** in the same labor market area and where she has not been advised that such restriction constitutes an undue limitation on her availability for work.

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AA 450.157 – 450.40

Appeal No. 1263-CA-76. The claimant would not accept work if the required hours of work began before 7:00 a.m. or ended after 5:00 p.m. **HELD:** Ineligible for benefits under Section 207.021(a)(4) of the Act as being unavailable for work where the evidence showed that the majority of the positions for which the claimant was qualified had either a starting time earlier than 6:00 a.m. or a quitting time later than 5:00 p.m. A claimant who limits the hours that he will work to the extent that he is not available for most jobs in his usual occupation is not available for work.

AA 450.20 Time: Irregular Employment.

Involves restrictions to, or unwillingness to accept, irregular work.

Appeal No. 866-CA-77. A claimant who restricts her availability for work to permanent full-time employment, and who is unwilling to accept part- time or temporary work, is ineligible for benefits under Section 207.021(a)(4) of the Act as such a restriction constitutes an undue limitation on her availability for work.

AA 450.40 Time: Part Time or Full Time.

Where claimant's availability is in issue because he either wants, or does not want, part-time or full-time work.

Appeal No. 4147-CA-76. Although the claimant desired part-time work so that she could spend more time with her retired husband, she had been willing at all times to accept full-time work and had never advised any potential employers that she was available only for part-time work. **HELD:** Available for work and eligible for benefits under Section 207.021(a)(4) of the Act as the claimant had been available for full-time work.

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AA 450.40(2) – 450.50

Appeal No. 4009-CSUA-76. A claimant who was originally willing to work only six and one-half hours a day but who later notified the Commission of her willingness to work eight hours a day, was held not available for work under Section 207.021(a)(4) of the Act prior to the date she so notified the Commission, as she was not available for full time work prior to that date.

Also see Appeal No. 1769-CF-77 under AA 375.25; Appeal No. 866-CA- 77 under AA 450.20; and Appeal No. 378-CSUS-76 under AA 155.35.

AA 450.50 Time: Shift.

Involves restrictions to, or unwillingness to accept work on some particular shift.

Appeal No. 1666-CA-77. The claimant was working part-time, had expectations that such work would become full-time work, was actively seeking other, full-time work, and her hours restriction was consistent with the usual shift starting times in the type of work she was seeking. **HELD:** Available for work and eligible for benefits under Section 207.021(a)(4) as her availability for work was not unduly restricted.

Also see cases under AA 450.154.

AA.450.55 Time: Temporary.

Claimant's restrictions to, or unwillingness to accept, temporary work.

In the case of **Texas Employment Commission vs. Kirkland**, 445 S.W. 2d 777 (El Paso Civ. App, 1969) the court HELD that a claimant who was available for work for only one week in effect detached himself from the labor market and that he was not available for work.

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AA 450.55(2)

Appeal No. 1878-CA-78. The claimant was separated by her last employer on May 19 due to lack of work and agreed to return to work for that employer on July 3. She filed her initial claim on May 26 and made an active search for temporary, full-time work during the ensuing five weeks, informing each prospective employer of her plan to return to work for her former employer. **HELD:** Since the claimant made an active search for temporary, full-time work and truthfully informed prospective employers that she planned to return to her former employment, the claimant was available for work within the meaning of Section 207.021(a)(4) of the Act.

Appeal No. 2480-CA-77. A claimant who is available only for temporary, full-time work, pending recall to work by his last employer, and who is making an active search for work until such recall, is available for work and eligible for benefits under Section 207.021(a)(4) of the Act. (Cross-referenced under AA 510.40.)

Appeal No. 3111-CSUA-75. A claimant, who was available for full-time work only from June 1 until September 1 because he had a firm job commitment to begin in September, was held available for work under Section 207.021(a)(4) of the Act.

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ABLE AND AVAILABLE

AA 475.05

AA Union Relations

AA 475.00 Union Relations.

AA 475.05 Union Relations: General.

Includes cases containing (1) a general discussion of the effect of union requirements upon a claimant's availability, (2) points not covered by any other subline under line 475, or (3) points covered by three or more sublines.

Appeal No. 1039-CF-79. A claimant who has been issued a union permit and has secured and performed work on the basis of that permit, but who is not a full union member in good standing, does not come within the union member exception to the general requirement of an active, independent search for work set out in the policy statement on work search under AA 160.05. (For a more complete digest of this decision, see AA 160.05.)

Appeal No. 1023-CA-79. A claimant whose union does not operate a hiring hall does not come within the union member exception to the general requirement of an active, independent search for work set out in the policy statement on work search under AA 160.05. (For a more complete digest of this decision, see AA 160.05.)

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AA Wages

AA 500.00 Wages

Includes cases in which a claimant's insistence upon a wage, below which he will not work, affects his availability for work.

Appeal No 86-05869-10-041087. The claimant was separated from his $8.00 per hour job on February 1, 1986. With no intervening work the claimant filed an initial claim on August 14, 1986, indicating $7.00 per hour as his minimum acceptable wage. On September 22, 1986 the claimant refused a job offering $5.00 per hour simply because of the hourly rate. The claimant eventually secured a job at $7.20 per hour. **HELD:** The claimant had good cause to reject the $5.00 per hour job offer because of the low pay. The length of the claimant's unemployment as a factor in determining the reasonableness of his wage demand is measured not from the date of separation from work, but from the date he files his initial claim for benefits. (Clarifying the decision in Appeal No. 2282-CA-77, digested under AA 500.00 and SW 500.35. Cross-referenced under SW 295.00 and SW 500.50.)

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AA 500.00(2)

Appeal No. 2282-CA-77. Although a claimant must have a reasonable and realistic wage demand which will not hinder or prevent his finding suitable work, the reasonableness of a claimant's wage demand must be considered in light of his earnings on his last job, his prior work experience and job classification, as well as the most commonly paid wage in the area where he is seeking work. Where there is a wide disparity between the most commonly paid wage for a particular job classification and what the claimant last earned, such factors as the length of the claimant's unemployment, the reasonableness of the claimant's wage demand, and the availability of jobs which the claimant might secure at such wage he is demanding must be considered. The overriding consideration is the probability of the claimant's securing suitable employment at a reasonable wage within a reasonable length of time. (Cited in Appeal No. 2190-CF-77 under AA 295.00 and Appeal No. 87-04333-10-032488 under SW 500.35.) (Cross-referenced under AA 160.06, SW 295.00, SW 500.35 and SW 500.50.) For future cases, the Commission established the following policy for the consideration and guidance of the Benefits Department and the Appeal Tribunal in determining a claimant's eligibility under Section 207.021(a)(4) of the Act with reference to the claimant's wage demand. In cases where a claimant has been laid off for lack of work and has immediately filed a claim for unemployment insurance benefits, it is not unreasonable to expect that claimant to demand a minimum wage or salary of approximately eighty-five to ninety percent of the wage or salary the claimant earned in his last employment.

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AA 500.00(3)

Such a minimum wage demand should not present any issues with respect to ineligibility under Section 207.021(a)(4) of the Act during the first eight weeks of the claimant's unemployment. Thereafter, however, the claimant should reasonably be expected, if he remains unemployed, to lower his minimum wage or salary demands to seventy-five percent of his former wage or salary. If the claimant's unemployment continues in spite of this further reduction, and there exists a considerable difference between his wage demand and the most commonly paid wage for his occupation in his locale, then further reduction in the claimant's demand, in order to bring such wage demand in line with the prevailing wage, would be in order.

Appeal No. 4267-CA-76. During her four months of unemployment, the claimant had been demanding a wage equivalent to 80% of her last wage. Following an active work search, she secured work paying a wage equivalent to her last wage. **HELD:** The fact that the claimant secured work at a higher wage than she had been demanding demonstrated that her wage demand was not unreasonable.

Appeal No. 2277-CF-76. A claimant who is demanding a beginning wage in excess of the most commonly paid wage in the area for the occupation in which he is seeking work and in excess of any prior earnings by him is not available for work. However, there is no basis for holding a claimant ineligible due to his wage demand prior to the time he has been advised of the most commonly paid wage in the area, if his wage demand has not been out of line with his prior earnings.

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AA 500.00(4)

Appeal No. 1927-CA-76. The claimant was seeking apartment maintenance work, demanding $3 per hour if an apartment was not furnished as part of the compensation. The most commonly paid wage for such work in the claimant's area was $2.75 per hour. However, this was merely the most commonly paid cash compensation for such jobs in the area, about one- half of the area jobs in the claimant's occupation provided additional compensation in the form of the rent-free use of an apartment. **HELD:** In light of the fact that about one-half of the area jobs in the claimant's occupation provided a rent-free apartment in addition to the most commonly paid wage of $2.75 per hour, the claimant's wage demand of $3 per hour, if an apartment was not furnished rent-free, was reasonable and did not render him unavailable for work under Section 207.021(a)(4) of the Act.

Also see Appeal No. 2190-CF-77 under AA 295.00 and Appeal No. 766-CA-77 under AA 450.155.

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ABLE AND AVAILABLE

AA 510.00 – 510.10

AA Work, Nature of

AA 510.00 Work, Nature of

AA 510.10 Work, Nature of: Customary.

Where a claimant's insistence upon, or inability or unwillingness to accept, work in his usual occupation raises a question about his availability for work.

Appeal No. 2980-CA-76. A claimant who restricts her availability to work in a particular occupation, from which type of work she was last separated under involuntary circumstances due to health problems related to that work, has unduly limited her availability for work because her prospects of securing such work are severely limited.

Appeal No. 1846-CA-76. A claimant who is precluded by her physical condition from accepting work in any of the occupations in which she has had prior experience, but who has almost entirely restricted her work search to such occupations, is not available for work.

Appeal No. 13201-AT-70 (Affirmed by 119-CA-77). Even though a claimant has worked in a particular occupation for the last four years and will no longer accept that type of work, her availability for work is not unduly limited if she is qualified for other work and has demonstrated that fact by obtaining such work on a part-time basis.

Appeal No. 809-CA-67 A claimant will not be required to be available for work in her regular occupation when she had to quit that kind of work on her doctor's advice for health reasons, provided she is available for other work and is actively seeking work.

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AA 510.10(2) – 510.40

Appeal No. 30337-AT-66 (Affirmed by 291-CA-66). A claimant who restricts her availability to the type of work she last performed is unduly limiting her availability where it is shown that she has practically no chance of securing such work in the area and other work which she is qualified to perform is available.

Also see Appeal No. 4267-CA-76 under AA 160.20 and Appeal No. 1865- CA-76 under AA 295.00.

AA 510.40 Work, Nature of Preferred Employer or Employment.

Effect upon availability of claimant's willingness to work only for a particular employer, or in a particular employment.

Appeal No. 86-07928-10-050787. The claimant was temporarily laid off for two weeks with a definite recall date. He went to Arkansas on family business for three days during the layoff. HELD: A claimant who has been laid off for a temporary period of time and is awaiting a return to his previous job after a specific amount of time, need not search for work during his temporary unemployment. In the present case, since the claimant was laid off for a two-week period, after which he could return to his previous job, he was available for work during the period in question. (Also digested under AA 160.05.)

Appeal No. 2722-CA-77. A claimant who, in good faith, relies on a definite recall date or a definite promise of work to begin in the near future, no longer needs to make an active personal search for work in order to be considered available for work under Section 207.021(a)(4) of the Act. (In the present case, the claimant had been promised the job "within several weeks" and it materialized five or six weeks after she ceased her work search. The Commission characterized this as a delay in the job's materialization but held that the claimant should not be held accountable for such delay.)

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AA 510.40(2)

Appeal No. 2364-CSUA-77. Since being laid off due to lack of work by a school district prior to the end of the academic term in May, with notice that she could not be guaranteed re-employment for the Fall term because of a decrease in student enrollment, the claimant made no work search other than contacting the school district for reemployment. **HELD:** Unavailable for work under Section 207.021(a)(4) of the Act as the claimant had not made an active personal search for work sufficient to show an attachment to the general labor market.

Appeal No. 2156-CSUA-77. In March, the claimant had been involuntarily separated from her employment as a special education teacher with a school district due to family and personal illness and the exhaustion of her sick leave. Prior to the Appeal Tribunal hearing on June 16, the claimant was notified that her contract had been reviewed for the academic year beginning in September. From the filing of her initial claim in March until the Appeal Tribunal hearing, the claimant sought work with the school district for the remainder of the then-current Spring academic term and the Summer term but was unsuccessful because no positions were available for the remainder of the Spring term and the district did not customarily utilize special education teachers during the Summer. **HELD:** The claimant was unduly limiting her availability by concentrating her work search on reinstatement to a position as a special education teacher, when no such positions were available.

Appeal No. 2353-CA-76. A claimant who had left work and filed her initial claim in May because of pregnancy and who was guaranteed re employment when again able to work (estimated to be in November), but who made no search for work during the interim as she felt this would jeopardize her guaranteed re-employment, was held unavailable for work under Section 207.021(a)(4) of the Act.

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AA 510.40(3)

Appeal No. 363-CA-76. A claimant who restricts her availability to work with one employer and that in an occupation in which, in regard to that employer and the three other possible employers in such occupation in her area, there are very limited chances of securing employment, is not available for work under Section 207.021(a)(4) of the Act.

Also see Appeal No. 2480-CA-77 under AA 450.55.

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AA 515.00 – 515.55

AA Working Conditions

AA 515.00 Working Conditions.

AA 515.55 Working Conditions: Prevailing for Similar Work in Locality.

Comparison of claimant's restrictions regarding working conditions with those existing for similar work in the locality. Includes cases in which consideration is given to the question of whether the "labor standards" provisions are applicable in such situations.

See U.I. Program Letter No. 9-84 under VL 315.00.

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CH 5.00

General

CH 5.00 General.

Cases involving chargeback points not elsewhere classified.

Appeal No. 1507-CAC-77. The employer had been incorrectly named as the claimant's last work on his initial claim and had filed a timely protest thereto, submitting facts establishing that the claimant's last separation from the employer's employment prior to the beginning date of the benefit year had been a disqualifying one. The employer was a base period employer (but not the last employing unit) with respect to the backdated initial claim subsequently filed by the same claimant. Following the latter, the employer was mailed a Notice of Maximum Potential Chargeback but failed to file a timely protest thereto. **HELD:** The employer, a base period employer, is not chargeable with benefits paid to the claimant, notwithstanding the employer's failure to file a timely protest to the Notice of Maximum Potential Chargeback sent to him, because in such a case information establishing the non-chargeability of the employer's account was already in the hands of the Commission before the Notice of Maximum Potential Chargeback was mailed to the employer. In such a case, the Commission's duty was to use such information to protect such base period employer's account, notwithstanding the employer's failure to timely protest the chargeback notice.

Appeal No. 2573-CAC-75. Where the initial claim which established the benefit year, with respect to which the employer was a base period employer, is disallowed because of the claimant's failure to name that employer as her correct last employer, the chargeback to the employer's account must be set aside.

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CH 10.00 – 10.10

CH Separation Required by Law, Ordinance, or Regulation

CH 10.00 Separation Required by Law, Ordinance, or Regulation.

CH 10.10 Separation Required by Law, Ordinance, or Regulation: Federal Statute.

Appeal No. 87-20329-10-112887. Section 274A of the Immigration and Nationality Act makes the employment of unauthorized aliens unlawful. The claimant had lost his social security card and was unable to present it to the employer as proof of citizenship. The employer discharged the claimant for failing to present proof of citizenship in a prompt manner. **HELD:** In discharging the claimant for failing to present proof of citizenship, the employer was complying with the mandate of Section 274A of the Immigration and Nationality Act (This confusing "dual" reference is due to the fact that the Immigration Reform and Control Act amended, inter alia, Section 274A of the Immigration and Nationality Act). Hence, the separation was required by Federal Statute and the employer's account was subject to protection from chargeback. (Also digested under MS 70.00 and MC 85.00.)

Appeal No. 577-CAC-74. The requirement of a Federal Statute that a former employee who was serving in the military service be returned to his job, in effect, was a requirement that an employee be laid off. Therefore, the employer's account will not be charged with benefits paid to the employee who had to be laid off.

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CH 10.20

CH 10.20 Separation Required by Law, Ordinance, or Regulation: Regulation of Federal Agency.

Applies to cases in which the separation was brought about by the application of a regulation promulgated by a federal agency under the terms of a federal statute.

Appeal No. 215-CAC-72. U.S. Dept. of Transportation regulations have the same force and effect as a Federal Statute. If such regulations require that an employee not be allowed to continue in his job, the separation was required by a Federal Statute and the employer's account is not subject to charge.

Appeal No. 643-CAC-74. When an employer is required by regulations of a Federal commission to divest itself of the complete television broadcasting portion of the employer's business, it was required to separate the employees of that portion of its business. The separation was required by a Federal Statute and the employer's account should not be charged.

Appeal No. 163-AT-68 (Affirmed by 81-CA-68). The employer chose to qualify his nursing home for the benefits of Medicare. The Federal standards required that a licensed vocational nurse in an extended care facility must have had certain special training and must have passed a state board examination. The claimant was a licensed vocational nurse but had not had the required training and had not passed the state board examination. She obtained her license by waiver. The employer laid the claimant off solely to replace her with an LVN who met the Federal Statute to become an extended care facility, it cannot be found that claimant's separation was required because of a Federal regulation or Statute.

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CHARGEBACK

CH 10.30

CH 10.30 Separation Required by Law, Ordinance, or Regulation: State Statute.

Applies to cases in which the separation was the result of the application of a statute of Texas or some other state.

Appeal No. 99-011775-10-121799. The employer is a horse racetrack which, in accordance with the Texas Racing Act, is subject to regulation by the Texas Racing Commission. The Texas Racing Act provides that, as to each horse racetrack participating in racing with pari-mutuel wagering, the Texas Racing Commission shall allocate the number of racing days which will constitute that track's annual racing season. The claimant in this case was an employee who was laid off at the end of the employer's allocated racing season. **HELD:** Although the employer could no longer conduct horse races without jeopardizing its license and, as a result, may have been forced by economic necessity to lay off the claimant, the separation was merely the indirect result of the application of a state statute. In accordance with the court's ruling in **Retama Development Corp & Retama Park Management Co., Appeal No. 99-011775-10-121799 L.C. v. TWC and Brown,** 971 S.W.2d 136 (Tex. App.- Austin 1998), Section 204.022 (a) (2) of the Act is not applicable, and the employer's account is subject to charge. The Commission noted that Appeal No. 93-004252-10M-012194 was inconsistent with the holding in **Retama v TWC**, supra, and directed that this precedent be removed from the precedent manual.CH 10.30(3)

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CHARGEBACK

CH 10.30(2)

In **Retama Development Corp. & Retama Park Management Co., L.C. v. TWC and Brown 971 SW2d 136**, (Tex.Civ. App – Austin, 1998), the Court upheld the Commission's decision charging the employer's account. The employer operated a racetrack under authority of the Texas Racing Commission. Due to an economic downturn, the employer requested permission from the Racing Commission to shut down two weeks earlier than originally authorized to do so by that Commission. The Racing Commission granted such permission, leading to the unemployment of claimant Brown and others. The Commission's decision charging the employer's account, distinguished Appeal No. 93-004252-10M- 012194 (replaced by Appeal No. 99-011775-10-121799) on the basis that the employer had requested the shortened season, rather than having completed the previously authorized season as in the precedent case. The Court agreed with this distinction but went on to dismiss the principle underlying the precedent, stating a separation must be required by statute for Section 204.022 to be applicable; it was insufficient to be merely an indirect result accompanying statutorily required regulation.

Appeal No. 87-18569-10-102287. The claimant was forced to resign after failing to pass the state dentistry exam. Under Articles 4548a and 4551a, Vernon's Annotated Civil Statutes, the employer could be charged with practicing dentistry without a license if they knowingly permitted the claimant to remain employed as a dentist. **HELD:** The claimant's separation was required by a Texas Statute because her continued practice of dentistry for the employer would have caused the employer to be in violation of state law.

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CH 10.30(3)

Appeal No. 7176-CA-60. A claimant who is hired to work as a truck driver and is then unable to pass the test for a commercial driver's license and is laid off because Article 6687b (Vernon's Texas Civil Statutes) prohibited him from operating a truck, is separated because of a State Statute.

Appeal No. 3629-CA-77. The claimant, a nursing home administrator, was involuntarily separated as a result of a suit instituted against her and the owner by the Texas Attorney General under the Texas Consumer Protection Act for misrepresenting the services provided by the nursing home. **HELD:** Although the claimant was not discharged by the employer, her separation was involuntary as a result of the action instituted by the Attorney General. The court's judgment lead the Commission to conclude that the claimant's separation was due to her involvement in work- related illegal actions and, accordingly, that she was discharged for misconduct connected with the work. The claimant was disqualified under Section 207.044 of the Act and, therefore, the employer's account was protected from chargeback. (Note that the claimant's separation was not deemed to have been required by a Texas Statute and that the employer's account was protected only because of the disqualifying nature of the claimant's separation, under Section 207.044 of the Act, and not because her separation had been statutorily required.) (Cross-referenced under MC 490.05.)

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CHARGEBACK

CH 10.30(4)

NOTE: Examples of State Statutes which may be held to have required separations, thus justifying the protecting of an employer's account, are Article 4445, Section 10, and Article 4477-11 (Vernon's Texas Civil Statutes). The former provides that no person infected with a venereal disease shall knowingly expose another person to infection with such disease; the latter provides that all persons infected with tuberculosis, or who, from exposure to tuberculosis, may be liable to endanger others who may come in contact with them, shall strictly observe instructions of local health authorities in order to prevent the spread of tuberculosis, such instructions to possibly include home treatment and isolation or quarantine.

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CHARGEBACK

CH 15.00

CH Separation Required by Medically Verifiable Illness

CH 15.00 Separation Caused by Medically Verifiable Illness.

Appeal No. 87-00700-10-011288. The claimant suffered from multiple sclerosis which impaired her vision and, consequently, her performance as a data entry clerk. She was discharged for excessive errors. **HELD:** No charge to the employer's account because the separation was caused by a medically verified illness, even though the claimant was not disqualified from receiving benefits.

Appeal No. 87-02634-10-022588. By a doctor's statement, the claimant and the employer were advised that the claimant should discontinue for the remainder of her pregnancy any activities which required heavy lifting. Since such a restriction would impair the claimant's ability to perform her duties, and because of the employer's concern for her health, the claimant was discharged. **HELD:** A separation caused by the claimant's pregnancy is a separation caused by a medically verifiable illness within the meaning of Section 204.022 of the Act, thereby compelling the protection of the employer's account from chargeback. (Also digested under MC 235.40.)

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CH 20.00 – 20.20

CH Separation by Sale of All or a Portion of the business

CH 20.00 Separation by Sale of All or a Portion of the Business.

CH 20.10 Separation by Sale of All or a Portion of the Business: Transfer of Compensation Experience.

Includes cases which discuss the effect of transfer of the predecessor employer's compensation experience to successor employer.

Appeal No. 559-CBW-65 (Commission Decision). When a joint application for partial transfer of compensation experience with respect to the establishment where a claimant worked is filed and approved by the Commission, there is no longer any possibility of charge against the former owner.

CH 20.20 Separation by Sale of All or a Portion of the Business: No Transfer of Compensation Experience.

Includes cases which discuss situations where successor employer does not acquire predecessor employer's compensation experience.

Appeal No. 1604-CAC-77. The employer, a base period employer, on selling one of his businesses, offered the employees at that lo- cation the option of transferring to another location and continuing to work for the base period employer. **HELD:** The employees who declined such transfer, in effect, voluntarily left their work with the base period employer without good cause connected with the work, so that such employer's account was not chargeable with benefits paid to the claimants who declined the option to transfer.

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CHARGEBACK

CH 30.00 – 30.10

CH When Separation Occurs

CH 30.00 When Separation Occurs.

CH 30.10 When Separation Occurs: Transfer from One Employer's Account to Another.

Includes cases which discuss the effect of transfer of an employee from one employer's account to another with or without knowledge of the employee.

Appeal No. 8427-ATC-69 (Affirmed by 79-CAC-70). When an employee is transferred at the convenience of the employer to another company which is a separate company with a different account number, although under the same general management and control, the separation from the first company is not under dis- qualifying circumstances and the employer's account is subject to charge.

Appeal No. 97-CAC-69. When a claimant is transferred at her own request from one of the employer's stores to another of the employer's stores having a different account number, the claimant's separation from the first store is voluntary in nature and that account number is entitled to protection if the claimant did not have good cause connected with the work for such leaving.

Also see cases reported under CH 20.20.

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CHARGEBACK

CH 30.40

CH 30.40 When Separation Occurs: Nature of Employment Relationship.

Includes cases which discuss the problem of whether there was an employment relationship between the claimant and employing unit and whether such relationship has ceased.

Appeal No. 3229-CAC-75. The claimant was employed by the base period employer on a regular part-time basis and continued to be so employed until after the date the claimant filed his initial claim. **HELD:** The Appeal Tribunal decision, charging the base period employer's account with benefits paid the claimant, was set aside. Since the claimant had not been separated from the base period employer's employment at the time the initial claim was filed, no ruling could be made on the chargeback. (Cross-referenced under MS 510.00.)

Appeal No. 3555-CAC-76. The claimant, who had been working for the base period employer during a temporary time off from his regular job, left the base period employer's employment to return to his regular job at a time when continued employment with the base period employer was available. **HELD:** The claimant had left such base period employer's employment under disqualifying circum- stances; thus, the employer was held not chargeable with benefits paid to the claimant.

Appeal No. 983-CAC-72. If a student is available for only summer work between semesters and leaves at a mutually agreed time to return to school, he voluntarily leaves the work without good cause connected with the work, even though he was hired for the summer only. Hiring programs for students such as this are to be encouraged, and the employer provided work for the claimant for as long as he was available for work. No charge to employer's account. (Also digested under VL 495.00.)

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CH 30.50 – 30.60

CH 30.50 When Separation Occurs: Independent Contract.

Includes cases which discuss the effect of separation from independent contract relationship with respect to charging employer's account.

Appeal No. 62-CA-65. Although the claimant's last work for the employer prior to the initial claim was on a contractual basis, the question of chargeability to the employer's tax account depends on the reason for the earlier separation from the employer's "employment" prior to which he had performed services for wages. (For a more detailed summary, see VL 505.00.)

CH 30.60 When Separation Occurs: Employment.

Includes cases which discuss the effect to be given to definition of term "employment" with respect to charging employer's account.

Appeal No. 9987-ATC-71 (Affirmed by 1206-CAC-71). Payments made to a claimant by an employer in accordance with Public Law 90-202, because of age discrimination, are considered as wages and are attributable to the period beginning with the date the claimant applied for work with the employer and was refused employment. (In this regard the principle is analogous to the back-pay award cases.) (Also digested under MS 375.05 and cross-referenced under MS 620.00.)

CH 30.60 (2)

Appeal No. 43-ATC-68 (Affirmed by 3-CAC-68). The claimant worked for the employer in Texas until he was laid off due to a reduction in force. Subsequently, the claimant worked for the employer in Arkansas but voluntarily resigned without good work-connected cause. The claimant's wages earned in Texas were reported to the Texas Workforce Commission and the claimant's wages earned in Arkansas were reported to the Arkansas employment security agency. **HELD:** Employment as defined in Section Chapter 201 D of the Texas Unemployment Compensation Act is limited to employment in Texas or to employment outside Texas which is subject to the Texas Unemployment Insurance Tax. Furthermore, the term "employment" as used in the chargeback protection provision in Section 204.022 of the Act is limited to employment as defined in Chapter 201 D. Accordingly, the claimant's last employment for the purpose of 204.022 of the Act was that from which he was separated in Texas due to a reduction in force, not the later separation in Arkansas.

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CH 40.00 – 40.10

CH Wages Erroneously Reported

CH 40.00 Wages Erroneously Reported.

CH 40.10 Wages Erroneously Reported: Liability of Reporting Employing Unit.

Includes cases which discuss the question of whether the employing unit which reported the wages was legally required to do so.

Appeal No. 764-CAC-76. The claimant had worked for the predecessor employer only after a joint application for transfer of experience tax rate had been filed and approved, after the predecessor had ceased operating under the number to which the joint application applied, and after the predecessor had acquired a number involved in the joint application. The claimant's wages from such subsequent employment having been, by virtue of the joint application, erroneously attributed to the account of the successor employer, it was held that such successor employer may secure correction of the error by having such wages deleted from its account, notwithstanding the successor's failure to timely protest the Notice of Maximum Potential Chargeback mailed to it. Since the claimant in this case had never been on the payroll of either of the accounts involved in the joint application for transfer of experience rating, the successor-employer in such joint application was not one whose account was properly potentially chargeable with benefits as a result of the claimant's initial claim; hence, such successor waived no rights by its failure to protest the Notice of Maximum Potential Chargeback.

Appeal No. 3029-CAC-75. The evidence showed that the claimant, although appearing on the records of the Commission as having been employed by the base period employer, had not actually performed services for, or received wages from, that employer during her base period. **HELD:** The Appeal Tribunal decision affirming the chargeback determination was reversed and the employer's account was held not chargeable with benefits paid to the claimant.

Appeal No. 12,694-BW-64 (Removed to Commission under provisions of Section 212.105 of the Act). The employer furnishes temporary labor to its clients and carried the employees of a contractor-client on its payroll for the duration of a particular job, giving the client cash each week for a weekly payroll and then billing the client for such payments, adding additional charges. The claimant was hired, supervised, and paid by the client and the agency was serving only as a banker who advanced payroll funds and arranged for worker's compensation coverage. The agency was not the claimant's employer and the determination of charge was set aside.

Appeal No. 9533-BW-62 (Affirmed by 374-CBW-62). When a claimant is hired and controlled solely by a subcontractor, but his wages are paid him by the general contractor, and deducted from the subcontractor's progress payments, the wages should be reported by the subcontractor as the general contractor merely advanced the wages for and on behalf of the subcontractor who was the claimant's employer.

Appeal No. 140-CBW-55. An undercover agent who works for a detective agency, and who is put on the payroll of a company in accordance with an agreement between the company and the detective agency, is an employee of both companies. The detective agency must report and pay taxes on wages paid to the undercover agent for work as an undercover agent and the company must report and pay taxes on wages paid by the company for work as an employee of the company.

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CHARGEBACK

CH 40.20

CH 40.20 Wages Erroneously Reported: Exemptions.

Includes cases which discuss the effect of the employer's erroneously reporting wages for employees whose services were exempt under the statute.

Appeal No. 88-05036-10-042188. The claimant last worked for a partnership in which he was a general partner and manager. He named this work as the last work on his initial claim. Without consulting the other partners, the claimant had reported to the Texas Workforce Commission wages paid to himself. **HELD:** A claimant cannot name a partnership as his last work if he was a partner, as he was actually self-employed and cannot show working for himself as his last work. The claimant was, therefore, not in "employment" as that term is defined in 201.041 of the Act and all wage credits erroneously reported by the employer for the claimant during his base period were deleted. As the deletion of such wage credits left no reported wage credits within the claimant's base period, the claimant's initial claim was disallowed under Section 207.021(a)(5) of the Act. (Also digested under MS 630.00 and cross-referenced under MS 600.10.)

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CHARGEBACK

CH 50.00

CH Finality of Determination

CH 50.00 Finality of Determination.

Includes cases which discuss the finality of a prior determination to charge or not charge an employer's account.

Appeal No. 986-CAC-79. The employer filed a late protest to a Notice of Maximum Potential Chargeback and, on appeal from a Decision of Potential Chargeback charging the employer's account, an Appeal Tribunal decision was issued which affirmed the charging of the employer's account. Meanwhile, the claimant had filed a disagreement to a monetary determination, alleging additional base period wages from the same employer. An investigation disclosed that the claimant was entitled to additional base period wage credits as some of his base period wages had been reported by the employer under an erroneous social security number. Accordingly, a further Notice of Maximum Potential Chargeback was issued to the employer, reflecting the correct amount of the claimant's base period wages from the employer and the correct amount of benefits chargeable. The employer filed a timely protest thereto. A Notice of Decision of Potential Chargeback, indicating that benefits were not chargeable, was issued to the employer on the same day that the Appeal Tribunal decision, affirming the charging of the employer's account, was issued. The employer then filed a late appeal to the Commission from that Appeal Tribunal decision. **HELD:** The Appeal Tribunal decision and the earlier Decision of Potential Chargeback, upon which it was based, were set aside and the more recent Decision of Potential Chargeback, ruling that benefits were not chargeable, was permitted to remain in full force and effect. A ruling of maximum potential chargeback which is based on an erroneous indication of maximum benefits chargeable and which is not timely protested does not become final if a subsequent, corrected Notice of Maximum Potential Chargeback is timely protested. A notice of Maximum Potential Chargeback which incorrectly recites the maximum benefits potentially chargeable does not satisfy the notice requirement of Section 204.023 of the Act. (Also digested under PR 430.20.)

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CH 50.00(2)

Appeal No. 1487-CAC-77. Duplicate Notices of Maximum Potential Chargeback were mailed to an employer on different dates and the employer timely protested the later notice; the ruling on such latter notice and the protest thereto was that benefits were not chargeable. **HELD:** Prior decisions to the contrary at earlier stages of the same case, including prior Appeal Tribunal decisions, were set aside, and the employer's account was held not chargeable with benefits paid to the claimant.

Appeal No. 521-CAC-77. A base period employer failed to file an appeal from a chargeback decision within the statutory time limit for such an appeal. The Appeal Tribunal decision affirmed the chargeback decision, Form B-78, charging the employer's account. **HELD:** Since the employer's appeal had been untimely filed, the Appeal Tribunal decision was set aside and the employer's appeal was dismissed for want of jurisdiction, leaving in full force and effect the chargeback decision charging the employer's account with benefits paid the claimant.

Appeal No. 2808-CAC-76. Where a base period employer is notified, with respect to a certain benefit year, that its account would be protected from chargeback, that base period employer's account will be protected from chargeback on that same separation in a subsequent benefit year, notwithstanding such base period employer's failure to file a timely protest of chargeback in such subsequent benefit year.

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CH 50.00(3)

Appeal No. 439-CAC-74. If a claimant is disqualified because of her separation from the employer in a prior benefit year, and the Appeal Tribunal decision is allowed to become final, the employer's tax account will be protected from charge in a subsequent benefit year on the same separation, regardless of whether the employer files a timely protest of chargeback in the second benefit year.

Appeal No. 2170-AT-71 (Affirmed by 317-CA-71). There can be no finality to a determination which fails to rule on chargeability to the account of the last employer who paid a claimant wages during the base period where the employer filed a timely protest to the initial claim.

Also see cases reported under CH 60.00.

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CH 60.00

CH Timeliness of Protest or Appeal

CH 60.00 Timeliness of Protest or Appeal.

Includes cases which discuss the effect of an employer's failure to file a timely protest from a chargeback notice or a timely appeal from a chargeback determination.

NOTE: Also see the Commission's policy statements on timeliness under PR 5.00.

Appeal No. 1486-CAC-77. An employer which does not file a timely protest to the Notice of Maximum Potential Chargeback (Form C-66) is chargeable with benefits paid the claimant, without regard to the reason for separation, because such employer has, under Section 204.024 of the Act, waived its right to protest such chargeback.

Appeal No. 1267-CAC-77. The employer, a base period employer, had been named as the last employer on the claimant's initial claim. Thereafter, a Notice of Claim Determination was issued which, based on the claimant's last separation from the employer's employment prior to the initial claim, disqualified the claimant and ruled that the employer's tax account would not be charged. That determination became final without appeal. Subsequently, a Notice of Maximum Potential Chargeback was mailed to the employer, requesting information regarding the same separation previously ruled on, and the employer filed a late protest thereto. **HELD:** The determination that, among other things, the employer's account would not be charged as a result of the particular separation, became final without appeal. That determination was held to be of binding effect, and the employer's account was not charged, even though the employer did not file a timely protest to the subsequent Notice of Maximum Potential Chargeback regarding the same separation.

CH 60.00(2)

Appeal No. 2735-CAC-76. An employer protest of chargeback has been timely filed when it is shown by sworn testimony that the protest had been placed in the custody of the U.S. Postal Service within the statutory time limit for filing a timely protest, notwithstanding the fact that the protest was not postmarked until after such protest period had expired.

(Compare cases and material cited under PR 430.20.)

Appeal No. 2683-CAC-76. The employer, a base period employer, filed a timely appeal from the Notice of Decision of Potential Chargeback but had not filed a timely protest to the earlier Notice of Maximum Potential Chargeback. The Appeal Tribunal dismissed the employer's appeal for want of jurisdiction. **HELD:** Since the employer filed a timely appeal from the Notice of Decision of Potential Chargeback, the Appeal Tribunal decision, dismissing the employer's appeal for want of jurisdiction, was set aside. However, since the employer had not filed a timely protest to the Notice of Maximum Potential Chargeback, thereby waiving its right under Section 204.024 of the Act to protest such chargeback, the decision charging the employer's account was affirmed.

Appeal No. 1650-CAC-76. The base period employer's Notice of Maximum Potential Chargeback bore a name different from that under which the claimant had worked for the employer. Upon consulting a Commission representative as to what to do about responding in such a situation, the employer was told by the Commission representative to wait until his (the employer's) bookkeeper returned from vacation and then to send in his protest; for that reason, the employer's protest was not timely filed. **HELD:** Since the employer had acted on the advice of a Commission representative, the protest of chargeback was deemed to have been timely filed.

CH 60.00(3)

Appeal No. 400-CAC-76. A Joint Application for Transfer of Experience rating had been made and approved and two Notices of Maximum Potential Chargeback were thereafter issued, one relating to the predecessor and one to the successor. The successor timely protested the predecessor's chargeback but was late in protesting its own (having given in its protest of the predecessor's chargeback the true reason for the separation from the successor). **HELD:** The successor filed a timely protest of chargeback in that it provided the Commission with sufficient notice of its desire to protest the charging of either account and of the fact that the claimant's last separation from the successor employer's employment had occurred under disqualifying circumstances. Consequently, the Commission assumed jurisdiction and protected the successor employer's account.

Appeal No. 439-CAC-74. If a claimant is disqualified because of her separation from the employer in a prior benefit year, the employer's tax account will be protected from charge in a subsequent benefit year on the same separation, regardless of whether the employer files a timely protest of chargeback in the second benefit year.

Appeal No. 62,935-AT-58 (Affirmed by 6303-CA-58). There is substantial compliance with the appeal requirements of Section 212.053 if a party acts on instructions of a Commission representative and fails to file a timely appeal because of these instructions.

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LD 5.00

General

LD 5.00 General.

Includes cases which discuss (1) the legislative intent to disqualify workers, in specific situations, under the labor dispute provision rather than under the voluntary leaving or misconduct disqualification provision, (2) the effect to be given to definitions of a term such as "labor dispute" found in other laws, (3) general discussion of the disqualification, its purposes, etc., and (4) points concerning the labor dispute disqualification provision not covered by any specific line in the labor dispute division.

Appeal No. 4032-CA-76. The collective bargaining agreement between the employer and the union representing the claimants expired. The claimants continued to work. Subsequently, the employer made an offer which was rejected by the union and a lockout by the employer resulted.

On August 19, 1976, the Waco Court of Civil Appeals held in a different case that, where the cause of involuntary unemployment was an employer lockout, such unemployment was not caused by the "claimant's stoppage of work" and unemployment compensation benefits were payable to claimants during the period of involuntary unemployment. This decision was upheld by the Texas Supreme Court in **Brown v. Texas Employment Commission,** 540 S.W. 2d 758 (Tex. Civ. App., 1976, err. ref., n.r.e.).

LD 5.00(2)

HELD: In view of the decision in the Brown case, the Commission concluded that the thirty-one claimants here involved were involuntarily unemployed when the employer instituted lockout and that the resulting claimants' unemployment was not caused by the "claimant's stoppage of work." The Commission accordingly reversed the decision of the Appeal Tribunal and awarded benefits without disqualification to the claimants. The lockout by the employer which caused the claimants unemployment was tantamount to a discharge under the provisions of the Texas Unemployment Compensation Act. Since the claimants were not guilty of any misconduct connected with the work which caused their discharge, the claimants were not subject to disqualification under Section 207.044 of the Act. (Also digested under LD 125.10, 125.35, 420.10, 445.15 and 465.20. Cross-referenced under LD 420.15.)

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LD 35.00 – 35.05

LD At the Factory, Establishment, or Other Premises

LD 35.00 At the Factory Establishment, or Other Premises.

LD 35.05 At the Factory Establishment, or Other Premises: General.

Includes cases which contain (1) interpretation of terms "factory," "establishment," and "other premises," and in which the application of the disqualification depends upon a finding that the dispute was localized, with respect to the place of claimant's work and (2) points relating to the terms "factory," "establishment," and "other premises" not covered by the other sublines under line 35.

Appeal No. 2499-CA-75. The claimant was a member of a laborer's union local in Sherman, where he worked for the employer-contractor. The claimant was hired in Sherman to help secure a job site there and to help ship materials to Dallas where a labor dispute existed between this employer and several Dallas-Fort Worth area construction trade locals. The claimant was laid off and not re- called. His union local was not a party to the dispute and no picket lines were established at the Sherman site. **HELD:** No disqualification under Section 207.048. In order for a Section 207.048 disqualification to be imposed there must be a reasonably proximate causal connection between the claimant's unemployment and a labor dispute at the premises where he was last employed.

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LD 35.05 (2)

Appeal Nos. 44,079-AT-67, 44,080-AT-67, 44,081-AT-67 & 44,086-AT-67 (Affirmed by 752-CA-67). The claimants' unemployment was brought about by a shortage of parts at the plant where they worked due to a strike at a supplying plant owned and operated by the employer. Although the claimants belonged to the same class and grade of workers as the strike members, the local and international union of which claimants were members did not support the striking members. **HELD:** The claimants did not fall within the escape provisions of Section 207.048 because they belonged to the same grade or class of workers of which, immediately prior to the commencement of the labor dispute, there were members employed at the premises where the dispute occurred, some of whom were participating in or financing directly interested in the dispute. (Also digested under LD 205.10.)

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LD 125.00 – 125.05

LD Determination of Existence

LD 125.00 Determination Existence.

LD 125.05 Determination of Existence: General.

(1) interpretation of or limitations upon term "labor dispute," (2) violations of statute by employer, (3) general observations as to what constitutes a labor dispute, strike, or lock-out, (4) comparison of various strike situations, (5) points on determination of existence of labor dispute not covered by any other subline under line 125, and (6) points covered by three or more sublines.

Appeal No. 3308-CA-75. The claimants were pilots working for an American employer overseas. Because of working conditions which they felt were unsafe, they formed an association to attempt to bargain collectively concerning the working conditions. The employer refused to recognize the association or to bargain with it. The claimants engaged in a "sick-out" and refused to report to work. The employer terminated those employees who would not report to work and immediately returned them to the United States. **HELD:** The claimants had engaged in a stoppage of work because of a labor dispute at the place they last worked. However, the employer took actions clearly evidencing an intention to sever the employer-employee relationship. No disqualification under Section 207.048 because of the employer's actions severing the employer- employee relationship prior to the initial claim. (Cross-referenced under LD 125.15, 125.205 and 465.10.)

North East Texas Motor Lines, Inc. vs. Dickson, 219 S.W. 2d 795 (Tex. Sup. Ct. 1949). In the absence of any knowledge by the employer of the nature of any demand which any of its employees or the union desired to make, and in the absence of any opportunity to negotiate, there could be no dispute. (Also digested under LD 125.45.)

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LD 125.10 – 125.15

LD 125.10 Determination of Existence: Closing of Plant or Lock-Out.

Includes cases which define the term "lock-out," and those which consider the actions of both the employer and the worker in determining whether there is a lock-out or a strike.

Appeal No. 2066-CA-77. The claimant was a non-union member but had acquired his job through the union, paid its dues, and received union scale wages. His cessation of work resulted from the expiration of the collective bargaining agreement. He reported for work and was advised by the employer that, since union members were not working, he could not work either. **HELD:** Because the claimant offered to work and was effectively "locked out," no disqualification under 207.048 was in order. The separation was likewise not disqualifying under Section 207.044.

Appeal No. 4032-CA-76. In Texas, a stoppage of work due to a "lock-out" does not constitute "claimant's stoppage of work" and is not disqualifying under Section 207.048 of the Texas Unemployment Compensation Act. (For a more complete summary, see LD 5.00.)

LD 125.15 Determination of Existence: Continuance of Employer-Employee Relationship.

Consideration of whether the employer-employee relationship has continued, or of the decisiveness of this factor in determining the existence of a labor dispute.

Appeal No. 4391-CA-50. Even though an employee may be out on strike or unemployed because of a strike at the premises where he was last employed, the employer-employee relationship which existed prior to the strike is not severed by reason of such strike, but is, instead, merely suspended for the duration of the strike. In the absence of a clear showing on the part of the claimant that he intended to sever his relationship with the employer and that the work which he seeks to establish as the L.E.U. was work which he intended to continue regardless of the outcome or duration of the strike or other labor dispute existing, the claimant is subject to disqualification under Section 207.048 of the Act.

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LD 125.15(2) – 125.20

Principle of law followed above reaffirmed in **Appeal No. 63,109- AT-58** (Affirmed by Appeal No. 6359-CA-58 under LD 205.20.)

Also see Appeal No. 3308-CA-75 under LD 125.05.

LD 125.20 Determination of Existence: Dispute Over Conditions of Employment.

Discussion of the common problems or grievances which may constitute the subject matter of the dispute between the employees and the employer or between the employer and the union.

International Union of Operating Engineers vs. Cox, 219 S.W. 2d 787 (Tex. Sup. Ct. 1949). Controversies concerning wages, hours or conditions or employment come within the term "labor dispute." (For a more complete summary, see LD 445.20.)

Appeal No. 32,831-AT-50 (Affirmed by 4740-CA-50). The Nation Labor Relations Act defines a "labor dispute" to include "any controversy concerning terms, tenure or conditions of employment, or concerning the association or representative of persons in negotiating, fixing, maintaining, changing, and seeking to arrange terms or conditions or employment regardless of whether disputants stand in the proximate relation of employer and employee." (Also digested under LD 125.205 and LD 205.05.)

LD 125.202 Dispute Over Conditions of Employment: Check-Off System.

Disputes involving the payment of union dues by means of a check-off system.

Vernon's Ann. Civ. St. art. 5154e. In order to withhold union dues from an employee's check, an employer in Texas must have written authorization from the employee authorizing such retention.

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 125.203 – 125.205

LD 125.203 Dispute Over Conditions of Employment: Discharge and Reinstatement.

Protest against discharge of fellow employee and strike to gain his reinstatement.

International Union of Operating Engineers vs. Cox, 219 S.W. 2d 787 (Tex. Sup. Ct. 1949). A protest against the discharge of fellow employees was considered a "labor dispute." (For test, see LD 125.20). The Court in this case was interpreting the definition of "labor dispute" in the context of Article 5471(F) concerning a prohibition against secondary boycotts.

Appeal Nos. 1363-CA-66 through 1367-CA-66. Layoff of the claimants, because of lack of work, precipitated a labor dispute. The claimants were laid off prior to commencement of the labor dispute and their unemployment was not the result of the dispute.

LD 125.205 Dispute Over Conditions of Employment: Safety Condition.

Protest over neglect by employer which might result in injury, or the employee's insistence upon compliance with "safety" regulations.

Appeal No. 32,831-AT-50 (Affirmed by 4740-CA-50). A dispute arose between the employer and its miners over safety conditions in a salt mine after the employer refused to assign men to remove loose lumps of salt from ceiling and walls. The Commission held that there was a labor dispute between the employer and the miners but that the claimants (all of whom were surface processing workers and not miners, the miners having continued working as work was available), were protected from disqualification by virtue of the escape clauses in subsections (1) and (2) of Section 207.048 of the Act. (Also digested under LD 125.20 and 205.05.)

Also see Appeal No. 3308-CA-75 under LD 125.05.

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 125.206 – 125.25

LD 125.206 Dispute Over Conditions of Employment: Transfer.

Refusal of, or protest against, transfer to other work: the employee's unwillingness to make such a transfer.

Appeals No. 253-AT-67 (Affirmed by 1252-CA-67). The employer became involved in a labor dispute with its taxicab drivers. The claimant crossed the picket lines and performed his customary duties as a dispatcher until no further work as a dispatcher was available due to the decline in business brought about by the strike. Although the claimant was offered, and refused, work as a driver, a position vacant due directly to the strike, the claimant's unemployment was due to lack of work and not to his stoppage of work because of a labor dispute. It was further held that the driving position offered the claimant was not "suitable work" within the meaning of Section 207.008 of the Act, since it was vacant due directly to a labor dispute, and thus the claimant was not subject to the denial of benefits for refusing such work. (Also digested under LD 315.00.)

LD 125.25 Determination of Existence: Judicial or Administrative Proceedings.

Complaints lodged with nlrb or other agency: suits in federal or other courts, as evidence of an incident to disputes.

Appeal No. 73,386-AT-60 (Affirmed by 7256-CA-60). A complaint was lodged with the NLRB charging the employer with refusal to bargain with the union even though the union had been certified by the NLRB as the exclusive bargaining agent. The refusal to bar- gain precipitated a walkout by the employees. **HELD:** Section 207.048 of the Act was applicable to the claimants. Furthermore, the employer's replacing the claimants and sending them notice of termination during the dispute did not effectively sever the employer-employee relationship since none of the claimants, by an overt act, revealed that they had accepted the employer's action as a discharge. (Also digested under LD 125.55 and 445.25.)

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 125.35 – 125.40

LD 125.35 Determination of Existence: Lack of Contract.

Status of employer-employee relationship after expiration of contract; refusal to sign new one; effect of working without contract; refusal to work without contract.

Appeal No. 4032-CA-76. Where claimants offered to continue working without a contract, but the employer instituted a "lock-out" of the claimants, the stoppage was not considered to be "claimant's stoppage of work" as that term is used in Section 5(d) of the Texas Unemployment Compensation Act. No disqualification under Section 207.048 or 207.044 of the Act. (For a more complete summary, see LD 5.00.)

Appeal Nos. 76,691-AT-61 through 76,693-AT-61 (Affirmed by 7537-CA-61). The expiration of a labor- management agreement does not automatically sever the employer-employee relationship. (Cross-referenced under LD 205.10.)

LD 125.40 Determination of Existence: Merits of the Dispute.

Questions of jurisdiction under unemployment insurance laws to determine merits of dispute.

Nelson vs. TEC, 290 S.W. 2d 708 (Tex. Ct. of Civ. Appeals, 1956, writ refused). The merits of a labor dispute are immaterial to the application of Section 207.048 of the Texas Unemployment Compensation Act.

LD 125.45 Determination of Existence: Negotiation with Employer.

Determination of whether negotiation is tantamount to a labor dispute; refusal by employer or union to negotiate; layoff or walkouts during negotiation; duration of negotiations as factors in deciding length of unemployment or labor dispute.

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 125.45 – 125.55

North East Texas Motor Lines, Inc. vs. Dickson, 219 S.W. 2d 795 (Tex. Sup. Ct. 1949). In the absence of any knowledge by the employer of the nature of any demand which any of its employees or the union desires to make, and in the absence of any opportunity to negotiate, there could be no labor dispute. (Also digested under LD 125.05.)

LD 125.50 Determination of Existence: Sympathetic Strike.

Determination of whether participation in, failure or refusal to work or boycott because of, a labor dispute at another factory, establishment or premises, constitutes a labor dispute at the factory, establishment, or other premises at which the claimant is or was last employed.

Appeal No. 2725-CA-75. The claimant and other workers in his craft walked off the job at midday due to a picket line established by another union. They did not thereafter return to work or make an unconditional offer to return to work. **HELD:** The claimant's unemployment was due to a labor dispute at the premises where he was last employed. Disqualified under 207.048.

LD 125.55 Determination of Existence: Union Recognition.

Distinguished from "jurisdictional dispute" line in that only one union is involved.

Appeal No. 73,386-AT-60 (Affirmed by 7256-CA-60). The claimants participated in a strike after the employer refused to recognize their union as the exclusive bargaining agent and failed to bargain with the union in good faith, notwithstanding certification by the NLRB. Section 207.048 of the Act was applicable even though the employer had notified all claimants that they had been replaced. (For a more complete summary on this issue, see LD 445.25; for text, see LD 125.25.)

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 125.60

LD 125.60 Determination of Existence: Violation of Contract or Agreement.

Contract violation as reason for the concerted action of employees of especial importance in those states having specific exemption from disqualification for such violations. Also applies in cases where employees go on strike in violation of the employer-union contract.

Appeal No. 119-CA-69. Claimants who leave their duty stations and establish a picket line at the employer's premises, in violation of a no-strike provision of a working agreement, and are discharged by the employer for such action, are subject to disqualification under Section 207.044.

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 130.00

LD Directly Interested In.

LD 130.00 Directly Interested In.

Includes cases which define or interpret this phrase, particularly in considering relief from disqualification of nonstriking workers.

Appeal No. 9044-CA-62. The employer operated a stevedoring company and primarily unloaded banana ships by obtaining all labor through a union hiring hall. After the completion of unloading the last ship on October 1, the union struck, and all subsequent ships were diverted to other ports. The unemployment of union longshoremen was not due to completion of unloading the last ship, but rather to the strike and the attendant picket line, which was the effective cause of the diversion of subsequent cargoes. Nonunion longshoremen who find their work so consistently through the union connection were "directly interested" in the disqualifying labor dispute as distinguished from those who were not so attached to this union connection and whose recent employment therein was by chance. Section 207.048 of the Texas Unemployment Compensation Act was not applicable to claimants who had other employment after their last employment for this employer, or those whose last assignment for this employer was more remote than two ships' arrivals. (Also digested under LD 420.15 and 465.25.)

Appeal Nos. 76,691-AT-61 through 76,693-AT-61. (Affirmed by 7537-CA-61). Claimants are directly interested in a labor dispute even though they are not union members as long as they are regular employees and stand to receive the benefit of any increase in wages or improved conditions won by the union. (Also digested under LD 125.35 and cross-referenced under LD 205.10.)

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 175.00

LD Employment Subsequent to Dispute or Stoppage or Work

LD 175.00 Employment Subsequent to Dispute or Stoppage or Work.

Permanency of employment obtained during the course of a dispute or work stoppage and the effect of such employment upon disqualification; those which consider whether new employment terminates a worker's employment relationship with the "struck" employer; and cases which discuss the significance of the worker's intention to remain at work obtained during the course of the strike at his former establishment.

Appeal No. 85-05701-10-051485. Citing its holding in Appeal No. 5881-AT-69 (Affirmed by 652-CA-69) (see below), the Commission held that where intervening employment following the inception of a labor dispute either (1) significant in duration or (2) substantially greater in duration than the period of employment with the employer engaged in the labor dispute, such intervening employment is not so casual or temporary as to warrant application of Section 207.048 of the Act to the claimant. Therefore, the claimant's initial claim, naming the intervening employment as the "last work," should not be disallowed under Section 208.002 of the Act. (Also digested under MS 600.20.)

Appeal No. 836-CA-EB-76. The claimant failed to return to his pre-strike employment after the strike ended, even though such work was available, because he was then working on a new job. **HELD**: Disqualified under Section 207.045 of the Act for voluntarily leaving his last work.

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 175.00(2)

Appeal No. 623-CA-76. The claimant last worked for a contractor in Dallas. His union went on strike, but the claimant did not directly participate in the strike. He moved to another area and gained other employment from which he was separated by a reduction in force. That separation and the claimant's filing of his initial claim occurred prior to the settlement of the strike. **HELD:** Disqualified under Section 207.048 of the Act but the disqualification was terminated as of the date of the strike settlement. The claimant's unemployment was due to his stoppage of work because of a labor dispute. The fact of relocation and employment alone was not sufficient to terminate the disqualification.

Appeal No. 5881-AT-69 (Affirmed by 652-CA-69). Casual intervening employment of a temporary nature does not sever the employer-employee relationship while a claimant is out on strike. A claimant must name the employer he is on strike against as his last employer prior to the initial claim, as he has not been separated from that employer.

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 190.00 – 190.10

LD Evidence

LD 190.00 Evidence.

LD 190.10 Evidence: Burden of Proof and Presumptions.

Applies to discussions of which party has burden of proof, or of legal adequacy of particular evidence to overcome presumptions relating to application of the labor dispute provision.

Martinez v. TEC, Cause No 5857 (Tex. Civ. Appeals at El Paso, 1967) (Not reported). Where there was evidence to show that claimants were participating or directly interested in a labor dispute by failing or refusing to cross a picket line and refusing, during the continuance of the labor dispute, to accept and perform their available and customary work at the plant, the burden was on the claimants to establish that they were not disqualified for benefits. (Also digested under LD 205.20.)

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 205.00 – 205.10

LD Financing and Participating

LD 205.00 Financing and Participating.

LD 205.05 Financing and Participating: General.

Includes cases which discuss (1) financing and participation, especially in considering relief from disqualification of nonstriking workers, (2) points on financing and participation not covered by other sublines under line 205, and (3) points covered by three or more sublines.

Appeal No. 32,831-AT-50 (Affirmed by 4740-CA-50). Claimants had no controversy with the employer, took no part in the controversy, could not expect to receive any benefit from the outcome of the dispute, worked on all occasions when work was made available to them, in no way assisted the cause of the disputing employees, and offered no financial aid, either individually or through the union. **HELD:** The claimants were not participating in, financing, or directly interested in the dispute which caused the stoppage. (Also digested under LD 125.20 and LD 125.205.)

LD 205.10 Financing and Participating: Affiliation with Organization.

Discussion of membership or non-membership in striking union as factor in participation, particularly in considering relief from disqualification of nonstriking workers.

Appeal Nos 44,079-AT-67, 44080-AT-67, 44,081-AT-67, and 44,086-AT-67 (Affirmed by 752-CA-67). Since claimants belonged to the same International Union as the individuals engaged in the labor dispute, the disqualification of the claimants under the labor dispute provision could not be removed as provided in subsection 207.048(b)(2) of the Texas Unemployment Compensation Act. (Also digested under LD 35.05.)

Also see Appeal Nos. 76,691 through 76,693-AT-61 (Affirmed by 7537-CA-61) under LD 125.35 and 130.00.

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 205.15 – 205.20

LD 205.15 Financing and Participating: Payment of Union Dues.

Discussion of whether payment of union dues constitutes participation in, or financing of, labor dispute, particularly in application of relief from disqualification clause.

Appeal Nos. 89,056-AT-62 through 89,060-AT-62. Claimants' payment of union dues, a part of which is used to finance a strike, is considered to be financing of a labor dispute and thereby subjects claimants to disqualification under 207.048 of the Act.

LD 205.20 Financing and Participating: Picketing or Refusal to Pass Picket Line.

Involves questions of picketing, or refusal or inability to pass picket line and reasons for such inability and refusal. Used especially in application of relief from disqualification clause.

Appeal No. 2725-CA-75. A claimant who left the job at midday because of a picket line established by a different craft union and who did not subsequently attempt to return or make an unconditional offer to return to work by crossing the picket line, was held subject to disqualification under 207.048 of the Act.

Martinez v. TEC, Cause No. 5857 (Tex. Civ. Appeals at El Paso, 1967) (Not reported). Claimants are subject to disqualification under Section 207.048 for refusing during the continuance of a labor dispute to accept and perform their available and customary work at the struck plant. (Also digested under LD 190.10.)

Appeal Nos. 63,244-AT-58, and 63,248-AT-58 (Affirmed by 6389- CA-58 and 6390-CA-58). Claimants who would have been required to cross a picket line established by another union against another employer at the premises where the claimants' work was located and who refused to cross such picket line are considered to have been participating and interested in a labor dispute.

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 205.20(2)

Appeal No. 63,109-AT-58 (Affirmed by 6359-CA-58). The claimants' unemployment was found to be due to their stoppage of work because of a labor dispute at the premises where they last worked. The claimants returned to the job site during the dispute at the request of the employer to perform a short period of clean-up work to preserve employer's property. **HELD:** The claimants were subject to disqualification under 207.048. Their crossing of the picket lines was with the knowledge and consent of their union and did not alter the fact that they were honoring the picket line. (Also digested under LD 220.25 and cross-referenced under LD 125.15.)

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 220.00 – 220.15

LD Grade or Class of Worker

LD 220.00 Grade or Class of Worker.

LD 220.15 Grade or Class of Worker: Membership or Non-membership in Union.

Discussion of status of nonunion members, membership in different union or type of union, in relation to "grade or class." applies especially in consideration of relief from disqualification clause.

Appeal No. 2919-CA-75. The claimants, electricians who were members of the International Brotherhood of Electrical Workers (IBEW), worked for an electrical contractor with whom their union had an existing collective bargaining agreement. However, the general contractor at the construction site where the claimants worked instituted a lockout at the site directed against other construction unions. Other IBEW members who were employed by the claimants' employer continued working at other sites not subject to the lockout. At all times, the claimants made themselves available for reassignment to other work sites or for work at the secured site. The claimants' union was not a party to the dispute and there was no demonstrated refusal to cross a picket line. **HELD:** The claimants were not themselves, nor were they members of a grade or class of workers which was, participating in or financing or directly interested in the dispute. Accordingly, by virtue of paragraphs (1) and (2) of 207.048(b) - (f) of the Act, the claimants were not subject to disqualification under the general provision of Section 207.048(a).

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 220.55

LD 220.25 Grade or Class of Worker: Performance of Work.

Determination of "grade or class" upon basis of type or work performed. Used especially in considering relief from disqualification of nonstriking workers.

Appeal No. 63,109-AT-58 (Affirmed by 6359-CA-58). Claimant had a supervisory, non-manual classification and was not a member of a grade or class of workers, many of whom were participating in the strike. He continued crossing a picket line until laid off due to lack of work. Consequently, his disqualification under 207.048 of the Act was reserved. (Also digested under LD 205.20 and cross-referenced under LD 125.15.)

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 245.00

LD In Active Progress

LD 245.00 In Active Process.

Includes cases which determine (1) period in which an existing labor dispute is in active progress, or (2) what constitutes "active progress".

Appeal No. 9581-CA-63. The testimony of the employer and the statement of a union official established that the labor dispute was still in progress even though the picket lines were removed, and the striking employees replaced. (Also digested under LD 445.05.)

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 315.00

LD New Work

LD 315.00 New Work.

This line is used in cases which consider whether work for a struck employer would be "new work" for a claimant, under the provisions of the unemployment insurance law of the state which corresponds to section 3304(a)(5) of social security act (formerly section 1603(a)(5)) of the internal revenue code, for the purpose of determining whether the application of the labor dispute disqualification provision to that individual would conflict with the requirements of the labor standard.

Appeal No. 7362-AT-68 (Affirmed by 853-CA-68). A claimant who was laid off prior to the beginning of a strike is not subject to a disqualification under Section 207.008 for failing to accept an offer of "new work" in a position which was vacant because of the strike.

Appeal No. 253-AT-67 (Affirmed by 1252-CA-67). Claimant's refusal to accept a transfer to a position vacant because of a labor dispute after claimant's regular work became unavailable by virtue of such dispute is considered a refusal of "new work" and claimant is not subject to a disqualification as provided in 207.008 of the Act. (Also digested under LD 125.206.)

Also see Unemployment Insurance Program Letter No. 9-84 under VL 315.00.

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 350.00 – 350.05

LD Period of Disqualification

LD 350.00 Period of Disqualification.

LD 350.05 Period of Disqualification: General.

Includes cases which discuss (1) the imposition of disqualification during a period of ineligibility, (2) an additional disqualification for second leaving in same labor dispute, and (3) points concerning period of disqualification not covered by other sublines under line 350.

Appeal No. 3605-CA-75. When the claimant's union signed a contract with the employer and the claimant indicated a willingness to return to his customary work with the employer, but was told that since other unions were not working the employer did not have any work for the claimant, his unemployment ceased to be due to a stoppage of work because of a labor dispute. Accordingly, the claimant's labor dispute disqualification was terminated as of the date the claimant's union signed its contract with the employer. (Also digested under LD 420.20 and 445.10.)

Appeal No. 74,364-AT-60 (Affirmed by 7336-CA-60). Claimants who do not attempt to return to work after a strike is over are subject to disqualification under 207.045 of the Act. Those claimants who seek re-employment immediately after the end of a strike and are not hired because they have been replaced are not disqualified under Section 207.044 of the Act. (Also digested under LD 350.55 and 445.10.)

LD 350.55 Period of Disqualification: Termination of.

Effect of factors evidencing end of disqualification, such as return to work; abandonment of business by employer; concurrence of stoppage and labor dispute as affecting return to normal operation.

Appeal No. 3557-VS-76. The Commission followed the principle of the Kraft case by stating that when a worker makes an unconditional offer to go to work and employment is refused, his unemployment is no longer due to a labor dispute. The Kraft case, Kraft, et al v. TEC, et al, 418 S.W. 2d 482 (Tex. Sup. Ct., 1967), is digested under LD 465.05.

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 350.55

Appeal No 74,364-AT-60 (Affirmed by 7336-CA-60). When the claimants agreed to remove the pickets and to abandon the strike, the labor dispute ceased to exist, despite the fact that the union did not notify the employer of such abandonment. No negotiations were pending, no demands were being made, and no pickets were in existence. The disqualification under Section 207.048 of the Act ceased to be applicable. (Also digested under LD 350.05 and LD 445.10.)

Appeal No. 63,253-AT-58 (Affirmed by 6421-CA-58). During the strike, the employer notified all employees that, due to conditions beyond their control, all employees were being terminated as of August 12. Since the employer had no further work for the claim- ants and would have none at the termination of the strike, the claimant's disqualification under Section 207.048 of the Act was removed effective August 12.

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 420.00 – 420.15

LD Stoppage of Work

LD 420.00 Stoppage of Work.

LD 420.10 Stoppage of Work: Determination of Existence of.

Includes case which (1) define "stoppage of work," (2) determine degree of curtailment of operations necessary to constitute stoppage of work, and (3) discuss purpose of disqualification only during stoppage of work.

Appeal No. 4032-CA-76. A "stoppage of work," in order to be disqualifying under Section 207.048 of the Act, must be a "claimant's stoppage of work." Involuntary unemployment due to an employer "lock-out" is not due to a "claimant's stoppage of work." (For a more complete summary, see Code LD 5.00.)

LD 420.15 Stoppage of Work: Existing Because of Labor Dispute.

Discussion of all the probable causes of stoppage of work, including a labor dispute. Duration of stoppage of work determined; point at which stoppage of work ceases to be due to labor dispute; causal relationship between stoppage of work

See Appeal No. 4032-CA-76, under LD 5.00.

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 420.15(2) – 420.20

Appeal No. 9044-CA-62. The employer operated a stevedoring company and primarily unloaded banana ships by obtaining all labor through a union hiring hall. After the completion of unloading the last ship on October 1, the union struck, and all subsequent ships were diverted to other ports. The unemployment of union longshoremen was not due to completion of unloading the last ship, but rather to the strike and attendant picket line, which was the effective cause of the diversion of subsequent cargoes. Non-union longshoremen who find their work so consistently through the union connection were "directly interested" in the disqualifying labor dispute as distinguished from those who were not so attached to this union connection and whose recent employment therein was by chance. Section 207.048 of the Act was not applicable to claimants who had other employment after their last employment for this employer or those whose last assignment for this employer was more remote than two ships' arrivals. (Also digested under LD 130.00 and LD 465.25.)

LD 420.20 Stoppage of Work: Termination of.

Determination of factors ending stoppage of work.

Appeal No. 3605-CA-75. When the claimant's union signed a contract with the employer and the claimant indicated a willingness to return to his customary work with the employer, but was told that since other unions were not working the employer did not have any work for the claimant, his unemployment ceased to be due to a stoppage of work because of a labor dispute. Accordingly, the claimant's labor dispute disqualification was terminated as of the date the claimant's union signed its contract with the employer. (Also digested under LD 350.05 and LD 445.10.)

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 445.00 – 445.10

LD Termination of Labor Dispute

LD 445.00 Termination of Labor Dispute.

LD 445.05 Termination of Labor Dispute: General

Includes cases which discuss (1) factors evidencing termination of labor dispute not covered by other sublines under line 445, (2) points covered by three or more sublines.

Appeal No. 9581-CA-63. The testimony of the employer and the statement of a union official established that the labor dispute was still in progress even though the picket lines were removed, and the striking employees replaced. (Also digested under LD 245.00.)

LD 445.10 Termination of Labor Dispute: Agreement of Arbitration.

Determination of whether (1) strike is ended by agreement, temporary or otherwise, (2) arbitration or agreement to arbitrate, (3) return to work in accordance with agreement, (4) acceptance of employer's terms by strikers, or (5) abandonment of picketing.

Appeal No. 3605-CA-75. When the claimant's union signed a contract with his employer and the claimant indicated his willingness to return to his customary work with the employer, his unemployment ceased to be due to his stoppage of work because of a labor dispute at the premises where he last worked. (Also digested under LD 350.05 and 420.20.)

Appeal No. 74,364-AT-60 (Affirmed by 7336-CA-60). When the claimants agreed to remove the pickets and to abandon the strike, the labor dispute ceased to exist, despite the fact that the union did not notify the employer of such abandonment. At that time no negotiations were pending, no demands were being made and no pickets were in existence. (Also digested under LD 350.05 and LD 350.55.)

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 445.15 – 445.20

LD 445.15 Termination of Labor Dispute: Closing of Plant or Department.

Effect of closing of plant or department by the employer upon existence of labor dispute and its termination.

Appeal No. 4032-CA-76. In Texas, a "lock-out" by an employer does not fall within the language of Section 207.048 providing that a disqualification will be applicable for "claimant's stoppage of work" because of a labor dispute in existence at premises where claimant last worked. (For a more complete summary, see LD 5.00.)

LD 445.20 Termination of Labor Dispute: Discharge or Replacement of Workers.

Effect of discharge or replacement of workers on existence of labor dispute and its termination.

Appeal No. 73,386-AT-60 (Affirmed by 7256-CA-60). A purported discharge of an individual after a strike begins is not in fact a severance of the employment relationship, unless the employee so discharged by some overt act reveals that he accepted the employer's action as a discharge. (For a more complete summary, see LD 445.25; also digested under LD 125.25.)

International Union of Operating Engineers V. Cox, 219 S.W. 2d 787 (Tex. Sup. Ct., 1949). A laborer on strike has not abandoned his employment; he has only ceased from his labor. Nor has his status changed when he is discharged because of his expressed dissatisfaction over wages, hours, or working conditions. To hold that a laborer ceases to be an employee when he strikes in protest of working conditions, or when he is discharged for union activities, would place in the hands of the employer complete control over labor controversies and would prevent a "labor dispute" from ever arising against his will. (Also digested under LD 125.20.)

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 445.20(2) – 445.25

Appeal Nos. 64,234-AT-68 and 64,235-AT-58 (Affirmed by 6503 and 6504-CA-59). The claimants went on strike on September 16th. While they were on strike, the employer hired replacements for them. On October 27th, the claimants removed their picket lines and sent the employer a certified letter conveying their unconditional offer to return to work. The employer had no job openings and refused to reemploy the claimants. **HELD:** The labor dispute ended on the date of the claimants' unconditional offer to return. Since the employer-employee relationship continued during the dispute and since the dispute ended on October 27th, the claimants' Section 207.048 disqualification was removed as of October 27. Since the claimants were separated by being replaced, no disqualification under 207.044 of the Act was applicable.

Appeal No. 63,253-AT-58 (Affirmed by 6421-CA-58). Where employer notified claimants that no further work was available and none would be at the termination of the strike, the employer-employee relationship was severed, and no further disqualification was applicable under Section 207.048 of the Act. (Also digested under LD 350.55.)

LD 445.25 Termination of Labor Dispute: National Labor Relations Board Proceedings or Order.

Effect of (1) nlrb stipulations or order on termination of labor dispute, (2) certification by nlrb of bargaining agency, (3) election under nlrb auspices, or (4) refusal to accede to nlrb orders on labor dispute's termination.

Appeal No. 73,386-AT-60 (Affirmed by 7256-CA-60). The claimants were members of a union on strike. The employer hired replacements for most of the strikers. The NLRB effected a compromise agreement whereby the employer agreed to reinstate all strikers upon their application even if it required terminating their replacements. The striking workers argued that the notice of replacement constituted a discharge and Section 207.048 should not be applicable thereafter.

LD 445.25(2)

HELD: Since, subsequent to the issuance of the letter of termination, none of the claimants by any overt act manifested any intent to accept such letter as an effective termination of employment, the letter of termination did not sever the employer-employee relationship and does not justify closing the claimant's Section 207.048 disqualification as of the date of its issuance. As to the compromise settlement, those claimants who did not apply for reinstatement under the settlement continued to be unemployed as a result of the labor dispute. (Also digested under LD 125.25 and LD 125.55.)

Appeals Policy and Precedent Manual
LABOR DISPUTE

LD 465.00 – 465.05

LD Unemployment Due to a Labor Dispute or Stoppage of Work

LD 465.00 Unemployment Due to a Labor Dispute or Stoppage of Work.

LD 465.05 Unemployment Due to a Labor Dispute or Stoppage of Work: General.

Includes cases which involve (1) status of claimant's leaving work for reasons other than labor dispute, (2) unemployment due to temporary termination of a union contract, (3) unemployment subsequent to termination of dispute (4) discussion of phrase "directly due to labor dispute," (5) any presumption of cause of the worker's unemployment during a stoppage of work at the plant, (6) points relating to whether claimant's unemployment is due to labor dispute or stoppage of work not covered by any other subline under line 456, and (7) points covered by three or more sublines.

Appeal No. 623-CA-76. During a strike, the claimant moved to another city and secured other work from which he was subsequently laid off due to a reduction in force. At that time, the strike was still in progress. **HELD:** Although the claimant relocated to another area and found interim employment from which he was laid off, this was held insufficient to terminate the disqualification under Section 207.048. The latter was terminated as of the date the strike was subsequently settled.

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LD 465.05(2)

Kraft vs. TEC, et al, 418 S.W. 2d. 482, (Tex. Sup. Ct., 1967). It was recognized as a practical matter that the strike had failed to gain the objective sought by the striking workers and the union granted permission to its members to cross that picket line and unconditionally agree to resume labor for the company. Claimants voluntarily crossed the union picket lines and made an unconditional offer to go to work for the employer. Employment was denied by the company on the ground that there were no jobs open as all available positions which could be held by claimants had been filled by re-employed persons or new personnel hired since the commencement of the strike. In the present case, as in Hodson (below), the basic disqualification no longer existed after claimants were refused work because no jobs were available, and there is no necessity to resort to the exceptions or escape clauses set forth in Section 207.048. (Cross-referenced under LD 350.55.)

TEC v. Hodson, 346 S.W. 2d 665 (Tex. Civ. Appeals, Waco 1961, writ refused, n.r.e.). Although claimant originally became unemployed as a result of his stoppage of work because of a labor dispute at the factory at which he was last employed, a new cause of involuntary unemployment had displaced the original disqualifying cause when claimant crossed his own picket line during the strike and was refused employment because there was no work available due to his job having been filled by another. Claimant's unemployment was due to a lack of work for him.

LD 465.10 Unemployment Due to Labor Dispute or Stoppage of Work: Discharge or Resignation.

Discussion of effect of (1) discharge of worker during or subsequent to labor dispute, (2) resignation, (3) removal of striker's name from those entitled to insurance under company plan, (4) any break in employer-employee relationship, (5) replacement of strikers, (6) letter of discharge when not acted upon by worker and employer, or when accepted as evidence or discharge, or (7) discharge and subsequent picketing.

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LD 465.10(2)

See Appeal No. 3308-CA-75 under LD 125.05.

Appeal Nos. 4092-AT-68 through 4101-AT-68 (Affirmed by 528-CA-68 through 534-CA-68). Upon the termination of the strike the claimants reapplied for their jobs and were told that they had been replaced. Thereafter, they filed their initial claims for benefits. Claims were approved without disqualification under Section 207.048 or 207.044 and the employer's account was charged.

Appeal No. 594-CA-72. Even though the employer notified the claimant she had been terminated during the strike, the employer-employee relationship continued during the period of the strike. Upon termination of the strike, the claimant reapplied for work but was not permitted to work. **HELD:** The claimant was effectively discharged when she reapplied for work following termination of the strike but was not returned to work and no disqualification under Section 207.044.

Appeal No. 8347-CA-62. The claimant last worked as a union plasterer at that employer's job site. He reported for work and was instructed that the job had been shut down because of a work stoppage by other crafts. No picket lines were established at the time. The Appeal Tribunal decision disqualifying the claimant under Section 207.048 turned on his answer to a hypothetical question as to whether he would have crossed a picket line. **HELD:** The claimant's answer to a hypothetical question cannot alter the fact that he was laid off because of lack of work for him. No disqualification under Section 207.048.

LD 465.20 Unemployment Due to Labor Dispute or Stoppage of Work: Prevented from Working.

Discussion of (1) pressures exerted on nonparticipating claimants, such as strong picket lines, fear of injury, (2) failure to observe union rules, or (3) prevention of entrance by employer, who may lock gates in anticipation of, or at outbreak of, strike.

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LD 465.20(2) – 470.05

Appeal No. 4032-CA-76. In Texas, a stoppage of work due to a "lock-out" does not constitute "claimant's stoppage of work" and is not disqualifying under Section 207.048 of the Act. (For a more complete summary, see LD 5.00.)

LD 465.25 Unemployment Due to Labor Dispute or Stoppage of Work: Temporary, Extra, or Seasonal Work.

Problems as to intermittent workers, temporary, extra, and seasonal workers, whose unemployment may or may not be due to existence of labor dispute, particularly when they are scheduled to work or would normally be expected to work at the time the labor dispute begins or while it remains in existence.

Appeal No. 9044-CA-62. Regarding nonunion longshoremen claimants, a distinction must be made between those who find work so consistently through this union connection that they must be held to be "directly interested" in the disqualifying labor dispute, on the one hand; and, on the other hand, those who are not so attached to this union connection and whose recent employment therein was by chance. The Commission held not disqualified those claimants who had other employment after their last employment for employer, and those whose last employment for employer was more remote than two ship arrivals. (Also digested under LD 130.00 and LD 420.15.)

LD 470.00 Unemployment Prior to Labor Dispute or Stoppage of Work.

LD 470.05 Unemployment Prior to Labor Dispute or Stoppage or Work: General.

Includes cases which discuss (1) effect of losing work or failure to be reinstated prior to labor dispute, (2) points concerning unemployment prior to labor dispute or stoppage of work covered by three or more sublines under line 470, and (3) points not covered by any other subline.

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LD 470.05(2) – 470.15

Appeal No. 2760-CA-75. The claimant was a member of the laborer's union and normally obtained work by calling in each day for assignment. Several days prior to the beginning of a strike by other unions, the claimant was informed by the employer that there was no further work. He consistently called in and occasionally was offered work. When offered work assignments he accepted them. **HELD:** Claimant was separated because of lack of work. No dis- qualification under Section 207.048 or 207. (Cross-referenced under 470.20.)

LD 470.15 Unemployment Prior to Labor Dispute or Stoppage of Work: Discharge or Resignation.

Involves (1) status of claimant discharged orally or by letter before labor dispute or for whose discharge the other workers go out on strike, (2) discussion of what constitutes a discharge status of claimant for whose discharge the other workers go out on strike, (3) effect of voluntary leaving or resignation prior to labor dispute, (4) intention as a factor in determining whether employer-employee relationship was severed, or (5) resignation because of impending strike.

Appeal Nos. 2518-CA-75 and 2520-CA-75. The claimants were pipefitters who were originally hired to work a job scheduled for Wednesday, Thursday, and Friday. The claimants worked the first two days and then were requested to take Friday off due to the fact that the equipment necessary for the job had not arrived at the site. They were requested to return Saturday to complete the work and they would have received double time wages for Saturday. The claimants refused to work on Saturday and were fired for failing to report on Saturday. A labor dispute ensued with the union contract expiration several days later. **HELD:** The claimants were separated prior to the beginning of the labor dispute; thus, Section 207.048 was not applicable. Since the Commission held that the employer's request that they work on Saturday was reasonable, the claimants were disqualified under 207.044.

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LABOR DISPUTE

LD 470.15(2)

Appeal No. 358-CA-74. The claimant's unemployment was caused by a discharge prior to the beginning of a labor dispute. After the inception of the labor dispute, the claimant secured other employment. Later, he was offered reinstatement by the earlier employer but declined the offer. Still later, he was laid off by his more recent employer due to lack of work. Subsequently, the claimant filed his initial claim, naming the more recent employer as his last work. **HELD:** Since the claimant was discharged prior to the inception of the labor dispute and since he did not accept re-employment by the employer involved in the labor dispute, he named his correct last employer on his initial claim.

Appeal Nos. 1363-CA-66 through 1367-CA-66. The claimants' layoff because of lack of work precipitated a labor dispute. **HELD:** The claimants were not subject to disqualification under Section 207.048 of the Act as they were laid off prior to the dispute. (Also digested under LD 125.203.)

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LD 470.20 – 470.25

LD 470.20 Unemployment Prior to Labor Dispute or Stoppage of Work: Lack of Work.

Consideration of (1) various causes of lack of work, whether due to labor dispute, customary slack season, or lack of orders, or (2) problem of workers in nonstriking departments being thrown out of work because of walkout in other departments.

See Appeal No. 2760-CA-75 under LD 470.05.

LD 470.25 Unemployment Prior to Labor Dispute or Stoppage of Work: Temporary, Extra, or Seasonal Work.

Same type of cases as under "temporary, extra, or seasonal work" line under 465, with specific application to period prior to dispute.

Appeal No. 133-CA-69. The claimant, a nonunion longshoreman, completed the job on which he was working immediately before the commencement of a labor dispute at the premises where he was last employed. Although he belonged to a grade or class of workers some members of which were participating in or financing or directly interested in the dispute, the claimant was not subject to disqualification under Section 207.048 of the Act as it was held that his unemployment was due to completion of the job rather than to the labor dispute because (1) his earning were derived for the most part from employers not involved in the labor dispute, and (2) he had worked only occasionally with the employers so involved.

Appeal No. 9044-CA-62. The claimants, who were not members of the longshoreman's union and whose employment with the employer prior to the strike was by chance, were not subject to dis- qualification under the labor dispute provision. (Also digested under LD 130.00, 420.15 and 465.25.)

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MS General

MS 5.00 General.

Includes cases which contain points not covered by any other line in the miscellaneous division or by any other division of the code.

Appeal No. 89-03198-10-032089. The Appeal Tribunal had modified the original claim determination to apply the child support deduction provision of Section 207.093 of the Act from the date of the claimant's initial claim. **HELD:** The Commission interpreted Section 207.093 as requiring that the withholding provision be applied only prospectively from the date notice of the claimant's child support obligation is properly served upon the Commission, not the date of the claimant's initial claim.

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MS 30.00

MS Good Cause to Reopen Under Commission Rule

MS 30.00 Good Cause to Reopen Under Commission Rule 16

Includes cases which discuss good cause for reopening under commission rule 16(5)(b), 40 tac § 815.16(5)(b).

Case No. 504981. The claimant was unable to participate in the first Appeal Tribunal because, after calling in as instructed in the 30 minutes before the hearing began, the Hearing Officer was unable to get through when returning the call. The claimant had called from a phone at a friend's house and, unknown to the claimant, the phone he was calling from had a call block feature that prevented it from receiving unidentified incoming calls. The Commission finds this constitutes good cause for nonappearance because the claimant made a good faith effort to participate.

Case No. 377319. The claimant did not participate in an appeal hearing because it was the second day of her new job and she did not feel she should ask her employer for time off. The claimant pre-advised the Hearing Officer of her inability to participate in the hearing. **HELD:** The claimant established good cause for her failure to participate in the previous appeal hearing. Although the claimant did not ask her new employer for time off to participate in the hearing, we find that it was not unreasonable that the claimant was unwilling to risk any adverse consequences to her job of two days by asking for time off to participate in the hearing. Under these circumstances, where the claimant has only been working in a new job for a short period of time, the claimant has established good cause for her nonappearance within the meaning of Commission Rule 16, 40 TAC Section 815.16.

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MS 30.00(2)

Case No. 201718. The employer selected its office manager to be its primary representative for the Appeal Tribunal hearing. The office manager did not have firsthand knowledge of the issues to be discussed at the Appeal Tribunal hearing. The employer did not appear at the hearing when a medical emergency of the office manager's husband prevented her participation in the hearing. **HELD:** A party is entitled to be represented by an individual of its own choosing, regardless of whether that individual has firsthand knowledge of the issues to be discussed at the hearing. Since the chosen representative for the employer in this case was unavailable due to an unforeseen medical emergency of a family member, the Commission concluded that the employer had established good cause for its failure to appear at the first hearing. Accordingly, the employer's petition for a new hearing was granted.

Case No. 109882. The claimant failed to appear for a hearing in this case because of the unavailability of her legal counsel. The claimant had retained an attorney, forwarded her documentation to the attorney, and intended to appear and have her attorney with her. Two days prior to the hearing, the attorney learned that he had a job interview. The interview conflicted with the hearing and could not be rescheduled. The claimant contacted the hearing officer on the day before the hearing. She was advised that if she were to appear for the hearing, she would be unable to petition for a new hearing. **HELD:** The Commission concluded that parties have the right to be represented by counsel. When a party has secured counsel, and counsel is unavailable for the hearing, the Commission will carefully examine the reason for counsel's unavailability in determining whether unavailability of counsel constitutes good cause for not appearing under the specific circumstances. In this case, the claimant had secured an attorney who was unavailable due to an important appointment, which could not be rescheduled. The claimant notified the hearing officer prior to the date of the hearing and was advised the hearing could not be postponed but the possibility of a new hearing was available to her.

MS 30.00(3)

If the claimant had gone forth with the scheduled hearing, she would have done so unrepresented and without the documentation that was relied on in the hearing. Given these circumstances, the Commission concluded that the claimant had shown good cause for her failure to appear at the hearing. Accordingly, the claimant's petition for a new hearing was granted.

Appeal No. 96-005851-10GC-051396. The Appeal Tribunal's hearing notice advised the parties of the 9:15 a.m. hearing and of their obligation to call in for the hearing during the 30-minute period of time prior to the hearing. The claimant called at 9:19 a.m. and was not permitted to participate in the hearing. **HELD:** The claimant did not telephone in for the hearing in a timely manner as instructed by the hearing notice nor did he establish by credible and persuasive evidence that he was prevented from doing so by circumstances beyond his control. Accordingly, the claimant did not have good cause for his nonappearance within the meaning of Commission Rule 16(5)(B), 40 TAC § 815.16.

Appeal No. 94-010532-10*-071294. The claimant-appellant did not appear at the first Appeal Tribunal hearing and received a decision affirming her disqualification. She filed a timely petition to reopen under Commission Rule 16(5)(B), alleging that she did not receive the written notice for the first Appeal Tribunal hearing. **HELD:** The claimant's uncontradicted testimony that she did not receive the hearing notice, taken in conjunction with her status as appellant and timely filing of her request to reopen wherein she alleged nonreceipt of the hearing notice, elevates her testimony to the level of "credible and persuasive" required by Commission Rule 32(b), 40 TAC § 815.32(b), and is sufficient to rebut the presumption of receipt. Accordingly, the claimant had good cause for her nonappearance within the meaning of Commission Rule 16(5)(B), 40 TAC § 815.16(5)(B). (Also digested under PR 430.30.)

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MS 30.00(4)

Appeal No. 93-017238-10*-121593. The claimant did not appear at the first Appeal Tribunal hearing because, at the time of the hearing, he was attending a job search and assertiveness seminar for which arrangements had been made prior to the scheduling of the Appeal Tribunal hearing. Prior to the hearing, the claimant wrote a letter to the hearing officer advising the latter that he would be unable to participate in the hearing at the scheduled time. **HELD:** Engaging in activities that place a priority on job hunting should be encouraged. As conducting an effective job search was the subject of the seminar and as the seminar had been arranged prior to the scheduling of the Appeal Tribunal hearing, the claimant had good cause for his nonappearance within the meaning of Commission Rule 16(5)(B), 40 TAC § 815.16.

Appeal No. 93-014606-10*-101993. The claimant-petitioner's telephone hearing was scheduled for 1:15 p.m. Central Time. However, the claimant, a resident of Washington State, called in for the hearing at 1:15 p.m. Pacific Time which was two hours late. **HELD:** If a party to a telephone hearing resides in a different time zone than that of the assigned hearing officer and the party calls in to participate in the hearing at the correct numerical time in their own time zone but because of the time zone difference, such call is untimely, such mistake will be good cause for nonappearance within the meaning of Commission Rule 16, 40 TAC § 815.16.

Appeal No. 95-004107-10*-032796. The claimant-petitioner's telephone hearing was scheduled for 11:15 a.m. Although the claimant received the Notice of Hearing, she mistakenly recorded the starting time for the hearing as 11:45 a.m. and called in at that time. The hearing had already been concluded. **HELD:** Incorrectly recording the date or time of a scheduled hearing on a personal calendar does not provide a party with good cause for failing to participate in the hearing on the date and time shown on the hearing notice. Accordingly, the Appeal Tribunal's granting of the claimant's petition to reopen under Commission Rule 16(5)(B), 40 TAC § 815.16(5)(B), was reversed.

MS 30.00(5)

Appeal No. 93-012042-10*-082093. The employer missed the first Appeal Tribunal hearing because she reported to the building in which the hearing officer's office was located, rather than the local office where the hearing was to be conducted. After realizing her mistake, the employer drove to the correct location, but she was too late to participate in the hearing. **HELD:** The Appeal Tribunal's denial of reopening under Commission Rule 16(5)(B), 40 TAC § 815.16(5)(B) was reversed, the Commissioners holding the earlier precedent in Appeal No. 89-08533-10-081189 (see below) to be inapplicable. The Commission held that if a party's misreading of a hearing notice is a reasonable error and the party makes a good faith effort to participate after discovering the error, the party will have good cause to reopen under Commission Rule 16.

Appeal No. 89-08533-10-081189. The employer representative failed to call in to participate in a telephone hearing because he misread the notice of hearing and assumed that the hearing officer would call him when it was time for him to participate in the hearing. **HELD:** The Appeal Tribunal's denial of reopening under Commission Rule 16(5)(B), 40 TAC § 815.16(5)(B), is affirmed as misreading a notice of hearing does not provide a party with good cause for failing to participate in a hearing.

Appeal No. 89-08868-10-081089. Although the claimant had received and read the notice of hearing prior to the date of the hearing, she missed the hearing because she went to the wrong local office. That is, she appeared at the office where she customarily filed her claims rather than the office in which the hearing had been scheduled. Upon realizing her error, the claimant telephoned the hearing location and was advised by Commission representatives there that she should immediately travel to the proper location. However, upon arrival there, the claimant learned that the hearing had already concluded.

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MISCELLANEOUS

MS 30.00(6)

HELD: After having filed all of her claims in a particular office, the claimant made a reasonable mistake in traveling to that office for her hearing. Furthermore, the claimant's actions in immediately notifying Commission representatives of her mistake and traveling to the proper hearing location reflected a good faith attempt to attend the hearing. Accordingly, good cause to reopen is found within the meaning of Commission Rule 16(5)(B), 40 TAC § 815.16(5)(B).

Appeal No. 89-08445-10-080789. When a claimant fails to appear at an Appeal Tribunal hearing because the claimant's copy of the hearing notice is returned as undeliverable by the postal service and it is established that after the hearing notice was mailed, but before the hearing was convened, the claimant filed a change of address with a Commission local office which erroneously advised the claimant that a hearing had not yet been scheduled, the claimant has good cause for his or her non-appearance within the meaning of Commission Rule 16(5)(B), 40 TAC § 815.16(5)(B).

Appeal No. 89-08766-10-081589. The employer's only firsthand witness did not attend the hearing because, prior to receiving the notice of hearing, he had purchased non-refundable airline tickets for a vacation coinciding with the hearing date. **HELD:** As the employer's only firsthand witness was unable to appear because he had purchased non-refundable airline tickets for a vacation coinciding with the hearing date, good cause for the employer's nonappearance has been established within the meaning of Commission Rule 16(5)(B), 40 TAC § 815.16(5)(B).

Case No. 1679010. After participating in an initial Appeal Tribunal hearing, the employer failed to participate in a continuance hearing that was verbally scheduled at the end of the initial setting. Written notice of the hearing was not sent to the parties. The employer missed the hearing and then filed a Rule 16 petition to reopen the case. **HELD:** As the party did not receive written notice stating the time and date for the continuance of the AT hearing, the party established good cause for failure to participate in the continuance hearing.

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MS 60.00 – 60.05

MS Benefit Computation Factors

MS 60.00 Benefit Computation Factors

MS 60.05 Benefit Computation Factors: General

Includes (1) a general discussion of benefit computation factors, (2) points not covered by any other subline under line 60, or (3) points covered by three or more sublines.

Appeal No. 85-01920-10-101785. Effective August 26, 1985, Section 207.004(c) of the Act was amended to define "benefit wage credits" as meaning "wages" as defined in 207.081 of the Act, removing the earlier limitation based on the maximum amount of wages as defined in the Federal Insurance Contributions Act. In the present case, the Commission held that with respect to all initial claims filed on or after August 26, 1985, a claimant's benefits wage credits shall reflect all wages received by the claimant during his or her base period regardless of whether or not such wages were required to be reported by the claimant's employer(s) at the time of their receipt.

Appeal No. 83-10723-10-0983. The claimant filed an initial claim on June 21, 1982. Shortly thereafter, he was paid vacation wages which had been earned before the inception of his benefit year and thus were attributable to that earlier period. On or about May 27, 1983, he performed carpentry services in self-employment for an individual. He performed no other personal services for remuneration during his first benefit year. He filed a subsequent initial claim on June 21, 1983, thereby establishing a new benefit year. The issues presented by this case were whether the requalifying earnings proviso in Section 207.021(a)(6) of the Act may be satisfied by (1) wages earned in self-employment, and (2) vacation wages attributable to a period prior to the claimant's earlier benefit year.

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MS 60.05 – 60.10

HELD: (1) The requalifying wages proviso in Section207.021(a)(6) of the Act does not require such "wages" to have been earned in "employment." Rather, any form of remuneration for personal services, including compensation as an independent contractor, shall constitute "wages" within the meaning of this provision of Section 207.021(a)(6). (2) On the other hand, vacation wages earned prior to the earlier benefit year may not be used to meet the aforementioned requirement in Section 207.021(a)(6). Such wages must be earned through actual work during the earlier benefit year in order to satisfy Section 207.021(a)(6)'s requirement, regardless of when such wages were received, because Section 3304(a)(7) of the Federal Unemployment Tax Act imposes such a condition on state law. Thus, the words "earned wages" in Section 207.021(a)(6) should be interpreted to include a requirement that the individual have had work which resulted in the earning of wages and that this work have occurred after the date of the original initial claim. (Emphasis added) Note: This decision is also digested under TPU 460.75.

Appeal No. 1621-CA-73. Section 207.004(c) of the Act provides that if an employer fails to report wages which were paid to a claimant during a base period when requested by the Commission, the Commission may establish wage credits for such claimant for such base period on the basis of the best information which has been obtained by the Commission.

MS 60.10 Benefit Computation Factors: Base Period.

Appeal No. 95-015087-70-103195. The prohibition in Section 207.004(b) of the Act should not be applied to a claimant seeking to qualify under the alternate base period provision in Section 201.011(1)(B) of the Act where the claimant received no unemployment insurance benefits during the relevant prior benefit year because the claimant was unable to work due to illness or injury during that benefit year.

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MS 60.15 – 60.20

MS 60.15 Benefit Computation Factors: Benefit Year.

Appeal No. 38723-AT-66 (Affirmed by 1388-CA-66). The benefit year begins at 12:01 a.m. on the effective date of the initial claim.

Appeal Nos. 69119-AT-59 and 69200-AT-59 (Affirmed by 6893-CA-59). An initial claim is invalid under Section 201.011(13) and Section 208.001(a) of the Act if the claimant worked a regular full- time shift on the same date. Consequently, such a claimant does not establish a benefit year. (Also digested under MS 75.00. Note: The holding in this case is applicable to the date on which the claimant actually filed the initial claim not the effective date of the claim.)

MS 60.20 Benefit Computation Factors: Disqualification Period.

Appeal No. 741-CA-66. Disqualification for job refusal assessed to start with first day of benefit period in which job refusal occurred and not first day of benefit period in which claimant was referred to work. (Full digest cross-referenced at SW 5.00).

Also see Appeal No. 384-CA-64 under PR 275.

MS 60.35 Benefit Computation Factors: Waiting Period.

Appeal No. 3280-CA-76. The claimant filed an initial claim on July 16. On August 25th, the claimant was paid for her waiting period claim since she had by then received benefits amounting to four times her weekly benefit amount. However, because the issuance of the four benefit warrants failed to fully take account of the claimant's part-time earnings, she was incorrectly paid full weekly benefits on those four claims. **HELD:** Because the claimant was not entitled to benefits equaling four times her weekly benefit amount, it necessarily followed that she was not entitled to payment of her waiting period claim.

(**NOTE**: Effective January 1, 1978, Section 4(f)(7) (such amendment is now codified as Section 207.021(c)) was amended to provide that an unemployed individual will be eligible to receive payments on his waiting period claim when he has been paid benefits in his current benefit year equal to three times his weekly benefit amount.)

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MS 65.00

MS Requalification

MS 65.00 Requalification.

Includes cases in which the requalification requirements in section 5 of the Texas Unemployment Compensation Act are discussed.

Appeal No. 86-08495-10-051887. After filing his initial claim, pursuant to which he was disqualified under Section 207.044 of the Act, the claimant performed services for three individuals. None of these individuals were covered employers, liable to the payment of contributions or reimbursement, under the Act. Taken together, these three individuals paid the claimant wages in an amount exceeding six times the claimant's weekly benefit amount. **HELD:** The services performed by the claimant were performed in "employment" within the meaning of Section 201.041 of the Act. Consequently, the claimant met the requalification requirements prescribed by Section 207.044 of the Act. Also see Commission Rule 20(6), 40 TAC §815.20(6).

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MS 70.00

MS Citizenship or Residence Requirements

MS 70.00 Citizenship or Residence Requirements.

Includes cases in which citizenship or resident requirements affect the right to benefits.

Appeal No. 87-20902-10-120887. Pursuant to initial claim dated May 6, 1987, the claimant established a base period from January 1, 1986 through December 31, 1986. The claimant is not a U.S. citizen. The claimant entered the U.S. from Ghana in 1978. In 1981, the claimant's then spouse, a U.S. citizen petitioned the U.S. Immigration and Naturalization Service (INS) for a relative immigrant visa for claimant, whereupon the INS denied this petition in 1982. The claimant appealed this action to the INS, who has taken no action as of the time of the Appeal Tribunal hearing. The claimant divorced and married a different individual. The INS approved a relative immigrant visa for the claimant on April 13, 1987 on the basis of a petition filed by the claimant's new spouse. **HELD:** The claimant was permanently residing in the U.S. under color of law during the base period of claim, a time when her appeal to the INS was pending, as Title 8, Chapter 1, Section 109.1(a)(3) of the Code of Federal Regulations provides that an alien who has properly filed application for adjustment to permanent resident status may be granted permission to work during the time necessary to decide the case. Therefore, the claimant is eligible for benefits based on services performed under Section 207.043 of the Act.

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MISCELLANEOUS

MS 70.00(2)

Appeal No. 87-020329-10-112887. The claimant was hired in March 1987. Section 274A of the Immigration and Nationality Act make unlawful the employment of unauthorized aliens; all individuals hired after November 6, 1986 must present proof of citizenship. Picture identification (such as a driver's license and a social security card) satisfy these requirements. Claimant had previously lost his social security card and could only submit his application for a new card. The employer, fearing liability, after numerous warnings, discharged claimant on September 22, 1987 for failure to provide proof of citizenship in a prompt manner. Subsequent to both termination and filing of initial claim for benefits, claimant received his new social security card, and established that he was a U.S. citizen. **HELD:** As claimant had taken all reasonable steps to prove his citizenship, his actions were not misconduct; therefore, no disqualification under Section 207.044 of the Act. As the Federal statute required the employer to discharge claimant, the employer's tax account is protected under Section 204.022 of the Act. (Also digested under CH 10.10 and cross-reference under MC 85.00.)

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 75.00

MS Claim and Registration

MS 75.00 Claim and Registration.

Includes cases in which requisites pertaining to claim and registration are discussed.

Appeal No. 83-07553-10-050187. Claimant worked for Brown & Root, Inc. from October 1982 through January 31, 1983. Claimant, an alien, held an H-1 visa classification, which allowed him to work for Brown & Root on a temporary basis. In January 1987, claimant filed an initial claim for benefits, backdated to 1983. A determination disallowing this claim under Sections 201.011(13) and 208.001(a) of the Act was mailed to claimant's correct address on January 27, 1987. Claimant appealed this determination on February 24, 1987, twenty-eight days later. Claimant gave a statement that he attempted to file the claim in June 1983. He testified he attempted to file within two weeks of the job ending. A witness testified he was with the claimant when he attempted to file in February 1983. Claimant and the witness testified that the Commission office told the claimant that he did not qualify because he was not a permanent resident. A claims supervisor testified this was not Commission policy and the claimant's description of the personnel and process was inaccurate. **HELD:** (1) The appeal was deemed timely under Commission policy of a one-time exception to timeliness on the issue of validity of the initial claim. (2) Testimony of claimant and his witness is sufficient to refute the general testimony of the Commission employee and to establish claimant was discouraged by Commission staff from filing claim in February 1983. (3) Valid claim under Sections 201.011(13) and 208.001(a) and backdating to February 15, 1983 authorized under Commission Rule 22, because claimant attempted to file that date, but was erroneously discouraged from doing so by a Commission employee.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 75.00(2)

Appeal No. 87-20876-10-121087. Claimant filed an initial claim dated June 17, 1987, with instructions to return and file for first two continued claims at 8:00 a.m. on July 1, 1987. Claimant called and advised he could not report until 8:30 because of an interview for an overseas job, which he had accepted. Thereupon he was told he could not file at 8:30 a.m., but to sign the claims and have his mother file them later. The mother was not allowed to file because, in the rush of leaving, he forgot to sign the forms. Upon return from overseas, the claimant filed claims on November 5, 1987, backdated to June 24, 1987 and July 1, 1987. It was ruled that the claims were unacceptable under Section 207.021(a)(2) of the Act and were voided. **HELD:** Although strict reading of Sections 207.021(a)(2) and 208.001 of the Act and Commission Rule 20 would support voiding the claim, the existence of Commission Rule 22 provides remedy for a case such as this rather than penalize an individual for being 30 minutes late for a scheduled filing as a result of a successful job interview. Adequate cause shown under Commission Rule 22 for acceptance of backdated claims and disallowance of claims under Section 207.021(a)(2) is reversed. (Cross-referenced under MS 95.35.)

Appeal No. 2495-CUCX-77. The claimant did not return to the local office to file backdated continued claims as scheduled because he had been led to believe by a Commission claims taker that he was not to do this until after a later scheduled Appeal Tribunal hearing (involving an unrelated issue). Citing Commission Rule 22 (40 TAC §815.22), the Commission allowed the backdating of the claims, reiterating the principle that a claimant who is misled by Commission personnel should not be forced to suffer adverse consequences caused by his relying on the instructions given him.

Appeal No. 927-CA-77. In a case where the claimant's error in filing continued claims by mail is shown to be due to misinformation or confusion resulting from Commission personnel's failing to properly explain the claims procedure, the claimant will not be penalized. Backdated claims accepted under Rule 22 (40 TAC §815.22).

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 75.00(3)

Appeal No. 796-CA-77. The claimant filed an initial claim on June 24. She filed a complaint with the NLRB which resulted in her reinstatement and an award of back pay retroactive to June 18, the date of her separation. The claimant, although apparently unemployed when she filed her initial claim, later received full back pay and since back pay is considered wages, she was held to have been employed on the date of her initial claim. **HELD:** The claimant's initial claim was voided under Section 201.011(20) and Section 208.001(a) of the Act. However, citing Commission Rule 22, the Commission authorized an initial claim backdated to the date of the claimant's first valid continued claim. (Cross-referenced under MS 375.05.)

Appeal No. 777-CUCX-77. The claimant was placed on mail-in claims and given sufficient cards for the month of November. A Commission representative testified that all mail-in claimants are instructed to mail their claim forms no earlier than and no later than the date on the claim. The claimant did not recall what instructions he had received but he mailed three claim cards of various dates in one envelope postmarked November 29, 1976 because he said he lacked postage to mail them individually. **HELD:** Section 208.001(a) of the Act requires that claims be filed according to regulations prescribed by the Commission and the Commission requires claims to be mailed on their effective dates. Therefore, the claims were voided.

Appeal No. 3306-CA-75. The claimant filed several mail-in claims earlier than their indicated date. When he recognized his error, the claimant reported in person and filed corrected claims which were subsequently voided. **HELD:** The mere fact that a claimant makes an error in mailing claim forms, is no reason to deny benefits for the claim dates in question. Accordingly, the Benefits Department was directed to process the claimant's corrected claims.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 75.00(4)

Appeal No. 2671-CA-75. The claimant provided an incorrect address for his last employer when filing his initial claim. The address given by the claimant was that of his brother, who was the employer's corporate secretary. The employer was actually located in another city and the claimant had reported there regularly when he worked for the employer. The employer failed to receive a copy of the claim. **HELD:** The claimant's initial claim was voided because he failed to give the Commission sufficient information to enable it to comply with Section 208.002. He was authorized to request a backdated initial claim giving the correct address of his last employer. However, the allowance of the request for backdating was made contingent on the claimant's explanation for his providing an incorrect address on the initial claim.

Appeal No. 2377-CA-75. Where no evidence of fraudulent intent on a claimant's part is shown, the claimant will be allowed to file a backdated initial claim naming the correct last employer.

Appeal No. 135-CA-71. An interstate initial claim may be voided when a claimant was not fully told of the benefits and drawbacks of filing against each of the states against which he could have filed.

Appeal No. 5930-AT-63 (Affirmed by 9839-CA-63). A claimant's failure to file a continued claim on schedule, although he had an opportunity to do so, is not good cause for backdating the claim.

Appeal No. 5605-AT-63 (Affirmed by 9814-CA-63). A claimant's failure to file an initial claim in time to use all wage credits available is not good cause for backdating the initial claim since any hardship caused the claimant was the result of his own failure to act in time.

Appeal Nos. 69199-AT-59 and 69200-AT-59 (Affirmed by 6893-CA-59). An initial claim is invalid under Sections 201.011(13) and 208.001(a) of the Act if the individual worked a regular full-time shift on the same date. (Also digested under MS 60.15. Note: The holding in this case is applicable to the date on which the claimant actually filed the initial claim, note the effective date of the claim.)

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 95.35

MS Construction of Statutes

MS 95.35 Construction of Statutes: Strict or Liberal Construction.

See Appeal No. 87-20876-10-121087 under MS 75.00.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 235.40

MS Health or Physical Condition

MS 235.40 Health or Physical Condition: Pregnancy.

Applies to cases which involve benefit rights of claimant for periods during pregnancy or after childbirth, decided under special provisions for denial of benefits during those periods, other than special able and available, work refusal, and voluntary leaving provisions. (note: for points relating to pregnancy decided under able and available, work refusal, and voluntary leaving provisions, see lines aa 235.40, SW 235.40, and VL 235.40.)

Not applicable under Texas Law.

TEX 10-01-96

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 250.00

MS Incarceration or Other Legal Detention

MS 250.00 Incarceration or Other Legal Detention.

Applies to cases which involve benefit rights of claimants who have been imprisoned or otherwise legally detained, decided under special provisions for denial of benefits under those conditions, other than special able and available, misconduct, and voluntary leaving provisions. (note: for points relating to imprisonment or other legal detention decided under able and available, misconduct, and voluntary leaving provisions, see lines AA 250.00, MC 15.00, MC 490.00, VL 135.00, VL 290.00, and VL 495.00.)

Not applicable under Texas Law.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 260.00

MS Interstate Relations

MS 260.00 Interstate Relations.

Includes cases which involve reciprocal agreements or other unemployment insurance factors pertaining to two or more states.

Appeal No. 941-CUCX-77. On January 13, 1976, the claimant filed an initial claim in and against the District of Columbia. On April 13, 1976, the claimant filed an initial claim in and against Texas. The Commission paid the claimant $630.00 before it was discovered that he had filed a prior valid initial claim in the District of Columbia. On September 23, 1976, the claimant's Texas initial claim was voided because of the prior claim and the existing benefit year. The $630.00 payment made by Texas was transferred to the District of Columbia and Texas received reimbursement for those benefits from the District of Columbia. Subsequently, a determination was issued which notified the claimant that he had been overpaid $630.00 by Texas which he was obligated to repay to the Commission under Section 214.002 of the Texas Unemployment Compensation Act. The claimant filed a late appeal from the overpayment determination and the Appeal Tribunal dismissed his appeal for want of jurisdiction. **HELD:** Section 203.030 of the Texas Act authorizes the Commission to make to other states or federal agencies, and to receive from such agencies, reimbursements from or to the fund in accordance with arrangements entered into pursuant to subsection (b) of Section 211.003 of the Act. The payments made to the claimant by the Commission as a result of his claim were transferred to the Unemployment Compensation Board of the District of Columbia pursuant to an agreement of the type permitted by Section 211.003. Therefore, the overpayment determination sent to the claimant, requesting repayment to the Commission, was void from its inception. Since the determination was void from its inception, the Commission held that Section 212.053's appeal time limits did not apply and set aside the Appeal Tribunal's decision dismissing the claimant's appeal for want of jurisdiction. (Also digested under PR 405.15 and PR 430.30; cross-referenced under MS 340.05 and PR 430.20.)

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 340.00 – 340.10

MS Overpayments

MS 340.00 Overpayments.

MS 340.05 Overpayments: General.

Appeal No. 1551-CA-77. The claimant (a non-English speaker) received a notice of forfeiture of benefits. He sought assistance from a Notary Public who informed him he need not take any action. His late appeal was dismissed by the Appeal Tribunal. **HELD:** Section 214.003 provides for the forfeiture of benefits to become effective only after a claimant has been afforded the opportunity for a fair hearing. Since the claimant acted prudently in seeking assistance in reading the determination and relied to his detriment on that assistance, he was denied his opportunity for a fair hearing. The Commission, therefore, considered the case on its merits. (Also digested under PR 450.10).

See Appeal No. 941-CUCX-77 under MS 260.00.

MS 340.10 Overpayments: Fraud or Misrepresentation.

Involves a discussion of the question of whether the claimant or another has willfully or knowingly misrepresented or failed to disclose a material fact for the purpose of obtaining benefits.

Appeal No. 514-CA-76. The claimant filed twelve continued claims and indicated on each of the claims that she had had no work or earnings during the preceding seven-day period. Actually, the claimant had worked from 10-50 hours per week during the period covered by her continued claims. Pursuant to her request, the claimant received a lump sum payment of her earnings after these claim weeks. The claimant argued that she was not obligated to report work or earnings on these claims because she had not received any wages at the time the claims were filed.

MS 340.10(2)

She acknowledged receipt of a Form B-91 ("Unemployment Insurance Information for Claimants") which advised her that all hours worked and all earning for the time covered by a weekly claim must be reported on the claim, even though earnings for the work have not yet been received. She also acknowledged that the claim form itself inquires, in the alternative, whether the claimant had work or earnings during the preceding seven days. **HELD:** After noting that Section 214.003 requires a showing of "willfulness", the Commission stated that, in Section 214.003 as in penal statutes, "willfulness" can also include an act done without reasonable grounds to believe it to be lawful. The Commission found the claimant's asserted belief, that she could work 20-50 hours per week and receive unemployment benefits for the same period so long as payment for the work was deferred, to be so unreasonable and contrary to written instructions as to constitute a willful nondisclosure of material facts under Section 214.003.

Appeal No. 695-CA-72. For the provisions of Section 214.003 of the Act to be applicable, there must be an intentional and willful misrepresentation or nondisclosure of a material fact. A claimant who was suffering from a disease which was affecting his brain at the time he was filing claims and who insisted he did not willfully or intentionally fail to report his work earnings was held not to have violated the provisions of Section 214.003.

Appeal No. 1246-CA-71. Because of the seriousness of the penalty, Section 214.003 of the Act will be invoked only when there is a high degree and quality of evidence sufficient to establish that the claimant is guilty of fraud.

Appeal No. 7839-AT-69 (Affirmed by 6-CA-70). When a claimant willfully misrepresents the reason for his separation from his last employment for the purpose of obtaining benefits to which he would not have been entitled had he given the correct reason for separation, the provisions of Section 214.003 of the Act are applicable.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 340.10(3) – 340.20

Appeal No. 29792-AT-66 (Affirmed by 506-CA-66). The provisions of Section 214.003 are not applicable unless evidence is clear and convincing that the claimant intended to misrepresent a material fact. The provision of Section 214.003 is not applied when the facts misrepresented by the claimant were not material in that the true facts would not have caused the claimant to be disqualified for benefits.

MS 340.15 Overpayments: Nonfraudulent.

Involves benefit overpayments where the question of fraud is not an issue.

See cases digested under MS 340.20.

MS 340.20 Overpayments: Restitution.

Relates to a discussion of restitution of benefits to which the claimant was not entitled.

Appeal No. 97-012552-90-121098. The claimant fully disclosed information concerning the length he worked for the trade affected employer, and this information was available to TWC as early as June of 1997. The information clearly showed the claimant had not worked for the trade affected employer for at least 26 weeks at wages of $30 or more a week during the 52-week period ending with his first qualifying separation, as required under 20 CFR § 617.11(a)(2)(iii). Although the claimant had disclosed all necessary information, he was paid $8,502.00 in TRA benefits before a determination was issued on August 31, 1998, denying his application for TRA benefits because he did not meet the 26-week test. This established an overpayment which the claimant was informed he was liable to repay under the provisions of 20 CFR § 617.55(a).

MS 340.20(2)

HELD: The Commission affirmed the denial of the claimant's application for TRA benefits and affirmed the overpayment. However, the Commission concluded that, in accordance with the provisions of 20 CFR § 617.55(a), since the overpayment was made without fault on the part of the claimant, the Special Payments Unit would be directed to send the claimant a request to waive recovery of the overpayment. The Commission also noted that, in order for the State to establish a policy not to apply the waiver provisions of 20 CFR § 617.55(a), it would be necessary for the State to publish such a decision for the information of the public as required under 20 CFR 617.55(a)(2)(ii)(C)(4).

Appeal No. 90-12054-10-120190. The claimant was erroneously credited with base period wages from an employer for which the claimant never worked. The claimant immediately, and persistently thereafter, reported this error to her TWC local office. Nonetheless, the claimant continued to be issued weekly benefits in amounts reflecting the inclusion of the erroneous wage credits. These improper payments continued for more than five months until the claimant's entitlement was recalculated and an overpayment established. **HELD:** The Commission affirmed the deletion of the wage credits erroneously credited to the claimant's base period. However, the Commission voided the initial determination and the Appeal Tribunal decision ruling that the claimant was liable to repay the erroneously paid benefits under Section 212.006 of the Act, reasoning that Section 212.006 applies only to situations in which an overpayment arises because a determination or decision is reversed on appeal through the administrative process. There was no such reversal in this case. The Commission also held that Section 214.002 of the Act did not apply because, in this instance, there was no nondisclosure or misrepresentation by the claimant or by another and because the overpayment here was caused solely by the Texas Workforce Commission. The Commission cited Martinez v. TEC and Mollinedo v. TEC (see the "Court Cases" Appendix to this manual) in support of this holding regarding the inapplicability of Section 214.002 of the Act.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 340.20(3)

Appeal No. 1700-CF-77. The claimant made every effort to keep the Commission notified of her application for a receipt of workmen's compensation payments. She nonetheless was paid unemployment insurance benefits without reduction and an overpayment was established under Section 214.002. **HELD:** The overpayment in this case was not the result of nondisclosure or misrepresentation of a material fact. Accordingly, Section 214.002 was not applicable, and the overpayment was reversed.

Appeal No. 97-CA-77. The claimant notified the Commission on his continued claim that he had received Federal Old Age Benefits for the preceding seven-day period. Disqualification under Section 207.049(a)(3) of the TUC Act was not established and claimant was issued payment on the claim and for subsequent claims totaling $504. **HELD:** In light of the claimant's specific disclosure on the claim, the Commission was of the opinion that the claimant did not come within the scope of Section 214.002 of the Act. The overpayment in the amount of $504 established under Section 214.002 of the Act was reversed. The disqualification from receipt of future benefits under Section 207.049(a)(3) of the Act was affirmed.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 375.00 – 375.10

MS Receipt of Other Payments

MS 375.05 Receipt of Other Payments: General.

Includes cases containing (1) a general discussion of the receipt of other payments, (2) points not covered by any other subline under line 375, or (3) points covered by three or more sublines.

Appeal No. 9987-ATC-71 (Affirmed by 1206-CAC-71). Payments made to a claimant by an employer in accordance with Public Law 90-202 because of age discrimination, are considered as wages and are attributable to the period beginning with the date the claimant applied for work with the employer and was refused employment. (In regard, the principle is analogous to the cases involving the award of back pay.) (Also digested under CH 30.60 and cross-referenced under MS 620.00.)

See Appeal No. 796-CA-77 under MS 75.00.

MS 375.10 Receipt of Other Payments: Disability Compensation.

Involves a discussion of reduction or cancellation of benefits because of the receipt of disability payments.

Appeal No. 5306-F-70 (Affirmed by 616-CF-70). Benefits under the Federal Employees' Compensation Act for a job-incurred disability are similar to workmen's compensation benefits provided by state law and are disqualifying under Section 207.049(a)(2) of the Act.

Appeal No. 92-CF-62. An individual who is receiving disability benefits under Title II of the Social Security Act is not disqualified for unemployment benefits under Section 207.049(a)(3) of the Texas Unemployment Compensation Act.

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Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 375.15

MS 375.15 Receipt of Other Payments: Lieu of Notice, Remuneration (Severance Pay)

Discusses reduction of benefits because of the receipt of remuneration in lieu of separation notice.

Case No. 176943. The claimant was laid off from his position. He was not given advance notice of this separation. Five days after the separation, the claimant signed an agreement that he would waive any legal claims against the employer and that he would keep certain information confidential. In exchange for this agreement, the employer agreed to pay the claimant 11 weeks' worth of wages as "severance pay." Any violation of the agreement would cause the claimant to forfeit these payments. **HELD:** For a claimant to be disqualified under Section 207.049(a)(1) of the Act, the payments in question must be made as an actual substitute for advance notification of a separation. Here, the claimant was paid in exchange for his agreement not to sue the employer and to keep certain information confidential. Therefore, although this was determined with reference to the claimant's weekly salary, the employer received something of value from the claimant. No disqualification under Section 207.049(a)(1), as the wages were not in lieu of notice.

Appeal No. 2302-CA-76. When discharged, the claimant was issued wages in lieu of notice covering the period from March 16 through May 6, 1976. She filed her initial claim on April 13, 1976. The Appeal Tribunal disqualified the claimant under Section 207.049(a)(1) of the Act from the date of her initial claim, April 13, 1976, through May 6, 1976. **HELD:** The Appeal Tribunal correctly applied Section 207.049(a)(1) to begin on the date of the claimant's initial claim rather than the beginning date of the period covered by the wages in lieu of notice for the reason that the Commission cannot disqualify an individual from the receipt of benefits during a period prior to that individual's filing an initial claim. To do so would be a meaningless act since an individual cannot draw benefits prior to filing an initial claim.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 375.15(2)

Appeal No. 748-CA-70. A disqualification under Section 207.049(a)(1) is applicable to all benefit periods covered by the wages in lieu of notice payments, even if the claimant elects to take these payments in a lump sum.

Appeal No. 3913-CA-49 (Affirmed by El Paso Court of Civil Appeals, 243 S.W. 2d 217). A severance payment made in accordance with a contractual agreement which is based on length of service, does not constitute wages in lieu of notice. It is payment for prior services and is not attributable to any period of time subsequent to the separation. The only separation payment which is disqualifying under the Act is wages in lieu of notice. Wages in lieu of notice is applicable to payments made to the employee because the employer does not give the employee advance notice of discharge.

Appeal No. 96-012205-10-102696, a disqualification under Section 207.049(a)(1) is applicable to all benefit periods covered by a payment made to an employee because the employer does not give the employee advance notice of discharge, even if the payment is mistakenly termed "severance pay". The payment was made out of employer concern that the claimant was the sole support of her family. There was no contractual agreement for such pay based upon length of service.

MS 375.20 Receipt of Other Payments: Loss of Wages, Compensation for.

Opinion No. WW-13, the Attorney General of Texas 1-30-57. Receipt of supplemental unemployment benefits from trust funds accumulated and paid out under the provisions of the contracts between Ford Motor Company and the UAW-CIO and General Motors Corporation and the UAW-CIO does not preclude an individual from receiving benefits under the Texas Unemployment Compensation Act. Such benefits are, in effect remuneration for past services and thus are "wages". However, since the benefits are to be received because of services performed by the employee prior to layoff, the benefits are allocable to that prior period and are not "with respect to" the benefit period for which he is seeking unemployment insurance benefits.

TEX 10-01-96

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 375.25 Receipt of Other Payments: Old-Age and Survivors Insurance.

Discusses reduction or cancellation of benefits because of receipt of old-age or survivor's insurance.

Note: House Bill 1086, passed by the 74th Session of the Texas Legislature discontinues deduction of Social Security Old Age Benefits (OAB). Beginning with June 16, 1995, such pensions will no longer be deducted from unemployment compensation claims.

Appeal No. 2423-CA-77. The receipt of survivors' benefits does not come within the purview of Section 207.049(a)(3) providing for disqualification from benefits when receiving Old Age Benefits under Title II of the Social Security Act.

Appeal No. 621-CA-74. A claimant was not receiving the increase in his OASI within the definition of Section 207.049(a)(3) of the Act until he actually received the check reflecting that increase.

Appeal No. 163-CA-67. The total amount of Old Age Benefits paid to a claimant must be deducted from his unemployment insurance. The amount withheld for Medicare must be included in total Old Age Benefits paid to the claimant.

Appeal No. 92-CF-62. Disability payments received under the Social Security Program are not deductible under Section 207.049(a)(3) because they are not Old Age Benefits.

Appeal No. 7366-CA-60. The language of Section 207.049(a)(3) of the Act provides for disqualification for any benefit period with respect to which a claimant is receiving or has received remuneration in the form of Old Age Benefits. The claimant will not be disqualified prior to the date he actually receives his first benefits even though the benefits covered a prior period of time.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 375.25(2) – MS 375.30

Appeal No. 55775-AT-57 (Affirmed by 5798-CA-57). A claimant who is entitled to receive Old Age Benefit payments but does not receive them because they are being used to offset a prior over- payment of such benefits, must have the value of these payments deducted the same as if he were actually receiving benefits.

MS 375.30 Receipt of Other Payments: Pension.

Discusses reduction or cancellation of benefits because of the receipt of a pension, either governmental or nongovernmental.

Case No. 793210-2. If a claimant is receiving deductible remuneration under Section 207.050 of the Act when the Initial Claim is filed, the disqualification will be effective with the Initial Claim date. Otherwise, the disqualification will begin on the date on which the first payment was received, even though the first payment includes a retroactive lump sum covering prior months during which unemployment benefits were paid.

Appeal No. 89-04118-10-041290. Where a claimant's annuity from a particular employer vested prior to the beginning of the claimant's base period and where services performed by the claimant for that same employer after the beginning of the base period in no way affected the claimant's eligibility for, or increased the amount of, the claimant's annuity, the amount of such annuity is not subject to deduction under Section 207.050 of the Texas Unemployment Compensation Act.

Appeal No. 89-11214-10-092989. The claimant last worked for the U.S. Navy and was forced to retire on the basis of a temporary partial medical disability. The claimant's temporary disability retired pay was calculated in relation to the individual's active duty base pay. **HELD:** As the claimant's retired pay bore a direct relationship to the level of the individual's prior remuneration, it was based on the previous work of the individual rather than solely on that individual's disability. Therefore, the claimant's benefits were subject to reduction under Section 207.050 of the Act.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS. 375.40 – 375.55

MS 375.40 Receipt of Other Payments: Railroad Retirement Benefits

Discusses reduction or cancellation of benefits because of the receipt of railroad retirement benefits.

Note: House Bill 1086, passed by the 74th Session of the Texas Legislature discontinues deduction of Railroad Retirement benefits. Beginning with June 16, 1995, such pensions will no longer be deducted from unemployment compensation claims.

Appeal No. 4330-AT-71 (Affirmed by 599-CA-71). Railroad retirement benefits received under the Railroad Retirement Act are disqualifying under Section 207.049(a)(3) of the Act because they are "similar payments under an act of Congress".

MS 375.55 Receipt of Other Payments: Worker's Compensation.

Discusses reduction or cancellation of benefits because of receipt of worker's compensation.

Appeal No. 706-CA-69. A compromise settlement of worker's compensation that does not allocate the compensation payment to any specific period of time is not disqualifying under Section 207.049(a)(2) of the Act.

Appeal No. 10288-AT-64 (Affirmed by 174-CA-64). Receipt of a lump-sum settlement covering time loss from work for the specific period of time the claimant was off from work because of a temporary, total disability is disqualifying for this entire period of time under Section 207.049(a)(2) of the Act.

Appeal No. 6221-CA-58. Receipt of worker's compensation for a temporary, total disability is disqualifying under Section 207.049(a)(2) of the Act for the period designed for which the benefits are paid. The type of agreement is immaterial so long as the agreement specifies the nature and duration of the disability for which payment is made.

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Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 375.55(2)

Appeal No. 3964-CA-49. Worker's compensation received for a permanent, partial disability is not disqualifying under Section 207.049(a)(2) of the Act.

Appeal No. 91-006068-10-041792. "Impairment income benefits" as provided for in Section 4.26 of the Worker's Compensation Act (Article 8308-4.26, Vernon's Texas Civil Statutes) constitute compensation for a permanent partial disability and thus are not disqualifying under Section 207.049(a)(2) of the Texas Unemployment Compensation Act.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 410.00 – 410.10

MS Seasonal Employment

MS 410.00 Seasonal Employment.

Includes cases which contain a discussion of the rights to benefits under the provisions relating to seasonal workers and seasonal employment.

MS 410.10 Seasonal Employment: Farm and Ranch Labor.

Includes cases where work was alleged to have been exempt as "farm and ranch labor" and wages either not reported or claimed to have been erroneously reported.

Appeal No. 1728-CA-73. The claimant in this case was engaged in both exempt agricultural labor and non-exempt labor. The employer did not maintain records showing the amount of time claimant spent in exempt labor as required by Commission Rule 16, subsection 3. As a result, the testimony available was based on period of time of several months' duration rather than on a pay-period basis. **HELD:** Since the employer did not present any evidence to show that the claimant was engaged in exempt employment more than half the time on a pay-period by pay-period basis as required by Section 201.076 of the Act, all of the claimant's work for the employer was considered to be covered employment.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 500.00

MS When Employment Begins

MS 500.00 When Employment Begins

Involves situations where it is necessary to determine whether the actions of the parties have resulted in establishing an employment relationship.

Appeal No. 632-CA-65. The claimant was offered her former position with her last employer. The claimant agreed to come back, but she never appeared for work. Although the claimant had already previously been disqualified under Section 207.045 of the Act based on her separation from the employer, the Appeal Tribunal assessed a disqualification, based on the work refusal, under section 207.045 rather than Section 207.047 of the Act. **HELD:** The claimant should have been disqualified under Section 207.047 rather than Section 207.045 of the Act because she had never performed any work or received any earnings from the "employer". She refused an offer of work and no employment relationship had been established. Partial disqualification under Section 207.047.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 510.00

MS When Separation Occurs

MS 510.00 When Separation Occurs

Involves situations where it is necessary to determine when separation actually occurs.

Appeal No. 2133419. In the oil and gas industry, it is customary for employees working on vessels at sea to routinely alternate predetermined periods of work on a vessel with pre-determined rest periods (home rotations). In this case, the claimant knew since beginning the job that the work schedule involved working 28 days on board the vessel followed by 28 days of home rotation, after which he would report back to work on the vessel. During home rotations, the claimant was required to take professional training, at the employer's expense, and respond to the employer's communications. The employer remained obligated to continue the benefits of employment. The claimant was paid on a bi-weekly basis for each day spent working on the vessel but was not paid for the days spent on home rotation. After completing one such 28-days of work on the vessel, the claimant began a typical 28-day home rotation. During the period of home rotation, the claimant filed for unemployment benefits, knowing that he was scheduled to return to work on the vessel. **HELD:** Separation is an issue that requires an examination of all the facts and circumstances. The employment relationship in this case was not severed when the home rotation began, even though the claimant stopped performing services and earning wages. Employment relationships in the off-shore oil and gas industry that involve regular, rotating periods of extended off-shore work followed by extended periods of cessation in work and pay connected to a mutually understood return to work date continue until one party notifies the other that the employment relationship has been severed. In this case, the claimant notified the employer that the employment relationship had been severed, for purposes of unemployment benefits, when the claimant filed a claim for unemployment benefits. The claimant in such a situation voluntarily quits the work without good cause connected with the work. Disqualification under Section 207.045 of the Act.

Appeals Policy and Precedent Manual
MISCELLANEOUS

VL 510.00(2)

Cross referenced at MC 5.00, VL 135.20 and VL 510.40.

Appeal No. 99-001852-10-022300. The claimant worked four hours for the employer on December 27, 1999. He did not work a full shift on this date due to inclement weather. The claimant did not work on December 28, 1999, due to inclement weather. The employer sent crews back to work December 29, 1999, since the weather had cleared up. However, the claimant did not report for work on this date. The claimant returned to work on December 30, 1999 and worked this day and the following day. The claimant filed his initial claim for benefits on December 28, 1999. The claimant knew he should return to work when the weather improved. **HELD:** The employment relationship continues whenever inclement weather causes a brief cessation of work, such as in this case, of three days or less. When a claimant files a claim during this time, a separation occurs, and the claimant must show good cause connected with the work to avoid a disqualification for leaving without good cause connected with the work. The record reflects no evidence that the claimant had good cause connected with work for quitting, therefore, we will reverse the Appeal Tribunal decision by disqualifying the claimant from the receipt of benefits under Section 207.045 of the Act. (Also digested at VL 450.20).

Appeal No. 96-009657-10-090297. The claimant worked as a substitute teacher for this employer, an independent school district, completing her last assignment on May 12, 1997. Shortly before the regular school year ended on May 22, 1997, the claimant requested her name be removed from the substitute teacher availability list so that she could travel overseas on a personal vacation beginning May 19, 1997. This request was granted. Had the claimant not removed her name from the availability list, continued work as a substitute teacher would have been available through June 27, 1997, when the summer session ended. The claimant had performed substitute teaching services during two previous summer sessions.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 510.00(3)

HELD: At least in situations where one party has taken affirmative action to end the employment relationship prior to filing a claim and clearly lacked good cause connected with the work for quitting, the Commission will look to that affirmative action for a ruling on separation. Disqualified under Section 207.045. (Cross referenced at VL 135.05).

Appeal No. 97-006341-10-060597. In the home health care referral industry, either the worker or the referral service may initiate reassignment. In this case, the claimant was removed from her current assignment at her own request because she was dissatisfied. When the employer offered claimant reassignment later that same week, claimant declined because the only way she could get to the new client's home was by bus. The employer had never furnished transportation. **HELD:** Claimant's separation occurred when she refused reassignment, not when she requested removal from her previous client. Claimant's dislike of the only available means of transportation, riding the bus, does not constitute good cause to leave voluntarily, because transportation was claimant's responsibility. (Cross referenced at VL 150.20, VL 510.40, and VL 515.90).

Appeal No. 86-02537-10-020587. On August 18, the claimant and other employees were subjected to a temporary layoff and were told to return to work on September 2. The claimant never returned and never called in to the employer. She filed her initial claim on October 9. **HELD:** The claimant was separated from employment when the temporary layoff began. As no misconduct was involved in that separation, no disqualification under Section 207.044). (Cross-referenced under MC 135.30.)

Appeal No. 370-CA-70. When a claimant is reduced from full-time work to regular part-time work with the same employer and files a valid initial claim as a partially unemployed individual, the separation which should be considered under Chapter 207C of the Act occurred when the claimant was changed from full-time work to part-time work. (Cross-referenced under MC 5.00, VL 450.40 and VL 505.00.)

Appeals Policy and Precedent Manual
MISCELLANEOUS

VL 510.00(4)

Appeal No. 6008-AT-69 (Affirmed by 639-CA-69). The claimant became incapacitated after he was laid off for an indefinite length of time due to bad weather and was replaced while he was unable to work. The separation occurred when he was laid off indefinitely due to the weather. No disqualification under Section 207.044.

Appeal No. 39676-AT-66 (Affirmed by 1546-CA-66). A claimant who is employed in regular part-time work and has not been separated from this work cannot show this work as her last work on her initial claim since there has been no separation. A claimant must show the last work from which she was separated prior to her initial claim. (Cross-referenced under MC 600.05.)

Also see cases under MC 450.55 and TPU 80.00, generally.

Appeal No. 6684-AT-59 (Affirmed by 6731-CA-59). The continuance of fringe benefits after layoff, as provided in the union contract, does not constitute wages where a claimant performs no services and receives no wages. The separation occurs at the time the claimant is placed in layoff status. This decision cites Karchmer vs. State, 225 S.W. 2d 222, and Todd Shipyards vs. TEC, 245 S.W. 2d 371. (Cross-referenced at MS 620.00.)

Also see Appeal No. 3229-CAC-75 under CH 30.40.

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MISCELLANEOUS

MS 600.00 – 600.05

MS Incorrect Last Employing Unit on Initial Claim

MS 600.00 Incorrect Last Employing Unit on Initial Claim.

MS 600.05 Incorrect Last Employing Unit on Initial Claim: General.

Cases not covered by following sub-heads and involves question of whether claimant has named his correct last employing unit.

Case No. 361479. The claimant's daughter was eligible for childcare services funded by the Tarrant County Workforce Development Board. According to Texas Workforce Commission rules, the daughter was able to self-arrange unregulated relative care with the claimant. Reimbursement was disbursed through a contractor of the Tarrant County Workforce Development Board. The contractor exercised no control over the manner in which the childcare services were provided and did not offer any training to the claimant. It simply forwarded the payments to the claimant based on the time sheets she submitted. **HELD:** The services were performed for the benefit of the claimant's daughter, and she determined who was going to perform the service. The contractor did not exercise any control over how the childcare services were performed. Thus, the claimant's daughter should have been named as the last employing unit.

Appeal No. 3947-CA-76. Prior to filing his initial claim for benefits, the claimant had most recently worked as an independent contractor. His initial claim, which named this independent contract work as his last work, was disallowed and a backdated initial claim was taken on which his last "employment" was listed. **HELD:** The claimant correctly named his last work as an independent contractor even though that work was not performed "in employment". Section 208.002 of the Act requires that the Commission mail notice of the filing of an initial claim to the individual or organization for whom the claimant last worked. This does not necessarily require that the last employment be named but that the last work be named whether or not it was in employment.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 600.05(2)

Appeal No. 90-06210-10-060190. On his initial claim, the claimant named as his last work a municipal work release program in which he had participated pursuant to the order of a municipal court judge, in lieu of incarceration or the payment of a fine for traffic offenses. For this work, the claimant had received credit against his outstanding traffic fines at the rate of $5.46 per hour. **HELD:** The claimant did not name his correct last work as required by Section 208.002 of the Act. The claimant's compulsory participation in the work release program authorized by a court of law in lieu of incarceration is analogous to services performed by inmates of a penal or custodial institution which are excluded by Section 201.074 of the Act from the definition of "employment." The claimant did not receive or earn wages for his participation in the program; rather, he earned credit at an hourly rate against fines owed to the municipality. The claimant's performance of services and receipt of credit against fines did not constitute "work" for the notification purposes of Section 208.002 of the Act because his services were ordered by a court of law.

Appeal No. 123-CA-70. If a claimant preached for a church and received remuneration for his services and it was the last work the claimant performed prior to the initial claim, the church must be shown as the last employer on the initial claim.

Appeal No. 49-AT-68. Section 214.003 is applicable to a situation where a claimant knowingly and willfully names an incorrect last employer to avoid disqualification. The claimant admitted that he named an incorrect last employer because he felt certain the reasons for separation from his actual last employer would result in disqualification.

Appeal No. 5182-CA-53. Where the claimant worked simultaneously for two employers and is laid off by one, he must show the work separated from on his initial claim because he has not been separated from the other work.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 600.05(3) – 600.10

Appeal No. 4254-CA-49. The claimant thought he was required, when filing an initial claim for benefits, to name his last regular employment. Consequently, he failed to name his actual last work, a two-day temporary job, on his initial claim. **HELD:** The initial claim naming an incorrect last employer was voided but the claimant was allowed to file a correct backdated initial claim because no evidence of fraudulent motive was present.

See Appeal No. 39676-AT-66 (Affirmed by 1546-CA-66) under MS 510.00.

MS 600.10 Incorrect Last Employing Unit on Initial Claim: Self-Employment.

Includes cases involving the question of whether an association or connection which might otherwise legally be classified as "self-employment" may be correctly shown as the "last work" on the initial claim.

Appeal No. 88-05036-10-042188. A claimant cannot name a partnership as his last work if he was a partner, as he was actually self-employed and cannot show working for himself as his last work. Initial claim disallowed under Sections 207.021(a)(2) and 208.002 of the Act.

Also see Appeal No. 88-05036-10-042188 under CH 40.20 and MS 630.00.

Appeal No. 62-CA-65. The claimant first worked as an employee, then as an independent contractor for "employer", until the work was completed. His last work was that as an independent contractor and should be shown on the initial claim as the last work

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 600.15

MS 600.15 Incorrect Last Employing Unit on Initial Claim: Last Work.

Cases which involve the question of whether the correct last employing unit has had notice of the filing of the claim.

Appeal No. 2001-CA-77. Section 208.002 of the Act requires the Commission to mail a copy of each initial claim to the last individual or organization for whom the claimant last worked prior to his initial claim. The Commission held that it is not necessary to the fulfillment of this obligation that the claimant's relationship with such last work be shown to have been "employment" as defined by Section 201.041 of the Act.

Appeal No. 1508-CA-76. The claimant's next-to-last employer and his last employer were closely associated, sharing some supervisory personnel, and the claimant named his next-to-last employer as his last employer when he filed his initial claim. The claimant's correct last employer received actual notice of the claimant's initial claim. **HELD:** Since the companies were closely associated, sharing some supervisory personnel, and since the last employer received actual notice of the claim, the claimant complied with the terms of Section 208.002 of the Act insofar as naming a last employer is concerned.

MS 600.20 Incorrect Last Employing Unit on Initial Claim: Labor Dispute.

Includes cases involving the question of whether temporary stop gap employment while on strike may be shown as last work on initial claim.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 600.20(2)

Appeal No. 85-05701-10-051485. Citing its holding in Appeal No. 5881-AT-69 (Affirmed by 652-CA-69) (LD 175.00), the Commission held that where intervening employment following the inception of a labor dispute is either (1) significant in duration or (2) substantially greater in duration than the period of employment with the employer engaged in the labor dispute, such intervening employment is not so casual or temporary as to warrant application of Section 207.048 of the Act to the claimant. Therefore, the claimant's initial claim, naming the intervening employer as the "last work", should not be disallowed under Section 208.002 of the Act. (Also digested under LD 175.00.)

Appeal No. 4391-CA-50. The employer-employee relationship continues while an employee is on strike and that employee must name the employer against whom he is striking as the last work on his initial claim even though there is intervening work. There must be a manifest intention by the employee to resign in order to terminate this relationship.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 610.00

MS Qualifying Wages on Initial Claim

MS 610.00 Qualifying Wages on Initial Claim.

Cases involving the distinction between wages "earned" and wages "received" for the purpose of establishing qualifying wages on initial claim.

Appeal No. 87-10097-10-061387. The claimant had contended that he was entitled to additional base period wage credits from a particular employer. At the Appeal Tribunal hearing, the claimant presented; (1) check stubs reflecting only a portion of his earnings in question and (2) a W-2 form reflecting his 1986 earnings from the employer (for whom claimant had worked for only 10 months during calendar year 1986, the first 9 months of which were included in the claimant's base period.) **HELD:** Proration of the claimant wages as shown on his W-2 form will establish a more accurate allocation of wage credits than relying on the admittedly incomplete check stubs produced by the claimant.

Appeal No. 76-F-68 (Affirmed by 16-CF-68). A cash advance to a seaman on wages already earned is reportable as wages in the calendar quarter in which the wages are received by the seaman. (See Commission Rule 15, 40 TAC §815.15).

Appeal No. 234-CF-66. Back pay awards are attributable to the periods of time designated in the award and must be treated as paid during the periods of time designated for which they are paid. This ruling on back pay awards is an exception to the usual interpretation of Section 207.004(a) of the Act which specifies that the Commission shall establish wage credits for each individual by crediting him with the wages for employment received by him during his base period from employers.

Appeal No. 16325-AT-64 (Affirmed by 744-CA-64). Wages are credited to the calendar quarter of the base period in which they are received by the claimant regardless of the calendar quarter in which they were earned.

Also see Appeal No. 981-CA-76 under MS 620.00.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 620.00

MS What Constitutes Wages

MS 620.00 What Constitutes Wages.

Includes cases which involve the question of whether remuneration paid the claimant constitutes "wages" which should be reported by the employer.

Appeal No. 87-10568-10-062187. In order to qualify for the exemption described in Section 201.067(2) of the Act, an unemployment work relief or work training program must have, as a minimum, the following characteristics: (1) There is an employer-employee relationship which is not based on normal economic consideration; (2) Qualification for the jobs take into account as indispensable factors the economic and social status of the applicants; (3) The product or services are secondary to providing financial assistance, training or work experience to individuals to relieve them of their unemployment or poverty or to reduce their dependence upon various measures of relief, even though the work may be meaningful or serve a useful public purpose; and (4) The program is financed or assisted in whole or in part by a federal agency or a state or a political subdivision thereof. In addition, such an unemployment work relief or work training program will also have one or more of the following characteristics: (1) The wages, hours, and conditions of work are not necessarily commensurate with those prevailing in the locality for similar work;(2) The jobs did not, or rarely did, exist before the program began (other than under similar programs); and (3) The services furnished, if any, are in the public interest and are not otherwise provided by the employer or its contractors.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 620.00(2)

Appeal No. 89-12624-10-113089. The claimant had been employed in a work-study program at a state-supported institution of higher learning and sought base period wage credits based on this employment. **HELD:** The Commissioners cited the ruling of the Travis County Court At Law No. 1 in The University of Texas System v. TEC and Janie Aleman, which held that Section 201.069 of the Act excluded from the definition of employment all services performed by work-study participants at institutions of higher education. The Commissioners reasoned that because a court of competent jurisdiction has ruled that Section 201.069 of our statute excludes from employment the services of a work-study participant employed by any institution of higher education, the Texas Workforce Commission should be guided by such ruling, in the absence of a contrary ruling from a higher authority.

Appeal No. 2855-CA-77. Prior to filing her initial claim, the claimant had worked throughout her base period in a work-study program at a college. During the entire duration of her work-study employment, she was at least a half-time student. **HELD:** Under Section 201.069 of the Act, the claimant's services did not constitute employment because she was performing services in the employment of a school and was regularly attending classes at such school.

Appeal No. 2622-CA-77. The claimant worked as a truck driver. His compensation consisted of a 5% commission on the gross revenues of his truck. He was permitted to draw up to a fixed amount each week against his gross earnings for personal expenses. The employer's quarterly reports reflected only the claimant's gross earnings less the advances and the advances themselves were not reported at all. **HELD:** The claimant was awarded additional wage credits to reflect the amounts of his advances and these were credited to the quarter in which the advances were actually made.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 620.00(3)

Appeal No. 981-CA-76. Section 201.081 of the Act defines wages to mean all remuneration paid for personal services, including the cash value of all remuneration paid in a medium other than cash. Therefore, the cash value of an apartment furnished to the claimant must be included in the wages credited to the claimant from this employer. Furthermore, since the claimant received monetary remuneration on a bi-monthly basis, the value of the non-monetary remuneration received by him was proportionately allocated among his bi-monthly pay periods. (Cross-referenced under MS 610.00.)

Appeal No. 1621-CA-73. If an employer does not produce payroll records and comply with Commission rules by reporting the amount of wages paid to an employee under Section 207.004(c) of the Act, the Commission may rely on the best information obtained by it as to the claimant's work and wages during the base period.

Appeal No. 9987-ATC-71 (Affirmed by 1206-CAC-71). Payments made to a claimant by an employer in accordance with Public Law 90-202 because of age discrimination, are considered as wages and are attributable to the period beginning with the date the claimant applied for work with the employer and was refused employment. (In this regard, the principle is analogous to the cases involving the award of back pay.) (Also digested under CH 30.60 and MS 375.05.)

Appeal No. 2835-AT-71 (Affirmed by 657-CA-71). The term "wages" does not include the amount of any payment made to or on behalf of an employee under a plan established by an employer which makes provisions for his employees generally on account of sickness or accident disability.

Appeal No. 5273-AT-68 (Affirmed by 860-CA-68). An insurance solicitor and debit collector who is paid by the week a sum which is determined solely by the amount of his insurance sales and collections during the preceding calendar quarter is held to have been paid solely by way of commission and is exempt under Section 201.071 of the Act.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 620.00(4)

Appeal No. 2371-AT-67 (Affirmed by 55-CA-68). Payments made to the claimant by the employer during a period when he was not working and was drawing workmen's compensation due to an injury, as provided by union contract, were not for personal services and were not wages as defined under Sections 201.081 and 201.082.

Commission decision involving tax liability of Transport Workers of America. Payments made by a union to union officials and member for time lost from their regular employment due to their pursuit of union business constitute wages under Section 201.081 of the Act.

Also see Appeal No. 9987-ATC-71 (Affirmed by 1206-CAC-71) under MS 375.05 and Appeal No. 6684-AT-59 (Affirmed by 6731- CA-59) under MS 510.00.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 630.00

MS What Constitutes Employment

MS 630.00 What Constitutes Employment.

Includes cases which involved the question of whether services rendered were in employment as defined in section 19(g) of the act.

Appeal No. 88-05036-10-042188. The claimant last worked for a partnership in which he was a general partner and manager. He named this work as the last work on his initial claim. Without consulting the other partners, the claimant had reported to the Texas Workforce Commission wages paid to himself. **HELD:** A claimant cannot name a partnership as his last work if he was a partner, as he was actually self-employed and cannot show working for himself as his last work. The claimant was, therefore, not in "employment" as that term is defined in Section 201.041 of the Act and all wage credits erroneously reported by the employer for the claimant during his base period were deleted. As the deletion of such wage credits left no reported wage credits within the claimant's base period, the claimant's initial claim was disallowed under Section 207.021(a)(5) of the Act. (Also digested under CH 40.20 and cross-referenced under MS 600.10.)

Appeal No. 86-03686-10-022587. The claimant contracted with a company, a subject employer, to work as an extra in a television commercial. That organization paid the claimant and it hired a production company. Although the company which contracted with the claimant sent a representative to the filming of the commercial, he gave only general directions to the production company's director. The latter actually controlled the actions of the actors and the filming of the commercial. **HELD:** The organization which contracted with the claimant and paid the claimant was his employer regardless of his having been given directions as to his part in the commercial by an employee of another entity which had itself been employed by the employer.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MC 630.00(2)

Appeal No. 87-17475-10-100287. The claimant, an adult, and his father performed services for the employer, an employer subject to the Act. The employer told the father how the job of painting car washes was to be performed. In turn, the father supervised the claimant's work as a painter. The claimant worked at least 8 hours a day, was paid by the hour and was paid directly by the employer. **HELD:** The facts that the claimant was paid by the hour, that he worked at least 8 hours a day, that the employer instructed his supervisor as to how work was to be performed, that the claimant had a continuing relationship with the employer, that the claimant was paid by the employer, and that the claimant felt he was an employee, all show that the claimant was in "employment" as defined by Section 201.041 of the Act.

Appeal No. 86-13145-10-070687. The claimant performed services on a full-time basis during the day for the employer, a private university. She also attended evening classes at the university. **HELD:** Although the claimant was regularly attending classes at the university while working there, her primary association with the employer was as an employee and not as a student. Since the claimant's academic pursuits were secondary to her employment, the Commission held that she was engaged in employment as defined by the Act. Thus, the exclusionary language in Section 201.069 did not apply to the claimant's performance of services.

MS 630.00(3)

Appeal No. 86-00651-10-122986. During his base period, the claimant worked for a foreign corporation which was a wholly owned subsidiary of a domestic Texas corporation liable under the Texas Unemployment Compensation Act. The foreign corporation performs services for the Texas corporation on a contractual basis. Throughout the claimant's employment, he worked for the foreign corporation and was usually stationed in Singapore. Although the claimant usually took instructions from a supervisor in Singapore who was an employee of the foreign subsidiary, the claimant usually interfaced and received instructions from a vice-president of the Texas corporation, headquartered in Houston. The claimant also occasionally engaged in business travel with employees of the Texas corporation. The Texas corporation also handled all of the payroll records for the foreign subsidiary and the claimant received his paychecks from Houston. Lastly, the Texas corporation and the foreign subsidiary shared some members of their Board of Directors. **HELD:** As the claimant's services were performed, in substantial part, under the direction and control of the Texas corporation based in Houston, the claimant was in the employment of that corporation within the meaning of Section 201.041 of the Act. The fact that the claimant was ostensibly performing services for the foreign corporation is irrelevant since that entity would be considered the agent of the Texas corporation under Section 201.046) of the Act. This conclusion was further supported by the following: the claimant worked closely with and received instructions from employees of the Texas corporation, he received his paychecks from the Houston office of the Texas corporation, which handled the foreign corporation's payroll records and some officers of the Texas corporation were also officers and directors of the foreign corporation.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 630.00(4)

Appeal No. 85-12107-10-092286. Claimant worked two days for the employer as an actor to complete a film. Claimant's agency negotiated the contract with the employer. Claimant was directed to work at a specific location and was paid union scale. **HELD:** The fact that the claimant offered his services to more than one employer did not render him an independent contractor. During the period he was performing, he was under the specific control of the employer. Additional wage credits awarded.

Appeal No. 4123-CSUA-76. The claimant had performed childcare services during her base period for a neighbor who was attending a work incentive training program. The claimant was reimbursed for such services by the State Department of Public Welfare (now the Department of Human Resources) pursuant to a written contract between the claimant and her neighbor, which was witnessed by a DPW representative. During the performance of such services, the claimant was never supervised in any way by either her neighbor or any DPW representative. At the end of each month, the claimant submitted a payment voucher to DPW which indicated the number of hours she had performed childcare services for her neighbor. No deductions were made in the claimant's reimbursements by DPW for federal income taxes or for social security taxes. **HELD:** The claimant was not in the employment of DPW within the meaning of Section 201.041 of the Act. Although it was understood, by the terms of the written contract between the claimant and the recipient, that the claimant would be reimbursed by DPW, no rights of control or direction over the performance of services by the claimant was reserved by DPW nor did the evidence indicate that such direction or control were actually exercised by DPW.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 630.00(5)

Appeal No. 2831-CA-76. The claimant worked during his base period as a trainee for a community action agency under a grant provided by the Comprehensive Migrant and Seasonal Farmworkers Program funded by the Department of Labor. All of his wages were paid by this program. His work ended at the end of the training program. **HELD:** The claimant was not employed in covered employment and was therefore denied wage credits. Section 201.067(2) therefore states that "employment" shall not include service performed as part of an employment work relief or work training program assisted or financed in whole or in part by any federal agency. The Commission found the claimant to have been employed in such a work training program.

Appeal No. 2347-CA-76. The claimant was employed by the Economic Development Administration, a federal agency, in a program designed to train persons in the field of restoration craftsmanship. The claimant was an unemployed, skilled carpenter who had had no experience in restoration work. **HELD:** The claimant was not working in covered employment. His employment was exempt under Section 201.067(2) of the Act which provides that employment shall not include service performed as a part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training.

Appeal No. 1528-CA-72. The fact that the claimant considered herself to be an independent contractor is strong evidence that claimant was an independent contractor.

TEX 10-01-96

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 630.00(6)

Carol and N.J. Segal, Jr., dba the Lages Co. and A.L. Mechling Barge Lines, Inc. The Commission in this case established some guidelines for dealing with an employer practice known as payrolling. Payrolling may be defined as an attempt by an employer to avoid, in whole or in part, the legal incidence of unemployment compensation tax by using an agent to report its payroll on the poor risk segment of its payroll. In this manner, an employing unit could avoid having to pay the unemployment tax altogether or an employer, by placing its high-risk employment on another payroll, can lower or retain a low tax rate on its overall payroll. It is the Commission's responsibility in administering the Act to limit such a practice as payrolling so that it will not adversely affect the intended purpose of the Act.

Three elements to consider when determining who is to be required to make contributions into the unemployment compensation fund are:

1. For whom is the service performed?
2. Who pays for the service performed?
3. Who controls the performance of the service?

Commission decision involving tax liability of Austin Postal Services, Inc. Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, is exempt from "employment" under Section 201.073 of the Act. However, the employer has the burden of proving individuals so employed were under age eighteen.

Commission decision involving tax liability of Dallas Automobile Club. If a written contract of hire gave the employer the "right to control" the manner and details of how the work is to be performed, it does not matter that the employer did not, in fact, exercise such control.

TEX 10-01-96

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 630.00(7)

Commission decision involving tax liability of Logan U. Mewhinney, M.D. An employee is considered in employment until the employer-employee relationship has been severed, such as by a resignation or by a discharge. Part-time employees who have regular working hours each week and are paid on a semi-monthly salary are employees on their days off, regardless of whether they were actually performing services or not.

Commission decision involving tax liability of Chatham & Associates. A court reporter is a highly trained professional practicing a skilled calling. If he is not supervised in his work, furnishes his own transportation and pays his own expenses, his remuneration is based on the amount of work he performs and no deductions are made from his earnings, and he is free to determine the hours of work and, generally, the site of the work, he is not in employment and no unemployment taxes are due on his earnings.

Commission decision involving tax liability of Regina Guild. An actual rather than potential exemption by the Internal Revenue Service of an allegedly non-profit organization is required before an employing unit's status can be considered under Section 201.023 of the Act. Otherwise, Section 201.021 applies.

Commission decision involving tax liability of Rio Grande Family Radio Fellowship, Inc. The corporation was not a convention or association of churches. Although it was operated primarily for religious purposes, it was not operated, supervised, controlled or principally supported by a church or a convention or association of churches. Therefore, services performed for the corporation were not exempt under Section 201.066 unless the corporation was a church. The corporation was not a church because it was interdenominational and was not a body of Christian believers having the same creed, rites, etc. It was simply a radio station which primarily broadcasted programs of a religious nature.

Appeals Policy and Precedent Manual
MISCELLANEOUS

MS 630.00(8)

Commission decision involving tax liability of MilMar, Inc. etc. (owners of shrimp trawlers). Unless there is total relinquishment of control through a bare-boat, or demise, charter, the owner of the trawler is considered, under maritime law, to have sufficient control to be charged with the duties of an employer. The owner is the employer of the captain and the crew. (See Section 201.075 of the Act.)

Commission decision involving the tax liability of Ruth Craig dba Yellow Cab of Grayson. The Commission was faced with the question of the employment status of taxicab drivers operating under a lease agreement. In reaching a conclusion that the drivers in this case were employees of Yellow Cab of Grayson, the Commission followed several federal cases which have invariably held drivers, who were not accountable for the balance of fares collected and who paid a stipulated daily rental to the owner of the cabs, to have been lessees or independent contractors. Conversely, those drivers who pay the owner of the cabs a percentage of the fares and who are dispatched by phone or radio are generally considered to be in employment.

Commission decision involving the tax liability of Barshu, Inc. Barshu, Inc. was the owner of several trucks equipped for specialized hauling. The trucks were leased to C & H Transportation Co. The Commission determined that the drivers operating the trucks were not employees of Barshu, Inc. The legal entity which possesses the necessary permits from the appropriate state and federal authorities to engage in business as a specialized motor carrier not only has the right to control the drivers of the trucks operating under its permits but, in fact, has the duty to exercise direction and control over the performance of their services.

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MS 630.00(9)

Commission decision involving the tax liability of C & H Transportation Company, Inc. C & H Transportation Co., Inc., was engaged in the interstate transport of various products. It operated under certificates of public convenience and necessity issued by the Interstate Commerce Commission and various state regulatory agencies. An issue of tax liability arose concerning whether the drivers of tractors leased to C & H Transportation were employees of that company. The Commission found that while a number of factors tended to indicate control by C & H over drivers of the leased equipment, the elements so indicating control were the direct result of government regulations. Various elements of control which the lessee (C & H) was required by government regulation to maintain were not inconsistent with the driver not being the lessee's employment.

Commission decision involving the tax liability of Sandra and John D. Hartley, dba Big John Enterprises. When a transportation company leases a tractor from a person also performing services as a driver, the cost of leasing the motor vehicle and the cost of providing a driver should be separated to determine the amount of wages or earnings which should be reported to the Commission for the purpose of determining the amount of unemployment compensation contributions due the Commission by the company. The existence of the employment relationship is reinforced where the company's dispatchers dictate when, where and how the drivers are to perform their duties and where the drivers are required to submit periodic reports to the company.

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MS 630.00(10)

Decision involving tax liability of United Missionary Aviation Inc. dba Missionary Tape and Equipment. The Legislature did not intend to exempt from unemployment taxation services performed for every organization engaged in some form of religious activity. Conversely, they set out specific categories of organizations entitled to an exemption. Since the corporation in question was not a church, convention or association of churches and was not controlled or principally supported by the church, convention or association of churches, it was not exempt under Section 201.066 of the Act, and it was not necessary to decide whether the corporation was operated primarily for religious purposes.

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MC 5.00

MC General

MC 5.00 General.

Includes cases containing (1) a general discussion of misconduct, if the point cannot be handled by a specific line (2) points not covered by any other line in the misconduct division, or (3) decisions under a statutory provision other than a misconduct provision, which do, nevertheless, decide the fact of "misconduct" or "discharge".

Appeal No. 2133419. In the oil and gas industry, it is customary for employees working on vessels at sea to routinely alternate pre-determined periods of work on a vessel with pre-determined rest periods (home rotations). In this case, the claimant knew since beginning the job that the work schedule involved working 28 days on board the vessel followed by 28 days of home rotation, after which he would report back to work on the vessel. During home rotations, the claimant was required to take professional training, at the employer's expense, and respond to the employer's communications. The employer remained obligated to continue the benefits of employment. The claimant was paid on a biweekly basis for each day spent working on the vessel but was not paid for the days spent on home rotation. After completing one such 28-days of work on the vessel, the claimant began a typical 28-day home rotation.

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MC 5.00(2)

During the period of home rotation, the claimant filed for unemployment benefits, knowing that he was scheduled to return to work on the vessel. **HELD:** Separation is an issue that requires an examination of all the facts and circumstances. The employment relationship in this case was not severed when the home rotation began, even though the claimant stopped performing services and earning wages. Employment relationships in the off-shore oil and gas industry that involve regular, rotating periods of extended off-shore work followed by extended periods of cessation in work and pay connected to a mutually understood return to work date continue until one party notifies the other that the employment relationship has been severed. In this case, the claimant notified the employer that the employment relationship had been severed, for purposes of unemployment benefits, when the claimant filed a claim for unemployment benefits. The claimant in such a situation voluntarily quits the work without good cause connected with the work. Disqualification under Section 207.045 of the Act. Cross referenced at MS 510.00, VL 135.25 and VL 510.40.

Section 201.012 of the Texas Unemployment Compensation Act states, Misconduct means mismanagement of a position of employment by action or inaction, neglect that jeopardizes the life or property of another, intentional wrongdoing or malfeasance, intentional violation of a law, or violation of a policy or rule adopted to ensure orderly work and the safety of employees. The term 'misconduct' does not include an act in response to an unconscionable act of an employer or superior."

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MC 5.00(3)

Appeal No. 1403-CA-78. The employer's personnel policy provided a multi-step disciplinary procedure for excessively absent employees, such procedure progressing in sequence, upon the occurrence of each unexcused absence, from warning to counseling to disciplinary suspension to discharge. Upon the occasion of her next-to-last unexcused absence, the claimant was advised that, upon her next unexcused absence, she would be suspended without pay for five days. Nonetheless, when the claimant was next absent without excuse, she was discharged even though she had never been suspended as required by the employer's policy. **HELD:** The employer did not comply with the terms of its own disciplinary procedure and the claimant did not have the benefit of progression through the required steps of the procedure prior to her discharge. Therefore, she did not feel that she would be discharged on the occasion of her last absence. The claimant's discharge without proper treatment under company policy was not for misconduct connected with the work.

Appeal No. 96-010354-10-090996. On June 14, 1996, the employer essentially placed the claimant on probation, by advising her that she had thirty days to improve her performance as manager or she would be terminated. On July 4, 1996, the employer decided to terminate the claimant, rather than affording her the entire thirty-day probationary period, because the claimant’s performance did not improve. **HELD:** If an employer determines during the probationary period that an employee has committed a dischargeable offense or is not going to improve, the employer is not obligated to afford the employee the entire thirty-day probationary period before discharging the employee. The scope of our review is limited to whether the incident prompting the discharge would be considered misconduct connected with the work. In this case, the claimant’s failure to improve her performance would be considered misconduct connected with the work.

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MC 5.00(4)

Appeal No. 4492-CUCX-76. The claimant, who worked part time while attending college, was discharged because he had not attended a required technical training school. The employer had not afforded the claimant an opportunity to attend the training school because he knew that the claimant planned to seek other work when he earned his degree and, therefore, the $1000.00 training school tuition fee, customarily paid by the employer, did not appear justified in the claimant's case. The claimant would have attended the training school had he been given the opportunity. **HELD:** Discharged for reasons other than misconduct connected with the work since the claimant had not been given an opportunity to attend the training school.

Appeal No. 3122-CSUA-76. The claimant was discharged because he was accident prone, had allegedly abused his sick leave, and had left the employer's premises without notice or permission on April 23, 1976. **HELD:** No misconduct connected with the work. The evidence showed that (1) as to his being accident prone, the employer's safety director and safety committee had found, after investigation, that the claimant had not been at fault in any of the seven accidents in which he had been involved; (2) his alleged abuse of sick leave consisted of his having accrued only six hours of sick leave at the time of his separation, which could not be considered misconduct connected with the work in the absence of evidence that the claimant had taken such leave without notice or when he was not genuinely entitled thereto; and (3) as to his absence without notice or permission on April 23, 1976, this was due to his having been mistakenly arrested and held incommunicado until 4:00 p.m., at which time he immediately returned to work, whereupon he was discharged.

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MC 5.00(5)

Appeal No. 1419-CA-76. The claimant was discharged allegedly because of his failure to report to work on time. This allegation was not supported by any evidence as to the number of times the claimant had been tardy or any specific occasion when he had been tardy. His discharge occurred on the day he had left the job site and returned with a policeman because he felt that his life was in danger following an incident with a co-worker. **HELD:** The claimant was discharged, not for any tardiness, but rather because he had brought a policeman to the job site. The claimant's bringing a policeman to the job site because he believed that his life was in danger was not an act of misconduct connected with the work.

Also see Appeal No. 370-CA-70 under MS 510.00 and Appeal No. 62-CA-65 under VL 505.00.

Also see, among others, Appeal No. 2027-CA-EB-76 under MC 435.00, suggesting that a finding of no misconduct may be based, in part, on the fact that a claimant was not warned.

Appeal No. 97-004948-10-050997. The claimant, a sales representative, was discharged for excessive tardiness after numerous verbal warnings. None of these warnings, however, specifically advised claimant his job was in jeopardy due to his tardiness. On his last day the claimant missed a previously scheduled mandatory sales meeting when he arrived late to work. **HELD:** Discharged for misconduct. Where the employer’s repeated warnings are sufficient to put claimant on notice that certain behavior is unacceptable, it is unnecessary for the employer to further warn claimant his job is in jeopardy. (Also digested at MC 435.00).

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MISCONDUCT

MC 15.00 – 15.05

MC Absence

MC 15.00 Absence.

MC 15.05 Absence: General.

Includes cases containing (1) a general discussion of absence as related to misconduct, (2) points not covered by any other subline under line 15, or (3) points covered by three or more sublines.

Appeal No. 87-18829-10-102887. The claimant was discharged after she failed to report to work for two workdays following her doctor's full release to return to work. The claimant had been off work due to a nonwork related injury. She submitted no medical statement concerning the two days she failed to report to work. **HELD:** As the claimant's absences on the two days in question were not medically verified, they were in violation of a rule adopted by the employer to ensure orderly work, thus meeting the definition of misconduct prescribed by Section 201.012 of the Act.

Appeal No. 2407-CA-77. The claimant had received warnings for his poor attendance record. Nonetheless, he was absent from work on the day before his discharge and was late to work on the day of his discharge. **HELD:** Discharged for misconduct connected with the work. Disqualification under Section 207.044 of the Act.

Appeal No. 2090-CA-77. The claimant was discharged because of her attendance record. During a twenty-five day period, she had been absent four times, late to work seven times and had left work early on one occasion. All but one instance of absenteeism or tardiness were unexcused and only one absence was excused. **HELD:** Discharged for misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 1605-CA-77. The claimant was discharged because he failed to return to work until two workdays after he had completely recovered from an eye infection for which he had been off work. HELD:

Discharged for misconduct connected with the work. Disqualification under Section 207.044.**MC 15.05(2) – 15.10**

Appeal No. 601-CA-76. The claimant was discharged immediately upon telling the employer that he intended to take off work in order to keep a doctor's appointment. He was not given an opportunity to protect his job by deferring the doctor's appointment and had offered to make up the time lost by reason of the doctor's appointment. **HELD:** Discharged but not for misconduct connected with the work.

Appeal No. 502-CA-76. The claimant had been placed on probation because of his absences and tardiness during a three-month period. All of his attendance problems had been due to his father's illness and death and the settling of his father's estate. The claimant had always notified his immediate supervisor in advance of such absences or tardiness. After being placed on probation, the claimant punched in six minutes late on one occasion and, on another occasion, punched in exactly at starting time which, under the employer's rules, constituted a tardy. The claimant was discharged following the latter occasion because of his attendance record. **HELD:** Discharged for reasons other than misconduct connected with the work. The claimant's absence and tardiness were primarily due to compelling personal reasons and the claimant had always properly informed his immediate supervisor in advance of the reason for an absence or tardiness.

MC 15.10 Absence: Notice.

Where the question of notice rather than absence itself is the chief consideration.

Appeal No. 87-17008-10-092887. The claimant left work on Friday because he was feeling ill. He did not notify anyone of his departure although he was aware company policy required him to do so. When he arrived home, he notified the employer's dispatcher by telephone. On Monday, a doctor diagnosed the claimant as having food poisoning. He was terminated on Tuesday for failing to give notice of his departure from work on Friday. **HELD:** The claimant's failure to even

attempt to advise anyone before he left constituted misconduct connected with the work.

MC 15.10(2)

Appeal No. 87-18557-10-102387. The claimant failed to report to work for two days and failed to notify the employer either day because he was out of town caring for his sick mother. Previously, he had been formally reprimanded for failing to notify the employer of absences. The claimant was discharged when he reported back to work after the last absences. **HELD:** As the claimant did not establish that he had a compelling reason for failure to notify the employer that he would be absent, and as he had previously been reprimanded for the same offense, the claimant's discharge was for misconduct connected with the work.

Appeal No. 2333-CA-77. The claimant was replaced while on an informal leave of absence due to an industrial injury. He had made no effort in over two months' time to contact the employer to advise him of his condition or to inquire as to his job status. **HELD:** The claimant's lack of effort to protect his job in this situation constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 1629-CA-77. The claimant had been referred to a hospital by the employer's physician and was hospitalized due to illness. At the time of his hospital admission, the claimant notified the employer and, from time to time during his hospital stay, advised the employer of his progress. He was discharged from employment by being replaced before he recovered. **HELD:** Discharged for reasons other than misconduct connected with the work. Absence from work without notice to the employer of the reason for such absence constitutes misconduct connected with the work. However, in this case, the claimant had been justifiably absent due to illness, had properly notified the employer of his hospital admission and had made reasonable efforts thereafter to keep the employer advised of his continuing illness.

MC 15.10(3)

Appeal No. 1008-CA-77. The claimant was discharged for having been absent from work without notice. **HELD:** Discharged for reasons other than misconduct connected with the work. The claimant, who did not have a telephone, had made an agreement with her manager whereby, if she did not report for work within one hour after starting time, he would assume she was going to be absent and would call in a replacement for her for that day.

Appeal No. 947-CA-77. The claimant had been absent from work due to illness for five consecutive days. She had notified her immediate supervisor of her absence on each of the first two of such days but not on any of the three subsequent days. She was discharged for her failure to give notice of her absence on the latter days. **HELD**: Discharged for misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 617-CA-77. The claimant was absent from work for three consecutive days because of her emergency need to leave town to arrange for the funeral of a close relative and because of delays encountered in the funeral arrangements. On the morning of the first day of absence, the claimant's sitter notified the employer of the reason for the claimant's absence and that she would probably return the following day but, in any case, would contact the employer as soon as she returned. On the morning of the third day of absence, the claimant notified the employer of the delays encountered and her need to be absent that day. **HELD:** Discharged but not for misconduct connected with the work. The claimant had properly notified the employer and kept him reasonably informed of her situation.

MC 15.10(4)

Appeal No. 4317-CA-76. The claimant was discharged for an absence of one week necessitated by the illness of her minor child. The claimant gave notice of the necessity for such absence and her husband called in each day of her absence. **HELD:** Not discharged for misconduct connected with the work. The evidence showed that the claimant had given proper notice of the reason and necessity for her absence, her husband never having been advised that it was necessary for the claimant herself to call in on each subsequent day of her continuing absence.

Appeal No. 3655-CA-76. The claimant was absent from work due to illness. As he did not have a telephone, he asked a co-worker to give notice for him of his inability to report to work. The claimant was discharged for absence without notice because the co-worker failed to give notice on the claimant's behalf. **HELD:** Discharged for misconduct connected with the work, as it was the claimant's responsibility to notify the employer of an absence. Disqualification under Section 207.044.

Appeal No. 771-CA-76. The claimant had been discharged for her absence from work without notice due to illness. On the occasion in question, the claimant had called the office where she worked and, not receiving any answer, had thereupon called and left word with the employer's answering service. **HELD:** Not discharged for misconduct connected with the work. The claimant had taken reasonable steps to report to the employer her inability to be at work due to illness.

MC 15.10(5)

Appeal No. 7-CA-76. The claimant was called away during the night by a sudden family emergency in another town. As she left prior to the opening of the employer's switchboard, she asked another employee to notify the employer of her inability to be at work. She was discharged because of the other employee's failure to give such notice**.** **HELD:** Discharged but not for misconduct connected with the work. The evidence showed that the employer customarily permitted an employee to give notice of the necessity for an absence through another, as the claimant in this situation was compelled to do. Under these circumstances and in light of the emergency situation faced by the claimant, the other employee's failure to give notice on her behalf did not constitute misconduct connected with the work on the claimant's part.

Appeal No. 893-CA-76. The claimant had been injured on the job and was off work for three and a half months for this reason. During his absence, he was treated by his physician and a specialist, at the request of the employer's insurance carrier. When released as able to return to work, the claimant immediately contacted the employer and learned that he had been replaced. **HELD:** The Commission found that the claimant had not voluntarily left his last work but, rather, had been discharged for reasons other than misconduct connected with the work. Regarding the latter, the Commission held that the claimant had reasonably assumed that the employer had been advised of his progress during his continuing absence since the employer's insurance carrier had been so advised.

Appeal No. 723-CA-76. The claimant was discharged after an absence of approximately ten consecutive days. She had given notice only with respect to the first day of such absence. She had been previously warned of the necessity for calling in when absent and had been aware that regular notice was required during any absence. **HELD:** Discharged for misconduct connected with the work in that she did not give daily notice of the necessity for her absence, as required by the employer's policy. Disqualification under Section 207.044.

MC 15.10(6)

Appeal No. 663-CA-76. The claimant was discharged for having left her place of work during working hours (due to her having become emotionally upset by an incident at work) without having notified a member of management that she was leaving. Such notice was required by company rule. Some member of management was always on duty but the person whom the claimant notified was not a member of management. **HELD:** Discharged for misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 660-CA-76. The claimant was discharged because she had been absent from work for two days without having called in. **HELD:** Although the employer had no specific policy requiring that an absent employee call in on a daily basis, the expectation that the claimant do so was not an unreasonable one. Hence, her failure to call in constituted misconduct connected with the work. Disqualification under Section 207.044. (Cross-referenced under MC 485.05.)

Appeal No. 3673-CA-75. The claimant was arrested while at work and was replaced because, during the two scheduled workdays following his arrest and detention, he did not notify the employer of his incarceration. **HELD:** The claimant's failure to keep the employer advised of his whereabouts on the two days that he missed from work because of his incarceration constituted misconduct connected with the work. (Also digested under MC 490.30.)

Appeal No. 3197-CA-75. The claimant was discharged for having failed, in violation of a known rule of the employer, to call in on four workdays in a twelve-day period, on each of which four days he was absent from work. **HELD:** Discharged for misconduct connected with the work. Disqualification under Section 207.044.

MC 15.15

MC 15.15 Absence: Permission.

Where the question of permission rather than the absence itself is the chief consideration.

Appeal No. 2769-CA-77. The claimant was discharged for excessive absenteeism and for failing to produce according to the employer's standards. Her five absences in five months were all occasioned by the illness of her child, each requiring her presence, and were upon permission being granted by the employer. She performed her work to the best of her ability and had never been counseled regarding her performance or her absence. **HELD:** No misconduct connected with the work. The claimant did her job to the best of her ability and secured permission to be off when absences were required due to family illness. (Cross referenced under MC 15.20.)

Appeal No. 2308-CA-77. The claimant was discharged upon his timely return from an authorized leave of absence. The employer, although having assented to the claimant's request for time off, had concluded during his absence that it had placed an undue burden on his co-workers. **HELD:** No misconduct connected with the work. Although the claimant's absence had caused an extra workload to fall on other workers, he had been absent with the employer's permission.

Appeal No. 679-CA-77. The claimant was discharged because the employer believed that he had left work early without permission. **HELD:** No misconduct connected with the work as the evidence showed that the claimant, in fact, had proper permission from his immediate supervisor to leave work early.

MC 15.15(2)

Appeal No. 190-CA-77. The claimant was placed on leave of absence because she was unable to perform her usual work and had been told by her physician to cease such work. The employer had no other work for her to do. Her leave of absence guaranteed reinstatement whenever the claimant obtained an unconditional release to return to work. The claimant filed her initial claim shortly after being placed on leave of absence, at which time she was still unable to work. **HELD:** The claimant was separated by company action and not for misconduct connected with the work. No disqualification under Section 207.044. (However, the claimant was held ineligible under Section 207.021(a)(3) of the Act, as not able to work, from the date of her initial claim, forward.)

Appeal No. 4100-CA-76. Following warnings for absenteeism, the claimant was discharged for a subsequent absence of three consecutive workdays, without notice or permission. **HELD:** Since the claimant had previously been warned concerning his absenteeism without permission yet had subsequently been absent without permission or proper notice to the employer, he was found to have been discharged for misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 3056-CA-76. The claimant was discharged because, during the last two weeks that he worked, he had been leaving work early. He had been doing so in order to obtain treatment for an arthritic condition. On each occasion, he had notified his immediate supervisor that he was leaving early, and the supervisor had either expressly authorized him to leave work early or had acquiesced therein. The supervisor had the authority to forbid the claimant from leaving work early but had not exercised it. **HELD:** No misconduct connected with the work since the claimant's early departures were always with the express or implied approval of his superior.

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MC 15.15(3) – 15.20

Appeal No. 1040-CA-76. The claimant was discharged because he took longer than he had anticipated to attend to some personal business. He had secured prior permission to report to work late in order to attend to the matter. **HELD :** By notifying the employer in advance that, because of personal business, he might be late in reporting to work, and receiving the employer's permission therefore, the claimant put the employer on notice that he was attending to personal matters which could cause him to be delayed longer than expected. No misconduct connected with the work.

Appeal No. 1-CA-76. The claimant took one week's leave from his job for personal reasons. He had notified the employer's dispatcher of his intended absence. Although the dispatcher was the individual whom the claimant was obligated to notify in case of any absence or tardiness, he did not have the authority to approve leave requests. The claimant was replaced while absent. **HELD:** The claimant had not received permission to be off by any individual with the authority to grant such permission. Accordingly, the claimant's absence from work without such proper permission constituted misconduct connected with the work and a disqualification was assessed under Section 207.044.

MC 15.20 Absence: Reasons.

Consideration of the reasons for absences.

Appeal No. 87-08030-10-050587. A claimant's absence from scheduled work due to his incarceration for criminal charges arising from off-duty conduct, which charges the claimant has not denied (in this instance, entering a plea of no contest) and for which the claimant was assessed a fine and a jail sentence, constituted misconduct connected with the work. (Also digested under MC 490.30.)

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MC 15.20 (2)

Appeals No. 86-04116-10-030487. The claimant was discharged after having missed work due to an alleged illness. He presented a doctor's statement to excuse this absence but the claimant neither spoke to nor saw the doctor on the day in question. The employer's policy required a valid doctor's excuse for any absence due to illness. Previously, the claimant had been reprimanded and warned that his attendance violations, including unexcused absences, were jeopardizing his job. **HELD:** The claimant's failure to produce adequate verification of his absence due to illness, after being warned that his job was in jeopardy, was misconduct connected with the work. The employer has a right to be provided with a doctor's excuse that is based on the claimant's actual contact with a doctor.

Appeal No. 86-01637-10-011587. The claimant witnessed a murder. The local police put him under protective custody and did not allow him to return to work. The claimant, who had received death threats, was advised by the police that they could not guarantee his safety and that he should leave the state until the anticipated trial. Before acting on such advice, the claimant contacted the employer and was told that he could have his job back whenever it was safe for him to return to Texas. **HELD:** The claimant was unable to attend work for reasons beyond his control. It is not necessary for a person to risk his life returning to work when such danger stems from his willingness to testify on behalf of the State of Texas to protect the general welfare and safety of this State.

MC 15.20(2)

Appeal No. 91-11479-10-101491. Even if a claimant has been warned that his or her job is in jeopardy due to poor attendance, the claimant's subsequent absence from work due to the illness of a minor child in the claimant's care does not constitute misconduct connected with the work if the claimant gave proper notice of such absence to the employer, the child's condition is medically verified, there was no reasonably available alternative source of care for the child and the employer refused to allow the claimant a reasonable amount of time off during the child's illness.

Appeal No. 2877-CA-77. The claimant was discharged for excessive absenteeism. She had received a written warning for her excessive absenteeism and tardiness, which was frequently without proper personal notice as required by the employer's written rules. On the occasion of her last absence, another individual contacted the employer on the claimant's behalf and advised the employer that the claimant would not report to work because her infant child was sick. On that day, the claimant took the child to a doctor and, later that day, to a graduation ceremony. The claimant had several relatives in the area but made no attempt to arrange for someone else to take the child to the doctor or otherwise care for it so that she could report to work. **HELD:** The claimant's absence, after warning, due to the illness of a family member constituted misconduct connected with the work where she did not make a substantial effort to obtain other care for the child so that she would be able to report to work as scheduled. Disqualification under Section 207.044.

MC 15.20(3)

Appeal No. 614-CA-77. The claimant was discharged because he had been late to work (with advance notice) due to the illness of his daughter. Prior to that occasion, on another day he had left work thirty-five minutes early with permission and, on still another day, he had been absent all day, again with permission. All of the irregularities in attendance had been caused by the illness of his daughter. **HELD:** Discharged for reasons other than misconduct connected with the work, where all attendance problems were occasioned by the illness of his child, a circumstance over which he had no control, and where all instances of absenteeism or tardiness were upon notice and with permission.

Appeal No. 80-CA-77. On a scheduled workday, the claimant notified the employer that she would not be in because her child was ill. The claimant absented herself from work and was discharged. She falsely notified the employer that she had taken the child to a doctor and that the latter had advised her to stay home with the child. In fact, the claimant attended a fair while the child's grandparents cared for the child. **HELD:** Discharged for misconduct connected with the work as the claimant was absent from work without a valid excuse when she was needed by the employer. Disqualification under Section 207.044. (Also digested under MC 140.20.)

Also see Appeal No. 2769-CA-77 under MC 15.15.

Appeal No. 1282-CA-77. The claimant was discharged, after several warnings, because of his attendance record. Immediately before his discharge, he absented himself from work, with notice, in order to take his pregnant wife to a doctor. However, the evidence showed that the claimant did not take his wife to the doctor on the day he took off but, rather, did so on the next day when he had not been scheduled to work. The claimant presented no medical evidence of the necessity for taking his wife to the doctor on the day that he took off from work. **HELD:** Absenteeism or tardiness due to personal reasons, other than personal illness, or because of a claimant's failure to arrange other care for an ill family member, constitutes misconduct connected with the work. Disqualification under Section 207.044.

MC 15.20(4)

Appeal No. 2386-CA-77. The claimant, in reliance on the employer's general, but not invariable, practice of requiring Saturday work only every other Saturday, set her wedding date for one of the Saturdays she expected to be off work, June 11th. On June 6th or 7th, the claimant's supervisor notified her that no work would be scheduled for June 11th; however, on June 9th the company president notified all employees that they would be expected to work on June 11th. The claimant then requested of her supervisor that she be given the 11th off. This request being denied, she requested permission to speak to the president of the company. This permission was also denied by her supervisor as, in his opinion, it would "do no good" for the claimant to speak to the company president. The supervisor also told the claimant that, if she did not work on the Saturday in question, she should not bother to come in on the following Monday. When she called in on Tuesday, she was discharged for her Saturday absence. Other employees absent on the Saturday were neither discharged nor otherwise disciplined. **HELD:** Discharged but not for misconduct with the work. Although absence from work without permission usually constitutes misconduct connected with the work, where, as here, the claimant had first been told that no work would be required on the day in question, only to have this order later countermanded, and where her request to be off was denied by her immediate supervisor, and she was not permitted to take this decision to higher management, even though she had an important reason for wanting to be off, her absence from work did not constitute misconduct connected with the work.

Appeal No. 1983-CA-77. The claimant was discharged for failing to report to work after having been told that his continued absence could not be tolerated. He had been absent for five days on the occasion in question, the last two days without even calling in. The claimant's absence had been due to the repossession of his car and his efforts to recover it. **HELD:** Discharged for misconduct connected with the work. Notwithstanding the repossession of the claimant's car, he had transportation to work. He put the personal consideration of recovering his car above the retention of his job. Disqualification under Section 207.044.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 15.20(5)

Appeal No. 1790-CA-77. The claimant was discharged, after warnings, for having more than twenty-three unexcused absences during an eight-month period, all of which were due to family problems. **HELD:** Discharged for misconduct connected with the work. It was the claimant's responsibility to manage her personal problems in such a way as not to interfere with her work. Disqualification under Section 207.044.

Appeal No. 3834-CA-76. The claimant was discharged because he failed to present to the employer evidence of the reason for his absence from work, as requested. **HELD:** Discharged for misconduct connected with the work in that he failed to comply with a reasonable request of the employer. Disqualification under Section 207.044.

Appeal No. 2770-CA-76. The claimant was absent from work a great deal due to personal reasons but was not discharged until after an absence from work of four days, due to illness. This fact was supported by medical evidence. Her last absence for personal reasons had been more than two weeks before her illness and ensuing absence. **HELD:** Discharged but not for misconduct connected with the work. The claimant's discharge took place when it did because of an absence due to the claimant's own illness and an absence for reason of personal illness does not constitute misconduct connected with the work.

Appeal No. 2480-CA-76. The claimant was on probation due to her attendance record. The condition of her probation was that she not be absent again for any reason. She was discharged because she was later absent from work due to her own personal illness of which the employer was duly notified. **HELD:** Absence from work due to illness, with due notice, does not constitute misconduct connected with the work. (Cross-referenced under MC 485.10.)

As to absences for personal illness, also see Appeal No. 87-03012-10030488 and Appeal No. 832-CA-77 under MC 485.10.

MC 15.20(6)

Appeal No. 2055-CA-76. The claimant was absent from work from March 19 through March 30, 1976 for the asserted reason that he had arm trouble. He gave the employer proper notice but did not seek medical treatment. However, on March 30, he obtained a medical statement indicating his release as able to return to work as of March 31. The union contract provided that an employee will be discharged if absent for three days unless the reason for the absence is acceptable to the employer. **HELD:** Discharged for misconduct connected with the work. The claimant was absent for a considerable time, assertedly for a fairly serious temporary disability, but did not seek medical treatment for it. The claimant's failure to seek medical treatment, therefore, reflected adversely on the validity of his reason for his absence. Disqualification under Section 207.044.

Appeal No. 1444-CA-76. The claimant, who lived and worked in Tyler, was discharged because she would not tell her supervisor the reason why she could not work on two successive workdays for which she wished to be absent. (The reason was that she was going to consult a physician in Dallas.) **HELD:** The claimant's telling the employer that she would not be at work as expected and her refusal to given him any clear information as to the reason therefor constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 15.20(7)

Appeal No. 1202-CA-76. The claimant was discharged for absenteeism. Out of the last eleven working days of the claimant's employment, she had been absent from work on six days, had left early on one occasion, and had arrived late to work on another occasion. Three of her absences had been due to her own personal illness, two of her absences had been due to the illness of her stepfather and one absence had been due to the claimant's car having been repossessed. On the occasion of her last absence, she had had a dental appointment but stayed away from work all day because she had felt that she was about to contract the flu. **HELD:** Discharged for misconduct connected with the work. Disqualification under Section 207.044. During a short period of employment, the claimant had had an excessive number of absences, several of which were not due to her own illness. As to her last absence, the claimant had had a dental appointment but was absent all day without a reasonable excuse.

Appeal No. 3033-CA-75. The claimant was discharged because he was seen at the employer's credit union on a day when he had failed to report to work due to illness. His discharge was based on the assumption that, if he was well enough to be at the credit union, he was well enough to work. **HELD:** No misconduct connected with the work. The evidence showed that the claimant went to the credit union on the day in question to borrow money to pay his doctor, who had declined to treat the claimant unless he paid at the time treatment was rendered.

Also see cases digested under MC 490.30

Appeals Policy and Precedent Manual

MISCONDUCT

MC 45.00 – 45.05

MC Attitude Toward Employer

MC 45.00 Attitude Toward Employer.

MC 45.05 Attitude Toward Employer: General.

Includes cases containing (1) a general discussion of claimant's attitude toward employer's interest, (2) points not covered by any other subline under line 45, or (3) points not covered by three or more sublines.

Appeal No. 86-2551-10-020687. The claimant, an attorney, was discharged because he disagreed with the employer. A senior partner had confronted the claimant about his conduct while taking a deposition. The employer insisted the claimant admit to being wrong, but the claimant continued to deny any wrongdoing. **HELD:** Not discharged for misconduct connected with the work. The senior partner was asking the claimant to change his opinion about a matter rather than asking him to perform a certain task a particular way. It was not shown that the claimant was refusing to adhere to his supervisor's instructions in the performance of his duties. The display of a negative attitude toward criticism by a superior is not sufficient in and of itself to constitute misconduct connected with the work.

Appeal No. 3063-CA-76. The claimant was discharged for her allegedly unsuitable reaction to criticism in that, during the three days following what she considered to be an unjustified reprimand, she spoke to the office manager only as business required. The claimant had not been counseled that her reaction to criticism was deemed unsuitable and might endanger her job. **HELD:** Within reasonable limits, an employee is entitled to react somewhat less than enthusiastically to a reprimand and a simple withdrawal from social contact with one's supervisor, except as business requirements dictate, does not constitute misconduct connected with the work, particularly where the employee has not been warned that her attitude and conduct are endangering her job.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 45.10

MC 45.10 Attitude Toward Employer: Agitation or Criticism.

Where a worker makes disparaging remarks about his employer or his employer's business, either at work or elsewhere; and situations in which a worker stirs up resentment and dissatisfaction among other employees.

Appeal No. 98-001381-10-021099. The claimant voluntarily resigned because he was demoted from store director to a customer service representative. The demotion occurred when the employer learned from a third party that the claimant had misappropriated $1,000 of the employer's money to assist a friend. The claimant admitted his guilt. This was a serious infraction, which normally resulted in discharge. The employer elected to demote the claimant and afford him an opportunity for rehabilitation based on his past employment record. **HELD:** Disqualified. Voluntary leaving without good cause connected with the work. When considering the seriousness of the offense, the demotion did not provide the claimant with good cause for quitting. The Commission distinguished this case from Appeal No. 2340-CA-77, MC 45.10, and noted that in the present case, it was claimant's illegal actions that ultimately resulted in the claimant's demotion and separation while in Appeal No. 2340-CA-77, the problem was one of attitude, which was not a violation of law and did not lead to a direct loss of a considerable sum of money to the employer.

Appeal No. MR 86-29-10-121986. The claimant was discharged after the employer received a letter from the claimant expressing her dissatisfaction with her job and pay. The letter suggested alternative solutions; however, the employer interpreted the letter as a demand for more money. The employer did not discuss the letter with the claimant before she was terminated. **HELD:** Not discharged for misconduct connected with the work. A poor attitude which is not accompanied by a refusal to work or prior warning that a poor attitude could lead to discharge, is not sufficient to establish misconduct.

MC 45.10(2) – 45.15

Appeal No. 2340-CA-77. The claimant's unsatisfactory attitude toward her work, as reflected by her complaints about the work and her refusal to do certain tasks assigned to her, caused the employer to reduce the claimant from full-time to part-time work. **HELD:** Although the employer had several objections to the claimant's work, such objections were not sufficiently serious to cause the employer to completely terminate the claimant. Actions by the claimant which, in the employer's opinion, were not serious enough to justify complete termination, cannot be considered misconduct connected with the work.

MC 45.15 Attitude Toward Employer: Competing with Employer or Aiding Competitor.

Where a claimant engages in business in competition with his employer or aids a competitor of the employer.

Appeal No. 87-19403-10-110987. The claimant was discharged for having a conflict of interest with the employer. The claimant opened an agency which booked chartered bus service for organizations. The employer's business was that of directly providing chartered bus service. The claimant had access to the employer's business records and hid her association with her agency from the employer. Several of the employer's clients cancelled trips scheduled with the employer and rebooked through the claimant's agency. The final incident was claimant's working at her place of business on an afternoon when she had been given permission to be off work for other personal reasons. **HELD:** Discharged for misconduct. The claimant's participation in a business which was competing with the employer created a conflict of interest and, therefore, was mismanagement of her position of employment within the meaning of Section 201.012 of the Act.

MC 45.15(2)

Appeal No. 87-16801-10-092587. The claimant was discharged for soliciting the employer's customers for a pump repair business he was thinking of starting. He told customers he could give faster service by working overnight. The customers complained to the employer and the claimant was discharged. **HELD:** Discharged for misconduct connected with the work. The solicitation of the employer's clients, for a business that would have been in direct competition with it, was an act of misconduct. It is not necessary to consider the absence of a non-competition agreement.

Appeal No. 86-14236-10-110586. The employer, a cigarette wholesaler, discharged the claimant because of his suspected involvement in a sale of cartons of cigarettes. Thirty cartons were missing from the employer's inventory. The owner of a retail store informed the employer that one of its employees had purchased fifteen cartons of cigarettes for cash from one of the employer's drivers. The employer did not receive the proceeds from the sale. The driver had received the cartons from the claimant. The claimant admitted selling the cigarettes to the driver but denied he obtained them from the employer. The employer was unable to definitely determine the rightful ownership of the cartons of cigarettes. **HELD:** Discharged for misconduct connected with the work. The claimant admitted to participation in the sale of products identical to the employer's product line outside of the ordinary course of business. This activity was in competition with the employer's business and carried a great risk of undermining the integrity of the employer's agents and the legal title of the employer's products. As such, the claimant's participation in the sale of cartons of cigarettes was in disregard of the employer's best interests and misconduct within the meaning of Section 207.044 of the Act. (Partially digested under MC 140.25 and cross-referenced under MC 140.30.)

MC 45.15(3) – 45.20

Appeal No. 826-CA-77. The claimant was discharged because he had been considering bidding on the employer's janitorial service contract should it appear that the employer would not secure a contract renewal. After his discharge, the claimant bid on the contract. **HELD:** The mere fact that the claimant was considering bidding on the contract and going into business for himself and, in fact, did so after his termination, did not establish that he had clearly competed with the employer or otherwise been guilty of misconduct connected with the work.

Appeal No. 658-CA-76. The claimant was discharged because he was believed to be competing with the employer. The claimant was conducting some research at home which was similar to the work he was doing for the employer, but the research was for the purpose of seeking work with a former employer located in Florida. **HELD:** Discharged for reasons other than misconduct connected with the work. The mere fact that the claimant conducted research at his home was not enough to establish that the claimant was trying to compete with the employer.

MC 45.20 Attitude Toward Employer: Complaint or Discontent.

Involves a worker's complaints about, or his dissatisfaction with his equipment, his fellow employees, or other working conditions.

Appeal No. 87-11058-10-062987. The claimant was discharged for complaining that she felt people were taking advantage of her. Earlier, she had been required to clean some cooking utensils that the other cooks refused to clean. The claimant had not used the utensils and was forced to work past her scheduled hours. **HELD:** Not discharged for misconduct connected with the work. A legitimate complaint about one's working conditions cannot be considered work-related misconduct.

MC 45.20 (2)

Appeal No. 87-6928-10-042787. The claimant was discharged for insubordination after objecting to the employer's calling the employees collectively "worthless bastards". The employer had discovered that employees were placing calls to sexually oriented businesses during working hours. The claimant had not made any of the calls and took offense to the employer's statement. **HELD:** Not discharged for misconduct connected with the work. The claimant was provoked into responding to the derogatory remark made by the employer.

Appeal No. 86-2005-10-011587. The claimant was discharged after she expressed some displeasure at a last-minute withdrawal of permission for time off. The claimant had received permission to take time off about two weeks earlier. The claimant's replacement decided to have a party, which the manager wanted to attend, and the permission was withdrawn one or two days before the claimant wanted to take off. **HELD:** Not discharged for misconduct connected with the work. Her reluctance concerning the last-minute arrangement, especially in light of the employer's lack of business necessity in requesting such a change, does not rise to the level of misconduct connected with the work.

Appeal No. 3217-CA-77. Where the only evidence of alleged misconduct on a claimant's part is his occasional complaints about being on-call a disproportionate amount of time and the evidence shows that he had been asked to take far more than his share of on-call time, the claimant's complaints do not constitute misconduct connected with the work.

Appeal No. 2870-CA-77. The claimant was discharged because he continually harassed the employer's payroll clerk about the correctness of his pay, even after the clerk had several times explained to the claimant how the computer had figured his pay, and also because the claimant admitted that he had altered his son's timecard. **HELD:** The claimant's actions constituted misconduct connected with the work. Disqualification under Section 207.044.

MC 45.20(3)

Appeal No. 2625-CA-77. The claimant, a bartender, was discharged because, several months prior to his separation, he had discussed with club patrons his dissatisfaction with his pay and because he had not followed the proper channels in seemingly voicing his objection to the manner in which tips were distributed. **HELD:** Discharged for reasons other than misconduct connected with the work. The evidence showed that the claimant had been reprimanded for discussing with patrons his dissatisfaction with his pay but that he ceased this practice. His statement about the manner of distributing tips was found to have been meant in jest and did not reveal that he was violating company procedure by taking his complaints to someone other than his immediate supervisor.

Appeal No. 97-CA-76. The claimant, who was a company pilot normally on-call 24 hours per day, left town temporarily for personal reasons but left a telephone number where he could be reached by his wife. During his absence, the claimant's wife received a call from the claimant's supervisor regarding a flight. The supervisor used rude and abusive language with the claimant's wife when he found the claimant to be out. The claimant was contacted and reported to the employer's office in time for the flight. However, he was discharged by his supervisor when he requested that the supervisor refrain from being rude to his wife in the future. **HELD:** The claimant was discharged because he protested the supervisor's use of abusive language toward his wife which did not constitute misconduct connected with the work.

Appeal No. 3583-CA-75. The claimant was discharged because she continued to complain about not having been called to the telephone on one occasion, even after it had been explained to her that the person who had called had not left his name or number and had declined to state that the call was an emergency one. The latter was the only type of call for which, under the employer's rules, an employee could be summoned from his workstation at any time other than a break period. **HELD:** The claimant's continuing to complain to the office manager, after the latter had repeated several times a reasonable explanation of the telephone incident, amounted to misconduct connected with the work. Disqualification under Section 207.044.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 45.25 – 45.30

MC 45.25 Attitude Toward Employer: Damage to Equipment or Materials.

Involves the claimant's willful or careless destruction of property, as reflecting a disregard for the employer's interest.

Appeal No. 84021-AT-61 (Affirmed by 8195-CA-61). A claimant who deliberately damaged the employer's presses was held guilty of misconduct and disqualification was assessed under Section 207.044. (Cross-referenced under MC 485.50.)

MC 45.30 Attitude Toward Employer: Disloyalty.

Discussion as to whether a claimant's actions reflect a disloyal attitude toward the employer. Includes cases involving claimant's disloyalty to the united states government.

Appeal No. 86-3455-10-022587. The claimant, a minority shareholder, was discharged after he threatened, he would leave the company to begin his own company if his demands to buy stock were not met. These threats were made to several directors. **HELD:** Discharged for misconduct connected with the work. The claimant's threats violated his duty of loyalty to the company.

Appeal No. 2708-CSUA-76. The claimant, a deputy sheriff, was discharged because, during an election for sheriff, he had supported a candidate other than the incumbent. The claimant's campaign activities had not interfered with his job performance. **HELD:** The claimant's support of a candidate other than the incumbent did not constitute misconduct connected with the work.

MC 45.35 – 45.40

MC 45.35 Attitude Toward Employer: Indifference.

Lack of interest or regard for employer's interests.

Appeal No. 3379-CA-75. The claimant was discharged because, in the opinion of her employer, she had manifested a poor attitude toward her job and a lack of initiative in her work. However, she had never refused any job assignment and had never been warned that her poor attitude and lack of initiative, if persisted in, would result in her discharge. **HELD :** Since the claimant had never refused any job assignment and had never been warned that her inadequacies, if continued, would lead to her discharge, the evidence in the record was deemed insufficient to support a conclusion that the claimant had been guilty of misconduct connected with the work.

MC 45.40 Attitude Toward Employer: Injury to Employer Through Relations with Patron.

Includes discourtesy to or neglect of a patron, or criticism of the employer's service or product to a customer.

Appeal No. 2914-CA-76. The claimant was discharged for habitual tardiness and for her rudeness to co-workers and to her employer's patients. The claimant had been previously warned about her tardiness. **HELD:** The claimant's habitual tardiness and her rudeness to patients and coworkers constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 657-CA-76. The claimant was discharged because, after a period of improvement following warnings, he again began excessively discussing his personal activities and using rude and uncomplimentary language while making service calls on the premises of the employer's customers. HELD: The temporary improvement in the claimant's behavior following his last warning demonstrated that he was capable of acceptable work. His failure to continue in this regard constituted misconduct connected with the work. Disqualification under Section 207.044.

MC 45.40(2) – 45.55

Appeal No. 3139-CA-75. The claimant was discharged because a check which he had given to one of the employer's customers (with whom the claimant normally did business) was dishonored by the bank. This happened because the claimant's estranged wife had, without the claimant's knowledge, drawn money out of his bank account. The claimant promised to make the check good but, through error, the matter was referred to the district attorney before he could do so. Although the claimant promptly sent a money order for the amount in question to the district attorney, as the latter had instructed him to do, he was discharged. **HELD:** Since the claimant had acted promptly and in good faith to correct the situation, he was found not to have been guilty of misconduct connected with the work.

MC 45.50 Attitude Toward Employer: Bringing Legal Action Against the Employer.

Includes cases where the discharge was caused because claimant brought legal action against his employer or abused a recognized legal right.

Appeal No. 3534-CA-76. The claimant was discharged because he had threatened to file a lawsuit to obtain a bonus to which he believed he was entitled. **HELD:** Since the claimant had reasonably believed that his complaint about the bonus was justified and had voiced his complaint through proper channels before threatening to sue, his actions did not constitute misconduct connected with the work.

MC 45.55 Attitude Toward Employer: Filing Suit for Worker's Compensation.

Involves cases where claimant's discharge was caused solely because he brought suit or filed a claim for worker's compensation.

Appeal No. 5660-AT-69 (Affirmed by 612-CA-69). A claimant's refusal to settle or abandon his claim for workmen's compensation does not constitute misconduct connected with the work.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 85.00

MC Connection with the Work.

MC 85.00 Connection with the Work.

Applies to cases which determine whether that act for which the claimant was discharged was connected with his work or in the course of his employment.

Appeal No. 87-20326-10-112587. The claimant was discharged for assaulting a co-worker during off duty hours and away from the employer's premises. The incident was the result of a dispute which had arisen at work four days earlier and had continued until the assault on the evening preceding the claimant's discharge. **HELD:** Although the assault had occurred away from the employer's premises, as it was the result of a dispute that arose at work and was carried on at work for several days, it was sufficiently connected with the work to warrant disqualification under Section 207.044 of the Act. (Cross-referenced under MC 390.20.)

Also see Appeal No. 87-20329-10-112887 under CH 10.10 and MS 70.00.

Appeal No. 86-9822-10-061187. The claimant was absent only one day because he had been jailed on a murder charge. However, as the murder received a great deal of publicity and retaining the claimant would have an adverse effect on business, the claimant was discharged. He was later convicted of voluntary manslaughter. **HELD:** Discharged for misconduct connected with the work. The claimant was guilty of an intentional violation of the law and, as the murder received a great deal of publicity, had the employer retained the claimant the business would have been adversely affected. (Also digested under MC 490.05.)

Also see Appeal No. 88-8751-10-063088 under MC 490.05.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 85.00(2)

Appeal No. 88277-AT-62 (Affirmed by 8676-CA-62 and TEC vs. Macias Cause No. 5632, El Paso Civ. App. 6-3-64). While on vacation, the claimant was arrested, charged, and subsequently convicted of unlawful possession of a narcotic drug. The employer discharged the claimant because it was the employer's policy that any employee arrested for violation of narcotics laws would be discharged. Disqualification assessed. The Court of Civil Appeals held that an employee who is discharged for a willful violation of a known rule of the employer cannot be paid unemployment insurance since this is a discharge for misconduct connected with the work. (Cross-referenced under MC 485.46.)

Appeal No. 938-CA-78. The employer, who was in the business of buying, feeding, and selling cattle, guaranteed a bank note for the claimant, at her request, so that the employer could buy and feed some cattle for her to enable her to earn some extra income. When payment on the note came due, the claimant refused to pay the employer what she owed him, for which refusal she was discharged. **HELD:** Although the business deal between the employer and the claimant was not a specific part of any of the claimant's office duties, it was definitely connected with the work in that the employer agreed to finance the claimant in the cattle feeding operation only because she had been a reliable employee and desired to make some extra money for herself through her connection with him. As the claimant gave no justifiable reason for her refusal to pay the employer what she owed him, her actions constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 85.00(3)

Appeal No. 1813-CA-77. The employer's policy provided that credit card accounts which were not promptly paid were "stopped" and notice was given to all employees not to accept further charges on a "stopped" account. If an employee accepted a charge on a card which had been "stopped", the employee was required to pay the employer the amount of the charge which the employee had accepted on the "stopped" account. The employee was then allowed to collect the charge on the "stopped" account from the customer who had made the charge. The claimant was discharged when a customer complained to the employer that the claimant had collected a $3.00 collection fee, in addition to the amount due, on an account for which the claimant had reimbursed the employer under the above-described policy. **HELD**: The employer, by its policy of selling returned credit card charges to its employees who originally accepted them, chose to exchange its right to control the collection of those charges in return for immediate collection from the employees of the sum due. Since the employer sold all of its rights in the account with respect to which the claimant eventually sought to collect a service charge, the claimant's collecting such a charge was not misconduct connected with the work.

Also see Appeal No. 87-09130-10-051387 under MC 485.46 in which it was held that a claimant's failure of a test for the presence of illegal drugs constituted misconduct connected with the work although the employer, prior to discharging the claimant, had not observed any evidence of impairment of the claimant's job performance.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 90.00

MC Conscientious Objection

MC 90.00 Conscientious Objection.

Includes cases where claimant was discharged for refusing to work under certain conditions because of conscientious objection on ethical or religious grounds.

Appeal No. MR 86-2479-10-020687. The claimant was discharged for abandonment of the job. He had requested a one-week leave of absence to attend an annual conference required by his religion, the Worldwide Church of God. The request was denied but the claimant took off anyway. **HELD**: Not discharged for misconduct connected with the work. The claimant was discharged while exercising religious rights guaranteed under the United States Constitution. Denial of unemployment benefits to the claimant would violate the Free Exercise Clause of the First Amendment.

Also see AA 90.00 and VL 90.00.

Appeal No. 872-CA-67. A claimant who is converted to a religious organization which holds Saturday as the Sabbath and thereafter refuses to work on Saturday because of his faith, and is discharged as a result, is not guilty of misconduct connected with the work.

Appeal No. 22817-AT-65 (Affirmed by 704-CA-65). A claimant who has not worked on Sundays and refuses to do so because of religious scruples, is not guilty of misconduct connected with the work.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 135.00 – 135.05

MC Discharge or Leaving

MC 135.00 Discharge or Leaving.

MC 135.05 Discharge or Leaving: General.

Includes cases containing (1) a general discussion of leaving or discharge, (2) points not covered by any other subline under line 135, or (3) points covered by three or more sublines.

Appeal No. 764254-2. The claimant worked part-time for the employer and ceased reporting to work as scheduled after he secured a full-time position with another employer. However, the claimant never informed the employer he was quitting and was subsequently terminated by the employer in accordance with their attendance policy for failing to report to work as scheduled. **HELD:** Section 207.045 of the Act, which provides that an individual who is partially unemployed and who resigns that employment to accept other employment that the individual reasonably believes will increase the individual's weekly wage is not disqualified for benefits, applies to situations in which an employee actually provides a resignation to his employer. Since the claimant merely abandoned his part-time job and did not advise the employer, he was quitting to take another full-time job, he did not resign. Accordingly, the claimant is not entitled to the protection of Section 207.045 of the Act. Rather, the claimant is disqualified under Section 207.044 of the Act for violating the employer's attendance policy.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 135.05(2)

Case No. 523756-2. The employer is a licensed staff leasing services company. It entered into a staff leasing services agreement with the client for which the claimant worked. The staff-leasing employer did not require employees to contact them at the end of an assignment for placement with another client. The client discharged the claimant for failing to comply with a reasonable request. In its response to the notice of initial claim from the TWC, the employer reported that the separation occurred when the claimant left the client location. **HELD**: A staff leasing agreement establishes a co-employer relationship between the client and the staff leasing company. Each entity retains the right to discharge a worker. If the staff leasing services company does not invoke the notice requirement in Section 207.045(i), then Section 207.045(i) is not applicable. In this case, by not invoking the notice issue in its response to the TWC, the staff-leasing employer essentially *ratified* the actions of its co-employer client in relation to the work separation. Therefore, the Commission will analyze the separation from the client in determining qualification for benefits and, if applicable, chargeback to the account of the staff leasing services company. (Also digested at VL 135.05)

Case No. 172562. The employer sold its business. The claimant was offered comparable work with the new owner but declined the offer. **HELD:** When a company purchases an employer's business and the new employer offers the claimant comparable employment, a rejection by the claimant of the new company's affirmative job offer will be considered a voluntary resignation without good cause connected with the work. (Also digested at VL 135.05.)

Appeals Policy and Precedent Manual

MISCONDUCT

MC 135.05(3)

Appeal No. 99-008549-10-090999. The claimant participated in a training program offered by the employer, earning an hourly rate while learning job skills. The claimant entered into the program with the knowledge that it was a work skills training program, designed to provide her with the skills needed to gain productive work. Separation occurred when she successfully completed the program. **HELD:** The Commission found that the claimant's separation from the skills training program was analogous to the circumstances in work study participant cases. The claimant's training was structured to continue only for the length of the work skills training program. As in the cases of work study participants, the work was not structured to continue beyond the end of her program participant status. When the program ended, the claimant's work ended. The claimant was aware when she entered into the program that this would be the case. Accordingly, the Commission held that the claimant voluntarily left the last work without good cause connected with the work. Cross referenced at VL135.05 , VL 495.00 and MC 135.05

Appeal No. 87-7940-10-051187. The claimant was discharged during his vacation. He had told the employer he would be interviewing for another job during his paid vacation. When the claimant called to check if he could return to work, he was told that his resignation had already been accepted. The claimant was not hired for the other job. **HELD:** No disqualification under Section 207.044. The claimant did not resign before leaving for his vacation. Since the employer's early discharge of the claimant was based on the unfounded assumption that the claimant meant to quit when he told his employer that he would be interviewing for another job during his vacation, the claimant was discharged for reasons other than misconduct connected with the work.

MC 135.05(4)

Appeal No. 87-13371-10-073187. The claimant, who felt management wanted to replace him, told his supervisor that if the owner wanted him to leave, he would leave at the end of that week. Later, he told the secretary he would be willing to stay another three to four weeks to see if the conflicts could be resolved. On Friday of that week, the claimant's supervisor advised him he was considered to have quite effective that day. **HELD:** The claimant never made an unequivocal expression of an intention to resign. The employer is the party who made the actual decision that the employment relationship would, in fact, be severed. Thus, the claimant was discharged and did not voluntarily quit. As no evidence of misconduct on the claimant's part was presented, no disqualification under Section 207.044.

Appeal No. 1069-CA-76. The claimant, a student, told the employer that he was going to have to quit work. The employer then offered the claimant part-time work, which the claimant accepted. He worked on this part time basis for about two months, when he was told that he could not justify a part-time employee. **HELD:** The claimant had not quit but had been discharged and for reasons other than misconduct connected with the work. The present case was distinguished from those situations in which a claimant's hours of work are, at his request, reduced from full-time to part-time. In the present case, the claimant's original intention was to completely give up working; it was at the employer's insistence that he had been allowed to continue working on a part-time basis, on which basis he continued working for about two months until he was discharged.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 135.05(5) – 135.15

Appeal No. 1259-CA-67. A former employer asked the claimant to work on a temporary basis for three weeks. The claimant lived in Dallas and the job was in Dallas, but the employer had the claimant paid by Manpower of Fort Worth as the claimant's employer. The claimant did not report to Manpower for further assignment upon being laid off from his temporary job. **HELD:** The Commission has consistently held that a person who secures work through the offices of an organization which provides employers with temporary employees on a contract basis must inquire whether such organization has other work to which he may be assigned in order to avoid a disqualification under Section 207.045 of the Act. However, no disqualification was assessed in this case because it would have been unreasonable to expect the claimant, a Dallas resident, to be available for work in Fort Worth.

Also see cases digested under VL 135.05, dealing specifically with employees of temporary help services.

Also see Appeal No. 983-CA-72 and Appeal No. 86-2055-10-012187 under VL 495.00.

MC 135.15 Discharge or Leaving: Constructive Discharge.

Where the claimant actually left employment, but under conditions that raise a question as to whether he was constructively discharged, as when his job was abolished, or when there was no job of the description for which he was hired, or when he was ordered to work under conditions that were not in his contract of employment.

MC 135.15(2)

Appeal No. 967-CA-77. The claimant was an officer as well as an employee of the employer corporation. On the advice of his attorney, he resigned his corporate office in order to protect himself from potential personal liability for some questionable actions which the corporation had taken. The employer considered the claimant as having resigned from his employment altogether and not merely from his corporate office. When the claimant protested to the employer that he had intended only to resign from his corporate office, he was discharged. **HELD:** Since the claimant had never exhibited any desire to resign from his employment, but only a desire to resign from his corporate office, and since his employment in general was independent and separable from his position as a corporate officer, it was concluded that the claimant had not voluntarily resigned but, rather, had been discharged and for reasons other than misconduct connected with the work.

Appeal No. 735-CA-67. The claimant, an office manager, was assigned the additional position of secretary-treasurer of the employer-corporation. She worked in this dual capacity for several months until she requested of the employer's president that she be relieved of the duties of secretary-treasurer because she felt unqualified therefor and feared that she might be held liable, in part, for the corporation's obligations incurred in the face of its declining financial conditions. He informed her that she would not be needed at all if she would not continue working as secretary-treasurer. The claimant resigned from the latter position immediately and the position of officer manager, effective six weeks thereafter. **HELD:** Although the claimant subsequently submitted a resignation, the employer had, in effect, served notice of discharge on her when its president refused to grant her request to continue working as office manager only. Accordingly, the claimant's separation was brought about by the employer's action and her separation was thus considered under Section 207.044. Since a corporate officer may be held liable for corporate obligations in a variety of situations, the claimant's unwillingness to serve as such was reasonable, considering the

employer's precarious financial conditions, and did not constitute misconduct connected with the work.

MC 135.15(3)

Appeal No. 71906-AT-60 (Affirmed by 7092-CA-60). In the shrimp industry it is the custom for a new captain to bring his own crew. Therefore, when the claimant's captain quit on the completion of a trip, the claimant was laid off by the employer and a new captain was hired who had his own crew. The claimant's involuntary separation was not due to any misconduct connected with the work on his part.

Appeal No. 6844-CA-59. While the claimant was on vacation, her employer leased the business and the claimant, and the lessee could not reach agreement on terms and the claimant did not work further. **HELD**: The separation occurred when the employer leased the business, in effect terminating the claimant's job. No disqualification under Section 207.044.

MC 135.25 Discharge or Leaving: Discharge Before Effective Date of Resignation.

Where claimant, upon giving notice that he intended to resign as of a certain date, was advised by the employer that he need not work until that date.

At its meetings on March 9 and March 23, 1988, the Commissioners adopted the following policy to apply to instances in which one party gives the other party notice of impending separation and the other party takes the initiative of terminating the employment relationship earlier:

1. The Commission recognized an expectation generally existing in the workplace that a party intending to terminate the employment relationship will customarily give two weeks' notice to the other party.

MC 135.25(2)

2. During such two-week period, early termination of the employment relationship by the party receiving such notice will not change the nature of separation. The party first initiating the separation will continue to bear the burden of persuasion as to whether the separation was justified; that is, in the case of an involuntary separation, whether the claimant was discharged for misconduct connected with the work or, in the case of a voluntary separation, whether the claimant voluntarily left work without good cause connected with the work.
3. When more than two weeks' notice of impending separation is given and the party receiving the notice initiates a separation prior to the intended effective date, the nature of the separation, and thus the allocation of the burden of persuasion, will depend on the general circumstances in the case.

Appeal No. 90-04461-10-041790. The claimant, an alarm monitor for a security company, gave more than seven weeks' notice of his intent to resign due to a personality conflict with a fellow employee and his supervisor's allegedly unfair treatment of the claimant in regard to this conflict. The claimant's letter of resignation contained some obscene language. The employer accepted the claimant's resignation effective immediately. **HELD:** The employer's early effectuation of the claimant's resignation constituted, in effect, a discharge. As the tone of the claimant's letter was insubordinate and as the sensitive nature of the claimant's work should have made him realize that the employer would not allow him to continue working

after receipt of the claimant's letter, the claimant's actions constituted misconduct connected with the work under Section 207.044 of the Act.

MC 135.25(3)

Appeal No. 88-4246-10-033088. The claimant was discharged because she refused to repress some shirts after quality control had informed her that they needed to be refinished. Although the claimant's main job was to press pants, she knew how to press shirts and had done so before. She refused to refinish the shirts because she had done them to the best of her ability and did not believe she would improve the shirts by repressing them. After it notified the claimant of her discharge, the employer kept the claimant on for another five days so that it could hire a replacement. **HELD:** The Commission did not agree with the Appeal Tribunal's conclusions that the employer's keeping the claimant on an extra five days showed that the discharge was for the employer's convenience. Rather, it concluded that five days after the misconduct was a reasonable amount of time for the employer to keep the claimant working while it looked for a replacement. The claimant's refusal to refinish the shirts constituted mismanagement of her position within the meaning of Section 201.012 of the Act and thus misconduct connected with the work. Disqualification under Section 207.044. (Cross-referenced under MC 385.00.)

Appeal No. 87-02149-10-021288. On October 1, the claimant gave the employer notice of her intent to resign at the end of December, to enter other employment. She was requested by the employer, and she agreed, to refrain from discussing with her co-workers her intention to resign. The employer discharged the claimant after learning that she had discussed her resignation with a co-worker. **HELD:** The claimant was discharged for work-connected misconduct because her betrayal of the employer's confidence and failure to abide by her agreement constituted a mismanagement of a position of employment.

MC 135.25(4)

Appeal No. 87-00697-10-011488. On November 2, the claimant gave notice of his intent to quit his job in March of the following year. He further advised the employer that, during that time period, he intended to work under a decreased workload and would train only one particular individual to replace him. The employer accepted his resignation effective immediately. **HELD:** Recently adopted Commission policy provides that where a party gives in excess of two weeks' notice of separation and that notice is accepted immediately, the burden of persuasion will normally shift to the party accepting the notice early. As the employer accepted the claimant's notice early here, the separation will be considered a discharge. The burden of establishing that the claimant was discharged for work-connected misconduct was found to have been met in that the claimant's actions of giving the employer an ultimatum that he would not perform to his usual standard during his notice period amounted to intentional malfeasance, thus constituting misconduct connected with the work on the claimant's part.

Appeal No. 87-00208-10-010488. The claimant was given two weeks' notice of impending termination by the manager who in the past had consistently and unfairly criticized him. The claimant left immediately because he was upset. **HELD**: The claimant was effectively discharged when given two weeks' notice of termination. As there was no evidence of any work-connected misconduct on the claimant's part, he was awarded benefits without disqualification under Section 207.044 of the Act even though he could have continued working two more weeks.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 135.25(5)

Appeal No. 86-20059-10-112387. The claimant was separated from this employer when he gave notice of his intent to resign. On December 11, the claimant informed the employer that he would be leaving on January 30 as he had been called to active military service and was to report for such duty on February 14. The claimant was allowed to continue working until December 15, when he was removed from the schedule. **HELD:** Commission policy provides that where a party gives notice in excess of two weeks and such notice is accepted before the intended effective date, the burden of proof will usually shift to the party accepting the notice early. Since the claimant in this case gave the employer approximately six weeks' notice, which was accepted early, the separation becomes a discharge. The claimant was terminated simply because he gave the employer notice of intent to quit in the future. Thus, he was discharged for reasons other than misconduct connected with the work.

Also see cases under MC 135.35, VL 135.25 and VL 135.35.

Appeal No. 96-001500-10-020697. After several poor performance reviews, the claimant gave the employer notice of his intent to resign voluntarily three weeks hence. The employer elected to accept the claimant’s resignation immediately. Although the claimant performed no further services for the company, the employer paid the claimant his usual salary through the intended resignation date. **HELD:** A separation does not change from a quit to a discharge simply because the employer decides to accept the resignation immediately. Here, the employer has compensated the claimant for not working out the notice period even if longer than the customary two weeks by paying him through his intended resignation date. In this case, the claimant did not have good cause to resign voluntarily after poor performance reviews. (Also digested at VL 135.25).

MC 135.30

MC 135.30 Discharge or Leaving: Involuntary Separation (Layoff).

Discussions as to whether the separation was voluntary.

Appeal No. 87-17297-10-092987. Due to a business slowdown, the employer offered all employees a severance package in order to reduce the work force. The claimant was required to sign the acceptance form by a certain date or risk being laid off and losing all benefits. The claimant signed the agreement prior to the imposed deadline. **HELD:** The claimant did not have the option of retaining her job because layoffs were imminent. The claimant would have lost all her benefits if she refused the package. Therefore, her separation constituted an involuntary layoff. No disqualification under Section 207.044.

Appeal No. 86-00326-10-121786. Due to technological changes, the claimant's position as plant assigner was eliminated completely. Layoffs based on seniority were scheduled to go into effect. The employer offered an incentive voluntary separation plan which opened up some positions for less senior employees who were going to be laid off. Despite this action, the claimant was still subject to layoff due to insufficient seniority. The claimant then signed up for the "termination" package offered to workers displaced due to technological changes as per union contract. The claimant was notified that she would be involved in the layoff. Although there was some temporary work available, none was offered to the claimant. **HELD:** No disqualification under Section 207.044. The claimant was terminated because her position was eliminated due to technological changes. She had insufficient seniority to be placed in other equal or similar categories. Payments made to her as a result of the separation were the contractual "termination" payments. Although some workers may have had the option of continued temporary work, the claimant was not offered such work. (Also see Appeal No. 86-14984-10-11886, digested under VL 495.00, involving similar facts except that the claimant had sufficient seniority to be protected from layoff. There, the Commission held the claimant's separation to have been voluntary.) (Also digested under VL 135.05 and cross-referenced under VL 495.00.)

MC 135.30(2)

Appeal No. 87-28015-1-0588 (Affirmed by 87-6732-10-052788). As provided for in the controlling collective bargaining agreement, the claimant volunteered to be laid off in place of a less senior employee who had been scheduled for layoff. Further work had been available to the claimant had he not taken this action. **HELD:** As continued work had been available to the claimant had he not volunteered to be laid off in place of a less senior employee, his separation was voluntary and without good cause connected with the work. Disqualification under Section 207.045.

Also see cases under VL 495.00.

Appeal No. 88-6395-10-051988 In September, the employer laid off a number of employees and, at that time, the claimant asked to be laid off also as she wanted to return to her family in Louisiana. Her supervisor told her she would be laid off the next time the employer instituted a layoff. On the following February 10th, the claimant's supervisor asked the claimant if she still wished to be included in the employer's next layoff. As she responded affirmatively, her supervisor told her she would be laid off on February 26th. The claimant canceled her apartment lease and moved all of her personal belongings to Louisiana. On February 22nd, 25th and 26th, the claimant's supervisor repeatedly assured the claimant that she would be laid off on February 26th. However, on that date, a different supervisor informed the claimant she could not be laid off and the employer's controller as well as its personnel director informed her that her supervisor did not have the authority to tell the claimant that she would be laid off. At that point, the claimant left work and relocated to Louisiana. **HELD:** The claimant did not have good cause connected with the work for leaving by relying on her supervisor's assurances that she would be laid off and making plans to move out of state based on those assurances. Rather, as the claimant had twice asked to be included in a layoff that presumably would not otherwise have included her, her reason for leaving did not constitute good cause connected with the work.

Disqualification under Section 207.045.

MC 135.30(3)

Appeal No. 2653-CA-77 The claimant filed an initial claim during a period when he was off work due to compressor breakdown. After he filed his initial claim, the claimant was told that he could report back to work several days thereafter but he failed to do so **HELD:** The claimant was unemployed at the time he filed his initial claim because he had been laid off by the employer due to a lack of work at that particular time and not for any misconduct connected with the work on his part.

Appeal No. 1056-CA-77. The claimant had worked for several months as an employee, presenting lectures. This arrangement was terminated because it was making no money for the employer and, during the claimant's last month of work for the employer, he worked as an independent contractor on a one-month contract, preparing taped lectures Upon the completion of the contract, no further work was available other than work again as a lecturer. However, this would have been as an independent contractor, not as an employee, and the claimant declined the offer. **HELD:** The claimant was last separated prior to his initial claim when he completed the one-month work as an independent contractor. This work was correctly named as his last work on his initial claim and his right to benefits was determined by reference to the reason for his separation from the independent contracting work. Since the claimant was separated when the work was completed and no further work was available to him, he was involuntarily separated for reasons other than misconduct connected with the work.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 135.30(4)

Appeal No. 913-CA-77. The claimant's attendance record had been unsatisfactory, but she was laid off due to a lack of materials for her to work on. **HELD:** Discharged for reasons other than misconduct connected with the work.

Appeal No. 508-CUCX-77. The claimant performed services for a chemical company. He was, without his knowledge, placed by the chemical company on the payroll of a temporary employment service The claimant was laid off by the chemical company due to lack of work and did not apply to the temporary employment service for another assignment because he did not know that it was his employer. **HELD:** The claimant was laid off due to lack of work when the chemical company ran out of work for him to do. As the claimant was not aware that he was on the payroll of the temporary help service, he was not obligated to report to the temporary help service for a further job assignment. No disqualification under Section 5(a) or Section 5(b) (now codified as Section 207.045 and Section 207.44, respectively).

Also see cases digested under VL 135.05, dealing specifically with employees of temporary help services.

Appeal No. 3197-CA-76. On a Friday, the claimant, a nursing home administrator, was given the next two days off (which were regularly scheduled workdays) and was told by the employer's owner that her work was satisfactory but that he would contact her on the following Monday about her continued employment. She was asked to surrender her keys and advised to remove her personal belongings. She was not contacted on the following Monday or thereafter and, on Wednesday, received a check made out on the previous Friday, paying her wages through that date. The claimant assumed she had been discharged. **HELD:** Since the claimant was not contacted by the owner and then was sent a check paying her through the last day she worked, she did not voluntarily leave her last work; rather, she was discharged and for reasons other than misconduct connected with the work.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 135.30(5) – 135.35

Appeal No. 414-CA-76. The claimant was laid off from her last work when the client for which she worked did not renew its janitorial service contract with her employer. **HELD:** The claimant was laid off due to the expiration of the employer's contract and not because of any misconduct connected with the work on her part.

Also see Appeal No. 86-02537-10-020587 under MS 510.00 and cases digested under VL 495.00.

MC 135.35 Discharge or Leaving: Leaving in Anticipation of Discharge.

Where the claimant left in anticipation of a discharge or resigned when told he would have his choice of resigning or being discharged.

Appeal No. 87-10432-10-061787. On her last day of work, the claimant was told by the assistant manager that he had found out she was to be fired that day by the district manager. The claimant left because she was upset and wanted to be spared further humiliation. In fact, the district manager did intend to discharge the claimant for her low sales. The claimant had consistently had lower sales than most of her co-workers, but she had not previously been warned that her job was in jeopardy. **HELD:** The claimant was actually separated from her job by her employer when she was told by the assistant manager, a person in authority, that she was to be discharged by the district manager. Thus, it was not unreasonable for the claimant to conclude that she was discharged. As there was no showing of misconduct connected with the work on the claimant's part, no disqualification under Section 207.044.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 135.35(2) – 135.45

Appeal No. 2028-CA-77. A claimant who resigns after having been given a choice of resigning or being discharged, will be treated, for the purposes of the law of unemployment insurance, as having been discharged and the question of whether or not the claimant should be disqualified, due to the circumstances surrounding her separation, will be considered under Section 207.044 of the Act.

Also see MC 135.25 and VL 135.25.

MC 135.45 Discharge or Leaving: Suspension for Misconduct.

Appeal No. 273-CA-77. The claimant, a convenience store manager, was suspended for three days because she refused to take a polygraph examination requested of her because of shortages occurring at her store. All employees were told when hired that they would be required to take a polygraph examination in the event of shortages and the claimant had submitted to them in the past. Because a re-inventory confirmed some shortages, upon the conclusion of her suspension, the claimant was offered a position as a clerk at another store with a reduction in salary of approximately 30 percent. The claimant declined the offer. **HELD:** The claimant actually terminated at the time she was placed on suspension as she ceased performing services or receiving wages and was, therefore, unemployed. Her separation was caused by her refusal to take a polygraph examination which, since the claimant had been aware of the employer's policy requiring submission to such examinations and had previously acceded to it, constituted misconduct connected with the work.

Disqualification under Section 207.044 (Also digested under TPU 80.05 and cross-referenced under VL 138.00.)

Appeals Policy and Precedent Manual

MISCONDUCT

MC 135.45(2)

Appeal No. 96-011228-10-100196. The employer reprimanded the claimant for failing to call in when she knew she would be coming in late. When the employer reviewed the claimant's personnel file, he discovered that she had been reprimanded two weeks earlier for being late. The employer dismissed the claimant at the beginning of her shift the next day. The claimant appealed. **HELD:** An employer may change its decision regarding the severity of discipline used even up to dismissal as long as this is done within a reasonable time after the initial decision.

Appeal No. 96-012206-10-102596. The claimant was suspended for three days, without pay, as a result of unexcused absences. At the end of the suspension, the claimant informed her supervisor that she was quitting. She quit because she believed she had not violated company policy. **HELD:** The separation occurred when the claimant quit and not when she was suspended. Thus, the claimant was disqualified for quitting without good cause connected with the work. When an individual receives a suspension for three days or less, and the individual chooses not to return after the end of the suspension, the case generally will be decided as a voluntary separation. A disqualification under Section 207.045 should be imposed unless it is shown that the employer did not act in good faith in imposing the suspension or that the manner in which it was imposed was extremely egregious.

Please cross reference at VL 135.05.

MC 135.50 Discharge or Leaving: After Indefinite Layoff.

Where claimant tenders resignation while on indefinite layoff.

Todd Shipyards Corp. vs. TEC, 245 S.W. 2d 371 (Court of Civil Appeals, Galveston-1951, Ref. n.r.e) A claimant who is laid off for an indefinite period, without pay, but retains seniority rights and certain fringe benefits, but submits his resignation while on layoff is held to have been separated when placed in layoff status as the employer-employee relationship ceased on that date.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 140.00 – 140.05

MC Dishonesty

MC 140.00 Dishonesty.

MC 140.05 Dishonesty: General.

Includes cases containing (1) a general discussion of dishonesty, (2) points not covered by any other subline under line 140, or (3) points covered by three or more sublines.

Appeal No. 87-5452-10-033187. The claimant was discharged for actions considered to be dishonest and in violation of a company rule prohibiting dishonesty. The claimant requested and received $1300 from the employer's savings plan. He received a second check for $1300 by mistake the following month. He kept the second check until the employer discovered the error two months later. The employer discharged him for failing to report the duplicate payment. **HELD:** Discharged for misconduct connected with the work. The claimant was under a duty to report the second payment and his failure to do so violated the employer's rule prohibiting dishonesty.

Appeal No. 87-02596-10-021888. The claimant, a telephone company service representative, was discharged for having prepared a continuous service verification letter for a customer, knowing the letter to be false. The claimant knew that the customer intended to use the letter in applying for the amnesty program administered by the U.S. Immigration and Naturalization Service. **HELD:** As the claimant prepared the continuous service verification letter knowing it to be false, the claimant's action constituted mismanagement of her position of employment and thereby was misconduct connected with the work.

Also see cases digested under MC 485.30.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 140.05(2) – 140.10

Appeal No. 2914-AT-69 (Affirmed by 343-CA-69). A claimant who willfully misrepresents facts to his employer for the purpose of obtaining reimbursement of funds, which reimbursement is not due him, is guilty of misconduct warranting disqualification under Section 207.044.

Appeal No. 5599-AT-68 (Affirmed by 677-CA-68). A claimant who uses his position with the employer in order to obtain for himself certain fringe benefits from the employer's customers, is guilty of misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 53836-AT-56 (Affirmed by 5681-CA-56) A claimant who is discharged because she asked the employer what he meant, after he made insinuating remarks about her honesty, is not guilty of misconduct connected with the work.

MC 140.10 Dishonesty: Aiding and Abetting.

Where a claimant allowed his employer to be defrauded by others, by helping or permitting acts of dishonesty to be committed without informing his employer or trying to prevent them.

Appeal No. 2327-CA-77. The claimant, an experienced room service waiter, was discharged for having knowingly cooperated with a guest of the employer hotel, in defrauding the hotel of the sum of $24.00 by altering records of charges. **HELD:** The claimant's active participation in a scheme to defraud his employer constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 3685-CA-76. The claimant was discharged for having provided food and beverages to certain patrons of the snack bar where she worked, without having recorded the purchases on her cash register, contrary to company policy. **HELD:** Discharged for misconduct connected with the work. Disqualification under Section 207.044.

MC 140.10(2) 140.20

Appeal No. 2957-CA-76. The claimant was discharged for having permitted a customer to leave the store where the claimant worked without the customer paying for certain merchandise. The claimant's motive in permitting the customer to leave with the merchandise was to test the honesty of another employee. However, she had not conferred with management as to her plan nor had it been her duty to test the honesty of other employees. **HELD:** The claimant's actions, in the absence of any consultation with management about her intention to determine the honesty of the other employee, constituted misconduct connected with the work.

MC 140.15 Dishonesty: Cash Shortage or Misappropriation.

Where cash was converted or misappropriated.

Appeal No. 2612-CA-77. The claimant was discharged for having stolen $155 from the employer. **HELD:** Discharged for misconduct connected with the work Disqualification under Section 207.044.

MC 140.20 Dishonesty: Falsehood.

Where claimant gave a false reason for an absence, or made false statements about employer, fellow employees or amount of work done.

Appeal No. 2454-CA-77. The claimant was discharged, after verbal and written warnings, because of her attendance record. She was absent a total of twenty-one days during a four-month period. Her last absence, allegedly for medical reasons, was supported by a medical certificate which was not regular on its face, in that it did not appear to have been issued by a physician and the name of the hospital referred to in the certificate was misspelled. The authenticity of the certificate could not be verified by the employer as the claimant could not give the doctor's name or telephone number. **HELD:** The claimant's actions constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 140.20(2)

Appeal No. 1005-CA-77. The claimant was discharged for having stated that he had been hospitalized for the entire four months that he was off work due to injury when, in fact, he had not been hospitalized for the entire time. **HELD:** The claimant's misrepresentation constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 80-CA-77. On a scheduled workday, the claimant notified the employer that she would not be in because her child was ill. The claimant absented herself from work and was discharged She falsely notified the employer that she had taken the child to a doctor and that the latter had advised her to stay home with the child. In fact, the claimant attended a fair while the child's grandparents cared for the child. **HELD:** Discharged for misconduct connected with the work as the claimant was absent from work without a valid excuse when she was needed by the employer. Disqualification under Section 207.04 (Also digested under MC 15.20.)

Appeal No. 2030-CA-76. The claimant was discharged because, in an attempt to increase his pay, he had reported that he was on jury duty during a period of time after he had actually been released from jury duty. **HELD:** The claimant's misrepresentation of his whereabouts, in an effort to increase his wages, constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 15483-AT-64 (Affirmed by 731-CA-64). The claimant witnessed a fight on the job but denied any knowledge of it to the employer. She was discharged because the employer had obtained proof, she was a witness. **HELD:** The claimant's telling the employer an untruth and being unwilling to cooperate with him in his efforts to learn the facts constituted misconduct connected with the work. Disqualification under Section 207.044.

MC 140.20(2) 140.25

Appeal No. 7581-CA-61. The claimant misrepresented to the employer that he had cut his hand in the performance of his duties. As a result of the misrepresentation, the claimant's medical expenses were paid by the company and he was compensated for lost time. When the employer learned the truth, the claimant was discharged. **HELD:** The claimant's actions constituted misconduct connected with the work and a disqualification under Section 207.044 was assessed.

MC 140.25 Dishonesty: Falsification of Record

Where claimant has given false information on application for work or on records in the course of his employment or has destroyed such records.

Case No. 747872-2. The claimant was fired for falsifying his employment application. The claimant checked "no" to a question regarding criminal "convictions" within the last seven (7) years. The employment application did not inquire as to whether the claimant had ever pled guilty or no contest to a criminal charge. Some four (4) years earlier, the claimant had been charged with, and pled guilty to, assault with bodily injury, a Class A misdemeanor. The claimant received deferred adjudication for the offense which consisted of two years' probation and a fine. The claimant successfully completed probation and paid the required fine. Held: Not discharged for misconduct connected with the work. The claimant did not falsify his employment application. In light of the claimant's successful completion of the conditions of his probation, the claimant's response to the conviction question was, according to state law, correct. Specifically, the Texas Code of Criminal Procedure [**Vernon's Ann.C.C.P. Art. 42.12§(5)(a) & (c)]** provides, in summary and in part, that "…the judge may, after receiving a plea of guilty or plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on community supervision. "Upon satisfying the terms of probation ", if the judge has not proceeded to adjudication of guilt, the judge shall dismiss the proceedings against the defendant and discharge him.

MC 145.25(2)

Appeal No. 87-60996-1-0687 (Affirmed by 87-11745-10-070987). When hired for a position as security guard for a security company, the claimant certified on his employment application that he had never been arrested for any offense other than a minor traffic violation. Five months later, the employer learned that the claimant had twice previously been arrested and that he had pleaded guilty to aggravated assault and paid a fine. The claimant was discharged. **HELD:** An employer should be entitled to expect employees to fill out employment applications in a truthful manner. The claimant's failure to do so constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 86-15444-10-112586. The claimant was discharged because the employer found he failed to list a misdemeanor conviction, driving while intoxicated, on a security clearance application. Although the claimant did list a previous felony conviction, he failed to list the misdemeanor because he mistakenly believed that no conviction had been entered on his record. **HELD:** Not discharged for misconduct connected with the work. Because the claimant listed a more serious conviction on the application, it does not appear that the claimant was attempting to hide his criminal record but, rather, failed to list it because of his misunderstanding of the legal disposition of the case. The employer was put on notice that the claimant had such a record which was available to the employer for closer inspection.

Appeal No. 1426-CA-77. The claimant was discharged for having failed to keep his promise to do work for which he had, by his own actions, improperly obtained his pay before doing the work. **HELD:** The claimant's failure to do the work which he had agreed to do in order to make restitution to the employer for payroll funds that he had obtained improperly constituted misconduct connected with the work Disqualification under Section 207.044.

MC 140.25(3)

Appeal No. 834-CA-77. The claimant was discharged for having falsified her employment application and her pre-employment medical history questionnaire, in that she failed to reveal in either document, although asked in both, that she had had a disabling back injury. **HELD:** The claimant's falsification of her employment application and her medical history questionnaire constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 95-014287-10-101895. In August 1991 the claimant completed his work application for the employer and, in response to a specific question on the application, he indicated that he had not previously worked for the employer. In May 1995, the employer discovered that, in fact, the claimant had previously worked for the employer in 1982 and had been discharged for attendance violations. The employer's application had expressly indicated that giving false information on the application is grounds for immediate discharge. The claimant was discharged. **HELD:** Falsification by misrepresentation or omission of material information on an employment application, generally speaking, constitutes misconduct connected with the work, no matter when such fact is discovered. Consequently, the precedent decision relied upon by the Appeal Tribunal.

Appeal No. 127-CA-77 (holding that it is not reasonable to hold that false information which was given almost two years before the claimant's discharge should constitute work-connected misconduct) is specifically overruled and deleted from the precedent manual The holding in the present case is adopted as a precedent. Disqualification under Section 207.044 of the Act.

MC 140.25(4)

Appeal No. 87-10312-10-061687. The claimant was discharged when the employer learned that the claimant had omitted one previous employer from her work history on her application form submitted two years earlier. The claimant omitted this prior employer because she worked there a week or less and received no wages. For those reasons, she did not believe she had "worked" for the prior employer. **HELD:** Because of the brevity of the previous employment and the lack of wages, it was reasonable for the claimant to believe that the prior employment had no bearing on her employment application. Furthermore, the claimant had performed well for the employer for two years after filing the application in question. The Commission held that the claimant's omission of one prior employer from her application form submitted two years earlier did not constitute misconduct connected with the work.

Appeal No. 3276-CA-76. The claimant was discharged because he had placed his supervisor's initials on his (the claimant's) expense account on one occasion and, on four other occasions, had had some other person or persons place the supervisor's initials on his expense accounts. The claimant had known that his supervisor was supposed to approve such expense accounts. **HELD:** Although there was nothing in the record to establish that the claimant had intended to obtain any money other than what was justly due him by way of reimbursement, his actions clearly violated the employer's known policy and constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 3570-AT-69 (Affirmed by 432-CA-69). A claimant's failure to report his previous arrests on his application for work, because he was afraid, he would not be hired if he listed them, constituted misconduct connected with the work. Disqualification under Section 207.044.

MC 140.25(5)

Appeal No. 315-CA-78 On the Monday following the Thanksgiving Holiday, the claimant turned in a record indicating that he had made outside sales on that date. In fact, the claimant had been home sick that day. He falsified the record because company policy provided that the Thursday and Friday of the Thanksgiving weekend would be paid days off only if the worker actually worked the following Monday. The reason given by the claimant for his deception was his difficult financial situation caused by his wife's long and expensive hospitalization. For this reason, the claimant could not do without the three days' pay he would have lost telling the truth. Prior to the deception, the claimant had been considered a good employee and had received only one minor reprimand during his twenty months' term of employment. **HELD:** The claimant's attempting, by lying to the employer, to gain three days' pay to which he was not entitled constituted misconduct connected with the work. Disqualification under Section 207.044.

Also see Appeal No. 86-14236-10-110586, more fully digested under MC 45.15, in which the Commission held guilty of misconduct connected with the work a claimant who had been suspected of theft of the employer's merchandise for resale, a suspicion which the employer was unable to definitely validate There, the basis for the Commission's decision was the fact that the claimant's actions constituted competition with the employer and was potentially damaging to the employer's relations with its customers.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 140.30

MC 140.30 Dishonesty: Property of Employer, Conversion of.

Taking of employer's property and putting to employee's own use.

Case No. 302389. The employer discovered that the claimant, a custodian, had a trash bag of items that were found double bagged on her cart. When the claimant was sent home so the incident could be further investigated, the claimant wanted to take the items Her request was denied. The investigation determined that these items were not trash or lost but were taken out of the classrooms without authorization. The claimant was discharged for possession and control of the property of others, without authorization. **HELD:** Although claimant denied during the hearing that she had stolen the items, the employer provided a witness with firsthand testimony who indicated that he discovered the items double bagged on claimant’s cart and when sent home, claimant wanted to take these items with her. The Commission concluded that this evidence was sufficient to establish that the claimant had possession and control of the items with intent to remove them from the school’s premises, regardless of whether she ultimately succeeded in removing the items from the premises. The Commission concluded that the employer had presented sufficient evidence to overcome the claimant’s firsthand denial, and therefore, the claimant was discharged for intentional wrongdoing and thus misconduct connected with the work. (Also digested at MC 190.15).

MC 140.30(2)

Appeal No. 87-20113-10-112487. The employer had allowed the claimant and other employees to take home items from the store as long as the information was kept in a log. The employer stopped the practice and directed that all items be returned. The claimant removed one page from the log which listed stereo equipment he had at his house. He was discharged because it appeared, he was attempting to misappropriate merchandise by the removal of information. **HELD:** The claimant's removal of the page from the log without the employer's knowledge was an act of poor judgment, at the least, and reflective of an intent to misappropriate merchandise. The claimant's action constituted misconduct connected with the work.

Appeal No. 1879-CA-76. The claimant was discharged when she was found to be attempting to leave the employer's premises with a handbag made by a co-worker with the employer's materials and valued at $2.00. The claimant had not secured permission to remove the handbag. **HELD:** Discharged for misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 1435-CA-76. The claimant was discharged for attempting to take from the club for which he worked food valued at $5.00 and $10.00, for which he had not paid. **HELD:** Discharged for misconduct connected with the work. Disqualification under Section 207.044.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 140.30(3) – 140.32

Appeal No. 921-CA-77. The claimant was discharged for unauthorized removal of company property from the employer's premises. He had unintentionally removed the employer's gauges, thinking them to be his own, and had left behind a set of his own gauges which he had brought to the employer's premises to test for accuracy. **HELD:** Since the claimant's unauthorized removal of the employer's gauges was unintentional and there was no evidence in the record to support a conclusion that he violated a company rule by using company time to check his personal gauges, no misconduct connected with the work on the claimant's part was established.

Appeal No. 627-CA-77. The claimant was discharged because he was found in unauthorized possession of the employer's goods. He was indicted, pleaded guilty and was sentenced to a term of imprisonment. **HELD:** Discharged for misconduct connected with the work. Disqualification under Section 207.044.

Also see Appeal No. 86-14236-10-110586 under MC 45.15.

MC 140.32 Dishonesty: Services of Employer, Unauthorized Us of.

Using facilities or services, in violation of company rule, without permission or knowledge of employer.

Appeal No. 87-689-10-011188. The claimant, a telephone operator, was discharged for placing a non-emergency long distance telephone call from her home at no charge, without the employer's knowledge or permission. At the time she placed the call, she was suffering from depression and anxiety, for which she was under a doctor's care. The claimant submitted medical records indicating that she had poor decision-making ability characterized by confusion and impulsive behavior. The claimant knew, however, that it was improper for her to place such a call.

MC 140.32(2)

HELD: Discharged for misconduct connected with the work. The claimant's placing of a non-emergency no charge long distance call from her home, without the employer's permission, constituted misconduct connected with the work. Despite the claimant's medically verifiable illness, she knew placing such a call without permission was improper.

Appeal No. 1992-CA-77. The claimant was discharged because, on the employer's time, he sold stock for a relative, using the employer's office space and equipment to make the sale, and missed an important sales meeting because of these activities. **HELD:** Discharged for misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 554-CA-77. The claimant was discharged for having made an unauthorized charge on a company gasoline credit card. On his last day of work, the claimant reported to his job site, 22 miles from his home, and learned that there would be no work that day due to rain. The claimant, as was customary, was the last to leave the job site. He then discovered that he did not have enough gasoline to drive home and, since he had no money, charged $5 worth of gasoline on the employer's credit card. **HELD:** The claimant's actions amounted to misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 2458-CA-76. The claimant was discharged for having made personal calls on the company telephone and for having made, on one occasion, a long-distance personal call on the company telephone, which call he immediately reported and offered to pay for. **HELD:** Discharged for misconduct connected with the work. An employee should know that he is not supposed to make personal long distance calls on the employer's telephone without specific authorization, even if he agreed to pay for them. Disqualification under Section 207.044.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 155.00

MC Domestic Circumstances

MC 155.00 Domestic Circumstances.

Includes cases where domestic circumstances rendered claimant incapable, unwilling, or unable to perform his duties, or resulted in insubordination or refusal to obey instructions or where interference on job by spouse caused claimant's dismissal.

Appeal No. 1033-CA-77 The claimant was discharged because of an argument between the claimant's husband and the employer's assistant store manager concerning the claimant's having attempted to exchange merchandise for cash, in violation of store policy. The incident occurred on the claimant's day off and, although she was in the employer's store, she was not present when the incident occurred. **HELD:** Misconduct connected with the work may not be based on the actions of the claimant's spouse, in which actions the claimant did not participate. No disqualification under Section 207.044.

Appeal No. 14,658-AT-64 (Affirmed by 553-CA-64). The claimant was discharged because her husband came to the employer's place of business and interfered with her work. On several occasions, he upset her to the point that she was unable to continue working. The employer's manager warned the claimant that her husband must not interfere with her work. **HELD:** The claimant's personal differences with her husband adversely affected the employer's business Her failure to prevent her domestic affairs from interfering with her work constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 190.00 – 190.10

MC Evidence

MC 190.00 Evidence

MC 190.10 Evidence: Burden of Persuasion and Presumptions.

Applies to discussions as to which party has burden of persuasion, or as to legal adequacy of particular evidence to overcome presumptions relating to application of the misconduct provision.

Appeal No. 2028-CA-77. The claimant, a registered nurse, was discharged because the employer believed, based on the complaints of patients and other employees, that she had mishandled medications and had mis-instructed one of the new personnel in the handling of narcotics. The claimant denied these allegations under oath and the employer presented no firsthand testimony in support of them. **HELD:** Since the claimant denied under oath the allegations of misconduct and since the employer presented only secondhand testimony, the employer did not carry its burden of proving that the claimant had been guilty of misconduct connected with the work.

Appeal No. 1181-CF-77. The claimant was discharged because of errors in surveys made by the crew of which he was a member. **HELD:** Since the evidence showed that the errors could have been caused by the claimant or by other members of the crew, none of which apart from the claimant had been discharged, and since occasional error is a normal incident of surveying work, the employer did not carry its burden of proving that the claimant had been discharged for misconduct connected with the work.

Also see Appeal No. 86-04275-10-031387 under MC 255.10.

MC 190.15 Evidence: Weight and Sufficiency.

Consideration of weight and adequacy of particular evidence relating to application of misconduct provision.

Case No. 302389. The employer discovered that the claimant, a custodian, had a trash bag of items that were found double bagged on her cart. When the claimant was sent home so the incident could be further investigated, the claimant wanted to take the items. Her request was denied. The investigation determined that these items were not trash or lost but were taken out of the classrooms without authorization. The claimant was discharged for possession and control of the property of others, without authorization. **HELD:** Although claimant denied during the hearing that she had stolen the items, the employer provided a witness with firsthand testimony who indicated that he discovered the items double bagged on claimant's cart and when sent home, claimant wanted to take these items with her. The Commission concluded that this evidence was sufficient to establish that the claimant had possession and control of the items with intent to remove them from the school's premises, regardless of whether she ultimately succeeded in removing the items from the premises. The Commission concluded that the employer had presented sufficient evidence to overcome the claimant's firsthand denial, and therefore, the claimant was discharged for intentional wrongdoing and thus misconduct connected with the work. (Also digested at MC 140.30).

MC 190.15(2)

Appeal No. 87-02450-10-021688. Suspecting the claimant had stolen some meat from the company freezer, the owner confronted him and threatened to call the police. At this, the claimant told the owner he would return the meat and promptly removed a box of meat from his car trunk and returned it to the freezer. The claimant was discharged for the incident. At the hearing, the employer's representative testified that he had been present and had heard the claimant's statement made to the owner. Furthermore, he witnessed the claimant's subsequent return of the box of meat. **HELD:** The evidence of the claimant's misconduct was sufficient because the claimant's statement to the owner was an admission and therefore excepted from the hearsay rule. The statement was evidence of the claimant's culpability in the theft and was corroborated by firsthand testimony as to the claimant's subsequent actions in removing a package of meat from his trunk and returning it to the employer's freezer. Disqualification under Section 207.044 of the Act.

Case No. 1051204. As a driver, the claimant was subject to U.S. Department of Transportation (US DOT) regulations, including drug testing regulations. The employer discharged the claimant for violating the employer’s policy and US DOT regulations, both of which prohibited a positive drug test. The claimant consented to the drug test but denied drug use. The employer presented documentation to establish that the drug test was performed in accordance with regulations prescribed by US DOT, including Medical Review Officer (MRO) certification.

MC 190.15(3)

HELD: The submission of documentation that contains certification by a MRO of a positive result from drug testing conducted in compliance with US DOT agency regulations, currently under 49 CFR Part 40 and Part 382, is presumed to satisfy requirements number 3, 4, and 5 of Appeal No. 97003744-10-040997 (MC 485.46) that the employer must present documentation to establish that the chain of custody of the claimant's sample was maintained, documentation from a drug testing laboratory to establish that an initial test was confirmed by the Gas Chromatography/Mass Spectrometry method, and documentation of the test expressed in terms of a positive result above a stated test threshold, as these elements must occur before a MRO can certify that the test results are in compliance with the regulations. Requirements number 1 and 2 under Appeal No. 97003744-10-040997 (MC 485.46) remain applicable; thus, the employer must also present a policy prohibiting a positive a positive drug test result, receipt of which has been acknowledged by the claimant, and evidence to establish that the claimant has consented to drug testing under the policy.

NOTE: See **Appeal 97-003744-10-040997** in this section for drug tests not subject to US DOT regulation. (Cross referenced at MC 485.46 and PR 190.00)

Appeals Policy and Precedent Manual

MISCONDUCT

MC 190.15(4)

Appeal No. 97-003744-10-040997. To establish that a claimant's positive drug test result constitutes misconduct, an employer must present:

1. A policy prohibiting a positive drug test result, receipt of which has been acknowledged by the claimant;
2. Evidence to establish that the claimant has consented to drug testing under the policy;
3. Documentation to establish that the chain of custody of the claimant's sample was maintained;
4. Documentation from a drug testing laboratory to establish than an initial test was confirmed by the Gas Chromatography/Mass Spectrometry method; and
5. Documentation of the test expressed in terms of a positive result above a stated test threshold.

Evidence of these five elements is sufficient to overcome a claimant's sworn denial of drug use. NOTE: **See Case 1051204** in this section for drug tests subject to regulation by the US Department of Transportation (Cross referenced at MC 485.46 & PR 190.00).

Appeal No. 87-13034-10-072387. At the hearing, the employer presented only hearsay statements to support its allegation that claimant had falsified a report of an on-the-job injury of a co-worker. The claimant presented no evidence. **HELD:** The employer's secondhand hearsay testimony of claimant's specific act of misconduct is sufficient to establish that misconduct in the absence of any controverting evidence from the claimant. Disqualification under Section 207.044 of the Act. (Also digested under PR 190.00.)

Appeals Policy and Precedent Manual

MISCONDUCT

MC 190.15(5)

Appeal No. 87-07136-10-042887. The claimant was discharged due to a statement he allegedly signed admitting to drug and alcohol use on company property. When he filed his initial claim, the claimant signed a statement (Form B-114, Statement of Facts) prepared by a Commission representative in which the claimant agreed he had admitted previously to the employer the use of alcohol on company property. The Appeal Tribunal ruled the evidence insufficient to establish misconduct in light of employer's failure to present the signed documentation of the prior admission. **HELD:** The Commission concluded that in light of the statement signed by the claimant at the time he filed his initial claim, sufficient proof existed to establish misconduct. The Commission found less than credible the claimant's contention that he had not reviewed the statement closely before signing it. (Also digested under PR 190.00 and cross-referenced under VL 190.15.)

Appeal No. 87-09130-10-051387. A claimant's sworn denial of illegal drug use did not overcome positive, confirmed drug test results, indicating the presence of cannabinoids. (For a more complete digest of the opinion of this case, see MC 485.46).

Generally, see cases under MC 485.46.

Appeal No. 871-CA-78. A reinstatement agreement entered into by a claimant and an employer, finding or not finding misconduct connected with the work and awarding or not awarding back pay, or applying disciplinary measures, is not binding on the Commission for the purpose of deciding whether the claimant's work separation was based on misconduct connected with the work. Rather, under the Texas Unemployment Compensation Act, the Commission is mandated to rule on misconduct connected with the work on the basis of the facts before it and not on the basis of an agreement between the claimant and the employer.

MC 190.15(6)

Appeal No. 87-2602-10-021688. The claimant was discharged for violation of the employer's invoicing policies and theft. At the claimant's instruction, two of the employer's engines were loaded for delivery without proper invoices. Subsequently, criminal theft charges were filed against the claimant. He pleaded not guilty but was found guilty, receiving a four-year deferred adjudication and a fine. **HELD:** The claimant violated the employers' invoicing policies and was found guilty of theft of the employer's property. The deferred adjudication assessment made by the criminal court is indicative of the claimant's misconduct connected with his work. He mismanaged his position of employment with the employer by failing to follow proper invoicing procedures and by his misappropriation of the employer's property. Disqualification under Section 207.044. (Also digested under MC 490.05.)

Appeal No. 86-07378-10-050187. The claimant was discharged following his arrest on company premises on two counts of delivery of a controlled substance. The transactions giving rise to these charges occurred both on and off the employer's premises. The claimant was found guilty on both counts and was sentenced to a penitentiary term of 5 years. **HELD:** The finding of guilt on the claimant's part to the two charges of delivery of a controlled substance proved that the claimant was discharged for misconduct. Disqualification under Section 207.044.

Appeal No. 86-06313-10-041687. As a result of an audit of funds in her custody and related records, the claimant had been suspended from her position as school district tax assessor and, after an indictment was handed down by the grand jury, she was discharged by the employer. Following the employer's appeal to the Commission, the claimant was convicted of theft by trial in District Court. **HELD:** Discharged for misconduct connected with the work. The finding of guilty of theft justifies the finding that the claimant was guilty of misconduct connected with the work.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 190.15(7)

Appeal No. 2619-CA-77. The claimant was discharged because, in the opinion of the employer, she was unable to get along with her fellow employees. The evidence showed that the claimant was not always on friendly terms with all of her fellow workers. **HELD:** As there was no evidence presented of any specific act of misconduct on the claimant's part, the Commission held that the claimant was not discharged for misconduct connected with the work.

Appeal No. 2114-CA-77. The claimant was discharged because it had been reported to the employer that he drove in an erratic manner and reported to work under the influence of alcohol or some other drug. However, there was no direct evidence presented to support these allegations. **HELD:** Since there was no evidence to support either of the allegations of misconduct, it was held that the claimant was not discharged for misconduct connected with the work.

Appeal No. 1437-CA-77. The claimant signed an affidavit to the effect that he had taken for his own use $200 worth of the employer's merchandise without having paid for it. In the affidavit, he gave no excuse for the taking. Later, the claimant tried to repudiate the affidavit but there was no evidence that it had been signed under duress. He was discharged, as the evidence showed that, at the minimum, he had taken $80 worth of merchandise. **HELD:** Since the claimant did not show that the affidavit was signed under duress, he was held to be bound by it. The evidence established that the claimant was guilty of misconduct connected with the work. Disqualification under Section 207.044.

MC 190.15(8)

Appeal No. 1273-CA-76. On the question of how much time the claimant had taken off from work on a certain day, a signed statement from the claimant's unit manager, dated four months after the date in question, to the effect that the claimant had left work with her permission during the afternoon (in contrast to the morning, as alleged by the employer), was accorded greater evidentiary weight than an undated payroll sheet purportedly for the week which included the date in question. This document was not signed by the claimant as was customary; however, it recited total weekly earnings consistent with the hours alleged by the claimant to have been worked by him. **HELD:** As a general proposition, a more nearly contemporaneous document would probably embody a clearer recollection of the circumstances surrounding a claimant's separation. However, the proposition was held to be inapplicable to this case since the purportedly more nearly contemporaneous document was undated, not signed by the employee as was customary, and recited total weekly hours consistent with the hours alleged by the claimant to have been worked by him.

Appeal No. 658-CA-77. The sworn testimony of one party, based on her firsthand knowledge, should be given greater weight than exclusively secondhand, hearsay testimony offered by another party.

Appeal No. 374-CA-77. On the question of whether or not the claimant had notified the employer on a particular date of her inability to report to work, the several employer representatives all testified that they were not contacted by the claimant or her doctor on the occasion in question and the claimant's testimony was inconsistent as to when she had contacted the employer and as to the identity of the employer representative whom she had allegedly contacted. **HELD:** In light of the contradictory nature of the claimant's testimony (and, implicitly, the noncontradictory nature of the employer representatives' testimony), the Commission held that the preponderance of the evidence established that the claimant had failed to properly notify the employer of her absence, such failure constituting misconduct connected with the work. Disqualification under Section 207.044.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 190.15(9)

Appeal No. 418-CA-76. A written statement signed by the claimant in connection with a polygraph examination, in which statement the claimant admitted having taken and sold property of the employer and having put the money to his own use, is sufficient evidence to establish misconduct connected with the work.

Appeal No. 243-CA-76. Where the three separate grounds for the claimant's discharge are allegedly well-supported by evidence available to the employer but such evidence is not offered at the hearing, and the claimant, by sworn testimony, controverts the employer's allegations, the evidence is insufficient to support a finding of misconduct connected with the work. (The Commission also noted that the most recent act of alleged misconduct had occurred three months prior to her separation and thus concluded that, even if more reasonably established by evidence not presently in the record, the claimant's acts of alleged misconduct occurred on dates far too remote in time to have rendered them the proximate cause of her discharge. In this regard, see MC 385.00.)

Appeal No. 3719-CA-75. Failure to pass a polygraph examination is not sufficient evidence on which to base a finding of misconduct connected with the work. (Also digested under MC 485.83.)

Appeal No. 5387-AT-69 (Decision written by the Commission). Inferences drawn from physical facts amount to circumstantial evidence which, when sufficiently strong, is as competent as positive evidence to prove a fact. The circumstantial evidence in the present case strongly led to the logical inference that the claimant was using narcotics on the employer's premises and he was seen in possession of narcotics paraphernalia. Possession of such paraphernalia is a felony and the willful commission of a felony on the employer's premises amounts to a wanton disregard of the employer's interest and constitutes misconduct in connection with the work. Disqualification under Section 207.044.

Also see Appeal No. 7109-CA-60 under VL 190.15.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 235.00 – 235.05

MC Health or Physical Condition

MC 235.00 Health or Physical Condition.

MC 235.05 Health or Physical Condition: General.

Covers all cases not applicable to following subheads.

Appeal No. 423-CA-77. Following the claimant's return from hospitalization for wounds resulting from his suicide attempt, the claimant was discharged because the employer believed that he was no longer emotionally stable enough to work as a manager. **HELD:** Although the claimant initiated the action which resulted in his discharge, such action was against his self-interest and revealed, at most, that he was not mentally competent. Incompetence to do a job does not constitute misconduct connected with the work.

Appeal No. 4114-CSUA-76. The claimant was discharged for having failed, within her two-year probationary period, to lose the pounds of excess weight by which she exceeded the employer's insurer's norms. The loss of excess weight within such two years was a condition for the removal of the probationary status. During the two-year probationary period, the claimant had consulted a physician and had attempted to lose the excess weight but had been unable to do so. **HELD:** An individual's mere inability to meet some standard set by the employer does not constitute misconduct connected with the work. Since the claimant had attempted to reduce her weight and had consulted a doctor, her failure to meet the weight requirement did not constitute misconduct connected with the work.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 235.10 – 235.20

MC 235.10 Health or Physical Condition: Age

Includes cases where employer alone brought about termination of employment solely because of age.

Appeal No. 3178-CA-75. The claimant, 75 years of age, was discharged because the employer believed that her health had deteriorated to the point that she could not do her work. However, the claimant worked to the best of her ability and the evidence showed that her health was good for her age. **HELD:** A discharge based on an employer's belief that an employee is no longer able to perform the work is not one based on misconduct connected with the work.

Appeal No. 859-CA-68. A claimant's mandatory retirement under the employer's pension plan, at an age and time determined by the employer, is not a voluntary leaving. It is an action by the employer under the employer's retirement policy, constituting a discharge because of attaining a certain age and not for misconduct connected with the work. [**Note**: In this decision the Commission cited **Redd V. Texas Employment Commission**, 431 S.W. 2d 16 (Tex. Civ. App., 1968 wr. ref. n.r.e.)].

MC 235.20 Health or Physical Condition: Hearing, Speech, or Vision.

Includes cases where employer alone brought about termination of employment solely because of hearing, speech, or vision.

Appeal No. 2431-CA-77. The claimant was retired because of a medical disability involving a hearing loss which impaired his ability to safely continue with his job and because of susceptibility to seizures. **HELD:** The claimant's separation was the result of his physical condition which prohibited continued employment and was not caused by any misconduct connected with the work on his part.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 235.20 - 235.25

Appeal No. 1136-CA-77. The claimant had performed drilling requiring good eyesight and, on two occasions prior to his discharge, had been warned of mistakes in his work. He was examined in December 1976 and it was discovered that he needed eyeglasses. The latter did not arrive until January 1977. During the interim, the claimant slowed his work somewhat in order to avoid further mistakes. He was discharged in February 1977 for a mistake he had made in December 1976 although he had made no further mistakes after receiving his eyeglasses. **HELD:** The claimant was not relieved of his work after his faulty vision was confirmed and before he received his eyeglasses. Furthermore, the claimant had temporarily slowed down his work performance only in order to cut down on mistakes which did not continue after he received his eyeglasses. Under such circumstances, the claimant was not guilty of misconduct connected with the work.

MC 235.25 Health or Physical Condition: Illness or Injury.

Includes cases where employer alone brought about termination of employment solely because of illness or injury.

Appeal No. 86-13613-10-102286. The claimant was injured on the job and sent home by the employer, who would not pay for the claimant's medical expenses. The claimant had no money to pay the doctor and was not allowed to be billed or start an account. The employer told the claimant that she still had a job but could not return without a doctor's release. The claimant could not immediately see the doctor because she had no money. The employer discharged the claimant for failing to report to him after a scheduled doctor's appointment. **HELD:** Because the claimant was told that her job was secure and that she could return when released by the doctor, her delay in obtaining the release due to her inability to pay for the doctor's appointment was not misconduct. (Cross-referenced under MC 255.10.)

Appeals Policy and Precedent Manual

MISCONDUCT

MC 235.25 – 235.40

Appeal No. 4184-CA-76. The claimant was not reinstated following her medical release after an on-the-job injury because she was unable to work full-time and the employer had no part-time work for her. **HELD:** The claimant was discharged because of her physical condition, not an instance of misconduct connected with the work.

Appeal No. 3131-CA-76. The claimant was discharged because she was off work due to injury for two weeks during which time, she kept the employer advised of her condition. The stated reason for her discharge was excessive absenteeism. **HELD:** The claimant was, in fact, discharged because she was unable to perform her work due to an injury, which inability does not constitute misconduct connected with the work.

MC 235.35 Health or Physical Condition: Physical Examination Requirements.

Includes cases where employer alone brought about termination of employment solely because of physical examination requirements.

Appeal No. 2296-CA-77. The claimant was discharged because of excessive absences, most of which were apparently due to health problems, because she refused to undergo a complete physical examination by a physician of her choice at the employer's expense, in order to determine the nature of her health problem. **HELD:** The claimant's refusal to cooperate in the employer's reasonable efforts, at its expense, to determine the cause of her illnesses and her repeated absences, some of which were due to personal problems other than illness, constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 235.40

MC 235.40 Health or Physical Condition: Pregnancy

INCLUDES CASES WHERE EMPLOYER ALONE BROUGHT ABOUT TERMINATION OF EMPLOYMENT SOLELY BECAUSE OF PREGNANCY.

Appeal No. 87-2634-10-022588. By a doctor's statement, the claimant and the employer were advised that the claimant should discontinue for the remainder of her pregnancy any activities which required heavy lifting. Since such a restriction would impair the claimant's ability to perform her duties, and because of the employer's concern for her health, the claimant was discharged. **HELD:** The claimant was separated from her last work due to a medically verified personal illness, a separation which does not constitute a discharge for misconduct connected with the work. (Digested for its chargeback ruling under CH 15.00.)

Texas Employment Commission vs. Gulf States Utilities, 410 S.W. 2d 322 (Texas Civ. Appeals 1967, writ denied, n.r.e.). Claimant ceased working, in accordance with company policy, when she reached the fifth month of pregnancy. The Commission held no disqualification in order under Section 207.044. The lower court reversed and held that the claimant had voluntarily quit. However, the Court of Civil Appeals held that her separation was not voluntary and was not disqualifying. Had her separation been held to be voluntary because she had agreed long before her separation to resign upon reaching the fifth month of pregnancy, the provisions of Section 207.071 of the Act would void such an agreement since it provides that an individual cannot waive his right to unemployment insurance.

Appeal No. 2336-CA-77. The claimant was pregnant and, for that reason, was placed on indefinite leave of absence without pay by the employer. **HELD:** Discharged for reasons other than misconduct connected with the work.

MC 235.40(2) – 235.45

Appeal No. 1349-CA-76. The claimant, upon becoming able to work and having arranged childcare, made application for reinstatement prior to the expiration of her pregnancy leave. She was not reinstated upon such reapplication because no work was available. **HELD:** The claimant's separation was involuntary and not caused by any misconduct connected with the work on her part.

Appeal No. 1342-CUCX-76. The claimant was discharged because the employer's insurer had advised him that it was not in his interest to let the claimant continue working while she was pregnant, as she might sue the employer for any on-the-job injuries she might sustain while pregnant. **HELD:** The claimant was involuntarily separated at the employer's convenience and not for any misconduct connected with the work on her part.

MC 235.45 Health or Physical Condition: Risk of Health or Injury to Claimant or Others.

Includes cases where employer alone brought about termination of employment solely because of risk of health or injury to claimant or others.

Appeal No. 1732-CA-76. The claimant was discharged because of excessive absenteeism due to illness (diabetes and high blood pressure), the employer's belief that his illness might cause him to injure himself at work and the claimant's involvement in several altercations with coworkers. In none of these was the claimant the aggressor or otherwise at fault. **HELD:** None of the reasons alleged for the claimant's discharge constituted misconduct connected with the work.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 255.00 – 255.10

MC Insubordination

MC 255.00 Insubordination.

MC 255.10 Insubordination: Disobedience.

Where claimant refused to perform a particular task, to perform his work as directed, or to act in the manner required.

Appeal No. 87-21062-10-120887. The claimant, a truckdriver, refused an assignment and was told by the terminal manager that that was all right. When he called for his next assignment, he was told he had been terminated. **HELD:** No misconduct and no disqualification under Section 207.044. The claimant had been informed by the terminal manager that it was all right for him not to accept the assignment and had no reason to know that he was putting his job in jeopardy. (Also digested under MC 255.303.)

Appeal No. 87-12956-10-072387. The claimant was discharged for refusing to sign an agreement which provided he was an independent contractor rather than an employee. Nothing had been said about his status at the time of hire. The claimant was injured on the job, and subsequently filed for workers compensation. After he returned to work from his injury, he was asked to sign the agreement, which would have released the workers compensation carrier from liability for the claimant's injury. For this reason, the claimant refused to sign and was discharged. **HELD:** The employer's request that the claimant sign the subcontractor agreement constituted a change in the hiring agreement. The claimant's refusal to sign was reasonable in light of the fact that his rights as an injured worker would have been directly affected. Thus, the claimant's refusal did not constitute misconduct connected with the work.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 255.10(2)

Appeal No. 86-04275-10-031387. The claimant was discharged for refusing to sign a written reprimand for an accident in which he felt he was not at fault. The evidence in the record did not clearly establish that the claimant was given notice, prior to being discharged, that he would be discharged if he refused to sign. Also, the claimant was never told he had a right to state on the reprimand form his version of the incident. **HELD:** In the absence of clear evidence that the claimant understood the consequences of his refusal to sign the reprimand and was offered an opportunity to rebut the accusation with which he disagreed, his mere refusal to sign a reprimand which he felt was unjustified does not rise to the level of misconduct. (Cross-referenced under MC 190.10.)

Appeal No. 86-07166-10-042987. The claimant, a branch store manager, was discharged for violation of company policy requiring daily deposit of receipts. The claimant had been extraordinarily busy because he had been managing the closing of an old store while attempting to open a new store on the employer's behalf. He delegated to his head cashier the responsibility to make daily deposits for the old store. The claimant failed to inquire whether the cashier had made the daily deposits as required. The store was robbed of $26,000, a figure which was, in part, attributable to the fact that the required deposit had not been made on the previous day. **HELD:** The claimant violated company policy by failing to make store deposits on a daily basis. Although he was extraordinarily busy, he knew or should have known as a store manager that making daily deposits was of paramount importance. He failed to protect his job by delegating the responsibility for making deposits to a subordinate without inquiring whether the deposits were, in fact, made by the subordinate. The amount of the employer's loss would not have been as great had the claimant followed company policy. Disqualification under Section 207.044.

MC 255.10(3)

Appeal No. 87-06533-10-041687. The claimant had suffered an off-duty back injury. He was treated by a doctor who released him for unrestricted duty. As requested by the employer's doctor, the claimant secured a second opinion from another doctor who also released him for unrestricted duty. The employer's doctor then referred the claimant to yet another doctor who requested the claimant to submit to a particular exam at a local hospital. This exam would have cost $845 to $1000 and, in light of that hospital's inferior equipment, would not have been accepted as definitive by the claimant's surgeon, thus requiring another exam at the claimant's expense. Accordingly, the claimant arranged for an exam, at an alternate site possessing higher quality equipment acceptable to the claimant's surgeon. The claimant notified the employer of this but was discharged for failure to comply with the request of the doctor to which the claimant was referred to by the employer's doctor. **HELD:** The claimant had been released without restriction by two doctors, one of whom was recommended by the employer's doctor. As the requested exam would have been conducted at the claimant's expense, the claimant's failure to appear for the exam did not constitute misconduct connected with the work.

Appeal No. 735-CF-77. The claimant was discharged for failing to produce a medical certificate to substantiate that a two-week absence from work without permission had been, in fact, for medical reasons. **HELD:** The claimant's failure to comply with a reasonable request of his employer, that he furnish medical evidence of the reason for his absence, constituted misconduct connected with the work. Disqualification under Section 207.044.

Also see Appeal No. 86-13613-10-102286 under MC 235.25.

MC 255.10(4)

Appeal No. 515-CA-77. The claimant was discharged because, contrary to the employer's specific instructions, he had failed to do some repair work on a certain building. The evidence showed that the claimant had omitted doing the work in question because he had had a number of buildings to repair and had been pressured to complete the building in question. **HELD:** The claimant had not intentionally failed to perform duties assigned to him and any mistakes he made on his last job assignment had been due to the pressure placed on him by the employer to complete the job as fast as possible. No misconduct connected with the work.

Appeal No. 267-CA-77. The claimant was discharged for refusing to sign a written reprimand which was issued because she had taken a 15-minute break rather than a 5-minute break, as instructed. Under the employer's policy, the signing of the reprimand was simply an acknowledgment of its receipt and not an admission of guilt. The claimant was advised of this and the fact that refusal to sign the reprimand would subject her to discharge. **HELD:** Since the signing of the reprimand was not an admission of guilt but simply an acknowledgment of its receipt, the claimant's refusal to sign the reprimand constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 18-CA-77. The claimant was discharged because he failed, after having been advised by a memo which he had initialed, to turn in sales reports on a daily basis or to see to it that his staff did so. The claimant had also continued to permit his wife to work on the employer's books despite instructions to cease this practice. **HELD:** The claimant's failure to follow instructions constituted misconduct connected with the work. Disqualification under Section 207.044.

MC 255.10(5)

Appeal No. 4622-CA-76. The claimant was discharged for having requested clarification of several conflicting instructions which she had been given by her supervisor within a short period of time. **HELD:** The claimant's action did not constitute a refusal to obey her supervisor's instructions. No misconduct connected with the work.

Appeal No. 3137-CA-76. The claimant, a laborer who also occasionally drove a truck but who was not a mechanic, was discharged because, after repeated admonitions, he continued from time to time to put oil in the truck which he drove. The clutch and transmission of the truck were ultimately ruined as a result of the truck having been overfilled with oil. **HELD:** Regardless of the claimant's opinion as to whether the truck needed oil, the claimant's failure to obey the instructions of his superiors in that regard constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 2455-CA-76. The claimant was discharged for insubordination because he disregarded his immediate supervisor's instructions as to the length of time of his lunch hour and took a longer time for lunch than his immediate supervisor had authorized. The claimant did this in order to meet with the employer's clients at lunch, as he had been instructed to do by the employer's higher management. **HELD:** Although the claimant disregarded the instructions of his immediate supervisor, he did so in order to carry out the assignment he had been given by higher management. No misconduct connected with the work.

Appeal No. 780-CA-76. The claimant was discharged for refusing to go from McAllen, Texas, into Mexico to collect an account due the company. The company was not legally authorized to do business in Mexico. **HELD:** Since the act which the claimant was instructed to perform was one which neither the company nor the claimant, as its agent, was legally authorized to perform, the claimant's refusal did not constitute misconduct connected with the work.

MC 255.10(6) – 255.15

Appeal No. 67-CA-76. The claimant was discharged because of her refusal to sign a work schedule allegedly drawn up to indicate the break and lunch times of all three employees in the claimant's unit but which, so far as was made known to the claimant prior to her discharge, applied only to her. Company policy did not require that employees sign work schedule changes and the claimant did not refuse to abide by the new work schedule. **HELD:** Since there was no prior company policy requiring employees to sign new work schedules and since the claimant had not refused to abide by the new schedule, the claimant's refusal to sign the schedule if it was to apply only to her did not constitute misconduct connected with the work.

Appeal No. 3242-CA-75. The claimant was discharged for having refused to follow the orders of her acting supervisor to perform a function on a particular machine. Although the claimant's actual reason for her refusal was that she did not know how to operate the machine, she merely told the acting supervisor that she did not have time to do what he wanted because of other tasks assigned to her by her regular supervisor. **HELD:** The claimant's refusal to follow the supervisor's instructions and her simply telling him that she did not have time because of previously assigned work, rather than telling him that she could not perform the task, constituted misconduct connected with the work. Disqualification under Section 207.044.

MC 255.15 Insubordination: Dispute with Superior.

Involves argument or altercation with one in a supervisory position.

Appeal No. 87-20103-10-111287. The claimant, a marine engineer, was discharged seven days after he confronted the chief engineer and the employer's consultant about rumors that the consultant was telling the claimant's supervisor that he was not performing his work. An argument ensued, and profanity was used by both the claimant and the consultant. The argument remained verbal, no physical violence was threatened, and the claimant remained seated. After approximately one-half hour, the chief engineer and the consultant left. The claimant reported to work as usual but was replaced upon the conclusion of his tour of duty seven days later.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 255.15(2)

HELD: Not discharged for misconduct connected with the work. The claimant's actions in confronting the consultant regarding the rumors that he had reported the claimant as not performing his job, were justified and the argument that ensued was not of such magnitude as to constitute misconduct connected with the work.

Appeal No. 87-16061-10-091187. The claimant, an auto mechanic, was approached by his supervisor and verbally reprimanded for talking to other mechanics instead of working. When the claimant questioned the supervisor as to why the claimant was reprimanded and the others were not, the supervisor told the claimant that he had previously spoken to the other mechanics about "standing around" or talking in the shop. The claimant then called his supervisor a liar and was discharged. **HELD:** The Commission found the claimant's behavior to have been blatantly insubordinate and a mismanagement of a position of employment. In so ruling, the Commission expressly overruled the holding in Appeal No. 1611-CA-78 (MC 255.15) which had held that arguing with a supervisor by itself did not constitute misconduct.

Appeal No. 2935-CSUA-76. A claimant who was discharged for striking her supervisor during a counseling session was found to have been guilty of misconduct connected with the work and was disqualified under Section 207.044.

Appeal No. 1356-CA-76. The claimant was discharged for having protested a public reprimand given him in the presence of customers and other employees and for not having followed an order which order he had, in fact, followed. **HELD:** The claimant's simply mentioning to his supervisor that he should not be reprimanded in public did not constitute misconduct connected with the work.

MC 255.20

MC 255.20 Insubordination: Exceeding Authority.

Where claimant decides to tell other employees how to perform their jobs, to assume responsibilities not authorized, or otherwise to overstep his authority.

Appeal No. 1552-CA-77. The claimant, a salesperson/cashier/manager, was discharged for having exceeded her authority by attempting to close the store by shutting off the main lights while there were still customers in the store (strictly contrary to store policy), by leaving the store early while there was still work to be done, by trying on clothes for her personal use during working hours, by ironing her own coat during working hours, and for making a disparaging remark about the owner when the owner observed the claimant carrying on a lengthy conversation with a friend during working hours. **HELD:** The claimant's knowing violation of store policy and overstepping her authority on numerous occasions constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 4801-CA-76. The claimant, a lab technician in a veterinary hospital, was discharged, after warnings, for constantly interrupting both the doctor and other employees in their consultations with clients and for persistently offering advice when none was requested of her. **HELD:** The claimant's continuing, after warnings, to interrupt the employer and her fellow employees in their consultations with clients and offering advice when none was requested of her, constituted misconduct connected with the work. Disqualification under Section.044.

Appeal No. 2903-CA-75. The claimant, a fabrication inspector, was discharged for allegedly having usurped the duties of the employer's superintendent. On the claimant's last day of work, he had, in his capacity as inspector, rejected a piece of equipment which was to be loaded for shipment. The superintendent directed that the equipment be loaded, and the claimant indicated that he had not approved the equipment as was required. The equipment was loaded, nonetheless. **HELD:** The claimant was performing his duties on his last day of work during the incident which led to his discharge. No misconduct connected with the work.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 255.25 – 255.30

MC 255.25 Insubordination: Negation of Authority.

Where the claimant ignores or refuses to discuss a situation with his supervisor and goes directly to higher authority.

Appeal No. 8-CA-77. During a conversation with the employer's regional manager, in which the latter had intended to notify the claimant of her reassignment, the claimant, thinking that she was going to be fired, told the regional manager that she could not be fired because her attorney had so advised her. The claimant was then discharged for speaking to the regional manager in an insubordinate manner**. HELD:** The claimant's statement, though unwise, was not serious enough to constitute misconduct connected with the work.

MC 255.30 Insubordination: Refusal to Increase Production.

Claimant declined to raise his production over the minimum requirements of his job, or to the agreed required production.

Appeal No. 3107-CA-76. On the morning of her last day of work, the claimant, an hourly production worker, had been asked by her supervisor to process a given number of articles. Later that day, the supervisor asked her to increase her hourly production with no indication that there was to be a like increase in the day's total quota. Thinking that this request meant that she would not be allowed to work an eight-hour day but rather would be required to work harder for less money, the claimant questioned the wisdom of the order. She was discharged for assertedly refusing to perform the work. **HELD:** The claimant did not refuse to obey her supervisor's orders; she merely questioned their wisdom because she reasonably believed that she would have had to work harder for less money. Under such circumstances, the claimant's questions did not constitute misconduct connected with the work.

MC 255.301

MC 255.301 Insubordination: Refusal to Transfer.

Claimant refused to transfer to another shift, another type of work, to closed-shop work, or to lower-paying work.

Appeal No. 86-13666-10-102286. The claimant worked as a detention/correctional officer for the employer. By terms of the employer's contract with the Federal Government, the claimant's minimum pay would be $6.08 per hour. The claimant had done this work at only one location during his employment. There was no evidence that the claimant had agreed at the time of hire to work at different locations or to work at a substantially lower wage. The claimant was informed that he was to report at a different location to work as a security guard at $4.84 per hour. The claimant informed the employer he would not report to the job because of the reduced wage. When the claimant did not appear as ordered, he was discharged. **HELD:** Not discharged for misconduct connected with the work. The employer's assignment of the claimant to a different job function at a different facility at a substantially reduced wage rate was an unreasonable action on the part of the employer. The proposed wage reduction in this instance exceeded 20%, a figure which the Commission has previously held to be substantial (See Appeal No. 84-05367-10-051485 under VL 500.35.) Had the claimant worked for the reduced wage, even for a short period of time, he would have risked waiving his right to object to future reassignments at a reduced wage. The claimant's refusal to perform work at a substantially reduced wage was justified under the circumstances and the employer has failed to otherwise show misconduct connected with the work by the claimant.

Appeal No. 672-CA-76. The claimant was discharged because she refused to accept a temporary job transfer requested of her in accordance with the terms of a collective bargaining agreement. Although she had medical reasons for objecting to the work to which she was to be transferred, she did not expressly state the grounds of her objection, saying only that she was afraid of the job and that it was too hard.

MC 255.301(2) – 255.302

HELD: The claimant's failure to make explicit the grounds of her objection to the transfer reasonably led the employer to assume that her refusal to transfer was merely arbitrary. It was not sufficient for the claimant to assume that her supervisors would realize from her prior medical history, that the grounds of her objection to the transfer were medical. Consequently, the claimant's actions constituted misconduct connected with the work for which she was disqualified under Section 207.044.

Appeal No. 3076-CA-75. The claimant was offered a transfer to another state because he was reported to have been giving unauthorized discounts to certain customers and to have been making passes at female employees and customers, of which charges he was innocent. He was discharged when he indicated that he could not pay the moving expenses incident to such transfer. Although payment of moving expenses was not usually required of employees, it was to be required of the claimant. **HELD:** The employer's intention in offering the transfer but requiring the claimant to pay his own moving expenses, was to force the claimant's separation. Since the claimant was not guilty of the alleged actions, reports of which caused his discharge, his discharge was found to have been for reasons other than misconduct connected with the work.

MC 255.302 Insubordination: Refusal to Work.

Claimant refused to work at all, under certain conditions, or more than a certain number of hours (not overtime).

Appeal No. 87-21062-10-120887. The claimant, a truck driver, refused an assignment and was told by the terminal manager that that was all right. When he called for his next assignment, he was told he had been terminated. **HELD:** No misconduct and no disqualification under Section 207.044. The claimant had been informed by the terminal manager that it was all right for him not to accept the assignment and had no reason to know that he was putting his job in jeopardy. (Also digested under MC 255.10.)

Appeals Policy and Precedent Manual

MISCONDUCT

MC 255.302(2)

Appeal No. 87-474-10-010688. The claimant, a hospital maintenance worker, was discharged after he notified the employer that he would not work in rooms where patients with AIDS were cared for and did not repair a television set because the patient in that room had AIDS. Gloves, masks and educational programs were provided for all employees to meet concerns of exposure to AIDS. **HELD:** Discharged for misconduct connected with the work. Making repairs in patient rooms was the claimant's job. The claimant's concern that he might contract AIDS while repairing a television set was unreasonable and the employer had taken reasonable steps to protect the claimant's health and address his fears. (Cross-referenced under VL 235.45.)

Also see Appeal No. 87-16605-10-091687 under VL 235.45.

Appeal No. 2544-CA-77. The claimant's hours were changed so that he had to be on call every second night rather than every fourth night. The claimant objected to this and, in the alternative, requested a pay increase which the employer refused. He was discharged because he would not answer a service call on a night on which, under the old schedule, he would have been off. **HELD:** The claimant's refusal to acquiesce in a change in the hiring agreement, which he would have had to do if he had answered a service call on the new schedule, and of which he had previously complained to the employer, does not constitute misconduct connected with the work.

Appeal No. 2470-CA-77. The claimant was discharged because he refused to work on the one remaining day of the work week, a regularly scheduled workday, after having missed two days of work that week. **HELD:** Discharged for misconduct connected with the work. Disqualification under Section 207.044.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 255.302(2)

Appeal No. 1694-CA-77. Due to reduced workload, the employer reduced its work force and realigned the duties of its remaining employees. The claimant was transferred from the checking department to the receiving department but retained some checking duties. He was to check large shipments but only when there was no receiving work to do. The claimant performed such checking work for two weeks but refused to do so thereafter. He was discharged when he refused to continue performing the additional checking duties which he had agreed to assume and had, in fact, assumed. **HELD:** The claimant's refusal to comply with a reasonable request of his employer that he perform a combination of duties which would have resulted in his having had a full day's work (which he otherwise would have not had because of a decline in the employer's business) constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 3198-CA-76. The claimant, a truck driver whose duties occasionally included heavy lifting, had been released by his doctor as able to resume his normal duties following an extended absence caused by an on-the-job injury. Two months after his doctor's release, the claimant refused to perform a particular job requiring some heavy lifting, for which he was discharged. **HELD:** Since the claimant had been released by his doctor as able to resume his normal duties, which customarily included some heavy lifting, the claimant's refusal was unreasonable and constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 1131-CA-76. The claimant was discharged for refusing to work in a work area which he alleged was unsafe. The area in question had been inspected and deemed safe by the claimant's foreman, by the employer's inspector and by the inspector of the company for which the work was being done. None of the other persons working in the area had complained that it was unsafe**. HELD:** Since the work area to which the claimant was assigned was as safe as could be reasonably expected, the claimant's refusal to do assigned work constituted misconduct connected with the work. Disqualification under Section 207.044.

MC.255.302(3) – 255.303

Appeal No. 820-CA-76. The claimant, a roofer who was paid at a variable rate per square of roofing installed, according to the type of structure and the slant of the roof, was discharged when he failed to reach agreement with the employer on the rate for a particular job, although the claimant offered to work on other jobs for the employer at lower rates**. HELD:** Since the claimant worked at a variable rate per square as agreed upon by him and the employer for each job, his unsuccessful attempt to negotiate an appropriate rate for a particular job could not be considered misconduct connected with the work, particularly in view of his offer to work at a lower rate on other types of structures.

MC 255.303 Insubordination: Refusal to Work Overtime.

Claimant refused to work overtime, to work overtime without a higher rate of pay, or to work without pay for the overtime.

Appeal No. 87-18302-10-101987. The claimant was discharged for refusing to work overtime. He had worked ten hours in the August heat when he was told it was necessary to work another six to eight hours to complete a project. The claimant, who had never refused overtime during his three and a half years' work for the employer, indicated he was too tired to work overtime on this occasion. **HELD:** Not discharged for misconduct connected with the work. The claimant's refusal to work overtime was not unreasonable under the circumstances. He had not refused overtime in the past but simply felt physically unable to work overtime on this occasion.

Appeal No. 853-CSUA-77. When hired, the claimant, a department store stock clerk, was advised that he normally would not have to work more than 45 minutes past closing time. However, on many occasions, the claimant and other employees were required to, and did, work much longer past closing time in order to complete their daily assigned tasks. On his last day of work, the claimant worked 45 minutes past closing time and left work without completing his daily assigned duties, advising his supervisor that he had worked enough that day. The claimant was discharged the following day.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 255.303(2) – MC 235.305

HELD: The claimant's leaving work before completing his duties, under all of the circumstances, constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 264-CA-77. The claimant was discharged because she had a history of personality conflicts with her coworkers and because, on her last day of work, she failed to work compensated overtime until the relief shift arrived, as was customary. **HELD:** The claimant's repeatedly demonstrated inability to get along with fellow workers and her refusal to cooperate with the employer when it needed her most constituted misconduct connected with the work. Disqualification under Section 207.044.

MC 255.305 Refusal to Change Hours.

Claimant refused to work longer or shorter work week, longer or shorter day, or split shift, or on irregular schedule.

Appeal No. 184-CA-78. The claimant was discharged for refusing to change his hours of work. Shortly before the claimant's separation, the employer instituted a new order-filling system which required the data processing department to change its hours of operation from 8:00 a.m. until 5:00 p.m. to 10:30 a.m. until 7:30 p.m. The claimant, who was the data processing manager, refused to accept the change because he had young children who would have been in bed each evening before he returned from work under the new schedule and he felt that the new hours would thereby substantially reduce his contact with his children. **HELD**: The claimant's refusal to change his hours, because the requested change would have had a substantially adverse affect on his family life, did not constitute misconduct connected with the work. The Commission majority referred to other cases in which a claimant was determined to have had good cause for a voluntary quit when a requested change in his hours would have adversely affected his family life and noted that the present decision was intended to bring the treatment of persons discharged for refusing to change their hours for the reason here discussed into conformity with the treatment accorded those who quit their jobs for the same reason. (Cross-referenced under VL 450.154.)

MC 235.305(2)– 235.45

Appeal No. 1577-CA-76. When hired, the claimant signed a statement agreeing to work any shift. Several months thereafter, she was discharged for refusing to transfer from the day to the night shift. HELD: The claimant's refusal to work the shift required by the employer, in spite of her written agreement at the time of her hiring to work any shift, constituted misconduct connected with the work. Disqualification under Section 207.044.

Also see cases under VL 450.154.

MC 255.40 Insubordination: Vulgar or Profane Language.

Where vulgar or profane language is used by employee to supervisor.

Appeal No. 196-CA-76. The claimant was discharged because he had used extreme vulgarity in talking to the employer's superintendent in an argument which the claimant had initiated in response to the superintendent's criticism of the claimant's work crew for loafing. **HELD:** The claimant's initiation of the argument with his superior and his use of extremely vulgar language constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 3366-CA-75. The claimant's supervisor complained about his work methods and called the claimant a vulgar name. The claimant was discharged for responding to his supervisor by using the same type of vulgar language. **HELD:** Since the claimant's supervisor, by first using vulgar language toward the claimant, invited a similar response from the claimant, the latter's action did not constitute misconduct connected with the work.

MC 255.45 Insubordination: Wage Dispute.

Where the claimant was discharged for refusing to work unless given a higher rate of pay, or for asking for a raise in wage.

Appeal No. 87-20338-10-112787. The claimant complained to the employer about an unresolved dispute over alleged failure to pay for a total of three days in prior paycheck periods. The claimant gave no ultimatum, nor did he say he was going to quit if not paid. Later that day, the employer discharged the claimant with no explanation. **HELD:** The claimant's complaint about the unresolved wage dispute did not constitute misconduct connected with the work.

MC 255.45(2)

Appeal No. 86-6003-10-040187. The claimant was discharged when he stated he was not going to return to work following his vacation unless he received a raise. No raise had ever been promised. The claimant offered to negotiate after the employer handed him his final check, but the employer refused, stating that he had been discharged. **HELD:** The claimant's statement that he would not return to work without first receiving a raise constituted misconduct connected with the work.

Appeal No. 4405-CA-76. The claimant was discharged after having a discussion with the employer concerning the claimant's failure to receive a 25 cent per hour raise. The employees had been told that all of them would receive the raise and, in fact, all employees except the claimant did receive the raise. There was no evidence that the claimant had been belligerent or abusive with the employer. **HELD:** A simple request for information concerning why he was not receiving the same raise as promised and as received by all other employees did not constitute misconduct connected with the work. Also see MC 600.00.

MC Intoxication and Use of Intoxicants

MC 270.00 Intoxication and Use of Intoxicants.

Includes cases where claimant was discharged for intoxication or use of intoxicants.

Appeal No. 88-04433-10-033188. The claimant was discharged for being at work under the influence of an alcoholic beverage. The claimant's supervisor found him to be slurred in his speech and unsteady on his feet. The claimant told his supervisor that he had gotten drunk. He had been drinking heavily the night before and had consumed an alcoholic beverage at lunch on the day of his discharge. The claimant had had an ongoing problem with alcoholism and depression for many years and had sought medical treatment at various times for these conditions. **HELD:** The claimant's action of consuming an alcoholic beverage on his lunch break and appearing later that afternoon at the workplace in an intoxicated condition constituted misconduct connected with the work.

Appeal No. 87-12927-10-072387. The claimant told her supervisor over the phone that she could not come into work because she was drunk. The employer discharged the claimant for the incident. **HELD:** Discharged for work-connected misconduct because the claimant failed to conduct her private life in a manner that would reasonably protect her job and the employer's interest. Disqualified under Section 207.044.

Appeal No. 3471-CA-76. The claimant was discharged for having reported to work intoxicated on three consecutive mornings. **HELD:** The claimant's reporting to work in an intoxicated condition constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 300.00 – 300.05

MC Manner of Performing Work

MC 300.00 Manner of Performing Work

MC 300.05 Manner of Performing Work: General

Includes cases containing (1) A general discussion of manner of performing work, (2) Points not covered by any other subline under line 300, or (3) Points covered by three or more sublines.

Case No. 776652-2. The claimant began working for the employer in October 1988 as a Park Ranger. State law changed and mandated each State Park treat their water and wastewater. These job duties were merged into the Park Ranger duties, and Park Rangers were required to obtain Class D Water and Class D Wastewater treatment licenses from the Texas Commission on Environmental Quality. In January 2005, the claimant was advised she had six months to obtain her licenses. The claimant continued working for the employer and took her exams. In July 2005, the claimant was discharged after she failed to obtain her licenses. **HELD:** In further refining policy set forth in Precedent Case No. 395031 (MC 300.05), the Commission concluded that the claimant's conduct in continuing to work for the employer after being apprised of the change in her hiring agreement constitutes an acceptance of those newly imposed terms and conditions. Consequently, the claimant's failure to obtain the required water and wastewater licenses constitutes mismanagement of her position of employment and misconduct under Section 207.044 of the Texas Unemployment Compensation Act.

MC 300.05(2)

Case No. 413444. The claimant, a sales assistant for an investment firm, was hired with the agreement that she would pass a "series 7" examination required by the Texas Securities Act. The claimant was initially given 90 days to pass the examination, and after failing it, was given an additional year to pass the test. The claimant was discharged after failing to pass the examination on four occasions. **HELD:** The Commission held that if an individual accepts a job with the understanding that continued employment depends upon the taking and passing of a subsequent test, the failure to pass that test constitutes misconduct connected with the work.

Case No. 395031. The claimant, an insurance agent working under a temporary license, was informed at the time of her hire that, in order to continue in her employment with the named employer, an insurance company, she would have to pass a licensing exam and thusly become a licensed insurance agent under the auspices of Texas State Law. After taking the test on multiple occasions and in each instance failing to pass the exam, the claimant's temporary license expired and, as the employer could not employ the claimant as an insurance agent without a license, the claimant was discharged. **HELD:** In **Case No. 177177** the Commission expressly overruled the holding in **Appeal No. 86-13685-10-092586** that a failure to secure certification in a timely manner was to be analyzed as an inability to perform and thusly not disqualifying. In the case at hand the claimant's employment with the named employer was entered into as the result of an agreed-upon understanding between the parties that the claimant's continued employment would be contingent upon her passing a licensing exam and thereby becoming a licensed insurance agent. The claimant's failure to do so in a timely fashion (prior to the expiration of her temporary license) constituted a mismanagement of her position of employment equivalent to misconduct connected with the work. Disqualification under Section 207.044.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 300.05(3)

Case No. 177177. The claimant, a teacher, had taught for three years in the State of Texas under a temporary permit. For the claimant to continue teaching, a passing score on the Examination for Certification of Educators in Texas (ExCET) and the certification that this would have provided were necessary. The claimant took only one part of the exam during the summer. The claimant was separated from employment after she failed to receive a passing ExCET test score. **HELD:** Under these circumstances, the claimant's failure to become certified by the time school started for another year was a mismanagement of her position and constituted misconduct connected with the work. Disqualified under Section 207.044. In so ruling, the Commission expressly overruled the holding in **Appeal No. 86-13685-10-092586** that failure to secure certification in a timely manner was analyzed as inability and thus not disqualifying.

Appeal No. 87-16289-10-091787. In determining whether a claimant's total performance or non-performance constitutes misconduct connected with the work, the last incident of alleged misconduct is not the only incident, which should be considered.

Also see Appeal No. 86-13688-10-091586 under VL 515.15.

Appeal No. 1456-CA-77. Where a claimant has performed her work to the best of her ability, her inability to meet the employer's standards or inability to perform the work to the employer's satisfaction does not constitute misconduct connected with the work.

Appeal No. 1123-CA-76. An employee's failure to meet the employer's production standards cannot be deemed misconduct connected with the work unless the evidence clearly shows that the individual, in the past, demonstrated an ability to consistently meet the required production standards.

MC 300.10 – 300.15

MC 300.10 Manner of Performing Work: Accident.

Where claimant was involved in an accident. In such a case, damage or lack of it is not the controlling element.

Appeal No. 1775-CA-77. The claimant, a truck driver, was discharged because he had been involved in two traffic accidents during his term of employment and the employer's rule, of which he had been aware, specified that drivers involved in two traffic accidents were subject to discharge. **HELD:** Since there was no evidence in the record tending to show that the claimant had been at fault in either of the accidents, even though in violation of the employer's rule, these accidents did not constitute misconduct connected with the work.

Appeal No. 3836-CA-76. The claimant was discharged because he was involved in two accidents with the employer's vehicles, resulting in damage to both of them. The evidence showed that both of the accidents had been caused by the claimant's negligence. **HELD:** The claimant's negligent performance of his work, which resulted in damage to the employer's property, constituted misconduct connected with the work. Disqualification under Section 207.044.

MC 300.15 Manner of Performing Work: Damage to Equipment or Materials.

Where damage to equipment or material was the result of claimant's manner of performing work.

Appeal No. 2082-CA-77. The claimant was discharged because, after putting a machine in operation, he went away from the machine for an extended time while on a coffee break. During this time, the untended machine malfunctioned and suffered $1,000 worth of damage, which would have been mitigated had the claimant been present when the machine malfunctioned. **HELD:** The claimant's leaving the employer's machine untended for an extended period of time, during which it malfunctioned and was damaged, constituted negligence and, thus, misconduct connected with the work. Disqualification under Section 207.044.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 300.15(2)

Appeal No. 2689-CA-76. The claimant was discharged because, during the three months that he worked as a punch press operator, he had damaged several pieces of expensive equipment. Notwithstanding his eight years' experience as a punch press operator, the claimant had been unfamiliar with the employer's equipment. Further, he had performed his work to the best of his ability and had never been warned that his actions could result in his termination. **HELD:** There was no specific act of misconduct connected with the work for which the claimant was discharged. No disqualification under Section 207.044.

Appeal No. 3189-CA-75. The claimant, a machine operator, was operating a machine when it jammed and broke, causing extensive damage to the machine. The claimant had not been doing anything out of the ordinary nor had she been inattentive in her operation of the machine. She was discharged because of this incident although during the six months that she had worked for the employer, she had received several raises in pay and there had been no prior complaints about her work. **HELD:** Although the machine broke while the claimant was operating it, there was no evidence of any specific act or omission on the claimant's part which could be characterized as negligence of such degree or recurrence as to constitute misconduct connected with the work.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 300.20

MC 300.20 Manner of Performing Work: Judgment.

Considers the question of whether a poor exercise of judgment constitutes misconduct.

Appeal No. 87-07750-10-050887. To get the attention of the operator of a forklift he needed on a job site, the claimant threw a rock at the fender but hit and shattered the rear window without injuring the operator. The claimant was reprimanded and given another assignment but was discharged the next day for the incident. He had seen other drivers in the past throw rocks at the forklift and knew that they had been reprimanded for it. **HELD:** The claimant's act constituted misconduct connected with the work because it damaged the employer's property and placed in jeopardy the well-being of the forklift operator, exactly the type of conduct contemplated as misconduct by Section 201.012 of the Act. Also, the claimant was aware that this type of conduct was not condoned by the employer. Further, the following day's discharge was in fact proximate in time to the incident.

Appeal No. 2175-CA-76. The claimant, an air-knife operator in a packing plant, was discharged because he broke an air-knife by using it to beat a pipe to attract attention to the fact that he needed someone to assist him in his work. The person assigned to assist him had walked off the job. **HELD:** Although the claimant may not have used good judgment, the evidence failed to establish that he had intended to damage the employer's property. Accordingly, the claimant's use of poor judgment did not constitute misconduct connected with the work.

MC 300.25 Manner of Performing Work: Quality of Work.

Where claimant was discharged because of the poor quality of his work.

Appeal No. 87-06368-10-041787. The claimant, a convenience store manager, was discharged by his new supervisor because of problems with the daily cash report, especially money order serial number discrepancies. The money order machine would often jam and issue money orders in an improper sequence. Also, because of staffing problems, the claimant did not have time to complete the daily cash report. The claimant's previous supervisor had counseled him on only one occasion and the claimant never received a written warning as per company policy nor had he been advised his job was in jeopardy. The new supervisor apparently had higher expectations of the claimant's performance than had the previous supervisor. **HELD:** Discharged for reasons other than misconduct connected with the work because the employer's perception of what constituted adequate job performance changed and the claimant's formerly satisfactory performance, although unchanged, became unsatisfactory to the employer.

Appeal No. 1893-CA-77. The claimant, manager of a convenience store location, was discharged because she was unable to control and prevent inventory shortages. The claimant had no authority to hire or discharge other store employees, some of whom were unable to control the store when large numbers of people were in the store at the same time. She was not counseled about the shortages until shortly before her discharge. **HELD:** Without the authority to hire and fire, the claimant had little opportunity to control the shortages. The claimant's simple inability to manage the store properly did not constitute misconduct connected with the work.

MC 300.25(3)

Appeal No. 1781-CA-77. The claimant was discharged because, after doing above average work for about one and one-half years, the quality of her work deteriorated dramatically in spite of warnings. **HELD:** The unexplained deterioration in the quality of the claimant's work demonstrated such recurring negligence as to show an intentional and substantial disregard of the employer's interests thereby constituting misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 270-CA-76. A claimant who produced substandard work was thereby deemed guilty of misconduct connected with the work where she had previously demonstrated a capacity to produce satisfactory work, had more recently been counseled regarding her failure to continue to do so, and, after a disciplinary layoff for this reason, had temporarily produced satisfactory quality work.

Appeal No. 482-CA-77. The claimant, a deliveryman for a candy company, was discharged because he failed to properly stack certain merchandise in the truck in the way he knew it should have been done. This risked damage to the merchandise and required its resorting and restacking. The claimant did not stack the merchandise properly because he felt it would take too much time. However, he was an hourly-paid employee and would have been paid for all the time required to stack the merchandise properly. **HELD:** The claimant's knowing failure to properly perform his job duties, merely because he did not wish to take the extra time, constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 3616-CF-75. An individual's inability to learn a job or to increase productivity during a probationary period, in the absence of evidence showing that the individual had previously been able to meet the employer's standards, does not constitute misconduct connected with the work.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 300.30 Manner of Performing Work: Quantity of Work.

Where claimant was discharged because his production was insufficient.

Appeal No. 640-CA-77. The claimant was discharged because, during the latter portion of his term of employment, his production level had decreased by about half. However, during the period in question, the claimant's hours of work had been reduced by more than 20% and the material he was then working with was more difficult to process than the material with which he had previously worked. **HELD:** The employer failed to prove that the claimant's decreased production was not attributable to his decreased hours and the more difficult materials he was processing; the employer thus failed to prove that the claimant had been guilty of misconduct connected with the work.

Appeal No. 363-CA-77. The claimant was discharged because, during the last three months of her six-month term of employment, her production level declined considerably. She had previously demonstrated a capacity to produce satisfactorily, her job had not been changed and she had been warned that her decreased productivity would endanger her job. **HELD:** The claimant's failure to meet the employer's required production standards, after she had previously demonstrated a capacity for satisfactory production and had been counseled regarding her decreased productivity, constituted misconduct connected with the work. Disqualification under Section 207.044.

MC 300.40(2)

MC 300.40 Manner of Performing Work: Careless or Negligent Work.

Where careless or negligent acts by claimant in carrying out the work caused discharge.

Case No. 785689-2. The claimant, who worked at a residence for handicapped persons, had received warnings about her performance, and was aware that her job was in jeopardy. The claimant's duties including handling documents that were used to make purchases for the residents. Just prior to the claimant's separation, she lost four of these documents and could offer no explanation for the loss. **Held:** Discharged for misconduct connected with the work. The task that the claimant was expected to perform was simple. The claimant's unexplained loss of the documents constitutes negligence and therefore misconduct connected with the work.

Appeal No. 96-003785-10-031997. The claimant, a cafeteria dishwasher, was discharged after warnings for poor job performance. The claimant's primary job duty was cleaning pots and pans and putting them away. Although claimant contended, he performed the job to the best of his ability, food particles and mildew were often found on pots and pans after claimant washed them and returned them to the storage rack. **HELD:** Where the work is not complex, an employee's failure to pay reasonable attention to simple job tasks is misconduct.

MC 300.40(3)

Appeal No. 87-07313-10-050487. The claimant, a custodian for the employer medical center, was instructed that it was of the utmost importance to dispose of hazardous waste carefully. The claimant received detailed instructions on how to proceed including unlocking a special receptacle with one of four keys kept at various locations in the employer's hospital. The claimant knew or should have known the four key locations. The claimant was discharged because he left hazardous waste (contaminated needles) lying next to the receptacle after unsuccessful attempts to locate a key. This was done without notifying security, as would have been proper. The claimant became preoccupied with other duties and forgot the needles which were discovered later by security. The employer discharged the claimant even though it was his first offense and he had had a good work record. **HELD:** Even one isolated incident that places in jeopardy the lives and property of others is so severe as to constitute misconduct connected with the work. Disqualification under Section 207.044 of the Act.

Appeal No. 86-03494-10-022387. The claimant, a tank truck driver, caused minor damage to the employer's truck by driving away from a fuel tank with the hose engaged after refueling. Previously the employer had warned all drivers that the next driver involved in such an incident would be discharged. The claimant had done the same thing two months earlier but did not know why he had failed to disengage the hose on the two occasions. He was discharged after the second occurrence. **HELD:** The claimant's failure to exercise the care he normally did in the performance of his job duties constituted negligence within the meaning of the Act. Disqualification under Section 207.044.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 300.40(4)

Appeal No. 87-19620-10-111287. The claimant refused to substitute a special blended meal for a regular meal given in error to a patient likely to choke on regular meals. The claimant promised to watch the patient eat but, after a few minutes, left the patient with another nurse's aide. Soon thereafter the patient choked on a dumpling and died. No one was watching the patient when she choked. The claimant was discharged after an investigation of the incident. **HELD:** The claimant's failure to switch the regular meal with the blended meal and her failure to make sure the patient was observed throughout the meal were neglect that placed in jeopardy the life of the patient and the employer's property and thus constituted misconduct connected with the work. Disqualification under Section 207.044

Appeal No. 906-CA-78. The claimant, a convenience store manager, was discharged when an audit of her store revealed a shortage of $2,673 for the month of February 1978. During the last 5 months of her employment, the claimant's store had monthly shortages ranging from $253 to $2,673. The claimant was absent from work for personal illness or vacation leave on 15 days between February 1 and February 21, 1978, the date of her discharge. **HELD:** Since there was no evidence presented to show that the February 1978 shortage was the result of any specific act or omission on the claimant's part, the claimant's discharge was for reasons other than misconduct connected with the work.

Appeal No. 1923-CA-77. Where a claimant exercised due care in the preparation of retail sales tickets and has never been warned of her performance in that regard, the claimant's occasional mathematical errors in preparing such tickets, do not constitute misconduct connected with the work as such errors do not reflect a lack of ordinary prudence.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 300.40(3)

Appeal No. 1115-CA-77. The claimant, a coffee shop cashier, was discharged because, over a three-day period, she had cash discrepancies of $95 to $140 per day whereas the average discrepancy of the other cashiers was $4 per day. Also, the claimant's register tapes were torn, and during the claimant's two-week vacation, her cash register was operated without discrepancies and with substantial increase in the daily gross revenues of the shop without any increase in patrons or any change in menus or prices. **HELD:** The claimant was guilty of either carelessness or negligence in the performance of her work. Considering the degree of loss involved, this carelessness was of sufficient magnitude to constitute misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 361-CA-77. The claimant was discharged after warnings because of shortages and overages in his cash register. He had to deal with two different types of currency, as well as with food stamps, and his last discrepancy had been an overage of $13.61 and not a shortage. **HELD:** Since none of the claimant's overages or shortages were substantial and it was an overage that caused the claimant's discharge and since it was the claimant's testimony that he had always performed to the best of his ability, the evidence was deemed insufficient to establish misconduct connected with the work on the claimant's part.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 300.40(4)

Appeal No. 3392-CA-76. The claimant, an inhalation therapy technician, was discharged because she had permitted a student nurse, who had been assigned to observe the claimant's performance of her duties, to partially assemble a life support machine for a patient. The machine was not properly assembled by the student nurse and the claimant did not observe her assembly of the machine nor did she check it after it was set up. As a result of the machine's improper assembly, the patient suffered cardiac arrest. **HELD:** The claimant's permitting the student nurse to assemble the life support machine, without closely supervising her or checking the machine after it was set up, was negligence of such a degree as to constitute misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 3259-CA-75. The claimant, a cashier, was discharged, after warnings, because she had miscounted money on the last two days that she worked, by about $100 each day. Her inattentiveness to her duties on her last two days of work was due to her having a pinched nerve in her back and being preoccupied by the condition of her critically ill father. Further, the claimant's errors had been quickly discovered and corrected and resulted in no monetary loss to the employer. **HELD:** In light of the fact that her health and personal problems may have affected the claimant's ability to concentrate on her last two days of work and since her errors were readily remedied with no monetary loss to the employer, the claimant's errors did not constitute misconduct connected with the work.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 310.00 – 310.10

MC Neglect or Duty

MC 310.00 Neglect of Duty

MC 310.05 Neglect of Duty: General

Includes cases containing (1) a general discussion of neglect of duty, (2) points not covered by any other subline under line 310, or (3) points covered by three or more sublines.

Appeal No. 25771-AT-65 (Affirmed by 957-CA-65). The claimant had been warned about neglecting customers and loafing on the job. She was discharged when she continued to neglect the customers. Her neglect of her duties constituted misconduct connected with the work. Disqualification under Section 207.044.

MC 310.10 Neglect or Duty: Duties Not Discharged.

Where the claimant neglected to perform all the duties of his job, failed to work overtime or some particular time, or failed to complete or do a particular task.

Appeal No. 911-CA-77. The claimant was discharged because, on a day when the employer's president was absent from work, she had closed the employer's shop and sent the other employees' home. On that same day, she had received a telephone call from the president's wife, accusing the claimant of having an affair with the president. The call had greatly upset the claimant, who could not continue working and did not feel that she could leave the shop in the hands of the other employees. The president had witnessed his wife's telephone call and had known that it would upset the claimant. **HELD:** Under the circumstances, the claimant's actions did not constitute misconduct connected with the work.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 310.10(2)

Appeal No. 844-CA-77. The claimant, manager of a short-order restaurant, was discharged, after warnings, for not opening the restaurant on time, for charging produce rather than paying cash, for failing to make bank deposits on time, for failing to post a work schedule, for being out of the prescribed uniform, and for not keeping the place as clean as he should have. All of these actions were contrary to company policy and most of them had occurred on several occasions. **HELD:** The claimant's repeated violation of company policy, after warnings, constituted misconduct connected with the work. Disqualification under section 207.044.

Appeal No. 605-CA-77. The claimant, a security guard, was discharged for having parked his car on the grounds of the school where he was assigned as a guard and for sitting in his car while he was supposed to be on duty, both of which actions were in violation of the employer's known rules. **HELD:** Discharged for misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 1309-CA-76. The claimant was discharged, after several warnings, for her repeated failure to perform promptly her assigned duty of verifying that bank deposits had actually been received by the banks to which they had been sent. Immediately prior to her separation, the claimant was absent for several days due to personal illness, during which absence the employer discovered a number of unverified deposit slips which were several weeks old. **HELD:** The claimant's continued failure, after several warnings, to perform properly a rather simple task constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 310.15

MC 310.15 Neglect of Duty: Personal Comfort and Convenience.

Involves claimant's wasting employer's time by, for example, talking and laughing or annoying other employees by singing or whistling, or sleeping at post of duty.

Appeal No. 4698-CA-76. The claimant, an instructor, was discharged because, after warnings, he continued to come in late and to take long breaks. For a long time before a recent change in policy, instructors had been permitted to work at their own pace. The warnings to the claimant came after the change in policy. **HELD:** The claimant's failure to adhere to the employer's change in policy, imposing a more restrictive work schedule, constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 3159-CA-75. The normal and permitted practice of the work crew of which the claimant was a member was to take breaks at irregular intervals to get coffee or cold drinks. The claimant was discharged because his foreman had seen him getting coffee which he had intended to drink while riding to the location where he was to unload a truck of chairs. **HELD:** In view of the fact that the claimant had been essentially following the normal practice of his crew and had never been told that their manner of taking breaks was against the employer's policy, the claimant's action did not constitute misconduct connected with the work.

MC 310.20 Neglect of Duty: Temporary Cessation of Work.

Where the claimant left before closing time or for some reason ceased working without authorization.

MC 310.20(2)

Appeal No. 86-00648-10-122286. The employer hired the claimant to clear debris from a roof without instructing the claimant how or at what pace to perform the work. The claimant enlisted his son as a helper and would periodically wait for about five minutes for his son to fill containers with the debris the claimant had gathered. The employer saw the claimant "standing around" and, without warning, discharged him for "loafing" on the job. **HELD:** As no warnings or instructions had ever been given to the claimant regarding his work performance, the claimant's short period of inactivity was not so much in disregard of the employer's interest that it rose to the level of misconduct. No disqualification under Section 207.044.

Appeal No. 1116-CA-77. The claimant, a truck driver, was discharged because he drove the employer's truck the twenty miles from the work site to the main office in order to ask permission for a day off, thereby taking his truck out of service. He could have requested such permission by means of his truck's two-way radio which had been installed to facilitate communication between the work site and the office. **HELD:** The claimant's leaving his assigned job and traveling to the employer's office for his own convenience, rather than using his truck radio, constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 1053-CA-77. The claimant, a hotel night desk clerk, was discharged because he left his workstation without authorization and was arrested two and one-half blocks away with some of the employer's property in his possession. The charge of petty theft originally lodged against the claimant was ultimately dismissed. **HELD:** The claimant's leaving his workstation without receiving prior permission constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 360.00

MC Personal Affairs

MC 360.00 Personal Affairs.

Includes cases where a claimant's personal affairs brought about discharge.

Appeal No. 147-CA-69. When there is no evidence the claimant's failure to pay a personal debt adversely affected his employer's interest, the claimant's resentment of the employer's intrusion into his affairs does not constitute misconduct connected with the work.

Appeal No. 750-CA-67. The claimant, a married woman, and a married male co-worker spent a considerable amount of time together off the job. Claimant was discharged because the employer felt she was disregarding the interest of the company. Claimant's relationship with the co-worker caused gossip inside the company and in the community and she was well aware of this fact. This situation, if permitted to continue, could have had a very detrimental effect on the reputation of the company. Disqualification under Section 207.044.

Appeal No. 1561-AT-69 (Affirmed by 201-CA-69). The claimant was discharged because her brother-in-law created a disturbance in the store. The claimant was not responsible for the actions of her brother-in-law and was not guilty of misconduct connected with the work.

MC 385.00

MC Relation of Offense to Discharge

MC 385.00 Relation of Offense to Discharge.

Includes cases in which there is a discussion of whether the alleged act of misconduct was too remote from the time of discharge to constitute a cause thereof: also, whether the alleged act of misconduct was the primary cause of the discharge.

Appeal No. 97-008947-10-082097. As a general rule, misconduct will not be found where the precipitating incident is too remote in time from the date of the work separation. This general rule does not apply, however, if the delay is caused by established procedures designed to protect the worker from possibly erroneous separation decisions. Here, the claimant was discharged four months after the precipitating incident. During that time, however, the employer conducted an internal investigation, reviewed the recommendation to terminate through the chain of command, and allowed the claimant to complete a pre-termination hearing procedure. **HELD:** Here, the delay caused by the employer's reasonable pre-termination procedures did not render the discharge too remote in time from the final incident. Discharged for misconduct connected with the last work.

Appeal No. 88-04705-10-041288. During the week beginning Monday, February 8, 1988, the claimant got into an argument with his foreman and used abusive language toward the foreman. The claimant was not discharged until Friday, February 12, 1988 because the employer needed a full crew to fulfill the terms of the employer's contract and because transportation from the claimant's offshore job site was not available until that date. **HELD:** The claimant's discharge occurred within a reasonable time and was delayed only by lack of transportation to take the claimant from the job site. This was not an issue of employer convenience but one of unavoidable practicality. As the claimant's use of abusive language toward his supervisor constituted misconduct as mismanagement of his position of employment, disqualification under Section 207.044.

MC 385.00(2)

Appeal No. 85-10309-10-092785. The claimant was originally separated from work when he was suspended for one week without pay after his employer discovered that the claimant had misappropriated equipment from the employer several years earlier. After the claimant served his week of suspension without pay and was returned to work for three weeks, the employer's higher management reversed the claimant's original disciplinary suspension and discharged the claimant. **HELD:** The claimant's original suspension from work without pay constituted a work separation. When the employer allowed the claimant to return to work for three weeks after one week of suspension without pay, the employer effectively forgave the claimant's previous act of misconduct. No disqualification under Section 207.044 of the Act. (Cross-referenced under TPU 80.05.)

Appeal No. 3968-CA-76. The claimant, a legal secretary, was allegedly discharged because, several months earlier, she had failed to post an examining trial on the employer's calendar. A petition which she had typed had been incorrectly filed by the individual responsible for such duty. **HELD:** Since both incidents, one of which was not attributable to the claimant, were too remote in time to have been the reason for the claimant's discharge, it was held that the claimant had not been discharged for misconduct connected with the work.

Appeal No. 243-CA-76. Where the most recent act of misconduct on a claimant's part alleged by the employer was shown to have occurred three months prior to the claimant's discharge, such act or omission, even if proved by a preponderance of the evidence, will not support a finding of misconduct with the work for which the claimant was discharged, because it was too remote in time from the discharge.

Also see Appeal No. 88-4246-10-033088 under MC 135.25.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 390.00 – 390.05

MC Relations with Fellow Employees

MC 390.00 Relations with Fellow Employees

MC 390.05 Relations with Fellow Employees: General.

Includes cases containing (1) a general discussion of discharge because of relations with fellow employees, (2) points not covered by any other subline under line 390, or (3) points covered by three or more sublines.

Appeal No. 847-CA-77. A claimant who was discharged, apparently because her two co-workers did not wish to work with her, but who had performed her job to the best of her ability and had given her co-workers no reason to object to working with her, was held not to have been discharged for misconduct connected with the work.

Appeal No. 277-CA-77. The claimant, an inexperienced new employee, was discharged because she had complained to her more experienced co-workers that they were working too fast for her to keep up with them. **HELD:** Although the claimant may have been inefficient and frustrated in her work, there was no evidence to show that she had failed to perform to the best of her ability. In light of the difference between the claimant's skill and experience and that of her co-workers, her request of them, that they work at a pace which she could keep up with, did not constitute misconduct connected with the work.

Appeal No. 2492-CA-76. The claimant, a fry cook, was discharged because of her failure to disclose to the employer's chef the whereabouts of the chef's daughter, a friend of the claimant's. The claimant had not wanted to become further involved in a family problem. **HELD:** Disclosing the whereabouts of the chef's daughter was not the claimant's responsibility and it was reasonable for her to wish to avoid further involvement in a family problem. Furthermore, the claimant's omission in this regard could not reasonably be described as connected with the work within the meaning of Section 207.044.

MC 390.10(2) – 390.20

MC 390.10 Relations with Fellow Employees: Abusive or Profane Language.

Involves the use of abusive or profane language in talking with fellow employees.

Appeal No. 3697-AT-69 (Affirmed by 405-CA-69). Although the claimant had been provoked by a co-worker's intimate questions about her personal life, she did not complain of the matter to management. Instead, she responded with a swear word. When management learned of the incident, the claimant was discharged. **HELD:** The claimant's use of objectionable language to the co-worker, instead of giving the employer an opportunity to take corrective measures, was misconduct connected with the work. Disqualification under Section 207.044.

MC 390.15 Relations with Fellow Employees: Agitation.

Where a claimant creates a disturbance, which is contrary to his employer's interest.

Appeal No. 1717-CA-76. A claimant who had been warned previously about making allegations of improper conduct on the part of her co-workers, which had been investigated by the employer and found to have been unfounded, but who persisted in such allegations, thereby disrupting the employer's operations, was held to have been guilty of misconduct connected with the work. Disqualification under Section 207.044.

MC 390.20 Relations with Fellow Employees: Altercation or Assault.

Where claimant has an argument or fight with another employee.

Appeal No. 87-18554-10-102687. The employer discharged the claimant for striking and throwing glue on a group leader in response to the group leader having called the claimant "nigger." **HELD:** As the claimant should have reported the incident to management in order to give the employer a chance to take corrective action, the claimant committed misconduct connected with the work. (Cross-referenced under VL 515.80.)

Also see Appeal No. 87-17200-10-092987 under VL 515.80.

MC 390.20(2)

Appeal No. 87-10609-10-061987. The claimant, but not the co-worker, was fired after the two yelled and cursed each other in front of customers. The co-worker had initiated the yelling. **HELD:** Because the employer did not discharge the co-worker who started the argument, the claimant must have been discharged for reasons other than misconduct connected with the work. No disqualification under Section 207.044.

Appeal No. 2802-CA-77. The claimant was discharged because, during a long verbal dispute with a co-worker, he pulled a knife on the co-worker. **HELD:** The claimant's actions in escalating the conflict from the verbal to the physical plane could have resulted in a very serious incident even though the claimant did not, in fact, slash at his co-worker with the knife. The claimant's actions were clearly against the employer's interests and constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 1984-CA-77. The claimant, toward whom another employee made a rude gesture which was returned in kind by the claimant, was then physically assaulted by the other employee, in spite of the claimant's attempt to avoid a fight. The claimant thereupon fought back in self-defense until rescued by fellow employees. He was discharged for having engaged in a fist fight on company property. **HELD:** Since the claimant was assaulted by the other employee and did not voluntarily engage in a violation of the employer's rule against fighting on company property, the claimant was not guilty of misconduct connected with the work.

Appeal No. 1011-CA-77. The claimant was discharged for having shoved his supervisor and having wrestled him to the ground. The claimant objected to a certain common expression used by the supervisor in urging the crew to get back to work. **HELD:** The expression would not have been unusual in a heavy equipment shop atmosphere and was not sufficiently objectionable to justify the claimant's actions. The claimant's assaulting his supervisor with no more serious provocation than this constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 390.20(3) – 390.30

Appeal No. 731-CA-77. The claimant was discharged for having loudly threatened another employee on the premises of the hospital where she worked. **HELD:** Since the claimant's threats could have been overheard by patients and a hospital is a place where a quiet atmosphere should be maintained, the claimant's actions constituted misconduct connected with the work. Disqualification under Section 207.044.

Also see Appeal No. 87-20326-10-112587 under MC 85.00.

MC 390.25 Relations with Fellow Employees: Annoyance of Fellow Employees.

Where claimant molests or irritates or otherwise annoys fellow employees.

Appeal No. 1194-CA-76. The claimant was discharged, after several warnings, for continuing to make forward comments to and requesting dates of female employees. The remarks and requests were unsolicited and unwelcome and had been made on company time and on company premises. **HELD:** The claimant's actions constituted misconduct connected with the work. Disqualification under Section 207.044.

MC 390.30 Relations with Fellow Employees: Debt

Involves a discharge because of the debt, or some incident of such debt, of claimant to a fellow employee.

Appeal No. 89-07579-10-071389. For a nine-month period, the claimant, a supervisor, periodically used his position to borrow or solicit money from his subordinates. Although he had never been warned not to do this, the claimant was discharged for violation of the employer's policies prohibiting (1) solicitation of company employees without prior approval and (2) intimidation of fellow employees. **HELD:** The claimant's actions violated the spirit of the employer's policies and constituted mismanagement of his supervisory position. Therefore, the claimant was guilty of misconduct connected with the work. Disqualification under Section 207.044.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 390.35 – MC 390.40

MC 390.35 Relations with fellow employees: Dishonesty.

Applies to acts of dishonesty in relation to fellow employees.

Appeal No. 46934-AT-67 (Affirmed by 1028-CA-67). Claimant was discharged because he removed an article from the employer's hotel, which article belonged to a co-worker. Claimant's removal of the article without inquiring whether it belonged to any of his fellow employees constituted misconduct connected with the work.

Disqualification under Section 207.044.

MC 390.40 Relations with Fellow Employees: Uncooperative Attitude.

Considers the effect of claimant's uncooperative attitude upon his fellow employees.

Appeal No. 2955-CA-76. The claimant was discharged because he refused to apologize to another employee whom the claimant had ordered to get to work as the claimant needed the other employee's assistance in waiting on customers. The other employee had been given permission to leave work early and had already clocked out, but this was not known to the claimant. **HELD:** The claimant's intent in ordering the other employee to get to work was to further the employer's interests in seeing that the customers got waited on. Accordingly, his actions did not constitute misconduct connected with the work.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 435.00

MC Tardiness

MC 435.00 Tardiness

Includes cases where claimant was discharged for being late for work.

Appeal No. 85-1414-10-011387. The claimant was discharged after warning for excessive tardiness and absenteeism. The claimant submitted medical documentation stating she had a chronic health problem but no specific dates on which the claimant could not work. **HELD:** Discharged for misconduct connected with the work. The claimant's medical documentation was insufficient because it did not specify dates on which the claimant was unable to work, and this documentation also did not excuse the claimant's tardiness.

Appeal No. 2323-CA-77. The claimant had been either late to work or absent from work about twice a week during the three months that he worked. He was discharged when he called in about noon and stated that he would be late. He knew that the peak hours of work in the employer's business were from 5:00 a.m. to 10:00 a.m. **HELD:** The claimant's repeated tardiness and absenteeism constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 1566-CA-77. The claimant was discharged because, on one isolated occasion, she was fifteen minutes late to work due to the unreadiness of a co-worker, who had requested that the claimant give her a ride to work. **HELD:** Since the claimant's tardiness was an isolated instance and was not entirely her fault, it did not constitute misconduct connected with the work.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 435.00(2)

Appeal No. 2027-CA-EB-76. The claimant was discharged for tardiness caused by a flat tire on his way to work. Earlier in his employment, the claimant, who commuted to work from a nearby town, had advised his supervisor that he might be late from time to time due to transportation problems and this state of affairs had been expressly condoned by the supervisor. The claimant had never been warned about his tardiness. **HELD:** Since the claimant's occasional tardiness had been expressly condoned by his supervisor and he had never been warned, his tardiness on his last day of work did not constitute misconduct connected with the work. (Cross-referenced under MC 5.00.)

Appeal No. 1605-CA-76. A claimant's consistent failure to report to work on time, despite repeated warnings, constitutes misconduct connected with the work.

Also see cases digested under MC 15.00.

Appeal No. 97-004948-10-050997. The claimant, a sales representative, was discharged for excessive tardiness after numerous verbal warnings. None of these warnings, however, specifically advised claimant his job was in jeopardy due to his tardiness. On his last day the claimant missed a previously scheduled mandatory sales meeting when he arrived late to work. **HELD:** Discharged for misconduct. Where the employer’s repeated warnings are sufficient to put claimant on notice that certain behavior is unacceptable, it is unnecessary for the employer to further warn claimant his job is in jeopardy. (Also digested at MC 5.00).

Appeals Policy and Precedent Manual

MISCONDUCT

MC 450.00 – 450.55

MC Time

MC 450.00 Time

MC 450.00 Time: Temporary Job

Where only reason for termination of employment was the completion of the work for which claimant was specifically hired.

Appeal No. 212-CA-77. A claimant who is employed irregularly on an on-call, as-needed basis and who does not know at the conclusion of one day's work whether further work will be available, is to be regarded as having been involuntarily separated for reasons other than misconduct upon the conclusion of each period of employment.

Appeal No. 2005-CA-76. A claimant who was hired for one day as a temporary replacement and was not offered further work was discharged for reasons other than misconduct connected with the work.

Also see Appeal No. 1252-CA-77 and Appeal No. 263-CA-68 under VL 135.05 and Appeal No. 983-CAC-72 and Appeal No. 86-2055-10-012187 under VL 495.00.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 475.00 - 475.10

MC Union Relations

MC 475.00 Union Relations.

MC 475.05 Union Relations. General

Includes cases containing (1) a general discussion of discharge because of union relations, (2) points not covered by any other subline under line 475, or (3) points covered by three or more sublines.

Appeal No. 2388-CA-77. The claimant was discharged for having refused, unless a union representative was present, to a sign a document which could have been later used as evidence in a disciplinary action or proceeding. **HELD:** Since the claimant, in insisting that a union representative be present, was exercising a right given her by the National Labor Relations Act, her action did not constitute misconduct connected with the work. The Commission cited NLRB vs. Weingarten, Inc., 95 S. Ct. 959, a U.S. Supreme Court case, in which the Court ruled that an individual who was discharged for refusing to answer questions at an investigatory interview unless a union representative was present, was denied rights secured to him under Section 7 of the National Labor Relations Act (29 U.S. Code, Section 157) which, in part, provides that "employees have the right...to engage in other concerted activities for the purpose of collective bargaining or mutual aid or protection". The Supreme Court noted that this right applied whenever the employee reasonably believed he was about to be subject to disciplinary action.

MC 475.10 Union Relations: Agreement with Employer.

Where the claimant was discharged after a dispute as to whether the employer had allegedly violated an employer-union agreement.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 475.10 - 475.35

Appeal No. MR 86-18940-10-103087. The employer unilaterally implemented a drug testing policy without first having bargained with the claimant's union as required by their collective bargaining agreement. The claimant was discharged for refusing to submit to the employer's drug test but later was reinstated by an arbitrator's decision that found the employer had violated the collective bargaining agreement by its unilateral action. **HELD:** Because the union, as the claimant's agent, grieved of the employer's unilateral action in a timely manner and never acquiesced in the drug testing policy, there is no evidence that the claimant ever agreed to be tested. Therefore, her refusal to submit to the test when requested by the employer cannot be deemed a violation of any existing policy and thus not misconduct connected with the work. (Also digested under MC 485.46.)

MC 475.35 Union Relations: Labor Dispute, Participation in.

Discussion of the legal effect of a discharge for an act which occurred during the course of a strike or a labor dispute.

Appeal No. 1984-CA-76. The claimant was discharged by not being reinstated at the conclusion of a labor dispute because, during the labor dispute, he had violated an injunction by engaging in violence in connection with the labor dispute, for which he had been convicted of a misdemeanor. **HELD:** Not only did the claimant engage in violence amounting to a crime, such violence was also in violation of an injunction issued against him and others. The claimant's actions constituted misconduct connected with the work for which a disqualification under Section 207.044 was assessed.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 475.50

MC 475.50 Union Relations: Membership or Activity in Union.

Where claimant is discharged for joining a union or for taking an active part in a union.

Appeal No. 87-09510-10-060887. The claimant, a local union member, solicited addresses and telephone numbers from his fellow employees during breaks and at lunch on the employer's premises. The employer's policy prohibited solicitation on company property during working time. The employer discharged the claimant because of his breaktime solicitations. **HELD:** The employer's rule was unreasonable in that it violated a rule of the National Labor Relations Board, approved by the U.S. Supreme Court in Republic Aviation Corps v. N.L.R.B. 324 U.S. 973 (1945), that an employer may not enforce a rule prohibiting solicitation by an employee during breaks or at lunch. No disqualification under Section 207.044 of the Act. (Also digested under MC. 485.05.)

Appeal No. 504-CA-76. The claimant, a "group leader", was discharged because, after warnings that, as a group leader, he was considered a supervisor and was therefore not eligible to participate in any type of union activity, he signed a union pledge card signifying that he was willing to have a particular union represent him in negotiations with management. The NLRB had subsequently determined the claimant's position to be a supervisory one. **HELD:** In light of the NLRB's determination and the fact that the claimant's signing a union pledge card would be more likely to result in adverse consequences to the employer than the claimant's merely voting in a union election, the claimant's action constituted misconduct connected with the work. Disqualification under Section 207.044.

MC 475.60 Union Relations: Refusal to Join or Retain Membership in Union.

Involves a discharge because of the claimant's refusal to join or retain membership in any union or some particular union.

Appeal No. 18638-AT-65 (Affirmed by 212-CA-65). Claimant was discharged, after warnings, because he failed to keep current on payment of his union dues. He was an airline pilot on an interstate airline, covered by the provisions of the Railway Labor Act. The collective bargaining agreement between the airline and claimant's union provides that an employee may be terminated if, after notice, he fails to pay his union dues or the service charge assessed in lieu thereof, if he does not wish to be a member of the union. This "Agency Shop Agreement" was made pursuant to the provision of the Railway Labor Act, which Act, and the agreements made pursuant thereto, by statute, govern the conditions of employment with interstate airlines, anything in the laws of any state to the contrary notwithstanding. Claimant's failure to comply with the provisions of the union contract under these circumstances constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 485.00

MC Violation of Company Rule

MC 485.00 Violation of Company Rule

MC 485.05 Violation of Company Rule: General

Includes cases containing (1) a general discussion of violation of company rule, (2) points not covered by any other subline under line 485, and (3) points covered by three or more sublines.

Appeal No. 87-2861-10-022988. The claimant, a convenience store assistant manager, was discharged for allowing loitering. She had been reprimanded in writing for this offense. Company policy prohibited relatives of employees loitering at the store. On her day off, the claimant was called in to the store for 30 minutes while the manager went to the bank. She brought her child with her since she had no baby-sitter on her day off. The claimant's supervisor entered the store, saw the child, and discharged the claimant because of the previous warning. **HELD:** The employer's action in discharging the claimant for bringing her child to work for 30 minutes, when she had been called in on her day off, was unreasonable. It cannot be said the claimant intentionally violated the employer's policy prohibiting loitering. The claimant's action in reporting to work for 30 minutes on her day off was in support of the employer's best interest and, thus, misconduct has not been shown. No disqualification under Section 207.044.

Appeal No. 87-20145-10-112487. The claimant was absent due to personal illness and had her husband notify her supervisor of her absence. This was contrary to the employer's attendance policy which required an employee to personally notify supervision of an absence. However, the claimant was not aware of this policy and her husband had previously provided such notice on the claimant's behalf, without complaint by the employer. **HELD:** As the employer produced no evidence to establish that the claimant knew of the policy requiring her to call in personally and as the employer previously condoned the practice of the claimant's husband calling in for her, the claimant's failure to personally notify supervision of her absence did not violate a well-known company rule. Thus, it did not constitute misconduct connected with the work.

MC 485.05(2)

Appeal No. 87-11380-10-062987. After complaining to the company officer who gave her the orders and expressing her concerns to her immediate supervisor, the claimant carried out orders that she felt violated the employer's policies. The employer discharged the officer and the claimant for violating the employer's policies. **HELD:** Discharged for reasons other then misconduct connected with the work because the claimant tried in good faith to avoid violating the employer's policies by expressing her concerns to her supervisors. No disqualification under Section 207.044.

Appeal No. 87-09510-10-060887. The claimant, a local union member, solicited addresses and telephone numbers from his fellow employees during breaks and at lunch on the employer's premises. The employer's policy prohibited solicitation on company property during working time. The employer discharged the claimant because of his break time solicitations. **HELD:** The employer's rule was unreasonable in that it violated a rule of the National Labor Relations Board, approved by the U.S. Supreme Court in Republic Aviation Corps. v. N.L.R.B. 324 U.S. 793 (1945), that an employer may not enforce a rule prohibiting solicitation by an employee during breaks or at lunch. No disqualification under Section 207.044 of the Act. (Also digested under MC 475.50)

Appeal No. 86-03697-10-022587. The claimant was helping a patient from his bed to a chair when the patient slipped and grabbed the claimant's blouse. The claimant slapped the patient's hand away to keep from being pulled on top of him. Because of the incident, the employer discharged the claimant for violating its policy against patient mistreatment. **HELD:** Discharged for reasons other than misconduct because the claimant's actions were not intended to mistreat the patient but to prevent herself from falling on and injuring the patient. Also, there was no evidence the claimant's actions harmed the patient.

MC 485.05(3)

Appeal No. 944-CA-77. The claimant, a grocery checker, was discharged in accordance with the employer's policy requiring discharge if a checker made four errors during a six-month period. There was no evidence of negligence or dishonesty on the claimant's part. **HELD:** Since the claimant was engaged in an occupation in which errors are common, the mere fact that the employer's policy required discharge upon the occurrence of four errors in a six-month period did not alone establish misconduct connected with the work.

Appeal No. 2900-CSUA-76. The claimant was discharged for regularly smoking at the nurses' station in the nursing home where she worked, a matter about which she had never been warned, and for having parked her car in an unauthorized location on one occasion several weeks before her discharge. **HELD:** The employer condoned the claimant's smoking at the nurses' station by permitting the practice to continue for several months without objection or warnings. Thus, the claimant's action did not constitute misconduct connected with the work. Furthermore, the claimant's unauthorized parking, on one much earlier occasion, did not constitute misconduct.

Appeal No. 1457-CA-71. If a claimant is discharged for violating a company rule, no disqualification is in order unless the employer's rule is a reasonable one. Any rule which prohibits employees from associating together after working hours is an unreasonable rule and against public policy.

Also see Appeal No. 660-CA-76 under MC 15.10.

MC 485.10 Violation 0f Company Rule: Absence, Tardiness, or Temporary Cessation of Work.

Where a point is made of the fact that the absence, tardiness, or leaving early was in violation of a company rule.

Appeal No. 87-03012-10-030488. The claimant worked under a union contract which provided that a certain number of unexcused absences would subject an employee to discharge. The contract further provided that an absence due to illness would be excused if substantiated by a doctor's statement. The claimant incurred enough absences to warrant discharge; however, he alleged that his last absences were due to personal illness. The claimant did not substantiate this illness with a doctor's statement which he could have secured at no cost to himself under the employer's insurance program. **HELD:** The claimant was not discharged because he had last been absent due to personal illness. Rather, he was discharged for his failure to substantiate that his last absence was due to illness by producing a doctor's statement as required by employer policy and the union contract. The claimant's failure to do this when he could have done so at no cost to himself constituted mismanagement of his position of employment through inaction which allowed his absences to violate the employer's rules. Disqualification under Section 207.044. (Cross-referenced under MC 15.20.)

Appeal No. 832-CA-77. The claimant was discharged because, during a year's time, she had been absent due to illness on a number of days in excess of that permitted by the employer's sick leave policy. **HELD:** The claimant's absenteeism, even in excess of that permitted by the employer's policy, did not constitute misconduct connected with the work when those absences were caused by personal illness. (Cross-referenced under MC 15.20.)

As to absences for personal illness, also see Appeal No. 2480-CA-76 under MC 15.20.

MC 485.10(2) – 485.15

Appeal No. 481-CA-77. The claimant was discharged for his violation of the employer's policy in that he failed, without notice, to appear for overtime work for which he had volunteered. **HELD:** The claimant's action constituted misconduct connected with the work. Disqualification under Section 207.044.

Also see cases digested under MC 15.00.MC 485.12 – 485.15

MC 485.12 Violation of Company Rule: Sleeping on the Job.

Involves cases where discharge was caused solely by sleeping during working time; also, reasons, if any, for falling sleep and consequences of claimant falling asleep on the job.

Appeal No. 2814-CA-76. A claimant's sleeping at the job site, when he was expected to be working, constituted misconduct connected with the work. Disqualification under Section 207.044.

MC 485.15 Violation of Company Rule: Assaulting Fellow Employee.

Where claimant fights or verbally assaults a fellow employee in violation of company rule.

Appeal No. 556-CA-74. If a claimant does not provoke a fight and hits a man only in self-defense after being stabbed, his actions do not constitute misconduct connected with the work.

Appeal No. 4686-AT-68 (Affirmed by 595-CA-68). Fighting with a coworker on company premises generally constitutes misconduct connected with the work. When an individual provokes a difficulty, he cannot then claim he was acting in self-defense in the fight that ensues. Disqualification under Section 207.044.

Also see cases digested under MC 390.20.

MC 485.20 Violation of Company Rule: Clothes.

Where claimant refused to wear clothing in accordance with employer's requirement.

Appeal No. 1570-CA-76. The claimant reported to work without a tie and was advised by his supervisor that, even though the employer's dress code did not specifically require the wearing of a tie during duty hours, such attire was customary. The claimant later went home and secured a tie but, upon his return, was discharged by the employer's vice-president for reporting to work without a tie. **HELD:** Since the employer's dress code had not specifically required the wearing of a tie, the claimant's action did not constitute misconduct connected with the work.

Appeal No. 517-CA-76. The claimant, a nurses' aide, was discharged for failing and refusing to wear a prescribed uniform top (adopted for ready identification of the various personnel in the hospital), a requirement of which the claimant had due notice. The employer had offered to lend her the money to purchase the top. **HELD:** Since the employer's request regarding the uniform top was reasonable, the claimant's refusal to comply therewith constituted misconduct connected with the work. Disqualification under Section 207.044.

MC 485.25 Violation of Company Rule: Competition, Other Work, or Recommending Competitor to Patron.

Where claimant, contrary to a company rule, established a business of the same kind as his employer, thus taking away his former customers, or advised a customer that he could obtain a better product elsewhere.

See cases under MC 45.15.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 485.30 – 485.35

MC 485.30 Violation of Company Rule: Dishonesty.

Where claimant commits a dishonest act in violation of company rule.

Appeal No. 2598-CA-77. The claimant was discharged for violations of the employer's rule prohibiting unauthorized purchases and the acceptance of gratuities from participants of the community action program by which she was employed. The claimant first became aware of the rule in January 1977. Prior to that time, the claimant had received small gifts from participants on certain occasions such as cookies and flowers but, after that time, the only occasion when she was given a small gift, the purchase of the gift was without her knowledge but with the prior knowledge of her supervisor. She had also accepted money from participants to assist in the opening of a halfway house for ex-offenders; she had not utilized the funds for her personal benefit but had retained them for the funding of her house. Lastly, the claimant had wanted to purchase some film to take pictures of the participants at a Mother's Day program. The employer refused authorization to charge such film purchase to the employer's account, so the claimant utilized $3.00 from the participant's petty cash fund which she duly reported. **HELD:** Since the claimant attempted to comply with the employer's policies after she became aware of them and, further, had never been warned that her actions could jeopardize her job, misconduct connected with the work was not established.

Also see cases digested under MC 140.00.

MC 485.35 – 485.36

MC 485.35 Violation of Company Rule: Employment of Married Women.

Where claimant is discharged because of a company rule forbidding employment of married women.

Appeal No. 38656-AT-66 (Affirmed by 1413-CA-66). The employer had a rule that required an airline stewardess to resign prior to marriage. The claimant submitted her resignation as required but requested work in another capacity, which was not available. **HELD:** Claimant's resignation was tantamount to a discharge (for reasons other than misconduct on her part) as the employer would not permit her to continue working after her marriage.

MC 485.36 Violation of Company Rule: Marriage to a Co-Worker.

Where claimant is discharged because of a company rule forbidding simultaneous employment of married persons, including cases where spouses agree which of them shall continue in the employment.

Appeal No. 2354-CA-77. The claimant, who married a co-worker, was discharged when she declined to resign in accordance with the employer's rule that, when two employees married, one of them had to resign or be discharged. **HELD:** The employer's policy cannot be made the basis for a disqualification from the receipt of unemployment insurance, under either Section 207.045 or 207.044 of the Act, as the employer's policy is one which attempts to prevent the employee from exercising his or her constitutional right to marry. It is well-settled public policy that the government encourages marriage and will not be a party to the enforcement of rules which place impediments in the way of persons desiring to marry. No disqualification under either Section 207.045 or Section 207.044.

MC 485.45 – 485.46

MC 485.45 Violation of Company Rule: Intoxicants, Use of.

Involves intoxication in violation of a company rule.

Appeal No. 1566-CA-77. The claimant was discharged because it had been reported that she had been intoxicated at work. Some time prior to reporting to work at 3:00 p.m. on the date of her discharge, the claimant had had one-half of a mixed drink and one and one-half beers with her lunch. The claimant was not intoxicated at work and performed her duties without incident. She was discharged after completing her shift. **HELD:** Since the claimant was not intoxicated when she reported to work, she was not guilty of misconduct connected with the work.

Appeal No. 357-CA-77. Drinking on the job in violation of company policy constitutes misconduct connected with the work.

MC 485.46 Violation of Company Rule: Use or Possession of Narcotics or Drugs.

Case No. 1051204. As a driver, the claimant was subject to U.S. Department of Transportation (US DOT) regulations, including drug testing regulations. The employer discharged the claimant for violating the employer's policy and US DOT regulations, both of which prohibited a positive drug test. The claimant consented to the drug test but denied drug use. The employer presented documentation to establish that the drug test was performed in accordance with regulations prescribed by US DOT, including Medical Review Officer (MRO) certification.

MC 485.46(2)

HELD: The submission of documentation that contains certification by a MRO of a positive result from drug testing conducted in compliance with US DOT agency regulations, currently under 49 CFR Part 40 and Part 382, is presumed to satisfy requirements number 3, 4, and 5 of Appeal No. 97003744-10-040997 (MC 485.46) that the employer must present documentation to establish that the chain of custody of the claimant's sample was maintained, documentation from a drug testing laboratory to establish that an initial test was confirmed by the Gas Chromatography/Mass Spectrometry method, and documentation of the test expressed in terms of a positive result above a stated test threshold, as these elements must occur before a MRO can certify that the test results are in compliance with the regulations. Requirements number 1 and 2 under Appeal No. 97003744-10-040997 (MC 485.46) remain applicable; thus, the employer must also present a policy prohibiting a positive a positive drug test result, receipt of which has been acknowledged by the claimant, and evidence to establish that the claimant has consented to drug testing under the policy.

NOTE: See **Appeal 97-003744-10-040997** in this section for drug tests not subject to US DOT regulation. (Cross referenced at MC 190.15 and PR 190.00)

MC 485.46(3)

Where discharge is solely or partly caused by use or possession of narcotics or drugs, legally or illegally.

Appeal No. 97-003744-10-040997. To establish that a claimant's positive drug test result constitutes misconduct, an employer must present:

1. A policy prohibiting a positive drug test result, receipt of which has been acknowledged by the claimant;
2. Evidence to establish that the claimant has consented to drug testing under the policy;
3. Documentation to establish that the chain of custody of the claimant's sample was maintained; Documentation from a drug testing laboratory to establish than an initial test was confirmed by the Gas Chromatography/Mass Spectrometry method; and
4. Documentation of the test expressed in terms of a positive result above a stated test threshold.

Evidence of these five elements is sufficient to overcome a claimant's sworn denial of drug use.

NOTE: See **Case 1051204** in this section for drug tests subject to regulation by the US Department of Transportation (Cross referenced at MC 190.15 & PR 190.00).

MC 485.46(4)

TEC v. Hughes Drilling Fluids, 746 SW 2d 796 (CA Tyler, 1988). Sometime after the claimant's hiring, the employer instituted a "contraband interdiction" policy prohibiting the use or possession by its employees of controlled substances, alcoholic beverages and firearms on any of its facilities. The policy, of which the claimant was aware, provided that no employee would be subjected to a search, urine drug screen or inspection without the written consent of the person to be searched. The policy further provided that any employee who refused to submit to a search, urine drug screen, blood and plasma sampling or inspection or who was found in possession, use or transportation of controlled substances would be subject to disciplinary action, including possible discharge. The claimant refused to sign a form consenting to the employer's policy provisions. Approximately three months later, the claimant was requested to sign a written consent form and to give a urine sample for drug screening. The claimant refused and was consequently discharged. The Appeal Tribunal and the Commission both ruled that the claimant's refusal did not constitute misconduct. Ultimately, the Texas Court of Appeals for the Twelfth District ruled against the Commission. **HELD:** As an "at-will" employee, the claimant's conduct in continuing to work with full notice of the employer's policy provisions amounted to his acceptance of the terms and provisions of the policy as conditions of his continued employment. The claimant's refusal to sign the consent form and to give a urine sample violated the employer's policy. The employer's policy was reasonable and was reasonably calculated to "ensure the safety of employees" within the meaning of Section 201.012 of the Act. Lastly, the employer's policy did not impermissibly require the claimant to give up his Fourth Amendment protection against unreasonable searches and seizures and invasion of his right to privacy, as well as his common-law right to privacy.

MC 485.46(5)

Appeal No. 87-21507-10-122287. As a result of allegations of the claimant's drug use on company property, the employer told the claimant he would be fired if he refused to take, or tested positive on, a drug screen. The employer's policy prohibited possession, use, and being under the influence of drugs or alcohol but did not provide for testing of existing employees. The claimant tested positive for marijuana and was discharged solely for the positive test result. **HELD:** As the claimant had no notice that he would be required to submit to a drug test as a condition of employment, his failure of the drug screen cannot be considered misconduct within the meaning of the Act. Although the claimant submitted to testing, such consent cannot be considered voluntary in light of the fact that his job was threatened for refusal. No disqualification under Section 207.044.

Appeal No. MR 86-18940-10-103087. The employer unilaterally implemented a drug testing policy without first having bargained with the claimant's union pursuant to their collective bargaining agreement. The claimant was fired for refusing to submit to the employer's drug test but later was reinstated by an arbitrator's decision that found the employer had violated the collective bargaining agreement by its unilateral action. **HELD:** Because the union, as the claimant's agent, grieved of the employer's unilateral action in a timely manner and never acquiesced in the drug testing policy, there is no evidence that the claimant ever agreed to be tested. Therefore, her refusal to submit to the test when requested by the employer cannot be deemed a violation of any existing policy and thus not misconduct connected with the work. (Also digested under MC 475.10.)

MC 485.46(6)

Appeal No. 87-14496-10-081487. After testing positive for marijuana on one urine sample, the claimant submitted another sample for testing three days later. The employer's representative observed the claimant produce the specimen. The claimant handed the specimen to a clerical employee who affixed an adhesive band around the container lid while the claimant watched. The claimant initialed both the container label and the envelope in which the container was placed. The specimen was kept in a refrigerator in a locked building with a security alarm on the employer's premises over the weekend, then picked up by a representative of the testing lab. The tape used to seal the specimen bottle could not be removed without destroying the tape, and the envelope could not be opened and resealed without some showing of tampering. **HELD:** The claimant's allegations of possible tampering did not overcome the evidence that the employer maintained a proper chain of custody in connection with the second urine specimen. Disqualification under Section 207.044 of the Act.

Appeal No. 86-05045-10-033087. The claimant was discharged pursuant to company policy for a second positive result on a drug test. The employer submitted no evidence as to the laboratory that conducted the test, the nature and accuracy of the test, or the type of drug that was discovered. **HELD:** In light of the deficiencies in the evidence presented by the employer, there was insufficient evidence to prove work-connected misconduct. Considering the seriousness of the charge, the Commission cannot rely solely upon the testimony of an employer representative to verify that an independent test for drugs has taken place. No disqualification under Section 207.044 of the Act.

MC 485.46(7)

Appeal No. 86-04227-10-031187. The employer's policy required a physical examination, including a drug screen, for all employees returning to work from on-the-job injuries. Upon returning to work after a two-month absence, the claimant tested positive (74 ng/ml) for marijuana on a gas chromatography/mass spectrometry test and was discharged. The claimant's urine specimen was not sealed in the claimant's presence and he was not allowed a second test. At the time of the test, the claimant had been taking medication. **HELD:** As the claimant's specimen was not sealed in his presence, as his medication could have affected the testing and as he denied smoking marijuana, doubts were reasonably raised about the results of the test. Given these doubts, the Commission concluded that the employer had not shown misconduct connected with the work on the claimant's part.

Appeal No. 87-09130-10-051387. The employer's policy prohibited the possession, use or sale of illegal drugs and alcohol and, further, provided that a positive drug test result would cause discharge. The claimant had been made aware of this policy. He was discharged for his failure to pass a drug test, to which he had consented as part of a physical examination for a new job classification for which he had applied. The chain of custody of the claimant's urine sample was properly maintained from the time of its collection to its delivery to the testing laboratory. The claimant's initially positive test result (thin layer chromatography), indicating the presence of cannabinoids, was confirmed by a second test (gas chromatography/mass spectrometry). Lastly, the employer had not observed any impairment of the claimant's job performance. **HELD:** The employer's policy, adopted for safety reasons, required an initial positive result and confirmation by a more reliable screen. Further, the claimant acknowledged notice of the policy and consented to the test. Accordingly, the claimant's test results established misconduct connected with the work; that is, violation of a policy or rule adopted to ensure orderly work and the safety of employees within the meaning of Section 201.012 of the Texas Unemployment Compensation Act. The claimant's denial of illegal drug use did not overcome the positive, confirmed test results. (Also digested under MC 85.00, MC 190.15 and PR 190.00.)

MC 485.46(8) – 485.55

Appeal No. 1177-CA-77. The employer, a discount department store which contained a pharmacy, instituted a policy, agreed to in writing by all employees, prohibiting the use, possession, sale or purchase of drugs by employees. This policy applied even to off-duty activity since the employer feared that pharmacy employees or store cashiers might be extorted into giving unauthorized discounts by customers aware of any drug related activities on their parts. The claimant, a cashier, was discharged because she had admitted to the occasional use of drugs during off-duty hours away from the employer's premises. **HELD:** The employer's policy was not unreasonable since it required that employees abide by the law and there was a reasonable connection between the policy requiring abstinence from connection with drug-related activities and possible harm to the employer's business. Consequently, the claimant's failure to comply with the policy, as she had agreed, constituted misconduct connected with the work. Disqualification under Section 207.044.

Also see **Appeal No. 88277-AT-62 (Affirmed by 8676-CA62** and **TEC v. Macias**, Cause No. 5632, El Paso Civ. App. 6-3-64) under MC 85.00.

MC 485.50 Violation of Company Rule: Maintenance of Equipment.

Where claimant has misused or has failed to give proper care to equipment in accordance with company rule.

See **Appeal No. 84021-AT-61 (Affirmed by 8195-CA-61)** under MC 45.25.

MC 485.55 Violation of Company Rule: Manner of Performing Work.

Discusses violations of a company rule regulating the manner in which employees perform their work.

Appeal No. 1830-CA-77. A claimant cannot be deemed guilty of misconduct connected with the work for his violation of a company policy of which he was unaware at the time of the violation.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 485.55(2)

Appeal No. 1778-CA-76. The claimant, a photographic studio branch manager, was discharged because she violated the employer's specific instructions not to furnish color proofs of photographs and because she acted as agent for a group of students who wished to obtain a yearbook of better quality than the claimant's employer could furnish. **HELD:** Since the claimant violated specific instructions regarding the furnishing of color proofs and engaged in activities which were against her employer's best interests, she was guilty of misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 710-CA-76. The claimant, a grocery store clerk, was discharged because she violated a company rule requiring that each transaction be completed before the next transaction is begun. On the occasion of her discharge, the claimant had already checked out a particular customer when the customer requested a carton of cigarettes. The claimant took the customer's money but did not immediately hand him the cigarettes or ring up the transaction because the customer next in line, who had only a few items, became ill and requested immediate handling. The claimant complied with this request and was discharged by the store manager who had been present during the entire incident. **HELD:** Although the claimant technically violated the employer's rule, she had done so only to serve a sick customer. She had never been counseled regarding any violations of the rule and the fact that she technically violated it in the presence of the store manager indicated that she did not realize how serious the employer regarded a violation of the rule. Under such circumstances, the claimant's actions did not constitute misconduct connected with the work.

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MISCONDUCT

MC 485.60 – 485.65

MC 485.60 Violation of Company Rule: Money Matters, Regulation Governing.

Where claimant is discharged for violation of a company rule in regard to regulation of money matters.

Appeal No. 86-03281-10-021987. The claimant, a convenience store cashier, was discharged for having $1.86 over the maximum of $50.00 allowed in his cash drawer by company policy. The claimant was aware of the policy but, during his 10-day employment, had never been found to be in violation of it before. The policy's purpose was to discourage robberies thus preventing loss of funds and risk to employees. **HELD:** Discharged for reasons other than misconduct connected with the work because the claimant's isolated violation did not defeat the purpose of the employer's policy and thus did not rise to the level of misconduct. No disqualification under Section 207.044 of the Act.

Appeal No. 2972-CA-76. The claimant, a bank employee, was discharged for violating the employer's new policy prohibiting bookkeeping employees from overdrawing their checking accounts without processing overdraft charges against the accounts. This practice had previously been permitted. The claimant violated this policy several times after its inception by depositing enough money in her account to cover the overdraft and then destroying the memorandum of the overdraft charge. **HELD:** The claimant clearly violated the employer's new policy and was thus guilty of misconduct connected with the work. Disqualification under Section 207.044.

MC 485.65 Violation of Company Rule: Motor Vehicle.

Where claimant is discharged for violation of a company rule in regard to use of motor vehicle.

Appeal No. 1294-CA-72. A claimant who operates the company vehicle in a dangerous manner so as to jeopardize the good will and the best interests of his employer and to probably endanger the lives of other persons on the highway is guilty of misconduct connected with the work. Disqualification under Section 207.044.

MC 485.65(2) – 485.75

Appeal No. 535-CA-67. Claimant was discharged because she failed to report it to the employer when she had an accident in the employer's truck and the driver of the other car complained of a whiplash injury, after which the claimant advised the employer of the accident. Although claimant contended, she did not know of a company rule that she must report an accident immediately, it is only logical to assume she was supposed to report it immediately so the employer could take steps necessary to protect himself against future liability. As it was, there was no way for the company's insurance adjuster or a policeman to judge possible extent of injury to the occupant of the other car. Disqualification under Section 207.044.

MC 485.70 Violation of Company Rule: Personal Comfort and Convenience.

Where claimant violated company rule in regard to talking or smoking or idling away time in any other manner.

Appeal No. 2202-CA-77. The claimant was discharged because she continued talking with a visitor on non-work-related matters and failed to attend to a duty when directly ordered to do so, saying that she would attend to the duty when she finished her conversation. **HELD:** The claimant's failure to comply with a reasonable request of her employer constituted misconduct connected with the work. Disqualification under Section 207.044.

MC 485.75 Violation of Company Rule: Removal of Property.

Where the decision was based upon the fact that property was removed in violation of a company rule.

Appeal No. 2101-CA-77. The claimant was discharged for having removed from the employer's premises merchandise valued at $50 which had not been checked out nor paid for in accordance with the employer's policy. She could not produce receipts for the merchandise. **HELD:** The claimant's violation of the employer's policy constituted misconduct connected with the work. Disqualification under Section 207.044.

MC 485.75 – 485.82

Appeal No. 1117-CA-77. The claimant was discharged because he did not immediately return to the employer merchandise he had found in some supposedly empty boxes in his car and did not even disclose to the employer the whereabouts of such merchandise until he was specifically asked about it. **HELD**: Discharged for misconduct connected with the work; disqualification under Section 207.044.

MC 485.80 Violation of Company Rule: Safety Regulation.

Where claimant was discharged for violation of a safety rule or regulation.

Appeal No. 86-02136-10-012387. As directed by the employer's vice president, the claimant, a general manager, instructed his workers not to wear their pants inside their boots as this would minimize the risk of injury. The claimant enforced the policy to the best of his ability by walking throughout the plant and reprimanding violators. The claimant was discharged when the Vice President saw two of the claimant's workers wearing their pants inside their boots. **HELD:** Discharged for reasons other than misconduct because the claimant did everything, he reasonably could to enforce the employer's safety policy.

Appeal No. 2286-CA-77. The claimant was discharged for refusing, despite repeated orders, to wear a hard hat as required on the job site. His refusal was based on his belief that the hard hat gave him headaches, but he presented no medical evidence of any reasons not to wear the hat. **HELD:** The claimant's refusal, despite repeated warnings and in the absence of any medical evidence in justification thereof, constituted misconduct connected with the work. Disqualification under Section 207.044.

MC 485.82 Violation of Company Rule: Personal Hygiene and Sanitation.

Includes cases where discharge was caused by claimant's personal hygiene and sanitation habit or lack of, or inefficient, observance of practices calculated to bring about good hygiene and sanitation.

MC 485.82 – 485.83

Appeal No. 58151-AT-57 (Affirmed by 5988-CA-57). Claimant was discharged for urinating on the floor in the smoked meat department where he worked. He committed an inexcusable act that would be grounds for a Federal inspector to close that part of the plant. He violated all the laws of sanitation and jeopardized the health of company employees and consumers of the employer's products. Disqualification under Section 207.044.

Appeal No. 57230-AT-57 (Affirmed by 5902-CA-57). Claimant was discharged for using the wash basin as a urinal. His actions constituted a gross violation of health rules. Disqualification under Section 207.044.

MC 485.83 Violation of Company Rule: Polygraph or Other Examination.

Includes cases where discharge was caused by claimant's failure or refusal to take a polygraph (lie detector) test, physical examination, or other examination required by the employer's rule.

Effective December 27, 1988, the Employee Polygraph Protection Act of 1988 (Public Law 100-347) makes it a violation of Federal law for employers engaged in or affecting interstate commerce to discipline or discharge any employee based on the results of a polygraph examination or for their refusal to take such an examination. The Act exempts employees of Federal, State or local governments, or any political subdivision of a State or local government. Also exempted are employees of contractors of Federal defense, security and law enforcement agencies, security services and employers authorized to manufacture, distribute or disburse controlled substances. The most notable exemption is for "ongoing investigations". This exemption would allow employers to request an employee to take a polygraph examination in conjunction with an investigation involving economic loss to the employer's business. The employer must provide the employee before the test with a statement signed by someone (other than the polygraph examiner) legally authorized to bind the employer specifying the purpose of the examination. The statement must identify the loss, indicate the employee's access to the property and describe the basis for the employer's reasonable suspicion that the employee was involved. The statement is to be retained for three years. If discipline or discharge occurs as a result of the examination, the employer will need additional supporting evidence to support its action.

MC 483.83(2)

Appeal No. 86-01130-10-010687. The claimant's original hiring agreement in August 1983 did not require submission to a polygraph examination. However, a few months after the claimant started work, all employees were notified in writing that they may be required to take a polygraph examination. Shortly before the claimant's separation in June 1986, the claimant and other workers were requested to take polygraph examinations. The claimant refused and was discharged for this reason. **HELD:** Although the original hiring agreement may not have required a polygraph examination, the agreement was subsequently amended to include such requirement. As the claimant was aware of such change and acquiesced in it, the claimant's refusal to take the polygraph examination constituted misconduct connected with the work.

Appeal No. 1476-CA-77. The claimant, a cashier, was discharged for refusing to take a polygraph (lie detector) test. When hired, the claimant agreed in writing that she would periodically take such tests and had, in fact, periodically taken such tests while working for the employer. **HELD:** Since the claimant had been aware of the employer's policy requiring periodic polygraph examinations, her refusal to submit thereto constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 4149-CA-76. The claimant was discharged for his failure to report to another agency on a designated day, his day off, to take a polygraph (lie detector) test. HELD : Since the claimant's omission was not related to his work as a service station attendant and the evidence failed to establish how the employer's interest was adversely affected by the claimant's not having taken the test on the day specified, the claimant's omission did not constitute misconduct connected with the work.

Appeal No. 3719-CA-75. Failure to pass a polygraph examination is not sufficient evidence on which to base a finding of misconduct connected with the work. (Also digested under MC 190.15.)

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MISCONDUCT

Mc 485.90

MC 485.90 Violation of Company Rule: Time Clock.

Where claimant violates company rule in regard to use of attendance records.

Appeal No. 1793-CA-77. The claimant was discharged for violation of the employer's rule against one employee punching in another employee's timecard. All employees were informed of the policy on several occasions and warned that any violation thereof could result in termination. **HELD:** Since the employer's policy was reasonable and was properly promulgated, the claimant's willful violation of it constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 3439-CA-76. A claimant who, because of an altered timecard, receives more pay than that to which he was entitled and who does not report to his employer his receipt of excessive wages is guilty of misconduct connected with the work. Disqualification under Section 207.044.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 490.00 – 490.05

MC Violation of Law

MC 490.00 Violation of Law

MC 490.05 Violation of Law: General

Includes (1)a general discussion of discharge for violation of law, (2) points not covered by any other sublines under line 490, or (3) points covered by three or more sublines.

Appeal No. 86-9822-10-061187. The claimant was absent only one day because he had been jailed on a murder charge. However, as the murder received a great deal of publicity and retaining the claimant would have had an adverse affect on business, the claimant was discharged. He was later convicted of voluntary manslaughter. **HELD:** Discharged for misconduct connected with the work. The claimant was guilty of intentional violation of the law and, as the murder received a great deal of publicity, had the employer retained the claimant the business would have been adversely affected. (Also digested under MC 85.00.)

Appeal No. 88-8751-10-063088. The claimant was suspended without pay after the employer learned that the claimant and her husband had been indicted for mail and tax fraud. All of the activities alleged in the indictments had occurred prior to the time the claimant began working for the employer. Local newspapers reported the indictments, specifically identifying the claimant by name. After such publicity, at least one of the employer's business associates called the employer to investigate the allegations made against the claimant. The claimant entered a negotiated plea of guilty to several of the indictments and was, thereupon, discharged by the employer.

MC 490.05(2)

HELD: The publication of the claimant's name in the local newspaper caused the employer to be faced with potential injury to its reputation in the financial and real estate communities. Actual injury occurred to the employer's reputation when the employer was contacted by a business associate who was attempting to investigate the allegations made against the claimant in the local newspaper. Thus, the claimant's indictment and subsequent plea of guilty inflicted both actual and potential damage to her employer's interest and reputation in the community. Disqualification un- der Section 207.044. (Cross-referenced under MC 85.00 and MC 490.40.)

Appeal No. 87-2602-10-021688. The claimant was discharged for violation of the employer's invoicing policies and theft. At the claimant's instruction, two of the employer's engines were loaded for delivery without proper invoices. Subsequently, criminal theft charges were filed against the claimant. He pleaded not guilty but was found guilty, receiving a four- year deferred adjudication and a fine. **HELD:** The claimant violated the employers' invoicing policies and was found guilty of theft of the employer's property. The deferred adjudication assessment made by the criminal court is indicative of the claimant's misconduct connected with his work. He mismanaged his position of employment with the employer by failing to follow proper invoicing procedures and by his misappropriation of the employer's property. Disqualification under Section 207.044. (Also digested under MC 190.15.)

Appeal No. 310-CA-77. The claimant was discharged, after warnings, for failing and refusing to obtain a valid health card required for her as a food-handler. The claimant's failure to secure such a card could have subjected the employer, as well as the claimant, to penalties. **HELD:** The claimant's failure to obtain a valid health card, after repeated warnings, amounted to misconduct connected with the work. Disqualification under Section 207.044.

Also see Appeal No. 3629-CA-77 under CH 10.30.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 490.05(2) – 490.10

Appeal No. 5387-AT-69 (Decision written by the Commission). Article 725b of the Texas Penal Code makes it unlawful for anyone to have or use a hypodermic syringe or a needle or any instrument adapted for the use of narcotic drugs by subcutaneous injections in a human being, and which is possessed for that purpose unless such possession is for the purpose of subcutaneous injections of a drug or drugs or medicine, the use of which is authorized by the direction of a licensed physician. Possession of narcotics paraphernalia is a felony and the willful commission of a felony on the employer's premises amounts to a wanton disregard of the employer' interest and constitutes misconduct in connection with the work. Disqualification under Section 207.044.

MC 490.10 Violation of Law: Conversion of Property Law.

Includes cases in which claimant has unlawfully taken property of another and put it to his own use.

Appeal No. 985-CA-76. The claimant was discharged because he had been arrested on charges of conspiracy to steal, forge and pass government checks and to appropriate the proceeds thereof to his own use. The employer, a financial institution, could not have an employee charged with misappropriation or theft of funds in its employ. The claimant was subsequently convicted of the charges. **HELD:** Since the claimant was found guilty of conspiracy to steal, forge and pass U.S. Government checks and appropriate money to his own use, he was guilty of misconduct connected with the work. Disqualification under Section 207.044.

MC 490.15 – 490.20

MC 490.15 Violation of Law: Liquor Law.

Where claimant has violated a liquor law.

Appeal No. 87-05888-10-040987. The claimant, a convenience store clerk for the present employer for more than 6 years, sold beer to a customer after verifying his age from his Texas driver's license. Later, a Texas Alcoholic Beverage Commission agent pointed out to the claimant that the year of birth had been altered on the license and issued a citation to the claimant. The employer discharged the claimant for the incident. The employer did not present evidence that the claimant had been trained in altered identification card detection or warned about this matter. **HELD:** discharged for reasons other than misconduct because the claimant was not negligent or careless and did not knowingly sell an alcoholic beverage to a minor, in violation of Section 106.03 of the Texas Alcoholic Beverage Code which provided that "(a) person commits an offense if he knowingly sells an alcoholic beverage to a minor."[**NOTE**: This Section of the Code, as amended effective January 1, 1988, provides in part that "A person commits an offense if with criminal negligence he sells an alcoholic beverage to a minor" (emphasis added).]

MC 490.20 Violation of Law: Motor Vehicle Law.

Where claimant has violated a motor vehicle law.

Appeal No. 2280-CA-77. A claimant who was discharged because of his driving record, but whose traffic violations had all occurred prior to his employment by the present employer, is not guilty of misconduct connected with the work, absent evidence that he had falsified his driving record when he applied for work with that employer.

Appeal No. 972-CA-77. The claimant, a delivery truck driver, was dis- charged when he became uninsurable as a result of traffic accidents he had had while at work**. HELD:** The claimant was guilty of negligence to such a degree as to show an intentional and substantial disregard of the employer's interest. Thus, he was discharged for misconduct connected with his last work. Disqualification under Section 207.044.

MC 490.20(2)

Appeal No. 723-CA-77. The claimant, a mechanic for an automobile dealership, was discharged because, due to his record of traffic violations, the employer's insurance carrier would no longer cover the claimant. However, in the two years that he worked, the claimant had received only one traffic ticket and that for an off-duty violation. He had not been told that off-duty traffic citations might adversely affect his employment, nor had he been advised of the terms of the employer's auto liability insurance coverage. He had had no citations for any traffic offense nor any traffic accidents, while at work. **HELD:** The only conduct of the employee causally connected with his discharge was his having received a traffic citation for an off-duty violation. This did not show such a disregard of the employer's interests by the employee as to constitute misconduct connected with the work, absent any warning that such incidents might adversely affect the claimant's retention as an employee.

Appeal No. 3269-CA-76. The claimant was discharged because of his driving record. He had more than three moving traffic violations in a two- year period, the last of which was 18 months prior to his discharge. The claimant had duly reported such violations (to which he had pleaded guilty) to his employer. He had never been told, either by the employer or by the employer's insurance carrier, that failing to contest traffic tickets, and having them go on his traffic record, might jeopardize his job. The claimant's driving record would not have resulted in the loss of insurance coverage by the employer but, rather, merely an increase in the rate for coverage of the claimant. **HELD:** The claimant's discharge was not for any recent acts which evidenced an intentional or willful disregard of the employer's best interest; thus, the claimant was not discharged for misconduct connected with the work.

Appeals Policy and Precedent Manual

MISCONDUCT

MC 490.30

MC 490.30 Violation of Law: In Jail.

Where discharge was result of claimant's arrest and confinement in jail, whether guilt is established or not.

Appeal No. 87-08030-10-050587. A claimant's absence from scheduled work due to his incarceration for criminal charges arising from off-duty conduct, which charges the claimant has not denied (in this instance, entering a plea of no contest) and for which the claimant was assessed a fine and a jail sentence, constituted misconduct connected with the work. (Also digested under MC 15.20.)

Appeal No. 869-CA-77. Where a claimant is unable to report to work because he had been unlawfully arrested and incarcerated, the claimant's failure to report to work is involuntary and does not constitute misconduct connected with the work.

Appeal No. 2622-CA-76. The claimant was arrested and detained in jail for three weeks, during which absence he was replaced. He was subsequently "no billed" on the charge for which he had been detained. **HELD:** An arrest on charges of which a claimant is found not guilty cannot be considered misconduct connected with the work.

Appeal No. 3673-CA-75. The claimant was arrested while at work and was replaced because, during the two scheduled workdays following his arrest and detention, he did not notify the employer of his incarceration. **HELD:** The claimant's failure to keep the employer advised of his whereabouts on the two days that he missed from work because of his incarceration constituted misconduct connected with the work. (Also digested under MC 15.10.)

MC 490.40 Violation of Law: Offenses Involving Morals.

Where claimant was discharged because of immoral practices, whether made a crime by law or not and whether convicted or not.

Appeal No. 7436-AT-68 (Affirmed by 767-CA-69). The claimant was discharged because he had been arrested and charged with assault with in- tent to rape. He was later convicted of the felony charge. **HELD:** The claimant's actions were such as to inflict damage and injury to his employer's interest and reputation in the community and, thus, constituted misconduct connected with the work. Disqualification under Section 207.044.

Also see Appeal No. 88-8751-10-063088 under MC 490.05.

MC Wage Demand

MC 600.00 Wage Demand

Involves cases where claimant was discharged as a result of demanding certain wages including wage raise, fringe benefits or other additional rewards.

Appeal No. 1038-CA-76. The claimant was discharged for having requested a conference with the employer regarding a raise in pay. **HELD:** It is not misconduct connected with the work to request a raise in pay.

Also see cases under MC 255.45

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PR 450.10 Procedure in Subsection 214.003 Case: Failure or Refusal to Timely Appeal or Failure to Appear in Response to Notice.

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PR 5.00

PR General

PR 5.00 General.

Applies to cases (1) general discussions of court or administrative tribunal procedural questions, and (2) procedural points not covered by any other specific line in the procedure division.

For an extensive description of the Commission's policies regarding timeliness, see Commission Rule 32, 40 TAC §815.32.

For cases addressing the issue of good cause to reopen under Commission Rule 16(5)(B), 40 TAC §815.16(5)(B), see MS 30.00.

Appeal No. 503040-2. Per Commissioner vote on November 1, 2005, Case No. 503040-2 is no longer a precedent and has been removed.

Appeal No. MR-90-03459-10-031691. At any benefits hearing conducted by the Texas Workforce Commission, no witness shall be denied an opportunity to testify. However, the hearing officer shall retain the right to limit testimony to matters which are relevant and material to contested fact issues.

Appeal No. 2761-CA-76. An employer who fails to file a timely protest of the initial claim, when named thereon and duly notified thereof, cannot be considered a party of interest to such claim and is not entitled to a ruling on the chargeback issue.

Appeal No. 1733-CA-76. To be valid, Benefits Department's redetermination of a non-monetary issue must be mailed within twelve calendar days from the date of the mailing of the original non-monetary determination which it redetermines. Otherwise, such redetermination is not valid because of the language in Section 212.054 of the Act providing that "within the same period of time (i.e., twelve calendar days) an examiner may reconsider and redetermine any such determination." (Note: As of September 1, 1987, 14 days.)

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PR 5.00(2)

Appeal No. 1213-CA-67. The Benefits Department is without jurisdiction to issue a determination which overturns a prior decision by the Appeal Tribunal in the same case and on the same issue. (Cross-referenced under PR 275.00.)

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PR 10.00

PR Abatement

PR 10.00 Abatement.

Applies to cases which consider (1) suspension of a proceeding for want of proper parties capable of proceeding, or (2) termination of a particular proceeding so that it cannot be revived, without determining or defeating claimant's rights or barring institution of a new proceeding.

Appeal No. 92-007970-90-051493. Following the issuance of a Commission decision, the director of the Job Service Operations Department of the Texas Workforce Commission requested that the matter be reheard. **HELD:** A department within the Texas Workforce Commission is not a party to the appeal and cannot file a written motion for rehearing under Section 212.153 of the Texas Unemployment Compensation Act. Therefore, in accordance with Section 212.153 of the Texas Unemployment Compensation Act, the Commission is without jurisdiction to rule on the referenced motion for rehearing and the motion is dismissed for lack of jurisdiction.

Appeal No. 85128-AT-62 (Affirmed by 8353-CA-62). The Soldier's and Sailor's Civil Relief Act specifically refers to a stay of proceedings "before a court"; therefore, the Commission is not obligated to grant a stay in administrative proceedings.

Appeal No. 7842-CA-61. The claimant's wife filed an appeal to the Commission signed only by herself and there was nothing in the record to indicate that the appeal was authorized by the claimant. **HELD:** The jurisdiction of the appropriate appellate body, whether it be the Appeal Tribunal or the Commission, is not properly invoked and the appeal will be abated if a party other than an "interested party" files an appeal on behalf of an "interested party" and it is not shown that the "interested party" was aware of and authorized the appeal. The appeal may be reinstated if the "interested party" files a written statement to the effect that the appeal was authorized by him. (Cross-referenced under PR 405.20.)

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PR 25.00

PR Appearances

PR 25.00 Appearances.

Involves cases in which the holding depends upon the appearance or nonappearance of the parties.

Appeal No. 3103-CA-76. The claimant declined to attend any hearing conducted by an employee of the Texas Workforce Commission. The Texas Unemployment Compensation Act contains no provision which would permit the Commission to authorize someone outside the agency to conduct such a hearing. The decisions of the Appeal Tribunal and the Commission were based on information contained in the claimant's file and information submitted in the claimant's behalf by mail.

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PR 100.00

PR Adjournment, Continuance and Postponement of Hearing.

PR 100.00 Adjournment, Continuance, and Postponement of Hearing

Applies to cases in which a postponement of the hearing is requested or granted, usually where such relief is asked on some specified ground or cause is shown why the applicant is or is not entitled to the postponement.

Appeal No. 88465-AT-62 (Affirmed by 8732-CA-62). A request for resetting of a hearing is denied when the party who makes the request has been afforded a reasonable opportunity for a fair hearing but refused to testify.

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PR 145.00

PR Dismissal, Withdrawal, or Abandonment.

PR 145.00 Dismissal, Withdrawal, or Abandonment.

Applies to cases which discuss the final disposition of a claim for benefits by dismissal, withdrawal, or abandonment without a hearing upon any of the issues involved in it.

Appeal No. 502-AT-72 (Affirmed by 198-CA-72). In the absence of a claimant being given erroneous information, he cannot void an initial claim during an established benefit year for the purpose of filing a new initial claim in order to obtain increased benefits based on a different base period.

Appeal No. 1536-CA-71. A claimant can withdraw his previously requested withdrawal of an appeal provided he does so within ten days after the Appeal Tribunal decision is mailed. In such case, the Appeal Tribunal will schedule a hearing and issue a decision on the merits of the case. (Note that the Act currently provides for a 14-day appeal period.)

Appeal No. 517-CA-41. A benefit year and a base period are automatically established when a valid initial claim is filed and there is no authority under the Act whereby a claimant may dismiss, withdraw, or annul such claim.

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PR 190.00

PR Evidence

PR 190.00 Evidence.

Applies to discussion of (1) burden of proof as a procedural matter, (2) legal adequacy of particular evidence to overcome presumptions, (3) weight and sufficiency of particular evidence, and (4) other points of evidence.

Case No. 1051204. As a driver, the claimant was subject to U.S. Department of Transportation (US DOT) regulations, including drug testing regulations. The employer discharged the claimant for violating the employer's policy and US DOT regulations, both of which prohibited a positive drug test. The claimant consented to the drug test but denied drug use. The employer presented documentation to establish that the drug test was performed in accordance with regulations prescribed by US DOT, including Medical Review Officer (MRO) certification. **HELD:** The submission of documentation that contains certification by a MRO of a positive result from drug testing conducted in compliance with US DOT agency regulations, currently under 49 CFR Part 40 and Part 382, is presumed to satisfy requirements number 3, 4, and 5 of Appeal No. 97-003744-10- 040997 (MC 485.46) that the employer must present documentation to establish that the chain of custody of the claimant's sample was maintained, documentation from a drug testing laboratory to establish that an initial test was confirmed by the Gas Chromatography/Mass Spectrometry method, and documentation of the test expressed in terms of a positive result above a stated test thresh-old, as these elements must occur before a MRO can certify that the test results are in compliance with the regulations. Requirements number 1 and 2 under Appeal No. 97-003744-10-040997 (MC 485.46) remain applicable; thus, the employer must also pre- sent a policy prohibiting a positive drug test result, receipt of which has been acknowledged by the claimant, and evidence to establish that the claimant has consented to drug testing under the policy.

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PR 190.00(2)

NOTE: See Appeal 97-003744-10-040997 in this section for drug tests not subject to US DOT regulation. (Cross referenced at MC 190.15 and MC 485.46)

Appeal No. 97-003744-10-040997. To establish that a claimant's positive drug test result constitutes misconduct, an employer must present:

1. A policy prohibiting a positive drug test result, receipt of which has been acknowledged by the claimant;
2. Evidence to establish that the claimant has consented to drug testing under the policy;
3. Documentation to establish that the chain of custody of the claimant's sample was maintained;
4. Documentation from a drug testing laboratory to establish than an initial test was confirmed by the Gas Chromatography/Mass Spectrometry method; and
5. Documentation of the test expressed in terms of a positive result above a stated test threshold.

Evidence of these five elements is sufficient to overcome a claimant's sworn denial of drug use.

NOTE: See **Case 1051204** in this section for drug tests not subject to regulation by US Department of Transportation (Cross referenced at MC 190.15 and MC 485.46).

Appeal No. 97-004379-10-042497. The company president discharged the claimant based solely upon her supervisor’s hearsay report that claimant admitted removing a refrigerator from a company storage shed. Neither the supervisor nor the company president had accepted payment for this refrigerator or authorized its removal. Although the claimant’s unsworn local office statement suggests she paid for the refrigerator before taking it, the claimant did not appear to offer any testimony at the Appeal Tribunal hearing.

PR 190.00(3)

HELD: An employer's evidence of a specific act of misconduct, albeit hearsay, is sufficient to support a misconduct disqualification where, as here, the claimant does not offer any testimony to rebut that evidence.

Appeal No. 87-02450-10-021688. Suspecting the claimant had stolen some meat from the company freezer, the owner confronted him and threatened to call the police. The claimant told the owner he would return the meat and promptly removed a box of meat from his car trunk and returned it to the freezer. The claimant was then discharged. At the hearing, the employer representative testified as to the claimant's statement made to the owner and the subsequent return of the box of meat. **HELD:** The evidence of the claimant's misconduct in the form of mismanagement of his position of employment was sufficient because the claimant's statement to the owner was an admission and therefore excepted from the hearsay rule. The statement was evidence of the claimant's culpability in the theft and was corroborated by firsthand testimony of the claimant's subsequent actions.

Appeal No. 87-18197-50-101687. The claimant was discharged after he informed the employer that he would be unable to come to work for approximately six weeks due to injuries incurred the previous evening. He further informed the employer that the injuries had occurred while he was in the process of stealing a vehicle after having committed a burglary. The Appeal Tribunal held, among other things, that as the employer had failed to provide any evidence that the claimant's reported statements were true, the claimant's discharge was not for misconduct connected with the work. **HELD:** In the absence of any evidence to the contrary, the employer's hearsay testimony as to the statements made by the claimant to him about the cause of the injury and impending absence are sufficient to establish that the claimant's actions constituted misconduct. (*Editor's note: As this was a chargeback case, the claimant did not participate in the Appeal Tribunal hearing.)

PR 190.00(4)

Appeal No. 87-13034-10-072387. At the hearing, the employer presented only hearsay statements to support its allegation that claimant had falsified a report of an on-the-job injury of a co- worker. The claimant presented no evidence. **HELD:** The employer's secondhand hearsay testimony of claimant's specific act of misconduct is sufficient to establish such misconduct in the absence of any controverting evidence from the claimant. Disqualification under Section 207.044 of the Act. (Also digested under MC 190.15.)

Also see cases digested under MC 190.00 and VL 190.00

Appeal No. 87-07136-10-042887. When the initial claim was filed, the claimant signed a statement (Form B-114) prepared by a Commission representative in which the claimant agreed he had previously admitted in writing to the employer that he had used alcohol on company property. **HELD:** Finding less than credible the claimant's assertion that he had not clearly reviewed the Form B-114 before signing it, the Commission held that sufficient proof had been presented to establish misconduct connected with the work on the claimant's part. (Also digested under MC 190.15 and cross-referenced under VL 190.15.)

Appeal No. 87-09130-10-051387. A claimant's sworn denial of illegal drug use did not overcome positive, confirmed drug test results, indicating the presence of cannabinoids. (For a more complete digest of the opinion in this case, see MC 485.46.)

PR 190.00(5)

Railroad Commission vs. Shell Oil Company, 161 S.W. 2d 1022, 1029 (Texas Sup. Ct., 1942). In reference to what constitutes "substantial evidence," the following statement was made: "In such a case, the issue is not whether or not the agency came to the proper fact conclusions on the basis of conflicting evidence, but whether or not it acted arbitrarily and without regard to the facts. Hence, it is generally recognized that where the order of the agency under attack involves the exercise of the sound judgment and discretion of the agency in a matter committed to it by the Legislature, the court will sustain the order of the action of the agency in reaching such conclusion if reasonably supported by substantial evidence. This does not mean that a mere scintilla of evidence will suffice, nor does it mean that the court is bound to select the testimony of one side, with absolute blindness, over that introduced by the other. After all, the court is to render justice in the case. The record is to be considered as a whole, and it is for the court to determine what constitutes substantial evidence. The court is not to substitute its discretion for that committed to the agency by the Legislature but is to sustain the agency if it is reasonably supported by substantial evidence before the courts. If the evidence as a whole is such that reasonable minds could not have reached the conclusion that the agency must have reached in order to justify its action, then the order must be set aside."

Todd Shipyards Corp. vs. TEC and Ochoa, 245 S.W. 2d 371 (Tex. Civ. App. 1951, n.r.e.). The court held that the "substantial evidence rule" applies to appeals to the court from decisions of the Commission respecting benefits.

Appeal No. 608-CA-77. In a case where, although notice of the claimant's initial claim was duly mailed to the employer, neither the State Office files nor the local office files contained any protest of the initial claim by the employer and no direct evidence was presented at the Appeal Tribunal hearing to show when such protest was filed, the Commission held that the evidence established that the employer had failed to file a timely protest of the initial claim.

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PR 190.00(6)

Appeal No. 1424-CA-76. Prior to filing her initial claim, the claimant last worked on a variable part-time basis for over eighteen months for the employer. Her claim was disallowed because of insufficient base period wage credits and the claimant contended that she was entitled to additional wage credits from the employer. She could not testify with certainty as to the exact number of hours per week that she worked but did recall her hourly rate and testified that she earned at least $50.00 per week. **HELD:** Under the authority of Section 207.004(c) of the Act, the Commission awarded the claimant additional base period wage credits from the employer in the amount of $650 per relevant quarter, the equivalent of $50.00 per week. Although the employer had reported some base period wages for the claimant, these figures were deemed not conclusive. Since the claimant testified to different wage amounts and the employer failed to appear at the hearing, the "best information" obtained by the Commission within the meaning of Section 207.004(c) consisted of the claimant's testimony.

Appeal No. 21386-AT-65 (Affirmed by 656-CA-65). Testimony under oath is more convincing than unsworn written statements or testimony based on hearsay.

Appeal No. 4269-CA-49. A party's objection that the decision of the Appeal Tribunal was based on hearsay evidence was cured when the decision made by the Commission was based on competent evidence which was obtained under oath at a further hearing directed by the Commission following the party's appeal to it and which was, at that further hearing, subject to questioning by opposing counsel.

Also see Appeal No. 92-012653-210-090393 digested in PR 430.30.

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PR 275.00

PR Jurisdiction and Powers of Tribunal

PR 275.00 Jurisdiction and Powers of Tribunal.

Applies to cases which discuss the right of the court or administrative tribunal to pass upon a given case or particular aspects of the case.

Appeal No. 3443032. Determinations made under Section 201.091(e) of the Act fit into the "wage credits/validity of claim" category which, pursuant to Rule 32(i)(1), 40 TAC §815.32(i)(1), present a one-time exception to the timeliness rules. A late appeal to the Appeal Tribunal on such issue, if made within the same benefit year as the determination on appeal, will be deemed timely. However, once an Appeal Tribunal decision on the issue has been mailed, the appeal time limits under Chapter 212 of the Act will apply. (Also digested under PR 430.30 and PR 405.15.)

Appeal No. 99-007805-10-082099. Determinations made under Sections 201.011(1), including requests to use an alternate base period, and 208.021 of the Act fit under the "wage credit/right to benefits" category which, pursuant to Commission Rule 32(i)(1), 40 TAC § 815.32(i)(1), present a one-time exception to the timeliness rules. A late appeal to the Appeal Tribunal on such issue, if made within the same benefit year as the determination on appeal, will be deemed timely. However, once an Appeal Tribunal decision on the issue has been made and mailed, the appeal time limits in Chapter 212 of the Act will apply.

Appeal No. 92-01264-60-011693. Determinations made under Sections 201.011(13) and 208.001(a) of the Act fit into the "wage credits/rights to benefits" category which, pursuant to Commission Rule 32(i)(1), 40 TAC §815.32(i)(1), present a one-time exception to the timeliness rules. A late appeal to the Appeal Tribunal on such issue, if made within the same benefit year as the determination on appeal, will be deemed timely. However, once an Appeal Tribunal decision on the issue has been made and mailed, the appeal time limits in Chapter 212 of the Act will apply. (Also digested under PR 405.15.)

VL 275.00(2)

Appeal No. 86-04849-50-032087. On different dates, the employer was mailed identical Notices of Decision of Potential Chargeback regarding the same claimant and wages. The employer timely appealed both, which appeals were separately processed by the Appeals Department. On January 19, an Appeal Tribunal decision protecting the employer's account from chargeback became final. After that date, another Appeal Tribunal decision (pursuant to the employer's other appeal) was issued, charging the employer's account. **HELD:** The Appeal Tribunal was without jurisdiction to issue the decision contradicting the decision which had become final on January 19.

Appeal No. 85-08452-10-080585. When the last day for filing a timely petition or request for reopening under Commission Rule 16 falls on a Sunday, the time limit for filing such petition or request will be extended through the next regular business day.

Appeal No. 1192-CA-77. Where a party's motion to reopen was not timely filed, an Appeal Tribunal decision, purporting to rule on the merits, must be set aside and the petition to reopen must be dismissed for want of jurisdiction.

For cases addressing the substantive issue of good cause to reopen under Commission Rule 16(5)(B), 40 TAC §815.16(5)(B), see MS 30.00.

Appeal No. 530-CA-78. The Appeal Tribunal has no jurisdiction over a determination which is issued subsequent to the filing of a timely appeal (regarding an earlier determination) and prior to the date of the appeal hearing, unless the later determination is itself appealed in a timely manner. (Cross-referenced under PR 430.30.)

Appeal No. 3267-CA-77. An order of ineligibility under Section 207.021(a)(3) or Section 207.021(a)(4) of the Act is a continuing matter, so that a late appeal from such a determination serves to vest the Appeal Tribunal with jurisdiction over the ability to work or availability for work issue, effective twelve (14, as of September 1, 1987) calendar days prior to the date the appeal was actually filed.

Appeal No. 780-CA-77. By not filing a protest to the claimant's initial claim, the employer waived his rights in connection therewith. Nevertheless, the employer appealed the initial determination awarding the claimant benefits without disqualification and the Appeal Tribunal disqualified the claimant under Section 207.045 of the Act. **HELD:** Since the employer waived all his rights in connection with the claimant's claim, the employer did not have appeal rights from the initial determination and the Appeal Tribunal did not have jurisdiction to hear the employer's appeal. Accordingly, the Appeal Tribunal decision was set aside for lack of jurisdiction, leaving in full force and effect the determination awarding the claimant benefits without disqualification.

Appeal No. 3585-CSUA-76. An order of ineligibility under Section 207.041 of the Act is a continuing matter. Therefore, a late appeal from such an order of ineligibility vests the Appeals Tribunal with jurisdiction over that issue effective twelve (14, as of September 1, 1987) calendar days prior to the date the appeal was actually mailed.

Appeal No. 1753-CA-76. Where a determination has become final, a timely appeal not having been filed therefrom, the Appeal Tribunal is without jurisdiction to issue a decision on the merits.

Appeal No. 3341-CA-75. Since a disqualification under Section 5(d) of the Act is a continuing matter, a late appeal from a determination of disqualification under that Section will vest the Appeal Tribunal with jurisdiction over the labor dispute issue effective twelve (14, as of September 1, 1987) calendar days prior to the date such late appeal was actually filed.

Appeal No. 554-CA-71. Regardless of whether an employer files a timely protest of an initial claim, Section 214.003 of the Act can be applied at any time fraud is discovered.

VL 275.00(4)

Appeal No. 343-CA-71. Where a claimant is initially determined to be eligible for benefits and no appeal is filed, an appeal from a subsequent determination on eligibility gives the Appeal Tribunal jurisdiction to consider eligibility only from the earliest date to which the subsequent determination on appeal relates.

Appeal No. 267-CA-70. Prior to the time a withdrawal decision becomes final, the Appeal Tribunal can reopen a case and rule on the merits.

Appeal No. 17-CF-68. A disqualification under Section 207.052 of the Act is a continuing condition and the Appeal Tribunal has jurisdiction over that issue twelve (14, as of September 1, 1987) calendar days prior to the date an appeal is actually filed even though the appeal is late to the determination imposing the disqualification.

Appeal No. 384-CA-64. The Act provides for imposition of disqualification under the provisions of Section 207.045 or 207.044 following the filing of a valid claim. No disqualification is authorized under these sections of the Act unless the claimant has filed a valid claim subsequent to the separation in question. (Cross-referenced under MS 60.20.)

Appeal No. 4644-CA-50. The Commission has no jurisdiction to impose a disqualification for refusal of suitable work under Section 207.047 of the Act if the refusal of work was prior to the beginning date of the claimant's benefit year.

Also see Appeal No. 1213-CA-67 under PR 5.00.

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PR 280.00

PR Readjudication

PR 280.00 Readjudication.

Includes cases which involve the question of whether the same work separation may be adjudicated more than once.

No precedent cases.

NOTE: See Commission Rule 20(7)(F), 40 TAC §815.20(7)(F), which provides that the fact that a disqualification was imposed on the basis of a given separation under Section 207.044 or Section 207.045 of the Texas Unemployment Compensation Act in a previous benefit year shall not prevent a disqualification on the basis of that separation if it is the last separation from work prior to the filing of an initial claim establishing a new benefit year.

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PR 380.00 – 380.10

PR Rehearing or Review

PR 380.00 Rehearing or Review.

PR 380.05 Rehearing or Review: General.

Includes cases containing (1) a general discussion of a rehearing or review, (2) points covered by three or more sublines or line 380, and (3) points not covered by any other subline.

Appeal No. 87-00811-10-011588. The Commission applied the holding in Appeal No. 84-14973-60-121284 (PR 430.30) to a notice of change of address filed during the period in which a party could file a timely petition to reopen under Commission Rule 16(5)(B), 40 TAC §815.16(5)(B). (Cross-referenced under PR 430.30.)

Appeal No. 4183-CA-76. Where the postmark on the envelope containing a motion for rehearing is illegible and there is evidence that it was actually deposited in the mail a few minutes before midnight on the last day for filing a timely motion for rehearing, the motion for rehearing will be deemed to have been timely filed.

Appeal No. 1917-CA-76. Where a party is erroneously advised by a Commission representative that he has exhausted his administrative remedies when, in fact, at that time he could have filed a timely motion for rehearing before the Commission, the claimant's motion for rehearing filed outside the statutory time limit for appeal or rehearing must be deemed timely filed.

PR 380.10 Rehearing or Review: Additional Proof.

Discusses the necessity or effect of presenting additional proof at rehearing or review, or whether additional evidence is admissible or constitutes such additional proof as is required.

Appeal No. 4269-CA-49. Additional evidence obtained by a rehearing is admissible and may be used as the basis for a Commission decision on review even though such competent evidence was not obtained at the Appeal Tribunal hearing.

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PR 38.15 – 380.25

PR Rehearing or Review

PR 380.15 Rehearing or Review: Credibility of Witness.

Discussion of the effect of the demeanor, behavior, attitude, or rendition of testimony of witness as affecting his credibility.

Appeal No. 7625-CA-61. Based on the fact that claimant gave one reason for quitting to his employer, another reason on the initial claim, and a third reason to the hearing officer, the Commission gave little credence to the claimant's testimony and disqualified claimant.

PR 380.25 Rehearing or Review: Scope and Extent.

Discussion of the powers of the tribunal to go into certain aspects of a case or to apply a particular remedy.

Appeal No. 2633-CA-77. The Commission may inquire into and rule on the question of whether a person has standing to file an appeal; that is, whether he became a party of interest or not, even though such question had not been raised at any prior stage of the proceeding. (Cross-referenced under PR 405.20.)

Appeal No. 608-CA-77. Where the employer fails to file a timely protest of the initial claim, the employer, having thereby waived its rights in connection with the claim, had no right to file an appeal to the Commission from the Appeal Tribunal decision in the case. Such appeal must be dismissed for want of jurisdiction, leaving the Appeal Tribunal decision in full force and effect.

Appeal No. 3087-CA-76. A base period employer which fails to file a timely protest of an initial claim upon having been duly notified of such claim, has thereby waived its right to a ruling on chargeback. A chargeback ruling made in such a case will be set aside.

PR 380.25(2)

Appeal No. 845-CA-76. The employer did not file a timely protest to the claimant's initial claim, nor did it appeal from the determination that, in light of its failure to file a timely protest, it had thereby waived all its rights in connection with the claim. Nonetheless, the employer was erroneously mailed a copy of the determination on the merits of the claimant's separation and the charging of its account and filed an appeal therefrom. The Appeal Tribunal assumed jurisdiction without comment and reversed the determination, thereby disqualifying the claimant and protecting the employer's account. **HELD:** The Appeal Tribunal decision was set aside, and the employer's appeal dismissed for lack of jurisdiction. By failing to file a timely protest to the initial claim, the employer waived all its rights in connection with such claim, including any right it might otherwise have had to appeal from the determination thereon, even though the employer was erroneously mailed a copy of such determination.

Appeal No. 96-012769-10-110796. A party appealed an Appeal Tribunal decision in which the separation and chargeback were averse to the appellant and the eligibility issue was favorable. The Commission assumed jurisdiction and ruled on only the issues of separation and chargeback since these were the only issues adverse to the appellant and such issues were easily severable.

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PR 405.00 – 405.15

PR Right of Review

PR 405.00 Right of Review.

PR 405.15 Right of Review: Finality of Determination.

Discussion as to whether a particular determination is subject to review or is a final disposition of the case or of the point involved.

Appeal No. 3443032. Determinations made under Section 201.091(e) of the Act fit into the "wage credits/validity of claim" category which, pursuant to Rule 32(i)(1), 40 TAC §815.32(i)(1), present a one-time exception to the timeliness rules. A late appeal to the Appeal Tribunal on such issue, if made within the same benefit year as the determination on appeal, will be deemed timely. However, once an Appeal Tribunal decision on the issue has been mailed, the appeal time limits under Chapter 212 of the Act will apply. (Also digested under PR 275.00 and PR 430.30.)

Appeal No. 92-01264-60-011693. Determinations made under Sections 201.011(13) and 208.001(a) of the Act fit into the "wage credits/rights to benefits" category which, pursuant to Commission Rule 32(i)(1), 40 TAC §815.32(i)(1), present a one-time exception to the timeliness rules. A late appeal to the Appeal Tribunal on such issue, if made within the same benefit year as the determination on appeal, will be deemed timely. However, once an Appeal Tribunal decision on the issue has been made and mailed, the appeal time limits in Chapter 212 of the Act will apply. (Also digested under PR 275.00.)

Appeal No. 86-09401-10-060187. Once a Notice of Claim Determination has become final, any subsequent corrected Notice of Claim Determination ruling on the same claim and work separation is void.

PR 405.15(2)

TEC & Wilson v. Cady, 563 S.W. 2d 387 (Civ. App. Dallas 1978). Although duly notified, the employer failed to file a protest of the initial claim within the period provided by statute, there being no evidence of when the notice of claim was actually received by the employer. **HELD:** (1) The protest period is not so short as to be, as a matter of law, insufficient to give the employer a fair opportunity to respond to the claim; hence, the protest period was not a denial of due process to the employer. (2) Even under current conditions, the United States Postal Service is not so unreliable as to render the protest period insufficient, where there is no evidence that the receipt of the Commission's notice of initial claim was excessively delayed. The court upheld the application of the provisions of Section 208.004 of the Act which declares that failure to protest a notice of initial claim within the specified time period from the date the notice was mailed by the Commission operates as a waiver of the employer's rights respecting the claim. (Note: The statutory protest period under review in the Cady case was ten days. Effective January 1, 1978, that period was extended to twelve days and remains 12 days despite legislative changes of September 1, 1987.) (Cross-referenced under PR 430.20.)

Appeal No. 702-CAC-78. The Commission in this case applied the proposition previously established in Appeal No. 1843-CA-74 (below) to a chargeback situation. The employer in this case filed a late protest to a Notice of Maximum Potential Chargeback and it was learned that the base period wages reported for the claimant by the employer were actually earned by the claimant's daughter, using the claimant's Social Security number. The Commission assumed jurisdiction, deleting the wage credits in question and reciting the dictum from **Appeal No. 1843-CA-74** to the effect that, at any time during a claimant's benefit year, a monetary redetermination adding or deleting wage credits would be made if an error in wage credits is brought to the Commission's attention. (Cross-referenced under PR 430.30.)

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PR 405.15(3)

Appeal No. 2653-CA-77. Where an employer is the last employer and a base period employer and filed a timely protest of the initial claim, it becomes a party of interest to the claim and is entitled to a ruling on the chargeback issue. Therefore, a determination mailed to such an employer which failed to rule on the chargeback issue does not become final, and the employer's appeal, filed more than twelve calendar days from the date of such determination, must be deemed timely and jurisdiction must be taken of the merits of the case.

Appeal No. 941-CUCX-77. The appeal time limits of Section 212.053 of the Act do not apply to a determination which is found to have been void from its inception. (For text, see MS 260.00.)

Appeal No. 1843-CA-74. With respect to monetary determinations, Section 208.023 of the Act provides that the claimant may, within twelve (14, as of September 1, 1987) calendar days from the date such determination is mailed, request a redetermination or appeal. The Commission held that the statutory language was intended to encourage a claimant to file a request for monetary redetermination as soon as possible and was not intended as a bar to his obtaining credits for wages. Any time during a claimant's benefit year, a monetary redetermination adding or deleting wage credits will be made if error in wage credits is brought to the Commission's attention. (Cross-referenced under PR 430.30.)

Appeal No. 339-CA-73. If the claimant named his correct last work and it was notified of the filing of an initial claim in accordance with Section 208.002 of the Act, the Benefits Department does not have jurisdiction or authority to disallow the initial claim. A determination which was issued without jurisdiction cannot be held to have become final and binding upon the parties and the Commission because of a late appeal.

Appeal No. 1101-CA-71. There can be no finality to a determination which does not show the employer's correct account number.

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PR 405.20

PR 405.20 Right of Review: Person Entitled.

Where determination is made of whether a particular party is an interested party for the purpose of appealing a decision.

Appeal No. 308-CA-69. A person may initiate an appeal on behalf of a claimant only if he is duly authorized to do so and if the authorization appears affirmatively in the record. It takes personal action by a party to the claim or a person duly authorized by a party to act on his behalf in order to invoke the jurisdiction of the Commission under the Act.

Also see Appeal No. 7842-CA-61 under PR 10.00 and Appeal No. 2633-CA-77 under PR 380.25.

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PR 430.00 – 430.10

PR Taking and Perfecting Proceedings for Review

PR 430.00 Taking and Perfecting Proceedings for Review

PR 430.05 Taking and Perfecting Proceedings for Review: General.

Includes cases containing (1) a general discussion of taking and perfecting proceedings for review, (2) points covered by all of the sublines of line 430, and (3) points not covered by any other subline.

Appeal No. 86-05110-10-032787. The employer's copy of the initial claim was mailed to the correct street address but the wrong zip code. The first actual notice of the initial claim was the notice of the hearing on the appeal filed by the claimant. The employer's first written "protest" was its appeal to the Commission. **HELD:** The mistake in the employer's zip code rendered the address incorrect. Accordingly, the employer was a party of interest entitled to file an appeal.

PR 430.10 Taking and Perfecting Proceedings for Review: Method.

Discusses the adequacy of method of appeal or whether certain action of an interested party constitutes an appeal.

Appeal No. 9594-F-78. (Commission decision; case taken up by the Commission on its own motion under Section 212.105 of the Act.) On its timely protest to the initial claim, the employer recited no facts adversely affecting the claimant's right to benefits; it merely requested a ruling on the claimant's eligibility under Chapter 207 B of the Act.

PR 430.10(2)

HELD: Although the employer's protest did not set out or allege any facts, the Texas Unemployment Compensation Act is a remedial statute and thus should be construed liberally. In keeping with this general principle, the Commission endorses an expansive reading of Section 208.004 of the Act. This comports with the Commission's past advice to employers that, if they wish to preserve appeal rights with regard to later determinations, they should protest the initial claim even if they do not have any information at that time which would prevent payment of benefits. Claimants and employers have traditionally been held to have preserved their appeal rights upon receipt by the Commission, within the statutory period, of any written information indicating a disagreement with the current status of a case. Accordingly, the employer's protest was held to have been timely and sufficient to preserve the employer's appeal rights.

Appeal No. 1574-CUCX-77. The claimant specifically informed the Commission on his interstate continued claim of January 8, 1977, that he desired to appeal from a determination of disqualification mailed January 6, 1977. He did not file a formal notice of appeal until January 28, 1977, when informed by the local office that he needed to do so. **HELD:** Although the claimant's intended appeal of January 8 was not submitted on a formal appeal document, it certainly amounted to a notification to the Commission that he desired to appeal. The Commission, therefore, held that the claimant's appeal was timely and that it had jurisdiction of the merits of the case.

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PR 430.15(2) – 430.20

PR 430.15 Taking and Perfecting Proceedings for Review: Notice.

Discussion as to adequacy of notice of a decision to an interested party, or as to adequacy of notice by interested party of a desire for review of decision.

Appeal No. 87-17430-10-093087. A Notice of Claim Determination was mailed to the address provided by the claimant when he filed his initial claim, an address which was subsequently determined not to be the claimant's correct address. The claimant did not receive the notice and, thus, did not file an appeal until after the notice had become final. **HELD:** The claimant's appeal was determined to be late. The validity of the Notice of Claim Determination was proper. The address as given by the claimant was, at the time of the mailing of the notice, the claimant's correct last address as reflected by Commission records.

Appeal No. 909-CA-76. Where the attorney for a party specifically requested that a copy of the Appeal Tribunal decision be sent to him but this was not done causing the attorney's appeal to the Commission on the party's behalf to be filed four days late, such appeal to the Commission was held timely as the party, under the circumstances, was not "duly notified" of the Appeal Tribunal decision as required by Section 212.103 of the Act.

NOTE: Commission Rule 32, 40 TAC §815.32, specifically extends this principle to non-attorney party representatives.

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PR 430.20(2)

PR 430.20 Taking and Perfecting Proceedings for Review: Timely Filing of Protest.

Includes cases which involved the question of whether employer's protest was timely filed.

NOTE: See Commission Rule 2, 40 TAC §815.2, for description of the Commission's general policy regarding controlling dates of mailed communications. Also see Commission Rule 32, 40 TAC §815.32, for an extensive description of the Commission's policies regarding timeliness.

Appeal No. 98-005480-10-052098. The employer alleged that they attempted to submit the employer's protest to the initial claim by faxing it to the Commission in a timely fashion. The Commission did not receive the fax. **HELD:** A situation involving a fax is analogous to nonreceipt of mailed documents set out in Commission Rule 815.32(f). When a party alleges filing a protest by the faxing of a document which the TWC has never received, the party must present credible and persuasive testimony of timely filing corroborated by testimony of a disinterested party and/or physical evidence specifically linked to the appeal in question. For faxed documents, physical evidence specifically linked to the appeal in question shall be a copy of the protest, in addition to physical evidence of the transmission, such as a copy of a confirmation message, copy of a transmission log indicating the fax date, or other credible and persuasive documentary evidence. The employer failed to present the above evidence and therefore the employer's protest cannot be deemed timely.

Appeal No. 97-007426-10*-061197. An employer's failure to timely protest the Notice of Application for Unemployment Benefits does not preclude it from filing a subsequent appeal as a party of interest during the same benefit year where the only issue to be decided is the claimant's entitlement to additional wage credits.

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PR 430.20(3)

Appeal No. 95-014321-50-102495. On April 11, 1995 the employer was mailed a Notice of Maximum Potential Chargeback, advising the employer of the 14-day period for filing a timely protest. The Texas Workforce Commission's Chargeback Unit had no record of any protest having been filed by the employer. At the Appeal Tribunal hearing, the employer presented a copy of its protest letter dated April 24, 1995 and, further, presented the firsthand testimony of its claim specialist who prepared the employer's protest and mailed it to the Texas Workforce Commission on April 24, 1995. **HELD:** Citing Commission Rule 32(f), 40 TAC §815.32(f), the Commission held that while the testimony presented by the employer was credible and persuasive, it was not the testimony of a disinterested party. However, the protest copy introduced into evidence by the employer constituted physical evidence specifically linked to the appeal, within the meaning of Commission Rule 32(f). Accordingly, the employer's protest was deemed timely.

Appeal No. 93-003426-10-022594. If there is credible and persuasive evidence of nonreceipt of a document from TWC, and it is established that a party's name was misspelled in the addressing of that document, regardless of the extent of the error and even if the document was otherwise correctly addressed, the appeal to that document will be deemed timely under Commission Rule 32(b)(2) (also see Appeal No. 7807-CA-61 in this subsection).

Appeal No. 87-18325-10-101987. The employer's protest to the initial claim bore a postal meter imprint dated the last day on which it would have been timely, but also a U.S. Postal Service postmark dated the following day. The employer representative, who had no firsthand knowledge of the mailing of the employer's protest, presented an affidavit from the individual who assertedly mailed the protest on the last day on which it would have been timely.

PR 430.20(4)

HELD: Specifically citing provisions of its timeliness policy (PR 5.00) (Now codified as Commission Rule 32, 40 TAC §815.32), the Commission held that where a postal meter date and a postmark date are in conflict, the latter will control, and that affidavits alone cannot establish earlier mailing. Such an affidavit or an allegation of earlier mailing entitles a party to a hearing where testimony of such earlier mailing, subject to cross-examination, can be offered.

Section 70. Texas Law of Evidence, (McCormick & Ray) Mailing and Delivery of Letters. A letter, notice or other communication properly addressed, stamped and mailed is presumed to have been received by the addressee in due time. However, this presumption arises only after proof that the letter was properly addressed to the post office of the addressee, stamped with the proper postage, and that the same was mailed; and that the usual time for transmission of mail between the points of mailing and address has expired. These matters may be proved by circumstantial evidence. For example, the mailing routine of the sender's business may be sufficient evidence to raise the presumption.

Smith v. F.W. Heitman Co., 98 S.W. 1074 (Tex. Civ. App. 1906). The fact of proper mailing may be shown by circumstances, and the regular and settled custom of a business house with regard to the disposition of letters sent out by it through the mail would be admissible as such a circumstance, and sufficient to uphold an inference that such letter was regularly mailed; that is, deposited in the post office, properly addressed and stamped and received by the addressee.

Also see **TEC & Wilson v. Cady** under PR 405.15.

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PR 430.20(5)

Appeal No. 986-CAC-79. The employer filed a late protest to a Notice of Maximum Potential Chargeback and, on appeal from a Decision of Potential Chargeback charging the employer's account, an Appeal Tribunal decision was issued which affirmed the charging of the employer's account. Meanwhile, the claimant had filed a disagreement to a monetary determination, alleging additional base period wages from the same employer. An investigation disclosed that the claimant was entitled to additional base period wage credits as some of his base period wages had been reported by the employer under an erroneous social security number. Accordingly, a further Notice of Maximum Potential Chargeback was issued to the employer, reflecting the correct amount of the claimant's base period wages from the employer and the correct amount of benefits chargeable. The employer filed a timely protest thereto. A Notice of Decision of Potential Chargeback, indicating that benefits were not chargeable, was issued to the employer on the same day that the Appeal Tribunal decision, affirming the charging of the employer's account, was issued. The employer then filed a late appeal to the Commission from that Appeal Tribunal decision. **HELD:** The Appeal Tribunal decision and the earlier Decision of Potential Chargeback, upon which it was based, were set aside and the more recent Decision of Potential Chargeback, ruling that benefits were not chargeable, was permitted to remain in full force and effect. A ruling of maximum potential chargeback which is based on an erroneous indication of maximum benefits chargeable and which is not timely protested does not become final if a subsequent, corrected Notice of Maximum Potential Chargeback is timely protested. A Notice of Maximum Potential Chargeback which in- correctly recites the maximum benefits potentially chargeable does not satisfy the notice requirement of Section 204.023 of the Act. (Also digested under CH 50.00.)

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PR 430.20(6)

Appeal No. 2827-CA-77. Where an initial claim has been backdated, the statutory time limit for protest, prescribed by Section 208.004 of the Act, begins to run from the day after the date on which notice of the initial claim was actually mailed to the employer named on the claim and not from the date to which the claim was backdated.

Appeal No. 1902-CA-77. The mailing of notice of an initial claim to the correct address of the premises at which the claimant actually last worked for the employer constitutes due notice under Section 208.002 of the Act and Commission Rule 3, notwithstanding the fact that the employer does not customarily receive mail at its branch locations but, rather, at its central office, through a post office box.

Appeal No. 973-CA-76. The notice of the claimant's initial claim was not mailed to the firm for which the claimant had last worked but, rather, to a related company, with a separate employer account number and a separate address from the company for which the claimant last worked. The last employer, consequently, did not protest the initial claim but did timely protest the chargeback notice which was the first notice the employer actually received concerning the claim. **HELD:** Since the Commission did not comply with the notice provisions of Section 208.002 of the Act, and the employer timely protested the first notice it actually received concerning the claimant's initial claim, the employer was deemed to have filed a timely protest of the initial claim.

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PR 430.20(7)

Appeal No. 497-CA-76. Where the claimant last worked for the employer named on the initial claim at its location in El Paso, Texas, notice of the filing of such claim mailed to the employer's office in California was not due and proper notice to the employer, because Section 208.002 of the Act provides, in material part, that if the employer has more than one branch or division operating at different locations, notice of the filing of an initial claim shall be mailed to the branch or di- vision where the claimant last worked. Further, since the employer was not notified in accordance with the terms of Section 208.002 of the Act, his failure to protest the claim within the statutory time limit did not constitute a waiver of his rights with respect to the claim.

PR 430.20(8)

Appeal No. 38-CA-76 and Appeals Nos. 57-CA-76 through 63-CA-76 (Affirmed by Maintenance Management, Inc. v. TEC, 557 S.W. 2d 561, San Antonio Ct. Civ. Appeals 1977). Shortly after losing a maintenance contract and laying off some of his employees, the employer visited a Commission local office and advised an individual there that he anticipated a number of initial claims by the separated employees and inquired of the individual how he should handle the matter. The individual to whom the employer spoke, who was not a Commission employee and did not represent himself as such, advised the employer that he should wait and handle all such claims at the same time. Acting on this advice, the employer delayed protesting a number of initial claims until after the statutory protest period had expired. Subsequently, the employer was sent a determination advising him that his protests had not been timely filed and that he had thereby waived his rights in connection with the claims. The employer did not appeal that determination, nor did he file protest to subsequent notices of maximum potential chargeback regarding the claimants. **HELD:** The employer did not file timely protests to the initial claims and, thus, waived his rights in connection with the claims. Furthermore, even if the employer's untimeliness in protesting the initial claims had been due to misinformation provided by bona fide Commission representatives, this would not excuse the employer's failure to protest or appeal other documents in a timely manner throughout the claimants' benefit years.

Appeal No. 3476-CA-75. An employer has not waived its rights in connection with a claim where notice of the initial claim was not mailed to the employer's correct address and was returned undelivered by the Postal Service and where the employer duly protested the first notice of the claim that it actually received.

Appeal No. 93-CA-73. Testimony as to an employer's mailing routine may be sufficient to raise a presumption that its protest was stamped, properly addressed and placed in the U.S. Mail on the date shown by the employer's postage meter, even though it was postmarked four days later by the Postal Service.

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PR 430.20(9)

Appeal No. 5763-AT-69 (Affirmed by 618-CA-69). When a copy of the initial claim is mailed, pursuant to Section 208.002 of the Act and Commission Rule 3, to the correct address and location of the employer's branch where the claimant last worked and the employer does not file a protest within the statutory time period, the Appeal Tribunal is without jurisdiction to consider the merits of the case.

Appeal No. 641-CBW-67. An employer who is notified that his account is protected in a prior benefit year will be protected in a subsequent benefit year on the same separation even though he does not file a timely protest to chargeback in the second benefit year.

Appeal No. 7807-CA-61. An employer is not given notice of an initial claim if notice is mailed without complete address and is not received by the employer. Therefore, the employer can file a timely protest of the initial claim when he does receive some notice that an initial claim was filed (also see Appeal No. 93-003426-10-022594 in this subsection).

Appeal No. 72802-AT-60 (Affirmed by 7150-CA-60). Mailing of notice of an initial claim to one of the partners for whom the claimant last worked meets the notice requirements of the Act even though the business named on the notice was not the business for which the claimant last worked.

Also see Appeal Nos. 85-099352-10-082885 and 941-CUCX-77 under PR 430.30

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PR 430.30

PR 430.30 Taking and Perfecting Proceedings for Review: Timely Filing of Appeal

Includes cases which involve the question of whether one or both parties has filed a timely appeal.

NOTE: See Commission Rule 2 for a description of the Commission's general policy regarding controlling dates of mailed communications. Also see Commission Rule 32, 40 TAC §815.32, for an extensive description of the Commission's policies regarding timeliness.

Appeal No. 3443032. Determinations made under Section 201.091(e) of the Act fit into the "wage credits/validity of claim" category which, pursuant to Rule 32(i)(1), 40 TAC §815.32(i)(1), present a one-time exception to the timeliness rules. A late appeal to the Appeal Tribunal on such issue, if made within the same benefit year as the determination on appeal, will be deemed timely. However, once an Appeal Tribunal decision on the issue has been mailed, the appeal time limits under Chapter 212 of the Act will apply. (Also digested under PR 275.00 and PR 405.15.)

Appeal No. 2091905-2. When the claimant filed the initial claim, he provided an incorrect mailing address to the Commission. Consequently, the claimant did not receive the initial determination that disqualified him for benefits. He filed an appeal more than 14 days after the determination was mailed. The claimant's election to receive electronic correspondence from the Commission became active within the appeal deadline. **HELD:** A party's election to receive electronic correspondence is equivalent to a change in his mailing address for appeal purposes. The activation date of such election during the appeal period will be deemed to be a timely appeal for any pending determination or decision that is averse to the party. Any such "appeal" must be filed within the applicable statutory appeal time period.

PR 430.30(2)

Appeal No. 95-009715-10-071895. The appellant's last day for filing a timely appeal fell on an official Texas state holiday of the sort on which agency offices remain open for public business with minimal staffing. The appellant filed the appeal in a TWC local office the next morning. **HELD:** The appellant's appeal was deemed timely. The provision in Commission Rule 32(a)(2), 40 TAC §815.32(a)(2), that appeal time frames established in the Texas Unemployment Compensation Act are to be extended one working day following a deadline which falls on a weekend or official state holiday should be applied to all Texas state holidays including those on which TWC offices are open for public business with minimal staffing ("skeleton crew" holidays).

Appeal No. 94-010532-10*-071294. The claimant-appellant did not appear at the first Appeal Tribunal hearing and received a decision affirming her disqualification. She filed a timely petition to reopen under Commission Rule 16(5)(B), alleging that she did not receive the written notice for the first Appeal Tribunal hearing. **HELD:** The claimant's uncontradicted testimony that she did not receive the hearing notice, taken in conjunction with her status as appellant and timely filing of her request to reopen wherein she alleged nonreceipt of the hearing notice, elevates her testimony to the level of "credible and persuasive" required by Commission Rule 32(b), 40 TAC §815.32(b), and is sufficient to rebut the presumption of receipt. Accordingly, the claimant had good cause for her nonappearance within the meaning of Commission Rule 16(5)(B), 40 TAC §815.16(5)(B). (Also digested under MS 30.00.)

PR 430.30(3)

Appeal No. 92-012653-210-090393. Testimony of an interested party meets the "credible and persuasive evidence of non-delivery" standard in Commission Rule 32(b)(2) only if it is not contradicted by the testimony of another witness or attendant circumstances and it is clear, direct and free from inaccuracies and circumstances tending to cast suspicion thereon. Here, there was no record of any inconsistent statements by the claimant or any other internal documentation that would challenge the claimant's contention of nonreceipt. As the claimant did not sit idly by for an extended peri- od without making any effort to determine the status of his claim, his uncontradicted testimony that he did not receive the determination elevates his testimony to the level of "credible and persuasive" and is sufficient to rebut the presumption of receipt. (Cross-referenced under PR 190.00.)

Appeal No. 87-022645-1-0488 (Affirmed by 87-05530-10-050288). On January 21, the claimant wrote a letter to the Commission at- tempting to appeal a determination which was mailed the following day, because he had been informed by a local office representative that he had been disqualified under Section 207.044 of the Act. On March 9, the claimant filed an appeal in person in the local office.

PR 430.30(4)

HELD: The claimant's letter of appeal dated January 21 could not be accepted as an appeal from the determination mailed January 22 because a document cannot be appealed prior to its mailing date. As the claimant's appeal dated March 9 was not filed within the appeal time limit prescribed by Section 212.053 of the Act, the claimant's appeal was dismissed for lack of jurisdiction.

Appeal No. 87-02148-10-021088. In its timely protest to the initial claim, the employer had requested that any claim determination be mailed to its corporate headquarters. Nonetheless, the notice of claim determination was mailed to the address given on the initial claim which was the actual physical location where claimant last worked. The employer filed a seemingly late appeal. **HELD:** By failing to mail the notice of claim determination to the address specifically requested by the employer, the Commission failed to com- ply with the requirement in Section 212.053 of the Act that copies of claim determinations be mailed to parties' last known address as reflected by Commission records. Therefore, the employer's ap- peal was deemed timely.

Appeal No. 85-02278-10-021886. When a written appeal is delivered by the U.S. Postal Service to the Texas Workforce Commission but in an envelope which has either no postmark or an illegible postmark, the appeal will be deemed to have been perfected on the date shown on the document itself or as of three business days prior to the date of receipt by the Commission, whichever date is later. In calculating "business days" for the purpose of implementing this holding, Saturdays, Sundays and Texas state holidays are not to be included.

Appeal No. 85-00190-10-122785. The Appeal Tribunal decision imposed a disqualification for the first time but did not specifically advise the claimant that he might be subject to the imposition of an overpayment which he would be obligated to repay. The claimant did not file an appeal within ten days of the date the Appeal Tribunal decision was mailed; however, he did file an appeal within the required twelve (14, as of September 1, 1987) days after the mailing of the subsequent overpayment determination which resulted from the Appeal Tribunal decision.

PR 430.30(5)

HELD: The Appeal Tribunal decision was misleading in that it did not specifically advise the claimant that he might be subject to the imposition of an overpayment which he would be obligated to repay. As the claimant did file a timely appeal from the overpayment determination, his appeal to the Commission was treated as timely and the Commission assumed jurisdiction over the merits of the claimant's work separation.

Appeal No. 85-09352-10-082885. The employer mailed its letter of appeal on a date on which it would have been timely. However, the letter was subsequently returned to the employer due to insufficient postage, with no delivery having been made to the Texas Work- force Commission. **HELD:** The employer's appeal was properly dismissed for lack of jurisdiction. It is the appellant's responsibility to use sufficient postage when filing an appeal by mail. (Cross-referenced under PR 430.20.)

Appeal No. 85-08055-10-071285. The last day on which the employer could have filed a timely appeal to the Appeal Tribunal was June 16, 1985, a Sunday. The employer's appeal, although dated June 13, 1985, was received in an envelope bearing a postage meter date of June 17,1985. The Appeal Tribunal dismissed the employer's appeal for lack of jurisdiction. **HELD:** The Commission held that the employer's appeal had been timely filed. As the last day for filing a timely appeal had been a Sunday, the employer had through the end of the next regular business day, Monday, June 17, 1985, to file its appeal.

Appeal No. 84-08253-60-073085. The last day on which the claimant could have filed a timely appeal to the Appeal Tribunal was June 30, 1985, a Sunday. The claimant filed his appeal in person at a Commission local office on Monday, July 1, 1985. The Appeal Tribunal dismissed the claimant's appeal for lack of jurisdiction. **HELD:** The Commission held that the claimant's appeal had been timely filed. As the last day for filing a timely appeal had been a Sunday, the claimant had through the end of the next regular business day to file an appeal.

PR 430.30(6)

Appeal No. 84-14973-60-121284. Written notice of a change of address given by a party to the Texas Workforce Commission or to its agent, whether given in person or by mail, will be deemed to also be a timely appeal from any pending determination or decision which is adverse to that party. Any such "appeal" must be filed within the applicable statutory appeal time period if filed in person at an office of the Texas Workforce Commission or an office of another State's employment security agency acting as agent for the Commission. Any such "appeal" filed by mail must be postmarked within the applicable statutory appeal time period.

Also see Appeal No. 87-00811-10-011588 under PR 380.05.

Appeal No. 1533-CA-78. On the same day that a Notice of Claim Determination was mailed to the employer, awarding the claimant benefits without disqualification and charging the employer's ac- count, a Notice of Maximum Potential Chargeback was also mailed to the employer. The employer submitted a timely written protest on Form B-115 (employer protest to chargeback notice) which was intended also as an appeal to the Notice of Claim Determination. Although the employer's protest was written by an individual in the employer's payroll department who was authorized to respond on the employer's behalf, the protest was simply signed with the employer's corporate name and bore no signature of any particular individual. **HELD:** The Texas Unemployment Compensation Act, including Chapter 212 thereof, is a remedial statute which should be construed liberally. Corporate appeals must necessarily be filed by an authorized person on behalf of the nonperson legal entity. The employer's protest to the initial claim had been signed in precisely the same manner as its subsequent protest to chargeback appeal and had been accepted as valid. Commission procedures should not require the protest and appeal format to be so legalistic that it frustrates genuine interest to protest or appeal. Accordingly, the employer was regarded as having filed a timely appeal and jurisdiction was assumed over the merits of the claimant's separation and the charging of the employer's account.

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PR 430.30(7)

Appeal No. 941-CUCX-77. The appeal time limits in Section 212.053 of the Act do not apply to a determination which is found to have been void from its inception. (For text, see MS 260.00.)

Appeal No. 315-CA-77. On the last day for filing a timely appeal to the Commission, the employer's letter of appeal was prepared and placed in the central collection box in the employer's front office. Each day, the employer's secretary takes all correspondence from the collection box at or about 5:00 p.m. and takes it to the post office. The mail was so taken to the post office on the last day for filing an appeal to the Commission. **HELD:** The testimony established that the employer's appeal to the Commission was properly mailed within the statutory time limit allowed by law.

Appeal No. 3687-CA-76. Where the employer filed a late protest of the initial claim but filed a timely appeal from the determination that the protest was not timely filed, the appeal may not be dismissed for want of jurisdiction. The appeal from the determination having been timely filed, the Appeal Tribunal must proceed to rule on the issue of whether the protest of the initial claim had been timely filed or not. (Note: If, in such case, the Appeal Tribunal finds that the protest of the initial claim has been timely filed, the Appeal Tribunal should proceed to rule on the substantive issues presented by the case.)

Appeal No. 3230-CA-76. On June 29, the claimant notified Commission representatives of his change of address. On June 30, a determination of disqualification was mailed to the claimant's previously correct address, from which the claimant appealed on August 3. **HELD:** Since the determination of June 30 was not mailed to the claimant's correct last known address as reflected by Commission records, the requirements of Section 212.053 of the Act were not met. Accordingly, the claimant's appeal was deemed timely and jurisdiction was assumed over the merits of the June 30 determination.

PR 430.30(8)

Appeal No. 1733-CA-76. The employer filed a timely appeal from a determination which allowed the claimant benefits without disqualification. Thereafter, but more than twelve (14, as of September 1, 1987) days from the date of the original determination, a redetermination was issued which disqualified the claimant and protected the employer's account. Upon receiving the redetermination, the employer withdrew its appeal from the original determination. **HELD:** The redetermination was void under Section 212.054 of the Act since it was issued more than twelve calendar days after the original determination. Since the employer was misled by the invalid redetermination into withdrawing his timely appeal from the original determination, the employer's withdrawal of his appeal was set aside. The employer's timely appeal from the original determination was reinstated and the case remanded to the Appeal Tribunal for a hearing and decision on the merits.

Appeal No. 1475-CA-76. A protest of a Notice of Maximum Potential Chargeback, postmarked within twelve (14, as of September 1, 1987) calendar days after the mailing of a B-33 (Notice of Claim Determination) which is adverse to the employer and which involves the same claimant and the same separation will be treated as a timely appeal from the B-33.

Appeal No. 436-CA-76. A late appeal will be deemed timely, and jurisdiction taken on the merits, if the untimeliness of the appeal is the direct result of the instructions, erroneous or otherwise, of a Commission representative.

Appeal No. 3501-CSUA-75. Where a claimant does not file a timely appeal from a determination of disqualification or ineligibility which effectively determines that the claimant was not entitled to benefits already received, the subsequent overpayment determination resulting therefrom must be affirmed.

PR 430.30(9)

Appeal No. 1489-CA-72. On August 9, a determination was mailed to the claimant, holding him ineligible as not available for work within the meaning of Section 207.021(a)(4) of the Act. On that same day, unaware of the adverse determination which had been mailed to him that day, the claimant visited the TWC local office to file a claim and stated he was available for work. The claimant did not file a separate written appeal until after the expiration of the statutory appeal period. **HELD:** The fact that the claimant came into the local office on the same day the adverse determination was mailed to him and made a statement in connection with the filing of a weekly claim, which contradicted the holding in the adverse determination, would not suffice to give the claimant a timely appeal.

Appeal No. 1583-CA-71. An employer has twelve (14, as of September 1, 1987) days to file an appeal from a determination charging his account. If the determination does not show the employer's correct account number, the employer is not limited by the twelve (14, as of September 1, 1987) day appeal period.

Appeal No. 531-CA-71. An appeal must be considered timely filed when it is dated within the statutory time limit and the party testifies, he placed it in a post office box on the last day for filing a timely appeal.

Appeal No. 3617-AT-69 (Affirmed by 454-CA-69). Filing an appeal with an attorney engaged by a party does not constitute filing an appeal with the Commission. The Appeal Tribunal has no jurisdiction over the merits of the case when the appeal is not made to the Commission or its representative within the statutory time limit.

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PR 430.30(10)

Appeal No. 397-CA-68. In cases involving forfeiture of benefits, an appeal is considered timely when the file clearly reflects the party did not receive notice of such forfeiture and filed an appeal promptly upon learning of the forfeiture. Frequently, the individual is no longer in claim status and has no reason to be expecting to receive information from the Commission.

Appeal No. 987-CA-67. If a claimant does not request a hearing within the statutorily specified number of days from the date a Section 214.003 determination was mailed, even though it was received in time to do so, the forfeiture determination becomes final and the Appeal Tribunal has no jurisdiction over the merits of the case.

Also see Appeal Nos. 702-CAC-78 and 1843-CA-74 under PR 405.15 and Appeal No. 530-CA-78 under PR 275.00

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PR 440.00 – 440.10

PR Procedure in Special Cases

PR 440.00 Procedure in Special Cases.

PR 440.10 Procedure in Special Cases: Finality of Findings of Federal Employing Agency.

Includes cases which discuss the finality of findings of the federal employing agency.

Section 313 of the Unemployment Compensation Amendments of 1976, P.L. 94-566 enacted October 20, 1976, provides that Section 8506(a) of Title 5 of the United States Code is amended by striking out the fifth sentence. The deleted sentence reads as follows:

"Findings made in accordance with the regulations are final and conclusive for the purpose of Sections 8502(d) and 8503(c) of this title."

Based on the 1976 Amendments, federal findings as to period of federal service, amount of federal wages and reasons for termination of federal service that are made by federal agencies after October 20, 1976, are no longer final and conclusive for purposes of determining entitlement of UCFE claims. UCFE claims will now be subject to the same administrative procedure applicable to regular UI claims.

However, any determination or decision as to what constitutes "federal service" and "federal wages" and the state to which federal service and wages are assigned, shall continue to be based upon federal law and regulations and as the Secretary of Labor may direct.

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PR 450.00 – 450.10

PR Procedure in Subsection 214.00. Cases

PR 450.00 Procedure in Subsection 214.003 Case.

PR 450.10 Procedure in Subsection 214.003 Case: Failure or Refusal to Timely Appeal or Failure to Appear in Response to Notice.

Includes cases which discuss effect of failure or refusal to appeal or failure to appear in 214.003 cases.

Appeal No. 1551-CA-77. The claimant (a non-English speaker) received a notice of forfeiture of benefits. He sought assistance from a Notary Public who informed him he need not take any action. His late appeal was dismissed by the Appeal Tribunal. **HELD:** Section 214.003 provides for the forfeiture of benefits to become effective only after a claimant has been afforded the opportunity for a fair hearing. Since the claimant acted prudently in seeking assistance in reading the determination and relied to his detriment on that assistance, he was denied his opportunity for a fair hearing. The Commission, therefore, considered the case on its merits. (Also digested under MS 340.05).

Appeal No. 1791-CA-77. A notice of cancellation of benefit rights under Section 214.003 of the Act was mailed to the claimant's correct last address. The claimant filed a late appeal, the Appeal Tribunal dismissed for lack of jurisdiction and the Commission affirmed. The claimant then filed a late motion for rehearing which the Commission granted. The evidence in the record revealed that the application of the forfeiture provisions of Section 214.003 had been based on erroneous information furnished by an employer (seemingly indicating that the claimant had failed to report earnings on certain claims when, in fact, the claimant had not been employed or receiving wages.)

PR 450.10(2)

HELD: Clearly, the claimant did not comply with the provisions of Sections 212.053 and 212.153 of the Act regarding time limitations on appeals and motions for rehearing. However, the Legislature recognized the severity of Section 214.003's penalties when it made the specific provision therein that forfeiture or cancellation may be effective only after opportunity for a fair hearing has been afforded the claimant. Since the application of Section 214.003 was based on erroneous information, the claimant's failure to file a timely appeal or a timely motion for rehearing should not preclude reversing the application of Section 214.003 in order to correct the error.

Appeal No. 7404-CA-60. Claimant was given an opportunity for a fair hearing and provisions of Section 214.003 were applied without a hearing when claimant refused to appear for hearing because he objected to statements on the notice of hearing.

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SW 5.00 General

Includes cases containing (1) interpretations of "suitability", "work", "good cause", (2) discussions as to the purpose of the unemployment compensation law, and its effect upon suitability determinations, (3) general interpretations as to legislative intent and the meaning of statutes, and (4) other suitable work points which do not fall within any specific line in the suitable work division.

Appeal No. 675-CA-72. It does not matter why a claimant refuses a job if the work was not suitable for the claimant.

Appeal No. 741-CA-66 (Modifying 33119-AT-66). The claimant was referred to a job on March 21, contacted the employer that date and was told to report the next morning. On the next morning, he tried out for the job and turned it down as he felt he could not do it, even though the employer was willing to train him. He was not paid for the few hours he was trying out for the job. **HELD**: The claimant did not have good cause for refusing the job. A disqualification under Section 207.047 was imposed beginning March 22, the first day of the benefit period in which the job refusal occurred. The Commission thereby modified the Appeal Tribunal decision which had imposed the disqualification effective March 15, the first day of the appropriate benefit period had the job refusal occurred on March 21, as originally found by the Appeal Tribunal.

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SW 90.00

SW Conscientious Objection

SW 90.00 Conscientious Objection

Includes cases in which an offer of, or referral to, work is refused because of religious scruples or ethical concepts.

Sherbert vs. Verner and S.C., E.S.C. 374 U.S. 398 (Supreme Court 1963). The claimant, a Seventh Day Adventist, was disqualified for failing to accept a job which required that she work on Saturday. The Court held "...It is apparent that (claimant's) declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forego that practice is unmistakable." The disqualification, therefore, operates to deny claimant's right under the First Amendment to the United States Constitution. (Cross-referenced under SW 450.10.)

Appeal No. 31272-AT-66 (Affirmed by 451-CA-66). Claimant refused referral to a job as a salesman, his usual occupation, because he did not like the products of the company. **HELD:** The claimant's contention that the merchandise was lacking in quality was without foundation and admittedly was based on his personal opinion only. Disqualification under Section 207.047

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SW 150.00 – 150.20

SW Distance to Work

SW 150.00 Distance to Work.

SW 150.05 Distance to Work: General

Includes cases containing (1) a general discussion of distance to work, (2) points not covered by any other subline under line 150, or (3) points covered by all the sublines.

Appeal No. 24689-AT-65 (Affirmed by 893-CA-65). Claimant wanted a job within walking distance of her home. She refused referral to a job which could have been reached by city bus. The job location was not an excessive distance from her home, and she did not have good cause to refuse the referral.

SW 150.15 Distance to Work: Removal from Locality.

Where claimant refuses a job because of (1) his removal from the locality of the employer's premises, (2) the requirement that he move to the locality of the job, or (3) the removal of the employer's place of business to another locality.

Appeal No. 1436-CA-66. Claimant was offered suitable work in another locality and accepted it but changed his mind and did not report because his wife could not stay home alone, and claimant could not dispose of his property in order to move. **HELD:** Since claimant had agreed to take the job and report on a specific date, he refused suitable work without good cause. Disqualification under Section 207.047. (Cross-referenced under SW 155.20, SW 265.20 and SW 265.30.)

SW 150.20 Distance to Work: Transportation and Travel.

Involves refusal of work because of claimant's lack of transportation, expense of travel, or time of travel.

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SW 150.00(2)

Case No. 141500. The claimant declined a job offer in Odessa due to the distance to the job of approximately 20 miles. The claimant had performed similar work and had accepted similar pay previously. She declined the job solely because she wished to work in her city of residence, Midland, and did not wish to commute to Odessa. Many individuals living in Midland and Odessa commute between the cities for employment. **HELD:** Distance to an offered job is not the sole factor to be considered in determining if the job location is suitable. Distance, travel time, and community customs are all factors which determine if a job location is suitable. Disqualified under Section 207.047 of the Act as the distance was not excessive and such commutes were customary in the area.

Appeal No. 1139-CA-67 (SW 150.20) of the Appeals Policy & Precedent Manual was expressly overruled and removed from the Precedent Manual by Case No. 141500.

Appeal No. 526-CA-69. The claimant had good cause to refuse a job which required her to work until 9:00 p.m., since bus transportation to her home at night was very inconvenient. Having to rely on bus transportation at night presented a further problem in regard to claimant's mother caring for her children. **HELD:** No disqualification in order. However, claimant's occupation usually requires some night work and her restriction to day hours limited her availability to the point she did not have a reasonable expectancy of securing work. Accordingly, the claimant was held ineligible under Section 207.021(a)(4).

Appeal No. 316-AT-68 (Affirmed by 87-CA-68). Claimant refused referral to a job because of the distance. The job was located at the Brownsville shrimp basin, about eight miles from Brownsville where the claimant lived. Many people commute from Brownsville to that location and public bus transportation is also available. Claimant said she would have to get up too early in the morning to catch the bus. **HELD:** The job was suitable in all respects and she did not have good cause for refusing the referral.

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SW 150.20(3)

Appeal No. 34049-AT-66 (Affirmed by 767-CA-66). Claimant refused a job because it was located in a remote area that was difficult to reach by city bus, which was her only means of transportation. She would have had to make two transfers, requiring about one and one-half hours to reach the job site. **HELD:** Claimant had good cause to refuse the job as it was not reasonably accessible.

Appeal No. 832-CA-65. The claimant failed to apply for a job in Houston because she did not have money available for transportation. She had filed eight continued claims and had managed to arrange transportation to file her claims. She had been representing that she was available to accept suitable work. **HELD:** Under the circumstances, the claimant's contention that she was not able to arrange transportation for an interview due to her lack of finances was not valid. Accordingly, her refusal of the referral was without good cause. Disqualification under Section 207.047 and ineligible under Section 207.021(a)(4) from the date of the work referral.

Appeal No. 31-CA-65. The claimant was referred to a job which would have required her to ride public transportation and to transfer in downtown Houston in order to reach work. Claimant failed to apply for the position because she wanted work only in the vicinity of her home (southeast Houston) or in the downtown area. The work was otherwise suitable. **HELD:** Claimant refused referral to suitable work without good cause. Claimant's objection to use of public bus transportation was not valid as thousands of workers in Houston rely on public buses daily to get to work. Disqualification under Section 207.047 and ineligible under Section 207.021(a)(4) (as unduly restricting her area of availability).

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SW 155.00 – 155.10

SW Domestic Circumstances

SW 155.10 Domestic Circumstances.

Where refusals of work are motivated by the need of the claimant to care for children. Cases involving the care of children during their illness are placed under "illness or death of others".

Appeal No. 87-00822-10-011888. The claimant had worked for the employer on an irregular basis. The claimant called for work and was told to call back later. At 8:30 that evening the employer told the claimant there was four days' work available if she could start at 7:00 the next morning. The claimant told the employer she could not start that soon because she needed to arrange childcare. **HELD:** Although childcare is the responsibility of the claimant, the employer's requirement that the claimant start work on such short notice was an unreasonable one and one that the claimant was unable to meet. No disqualification under Section 207.047 of the Act. (Cross-referenced under SW 265.25.)

Appeal No. 27564-AT-65 (Affirmed by 1236-CA-65). Claimant refused a referral to suitable work because she had to have work in an area so located that she could pick up her children at the nursery at 5:30 p.m. **HELD:** The claimant's childcare problems were personal and did not constitute good cause. Disqualification under Section 207.047.

See Appeal No. 28114-AT-65 (Affirmed by 69-CA-66) under SW 450.154.

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SW 155.20 – SW 155-35

SW 155.20 Domestic Circumstances: Home or Spouse in Another Locality.

Where a claimant refuses work because of his de- sire to accompany or to join his spouse in another locality, or because of his unwillingness to leave his home or spouse to accept employment in another locality.

See Appeal No. 1436-CA-66 under SW 150.15.

SW 155.35 Domestic Circumstances: Illness or Death of Others.

Involves questions of refusal of work because of illness or death of others.

Appeal No. 71105-AT-60 (Affirmed by 7019-CA-60). Claimant accepted a job but did not report because her daughter had gone into labor and she wanted to be with her. **HELD:** Claimant's failure to report for work because of her daughter's condition constituted a refusal, without good cause, of suitable work. Disqualification under Section 207.047.

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SW 170.00 – 170.10

SW Employment Office or Other Agency Referral

SW 170.00 Employment Office or Other Agency Referral

SW 170.10 Employment Office or Other Agency Referral

Discussion of questions such as (1) the adequacy or propriety of a direction to apply for, or a referral to, a job; or (2) the purpose and use of referral cards.

Appeal No. 1670-CA-73. Before a disqualification can be assessed under Section 207.047, it must be shown that claimant failed, with- out good cause, either to apply for available, suitable work when so directed by the Commission or to accept suitable work when offered. In this case, the claimant was told of an existing job opening but not of the job location or the name of the employer or wage in- formation. When he was not directed to a particular address, claimant did not consider that he was offered a referral. **HELD:** An essential element of disqualification for failing to properly apply for work when directed by the Commission was missing. No disqualification under Section 207.047 as the evidence failed to establish that the claimant was actually given a referral and directed to suitable work.

Appeal No. 31-CA-68. It was held that the claimant had actually had notice of an offer of work sent him by telefax from the employer's office through Western Union. It was established that, if the message had been returned undelivered because of an improper address, as contended by the claimant, the sender would have been notified of such fact and would not have been billed for the message. The employer presented a copy of the telegram, showing that it was properly addressed. **HELD:** The work was suitable; disqualification under Section 207.047. (Cross-referenced under SW 330.15.)

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Suitable Work

SW 170.10(2)

Appeal No. 25802-AT-65 (Affirmed by 1039-CA-65). The claimant was told by the placement interviewer that a certain employer was hiring but the claimant did not wait until the interviewer had time to tell her to which store or to whom to report. Claimant failed, without good cause, to apply for available, suitable work.

Appeal No. 8629-CA-62. When the Commission representative attempted to refer the claimant to a suitable job and claimant refused to discuss the matter, she refused a referral to suitable work without good cause. When she stated she was not interested in the job, it was unnecessary to tell her where the job was located or give her a referral card. Such attempts to persuade the claimant to apply for the job would have served no useful purpose.

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SW 180.00

SW Equipment

SW 180.00 Equipment

Includes cases where claimant refuses work because of his inability or unwillingness to secure necessary equipment, such as tools, special clothing, etc.

Appeal No. 2012-AT-67 (Affirmed by 11-CA-68). The claimant was referred to a construction job. He accepted the referral and reported to the employer. The employer advised the claimant that he must have a safety helmet and safety shoes, and that the employer would not furnish them. The claimant was not hired because he did not have such items and could not buy them anywhere in the area. **HELD:** The claimant did not fail, without good cause to apply for or accept suitable work; no disqualification under Section 207.047.

SW Evidence

SW 190.15 Evidence: Weight and Sufficiency.

Discussion of weight and sufficiency of evidence relating to application of the suitable work provision.

Appeal No. 2791-CA-76. At the Appeal Tribunal hearing on the claimant's separation, the employer testified that, after the claimant filed her initial claim, he offered her reemployment in her former position but under a different remuneration agreement, which the claimant refused. However, the employer could not recall the exact date of the work offer. The claimant did not appear at the hearing and the Appeal Tribunal held that, since the employer could not recall the exact date of the work offer and since the work offered was under a different remuneration agreement, no disqualification under Section 207.047 was in order. **HELD:** The employer submitted sufficient facts at the Appeal Tribunal hearing to raise an issue as to whether the claimant had been offered suitable work which she refused. However, since the claimant was not present at the hearing to testify as to her reason for refusing this work offer, the Commission held that there was insufficient evidence available to the Appeal Tribunal to support a ruling under Section 207.047. Accordingly, the Appeal Tribunal's decision, insofar as it held that no disqualification under Section 207.047 would be applied, was set aside and the Insurance Department was directed to investigate the work offer and issue a Section 207.047 determination.

Appeal No. 1522-AT-69 (Affirmed by 200-CA-69). A claimant who indicates she would not have refused a referral to a prospective job had she known that she would be disqualified therefor did not have good cause for refusing referral to suitable work.

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SW 195.00 – 195.10

SW Experience or Training

SW 195.00 Experience or Training

Includes cases containing (1) a general discussion of experience and training, (2) points not covered by any other subline under line 195, or (3) points covered by three or more sublines.

Appeal No. 8687-CA-62. No disqualification under Section 207.047 is in order where a claimant refused a referral to work chopping cotton because the work was not suitable, in that all of her work experience had been as a maid.

SW 195.10 Experience or Training: Insufficient.

Where a job is refused on grounds of lack of training or experience.

Appeal No. 713-CUCX-EB-77. The claimant, a former Air Force propeller mechanic for twenty-one years, refused a job offer as an industrial engine mechanic because he felt unqualified for the work and felt that his lack of experience in the work would render it unsafe. The employer required only that applicants be interested in mechanics; those hired would receive on-the-job training. **HELD**: Since the employer required only an interest in mechanics to qualify for the job, the claimant did not have good cause to refuse the job offer.

Appeal No. 399-CA-77. The claimant, a licensed vocational nurse (L.V.N.) whose work experience had been with physicians in private practice, refused a referral to an available L.V.N. position with a convalescent home. The job involved the administration of medicines, which the claimant had no experience in. The claimant would have required a three-month hospital training course in order to qualify and the job offered was not for a trainee. Had the claimant performed such duties for which she was not qualified, she could have had her license revoked and incurred civil liabilities.

SW 195.10(2) – SW 195.20

HELD: Since the claimant was not qualified for the position and would have subjected herself to possibly serious consequences had she performed duties for which she was not qualified, she had good cause to refuse the referral.

Appeal No. 1183-CA-67. A claimant who refused a job because of lack of experience in repairing electric watches did not have good cause for the refusal as he had many years' experience as a watchmaker and the employer was willing to train him in the repair of electric watches.

Appeal No. 1117-UCX-66 (Affirmed by 53-CUCX-66). The claimant refused a referral to a job as a shipping and receiving clerk because he felt he was unqualified for the job. However, the claimant had had prior experience on a loading dock, had had two years of college and could type. **HELD:** The claimant's educational back- ground and work experience were such that his chances of securing the job were good and the work was suitable. Disqualification under Section 207.047.

SW 195.20 Experience or Training: Use of Highest Skill.

Where the question of maximum utilization of claimant's skills determines whether there is justification for his refusal of a particular job.

Appeal No. 96-007549-10-062797. When she returned from an approved medical leave of absence, the claimant was advised her former position as a dental assistant was no longer available. The claimant then filed an initial claim for benefits. About a month later, the employer offered the claimant a new job as an office assistant with the same hours, pay and work location. The claimant refused this offer because she felt the duties of an office assistant were different from those of a dental assistant. **HELD:** Disqualified for refusing an offer of suitable work. Although the new job duties were different, the pay, hours and work location were identical, and the two positions were of comparable skill level.

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SW 195.20(2)

Appeal No. 179-CA-69. A claimant has good cause to refuse a referral to work that would not utilize her experience and training, which qualified her for a better paying and more responsible job.

Appeal No. 214-CA-68. A claimant who has undergone specialized training under the Manpower Redevelopment and Training Act has good cause for refusing a referral to a job which required no special training or skills and paid only the minimum wage, and which was, therefore, not suitable work.

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SW 235.00 – 235.25

SW Health or Physical Condition.

SW 235.00 Health or Physical Condition.

SW 235.20 Health or Physical Condition: Hearing, Speech, or Vision.

Appeal No. 33479-AT-66 (Affirmed by 721-CA-66). The claimant refused referral to a job as a sewing-machine operator because she felt it would be too much of a strain on her eyes. She presented a doctor's statement to the effect that he had examined her eyes and found her vision to be so deficient that she was unable to do sewing-machine work. The claimant was held to have had good cause to refuse the referral.

SW 235.25 Health or Physical Condition: Illness or Injury.

Appeal No. 339-AT-68 (Affirmed by 92-CA-68). A claimant who was ill at the time of the referral and so advised the employer by telephone had good cause not to apply for work and no disqualification under Section 207.047 was in order. The claimant's statement was supported by medical evidence. (Note that the decision in this case did not address itself to the possible application of Section 207.021(a)(3) of the Act.)

SW 235.40 Health or Physical: Pregnancy.

Appeal No. 31535-AT-66 (Affirmed by 440-CA-66). A claimant who refuses a referral for the sole reason that she is pregnant and, therefore, does not think the employer would be interested in hiring her, does not have good cause for refusing the referral. Disqualification under Section 207.047.

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Suitable Work

SW 235.45

SW 235.45 Health or Physical Condition: Risk of Illness or Injury.

Appeal No. 86-14411-10-110686. The claimant had experienced back problems after working for the employer in positions requiring heavy lifting. After being transferred to lighter duty work, the claimant was laid off for lack of work. Two months after filing her initial claim, the claimant refused the employer's offer of work as a stock clerk because it required heavy lifting. On appeal to the Commission, the claimant submitted medical documentation of her back problem, including her physician's advice against any work involving strenuous lifting. **HELD:** The offered work was not suitable because it would have posed a health risk to the claimant. No disqualification under Section 207.047 of the Act.

See Appeal No. 1716-AT-70 (Affirmed by 189-CA-70) under SW 450.154.

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SW 265.00 – 265.15

SW Interview and Acceptance

SW 265.00 Interview and Acceptance.

SW 265.05 Interview and Acceptance: General.

Involves (1) points not covered by any other subline under line 265, or (2) points covered by three or more sublines.

Appeal No. 30802-AT-66 (Affirmed by 475-CA-66). The claimant was given a referral to suitable work and, on that same day, made several telephone calls to the employer, as instructed. However, she was unable to reach the individual whom she was to contact because either the employer's line was busy or the individual to be contacted was occupied on interviewing job applicants. The claimant left no message for him to return her calls. **HELD:** It was reasonable to believe that the claimant could have contacted the employer had she made a diligent effort to do so. By her failure to make such a diligent effort, she failed, without good cause, to apply for available, suitable work. Disqualification under Section 207.047.

SW 265.15 Interview and Acceptance: Availability.

Where the issue turns upon the immediate existence of work for the claimant or on the claimant's availability for work.

Appeal No. 105-CA-78. The claimant had last worked as a nurse's aide for a hospital. However, when she filed her initial claim, she indicated that she would not accept nursing homework. Subsequently, she was referred to a job as a nurse's aide at a nursing home but declined to apply therefor. **HELD:** Since the claimant had already informed the Commission office that she would not accept nursing homework, the referral should not have been made. Accordingly, no disqualification under Section 207.047 was in order. However, the claimant was held ineligible under Section 207.021(a)(4) as, by her geographical restrictions and her prohibition against nursing homework, she had removed herself from any substantial labor market and, further, had made virtually no search for work.

Appeals Policy and Precedent Manual
Suitable Work

SW 265.10 – 265.25

Appeal No. 827-CA-71. It is not equitable to refer a claimant to a job paying less than the wage she had stated she would accept and then disqualify her, when she had not been informed that her wage demand was excessive at the time, she set it. In such an in- stance, no disqualification would be in order under Section 207.047 of the Act. If the claimant's wage demand is excessive, Section 207.021(a)(4) of the Act is applicable.

Appeal No. 7569-AT-68 (Affirmed by 875-CA-68). A claimant will not be disqualified a second time for refusing a referral to work in a particular location where she has previously advised the Commission that she will not work. However, the claimant's Section 207.021(a)(4) ineligibility, based on her geographical restrictions, was continued.

SW 265.20 Interview and Acceptance: Discharge or Leaving After Trial.

Discussion of whether the early termination of newly accepted work constitutes a refusal of work or a leaving or a discharge.

See Appeal No. 1436-CA-66 under SW 150.15.

SW 265.25 Interview and Acceptance: Failure to Accept or Secure Job Offered.

Discussion of the affect of circumstances occurring during or after the interview which result in the claimant's not becoming employed.

Appeal No. 25-CA-66. A claimant with twenty years' experience as a welder was referred to a prospective job as a welder. The offered wage was lower than that which the claimant had indicated he would accept. The claimant represented to the employer that he doubted he could perform the work and that he had no experience in this type of work. He testified that he would have accepted the job if it had paid the wage he desired. **HELD:** The claimant refused available, suitable work without good cause. His contention that no offer had been made was not valid as he had led the employer to believe that he would not accept the position.

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SW 265.25(2) – 265.30

SW 265.25 Interview and Acceptance: Failure to Accept or Secure Job Offered.

Appeal No. 15-CA-64. The claimant took affirmative action to in- sure that she would not be accepted for the job by dressing improperly for the job interview, chewing gum, and understating her ability to perform the work. **HELD:** Since the work was suitable, the claimant was disqualified under Section 207.047. (Also digested under AA 160.15.)

See Appeal No. 87-00822-10-011888 under SW 155.10.

SW 265.30 Interview and Acceptance: Failure to Report for Interview or Work.

Circumstances which prevent claimants from either reporting, or reporting on time, for inter- views with the prospective employers after the acceptance of referrals, or from reporting for work after they have been hired.

Appeal No. 3290-CA-75. The claimant was referred to a prospective employer. She contacted the employer and made an interview appointment, forgetting that she had previously committed herself to several other interviews on the same morning. The claimant attempted to call the employer and postpone the interview until later the same day. The employer advised the claimant that, if she could not keep her appointment, she would not be considered. **HELD:** The claimant had good cause for not actually applying for work with this employer. She made a reasonable effort to apply for the job in light of the circumstances.

Appeal No. 6150-AT-68 (Affirmed by 718-CA-68). A claimant who failed to report for a scheduled job interview because he was helping his neighbors search for a rabid dog and was informed next day that the job had been filled, failed without good cause to apply for work which was suitable.

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SW 265.30(2) – 265.35

Appeal No. 24750-AT-65 (Affirmed by 921-CA-65). Claimant accepted a referral to work which was admittedly suitable but did not report to the employer because she had been registering for work and filing her claim at the Commission office that day and was too nervous to keep the appointment. **HELD:** The claimant did not have good cause for failing to apply for the job; disqualification under Section 207.047.

See Appeal No. 1436-CA-66 under SW 150.15.

SW 265.35 Interview and Acceptance: Inability to Perform Offered Work.

Where claimant's inability to perform the work offered is considered in determining the suitability of the work or the claimant's "good cause" for refusal.

Appeal No. 880-CA-66. Claimant refused a job when advised that it required heavy typing because she could type only forty-five words per minute with very poor accuracy. For the past four years she had done light bookkeeping and general office work. **HELD:** Since the claimant clearly was not qualified for the job, she had good cause for her refusal. No disqualification under Section 207.047.

SW 265.40 Interview and Acceptance: Necessity for Interview.

Discussion of the necessity of a personal interview for the purpose of clarifying the terms of the offer and the circumstances under which the employment will be performed.

Appeal No. 9-CUCX-F-66 (Affirmed by 1-CUCX-F-66). Claimant took a work application from the prospective employer's secretary to fill out and return. However, he did not pursue the job as one of the employees told him the job began at midnight and he would have no transportation. **HELD:** The claimant did not properly apply for the job and merely accepted information given him by one of the employees. Disqualification under Section 207.047.

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Suitable Work

SW 265.45 Interview and Acceptance: Refusal or Inability to Meet Employer's Requirements.

Where claimant's reason for refusal or inability to meet employer's standards is considered in determining the suitability of the work or claimant's "good cause" for refusal.

Appeal No. 87-00822-10-011888. The claimant had worked previously for the employer on an irregular basis. The claimant called for work and was told to call back later. At 8:30 that evening the employer told the claimant there was four days' work available if she could start at 7:00 the next morning. The claimant told the employer she could not start that soon because she needed to arrange childcare. **HELD:** The claimant, in fact, accepted the offer of work but was not able to start immediately because she needed to find adequate childcare arrangements. Although childcare is the responsibility of the claimant, the employer's requirement that the claimant start work on such short notice was an unreasonable one. No disqualification under Section 207.047.

Appeal No. 27494-AT-65 (Affirmed by 52-CA-66). Claimant refused to apply for a job for the sole reason she would be required to take a polygraph test. The requirement that claimant submit to a polygraph test was not unreasonable and did not give claimant good cause for refusing the referral. Disqualification under Section 207.047.

Appeals Policy and Precedent Manual
Suitable Work

SW 290.00

SW Length of Unemployment

SW.295.00 Length of Unemployment.

Includes cases where the length of unemployment is considered in determining whether there is justification for a refusal.

Appeal No. 1044-CA-65. A claimant who last earned $500 a month and had been unemployed about a year did not have good cause to refuse a referral to a job paying $325 per month, which approximated the prevailing rate in the area. (Cross-referenced under SW 500.35.)

Also see Appeal No. 2282-CA-77 and Appeal No. 86-05689-10-041087, both under AA 500.00.

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Suitable Work

SW 315.00

SW New Work

SW 315.00 New Work

This line is used only with reference to determinations as to whether a job offer is "new work" within the meaning of section 1603(a)(5) of the internal revenue code (effective august 5, 1954, section 3304(a)(5) of the federal unemployment tax act) or of state labor standards provisions patterned after it. Includes cases involving interpretations as to what constitutes "new work"; new contract of hire; work offered by old employer of a different type than formerly done; or transfer to a different plant or to a different department in same plant.

See Unemployment Insurance Program Letter No. 9-84 under VL 315.00.

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Suitable Work

SW 330.00 – 330.20

SW Offer of Work.

SW 330.00 Offer of Work.

SW 330.00 Offer of Work: General

Includes cases which (1) define an "offer", (2) determine whether there has in fact been an offer, (3) discuss points covered under three or more sublines under line 330, or (4) consider points not covered under any other subline.

Appeal No. 1213-AT-67 (Affirmed by 289-CA-67). A claimant is not subject to a disqualification under Section 207.047 of the Act when no job opening actually exists at the time of the offer and there is no definite date on which such job may become available. Section 207.047 contemplates an offer of present work and not work which may be available at some indefinite date in the future.

SW 330.15 Offer of Work: Means of Communication.

Questions as to (1) the source and method of communication of the work offer, and (2) the adequacy of the means of notification.

See Appeal No. 31-CA-68 under SW 170.10.

SW 330.20 Offer of Work: Necessity.

Discussion of the necessity of an offer of work as a prerequisite to disqualification for a job refusal.

Appeal No. 33002-AT-66 (Affirmed by 649-CA-66). No disqualification is in order where both the claimant and her witness testified that they were told by the employer that the job had been filled.

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SW 330.30 – 330.35

SW 330.30 Offer of Work: Time.

Discussion of the time of the offer as related to (1) the date of the claim, or (2) the date the claimant became unemployed.

Appeal No. 897-CA-76. The claimant was laid off for lack of work. Two months later, but prior to the date of the claimant's initial claim, he was offered recall to his job by his supervisor, which offer he declined. **HELD:** No disqualification under Section 207.047. The latter provides for disqualification only if a claimant refuses an offer of suitable work "during his current benefit year".

SW 335.00 Offered Work: Previously Refused.

Includes cases which consider the effect of offers of work previously refused, or repeated refusals of a particular job. The offers may be either those made by employers or the employment office.

Appeal No. 88764-AT-62 (Affirmed by 8778-CA-62). The claimant was disqualified for refusing her former job with her last employer on July 6. She was again offered the same job by that employer on July 13. She refused on both occasions because she needed more money. Since the claimant had already been disqualified for refusing work with that employer on July 6, no further disqualification was applicable because of the work refusal of July 13.

Appeals Policy and Precedent Manual
Suitable Work

SW 360.00

SW Personal Affairs

SW 360.00 Personal Affairs.

Includes cases in which the refusal is based on some personal circumstances not covered by any other line in the suitable work division of the code.

Appeal No. 15990-AT-64 (Affirmed by 713-CA-64). A claimant has good cause to refuse a referral to a job with a company against which her husband's employer had a lawsuit pending. Her acceptance of work with the particular employer would have caused embarrassment to her husband. (Cross-referenced under SW 515.80.)

Appeals Policy and Precedent Manual
Suitable Work

SW 365.00

SW Prospect of Other Work.

SW 365.00 Prospect of Other Work.

Includes cases where the claimant's likelihood of obtaining employment in his customary occupation, or in some other type of work, is considered in determining whether or not there is justification for a refusal.

Appeal No. 1100-CA-67. A claimant who refuses a work referral because he is involved in serious negotiations with another company and has a good possibility of obtaining a much better job than the one to which he was offered referral, has good cause to refuse the referral.

Appeal No. 89938-AT-62 (Affirmed by 8819-CA-62). A claimant who refuses a referral because she is working part-time and has been promised full-time work with that employer in six weeks, which work is nearer her home and pays better, has good cause to refuse the referral but is ineligible under Section 207.021(a)(4).

TEX 10-01-96

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Suitable Work

SW 450.00 – 450.154

SW Time

SW 450.00 Time.

SW 450.10 Time: Days of Week.

Where claimant refuses work because of his insistence upon, or objection to, working particular days of the week.

Appeal No. 24750-AT-65 (Affirmed by 921-CA-65). A claimant who refuses a job solely because it requires Saturday work is subject to a disqualification under Section 207.047 when the majority of jobs in her line of work require working on Saturdays. (The claimant's ineligibility, based on her unavailability for Saturday work, was closed because, at the Appeal Tribunal hearing, she indicated that she would thereafter be available for Saturday work.)

Also see Sherbert vs. Verner and S.C., E.S.C. 374 U.S. 398 (Supreme Ct. 1963) digested at SW 90.00.

SW 450.15 Time Hours

SW 450.154 Time: Hours: Night.

Claimant's refusal of work because of his objection to working at night.

Appeal No. 1716-AT-70 (Affirmed by 189-CA-70). A claimant has good cause to refuse a job requiring night work when medical evidence shows night work is injurious to her health. No disqualification under Section 207.047. However, if night work is usually required in her occupation, she is ineligible under Section 207.021(a)(4).

Appeals Policy and Precedent Manual
Suitable Work

SW 450.154(2) – 450.155

Appeal No. 28114-AT-65 (Affirmed by 69-CA-66). The claimant refused a job referral because the job required working a night shift and the claimant preferred daytime work, lasting no later than 8:00 p.m., because she had four children. In the claimant's line of work, most employers operate two shifts, one day and one night. She was held not to have had good cause for refusing the referral. **HELD:** Disqualification under Section 207.047 and ineligible under Section 207.021(a)(4). (Cross-referenced under SW 155.10.)

SW 450.155 Time: Hours: Prevailing Standard, Comparison with.

Consideration as to whether the working hours of the offered job are substantially below those most commonly to be found for similar work in the com- munity. This line is also used in determinations as to whether the hours of the job offered were those prevailing within the meaning of section 1603(a)(5) of the internal revenue code or of the state labor standards provisions enacted in conformity with the federal statute.

Appeal No. 3146-CA-76. The claimant was offered a position which would have required him to work from 2:00 p.m. to 10:00 p.m. and some Saturdays. Claimant refused the job, indicating that he was available from 8:00 a.m. to 5:00 p.m. only. Expert testimony indicated that the great majority of work in this occupation is performed between 8:00 a.m. and 5:00 p.m. with occasional Saturday work. **HELD:** No disqualification under Section 207.047, as the work was not suitable. The conditions of the offered job were substantially less favorable than those prevailing for similar work in the locality.

Appeals Policy and Precedent Manual
Suitable Work

SW 450.155 – 450.40

Appeal No. 7741-CA-61. The claimant refused a job in her regular occupation because it required Saturday work and she had no arrangements for childcare on Saturdays. A Commission representative testified that fifty percent of the jobs in the area for which claimant qualified required Saturday work. **HELD:** The work was suitable, and claimant did not have good cause to refuse it. A disqualification was assessed under Section 207.047 and ineligibility under Section 207.021(a)(4) was imposed from the date the claimant was informed of the area's requirements of Saturday work.

SW 450.40 Time: Part or Full Time

Refusal of work by the claimant because of his insistence upon, or objection to, working part time or full time.

Appeal No. 26087-AT-77 (Affirmed by 2874-CA-77). The claimant last worked full-time for an employer as a truck driver. He was discharged with no showing of misconduct connected with the work. After his initial claim, he was offered reemployment by that employer on a part-time basis, which offer he refused. **HELD:** Since the claimant had been discharged by the employer at its convenience and had subsequently been offered only part-time work, the claimant had good cause to refuse the offer. No disqualification under Section 207.047. (Also digested under SW 510.20.)

Appeal No. 1179-CA-66. Claimant refused a job because it was part-time as well as irregular work. At most, she could have worked about twelve hours a week and the employer would not state that even this much work would be available. The small number of hours would have been spread out over at least four days a week, making it necessary for claimant to have childcare and transportation. The work was not suitable under these circum- stances and claimant had good cause to refuse it.

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Suitable Work

SW 450.40(2) – 450.55

Appeal No. 28114-AT-65 (Affirmed by 69-CA-66). Claimant refused a job because she would be allowed to work only thirty-seven and a half hours a week. **HELD:** The work was suitable, and she did not have good cause to refuse it as she could have looked for full-time work while engaged in part-time work. Disqualification under Section 207.047.

SW 450.50 Time: Shift.

Relates to work refusal where the claimant insists upon, or objects to, working any particular shift.

Appeal No. 32531-AT-66 (Affirmed by 787-CA-66). A claimant does not have good cause to refuse a referral to work beginning at 8:00 a.m., which is normal in her occupation, because she has to get her children off to school and cannot begin work prior to 8:30 a.m. Disqualified under Section 207.047 and ineligible under Section 207.021(a)(4) from date of referral.

Appeal No. 32573-AT-66 (Affirmed by 577-CA-66). A claimant has good cause to refuse a job on a shift that would require her to leave home about 5:30 a.m. because she could not arrange for childcare earlier than 7:30 a.m.

SW 450.55 Time Temporary.

Discussion of a claimant's insistence upon, or refusal of, temporary work.

Appeal No. 736-CA-65. The fact that work is temporary does not render it unsuitable. Refusal of work because it will last for only three weeks, and claimant wants permanent full-time work, warrants a disqualification under Section 207.047. However, if a claimant is available for most of the jobs in his line of work and the restriction as to the type of work he will not accept applies to only a small segment of the labor market, he will be considered available for work and eligible under Section 207.021(a)(4).

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Suitable Work

SW 475.00 - 480.00

SW Union Relations

SW 475.00 Union Relations.

SW 475.64 Union Relations: Remuneration.

Discusses refusal of work because of wages, when the question of wages is treated with reference to those established under union contract or agreement. This line serves to distinguish the problem as a strictly union one from the general consideration of wages as a personal factor in the cases classified to line 500.

Appeal No. 1175-CA-65. A claimant who is a union carpenter has good cause for refusing a nonunion job as a carpenter when the job pays below the union scale and claimant would have been subject to disciplinary action by his union had he accepted it.

SW 480.00 Vacant Due to a Labor Dispute.

Includes cases in which a worker refuses a referral to, or offer of, a position at an establishment where a labor dispute exists, and it is determined whether or not the job refused was vacant due to a labor dispute within the meaning of section 1603(a)(5) of the internal revenue code or of state labor standards provisions enacted in conformity with the federal provisions.

Appeal No. 4061-AT-72 (Affirmed by 979-CA-72). Under Section 207.008)(b)(1), no work shall be deemed suitable and benefits shall not be denied for refusing to accept new work if the position offered is vacant due directly to a strike, lockout, or other labor dispute.

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Suitable Work

SW 500.00 – 500.20

SW Wages

SW 500.00 Wages

SW 500.05 Wages: General.

Includes cases containing (1) a general discussion of remuneration, (2) points not covered by any other subline under line 500, or (3) points covered by three or more sublines.

Appeal No. 38831-AT-66 (Affirmed by 1429-CA-66). The fact that the employer only pays employees every two weeks does not give a claimant good cause for failing to apply for suitable work. Disqualification under Section 207.047. (Cross-referenced under SW 500.65.)

SW 500.20 Wages: Benefit Amount, Comparison with.

Where the worker's justification for refusal is tested by comparison of the wage offered with the weekly benefit amount to which the worker would be entitled.

Appeal No. 864-AT-69 (Affirmed by 136-CA-69). A claimant does not have good cause to refuse a referral for the reason that the job would not pay as much as he was receiving by way of unemployment insurance plus supplemental unemployment benefits from his former employer, even though the job paid much less than he earned in his prior employment.

SW 500.25 Wages: Expenses Incident to Job.

Discusses refusal of a referral or a job because of the extra expense which would be incident to the job.

Appeals Policy and Precedent Manual
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SW 500.25(2) – 500.35

Appeal No. 87-07983-10-050787. A few days before receiving a referral to the employer from his local office, the claimant had learned from a conversation with the employer that acceptance of the sales position with the employer would require responsibility for all travel and accommodation expenses incident to the job. The claimant was without an income and could not afford to pay travel expenses. He, therefore, chose not to follow up on the referral. **HELD:** The claimant had good cause to decline the job referral because he had been informed by the employer before receiving the referral that the job would entail substantial initial expenses that the claimant could not afford. No disqualification under Section 207.047 of the Act.

SW 500.35 Wage: Former Rate, Comparison With.

Where the worker's justification for refusal is tested by a comparison of the offered wage with that which he had formerly earned.

Appeal No. 87-04333-10-032488. For two weeks prior to his layoff due to a reduction in force, the claimant had been working as a sheet metal foreman, earning $8.82 per hour. Approximately ten weeks after the effective date of his initial claim, the claimant was recalled by the employer and offered work as a sheet metal mechanic, to be paid a wage of $7.00 per hour. The hours and bene- fits would have been exactly the same as on the claimant's previous job. The claimant declined the offer. The average wage for sheet metal mechanics in the claimant's work search area was $5.83 per hour.

SW 500.35(2)

HELD: Citing the holding in Appeal No. 3889-AT- 69 (Affirmed by 414-CA-69)(digested in this same subsection), the Commission held that the wages and other conditions of work offered to the claimant had not been substantially less favorable to the claimant than those offered for similar work in the locality. Citing the holding in Appeal No. 2282-CA-77 (digested under AA 500.00), the Commission noted that the claimant had been unemployed at least eight weeks following the date of his initial claim and that the work offered to him had paid substantially more than 75% of his former wage. Accordingly, it held that the claimant did not have good cause to refuse the work offered to him. The fact that the work had not been as a supervisor or foreman also did not provide the claimant with good cause because he had not been a supervisor or foreman for a significant length of time. Disqualification under Section 207.047. (**Note:** The Commission in this case reiterated the holding in Appeal No. 86-5869-10-041087, digested in this same subsection, that the rule in Appeal No. 2282-CA-77 would be applied from the date the claimant filed the initial claim rather than the separation date.)

Appeal No. 86-05869-10-041087. The claimant was separated from his $8.00 per hour job on February 1, 1986. With no intervening work the claimant filed an initial claim on August 14, 1986, indicating $7.00 per hour as his minimum acceptable wage. On September 22, 1986 the claimant refused a job offering $5.00 per hour simply because of the hourly rate. The claimant eventually secured a job at $7.20 per hour. **HELD:** The claimant had good cause to reject the $5.00 per hour job offer because of the low pay. The length of the claimant's unemployment as a factor in determining the reasonableness of his wage demand is measured not from the date of separation from work, but from the date he filed his initial claim for benefits. (Clarifying the decision in Appeal No.2282-CA-77, digested at AA 500.00.) (Cross-referenced under SW 500.50.)

Appeals Policy and Precedent Manual
Suitable Work

SW 500.35(2)

Appeal No. 3889-AT-69 (Affirmed by 414-CA-69). The claimant did not have good cause to refuse a job when the wages paid and other conditions of work were not substantially less favorable to the claimant than those offered for similar work in the locality, even though she had earned about ten percent higher wages on her last job. (Cited in Appeal No. 87-04333-10-032488 under this same subsection.)

Appeal No. 116-CA-68. On the date of his initial claim, the claimant refused a referral to a job paying 30¢ per hour less than he earned on his last job. He last earned $2.08 per hour and stated that he must have $2 an hour. Claimant named two employers in the same area who paid a starting wage of $1.97 and $2.07 an hour for work similar to his last job. **HELD:** The claimant had good cause to refuse the referral because the pay reduction would have been substantial, local office records showed the wage he demanded existed in the area, and claimant had not been allowed time to try to find work at a wage similar to that paid for his last work. No disqualification under Section 207.047.

Appeal No. 4783-CA-51. A claimant has good cause to refuse work which pays the same hourly rate as her former job but offers none of the substantial fringe benefits (paid vacation and sick leave, paid legal holidays, free medical case, death benefits, time and a half pay for Saturday work and other benefits). The work offered was not suitable in this case.

Also see Appeal No. 2282-CA-77 under AA 500.00 and Appeal No. 1044-CA-65 under SW 295.00.

SW 500.50 Wages: Low

Includes decisions based solely upon the validity of the worker's contention that the wages offered were too low. See Appeal No. 2282-CA-77 under AA 500.00. Also see Appeal No. 86-05869-10-041087 under AA 500.00 and SW 500.35.

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SW 500.65 – 500.70

SW 500.65 Wages: Piece Rate, Commission Basis, or Other Method of Computation.

Discussion or refusal based on the claimant's insistence upon, or objection to, the method of wage computation.

Appeal No. 27564-AT-65 (Affirmed by 1236-CA-65). A claimant does not have good cause to refuse a job in which she has experience simply because she would be paid on a piece-rate basis. She should have attempted to perform the work to determine whether it would provide the desired wages. Disqualification under Section 207.047.

See Appeal No. 38831-AT-66 (Affirmed by 1429-CA-66) under SW 500.05.

SW 500.70 Wages: Prevailing Rate

Comparison of the wage refused to the rate of pay prevailing for similar work in locality. Include also cases which discuss the methods of determining prevailing wage rate.

This line is also used in determinations as to whether the wages of the offered job were those prevailing within the meaning of Section 1603(a)(5) of the Internal Revenue Code or of State labor standards provisions enacted in conformity with the Federal provisions.

Appeal No. 877-CA-70. If a job pays 10% to 15% per hour less than the wage most commonly paid in the area for the type of work in question, it is not suitable to the claimant and no disqualification is in order under Section 207.047.

Appeal No. 8233-AT-69 (Affirmed by 21-CA-70). Even though a job pays the wage most commonly paid for that type of work, it is not suitable for a claimant who has qualifications that would entitle her to a job paying substantially more, when such claimant has been unemployed only a comparatively short period of time.

Appeals Policy and Precedent Manual
Suitable Work

SW 500.70(2)

Appeal No. 7899-AT-68 Affirmed by 4-CA-69). A claimant does not have good cause to refuse a referral to work because of the rate of pay where it is established the job paid the wage most commonly paid in the area, even though it paid considerably less than the claimant was accustomed to earning. Disqualification under Section 207.047.

Appeal No. 25-CA-66. A claimant who last worked in a metropolitan area for $3.60 per hour, then moves to a rural area where the most commonly occurring rate is $2 an hour, does not have good cause to refuse a job in his occupation paying $2 an hour. Dis- qualification under Section 207.047 and ineligible under Section 207.021(a)(4), the latter based on his excessive wage demand and his failure to actively seek work.

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Suitable Work

SW 510.00 – 510.10

SW Work, Nature of

SW 510.00 Work, Nature of.

SW 510.05 Work, Nature of: General

Includes cases containing (1) a general discussion of refusal because of the claimant's desire to obtain work of a different nature, (2) points not covered by any other subline under line 510, or (3) points covered by three or more sublines.

Appeal No. 31272-AT-66 (Affirmed by 451-CA-66). A claimant with experience in outside sales work does not have good cause to ref- use a referral to sales work simply because he assumed, when told that it would require some outside selling, that it would involve selling door-to-door. He should have investigated further. Disqualification under Section 207.047.

SW 510.10 Work, Nature of: Customary.

Where a claimant refuses employment because of his insistence upon, or unwillingness to accept, work in his usual occupation.

Appeal No. 3103-CA-76. A claimant does not have good cause for failing to apply for work of a type for which she is registered with the Commission and which pays a wage equaling that most commonly occurring in the area for similar work.

Appeal No. 30937-AT-65 (Affirmed by 375-CA-66). A claimant does not have good cause to refuse a referral to work which is in keeping with her past work experience simply because she assumes, she could not do the work.

Appeal No. 28235-AT-65 (Affirmed 29-CA-66). The claimant had worked as a porter for the past two years and refused a referral to work as a porter because he did not like that kind of work and hoped to get a job with a grocery chain, although he had no definite prospects. **HELD:** The work was suitable, and the claimant did not have good cause to refuse the referral. Disqualification under Section 207.047.

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Suitable Work

SW 510.20

SW 510.20 Work, Nature of: Former Employer or Employment.

Involves an offer of work by the claimant's former employer which is refused. Such an offer may or may not concern the precise type of work performed formerly by the claimant.

Appeal No. 26087-AT-77 (Affirmed by 2874-CA-77). The claimant worked full-time as a truck driver. He was discharged with no showing of misconduct connected with the work. After filing his initial claim, the claimant was offered part-time reemployment by that former employer. The claimant refused the offer. **HELD:** Since the claimant had been discharged by the employer at its convenience and had been offered part-time reemployment by that employer, the claimant had good cause for refusing the offer. No disqualification under Section 207.047. (Also digested under SW 450.40.)

Appeal No. 3200-CA-76. The claimant, a university cafeteria employee, was terminated upon the conclusion of the spring term. Shortly thereafter, the claimant was offered reemployment during the summer term but on a different hourly schedule which was, however, like her previous schedule, normal in her occupation. The claimant declined the offer. In August, the claimant was offered reemployment for the fall term under the identical terms under which she had worked the previous spring except that she would have received a 5% wage increase. The claimant declined the offer because the employer could not assure her that she would have additional help in her duties. However, she had functioned without such help during her earlier employment. **HELD:** Since the position offered to the claimant in August was the same previously performed by her, the only difference in its conditions being that she would have enjoyed a 5% wage increase, the work was clearly suitable. Disqualification under Section 207.047. (The Commission also affirmed, without comment, the Appeal Tribunal's decision insofar as it awarded the claimant benefits without disqualification and held her ineligible.)

Appeals Policy and Precedent Manual
Suitable Work

SW 510.20(2)

Appeal No. 238-CA-71. A claimant is subject to a disqualification if she refuses to return to work similar to that which she had been performing and at a wage not substantially reduced from her ending wage, where she had been laid off previously in a reduction in force and offered no objection to the type of employment or to the wage being offered on recall.

Appeal No. 196-CA-66. A claimant who resigns her job because of dissatisfaction with her working conditions and wage has good cause to refuse a job with the same employer even though he offered her an increase in wages to return.

Appeal No. 4312-AT-63 (Affirmed by 9677-CA-63). The claimant refused reemployment in his old job with his former employer because he had been discharged from that job due to the fact that he was unable to adapt himself to the use of a new egg packing machine. The claimant had good cause for refusing employment from which he had been discharged for reasons other than lack of work. No disqualification under Section 207.047.

Appeal No. 632-CA-65. The claimant had resigned her last work to take care of her invalid mother. She was later offered her job back and accepted and agreed to report for work the next day but did not do so because the person who had replaced her would have had to be fired. **HELD:** The claimant did not have good cause for not accepting the job. Disqualification under Section 207.047. The disqualification had previously been assessed under Section 207.045 of the Act but was changed to Section 207.047 because the claim- ant had not performed any services or received any wages after agreeing to report.

Also see Appeal No. 3879-CA-49 under SW 515.10.

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Suitable Work

SW 510.40

SW 510.40 Work, Nature of: Preferred Employer or Employment.

Claimant's refusal of employment because of his desire to work for a particular employer or in particular employment, or because of his objection to work for the prospective employer or in the offered employment.

Appeal No. 1433-AT-68 (Affirmed by 246-CA-68). Although the claimant worked as an electronic assembler for the past eleven months, she had worked prior to that time for more than seven years as a power sewing-machine operator. She refused referral to a job as a sewing-machine operator because such work had made her nervous. The job paid the same wage she had earned in her last job and was suitable. **HELD:** The claimant did not have good cause to refuse the work as she had not sought medical advice to determine whether such work had been the cause of her nervousness.

Appeal No. 9709-CA-64. Claimant had good cause for failing to apply for a job at a business owned and operated by her former husband. She had remarried and her acceptance of such job could have caused serious marital difficulties.

Appeals Policy and Precedent Manual
Suitable Work

SW 515.00 – 515.35

SW Working Conditions

SW 515.00 Working Conditions.

SW 515.10 Working Conditions: Advancement, Opportunity for.

Where a claimant refuses a job because of lack of opportunity for advancement.

Appeal No. 3879-CA-49. A claimant does not have good cause to refuse to return to his former job simply because he had previously been selected for layoff when the employer had to reduce his work force and claimant felt he had no future with the company. Disqualification under Section 207.047. (Cross-referenced under SW 510.20.)

SW 515.35 Working Conditions: Environment.

Involves discussion of objections to the location or physical conditions surrounding the work establishment at which the job was offered.

Appeal No. 337-CA-69. Work is not suitable for a claimant when the evidence shows the condition of the employer's premises is substandard.

Appeal No. 878-CA-68. The fact that work is located in an office in a private home is not good cause for refusing work which is otherwise suitable. Disqualification under Section 207.047.

SW 515.55 Working Conditions: Prevailing for Similar Work in Locality.

Comparison of working conditions, other than wages and hours, of a job refused with those most commonly to be obtained for similar work in the locality.

This line is also used in determinations as to whether the working conditions of the job offered were those prevailing within the meaning of Section 1603(a)(5) of the Internal Revenue Code or of the State labor standards provisions enacted in conformity with the Federal provisions.

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SW 515.55(2) – 515.60

Appeal No. 6084-AT-69 (Affirmed by 660-CA-69). Work in a claimant's customary occupation is suitable if it pays the wage most commonly occurring in the area and the duties are normal for such work in the area. Claimant did not have good cause to refuse it for the reason that she assumed she would not be able to perform the work in the working hours assigned. (Cross-referenced under SW 515.65.)

SW 515.60 Working Conditions: Production Requirement or Quantity of Duties.

Involves discussion of the claimant's refusal of work because of his objection to some production requirement, or the amount of work he would be required to perform.

See Appeal No. 6084-AT-69 (Affirmed by 660-CA-69) under SW 515.55.

SW 515.65 Working Conditions: Safety.

Claimant's refusal of work because of some safety hazard.

Appeal No. 1240-CA-71. Work is not suitable if it presents a hazard to the claimant's safety. Although the claimant had on one occasion performed the particular job, he had complained about the safety factor at the time.

Appeal No. 1078-CA-67. The claimant was referred to a job as a guard at the plant which was involved in a labor dispute where acts of violence had been occurring connected with the strike. Claimant's primary occupation was not as a guard. He failed to apply for the position because of potential violence. **HELD:** No disqualification under Section 207.047 as the work was not suitable.

SW 515.80 Working Conditions: Supervisor.

Consideration of the validity of the claimant's objection to work under a certain supervisor or for a particular employer.

See Appeal No. 15990-AT-64 (Affirmed by 713-CA-64) under SW 360.00.

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TPU 20.00 – 20.10

TPU Amount of Compensation

TPU 20.00 Amount of Compensation

TPU 20.10 Amount of Compensation: More or Less Than benefit amount.

Comparison of the amount of compensation received with the claimant's benefit amount.

Appeal No. 80-2881-CA-0781. In this case the Commission expressly overturned a long-standing Commission precedent which invalidated an initial claim if the claimant earned wages equal to the weekly benefit amount (WBA) plus 25 percent during the benefit period that included the date of the initial claim. Such initial claims will no longer be invalidated if the claimant is fully or partially unemployed on the effective date of the initial claim.

NOTE: This principle would be applicable to additional claims as well.

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TPU 8.00 – 80.05

TPU Compensation Not Payable or No Work Done

TPU 80.00 Compensation Not Payable or No Work Done

Includes three types of cases: those involving (1) no wages but some service performed, (2) no service but some compensation or remuneration and (3) no service and no compensation.

TPU 80.05 Compensation Not Payable or No Work Done: General.

Includes (1) a general discussion of compensation not payable or no work done, (2) points not covered by any other subline under line 80, or (3) points covered by three or more sublines.

Todd Shipyards Corp. v. TEC, 245 S.W.2d 371, Ref. n.r.e. A claimant who is laid off for an indefinite period and thereafter performs no services and receives no wages but submits a resignation to obtain his retirement contributions was held to have been separated from his work on the date he was laid off for an indefinite period and was an unemployed individual subsequent to that time.

Appeal No. 273-CA-77. The claimant was placed on leave without pay pending investigation of shortages at the store where she worked. **HELD**: The claimant was separated from the work at the time of the suspension without pay, not when she refused an offer of reemployment made later. She became unemployed when she ceased to perform services and ceased to receive wages. (Also digested under MC 135.45 and cross-referenced under VL 138.00.)

Appeal No. 2166-CF-76. The claimant was placed in non-pay status on February 4, 1976. The claimant appealed his separation and, several months thereafter, it was sustained by appropriate authority. **HELD:** The claimant was unemployed as of the date of his initial claim as he was at that time performing no services and receiving no pay.

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TPU 80.05(2) – 80.15

Appeal No. 8464-CA-62. A claimant who is placed on indefinite layoff and files his initial claim and, during the first benefit period, is offered work by the employer but fails to report, has filed a valid initial claim. The fact that he could have worked and earned in excess of his benefit amount during the first benefit period does not affect the validity of the initial claim.

Also see Appeal No. 85-10309-10-092785 under MC 385.00, holding, in part, that a suspension from work without pay constitutes a work separation.

TPU 80.15 Compensation Not Payable or No Work Done: Leave of Absence or Vacation.

Considers a person's unemployment status while on vacation or leave of absence.

Worley v. TEC, 718 SW 2d 62 (Tex. App. - El Paso 1986, no writ). Pursuant to the employer's reduction-in-force program, claimant elected to take voluntary leave of absence for up to twelve months to meet requirements necessary for retirement. Claimant ceased active work on August 31, 1983. Under the program, the claimant was paid 65% of his previous salary and the employer continued insurance benefits and all other company benefits except leave accrual. Under the program, claimant would have been eligible for retirement on April 30, 1984. He filed his unemployment initial claim in September 1983. **HELD:** The Court of Appeals affirmed the district court's judgment upholding the Commission decision to deny unemployment benefits. The Commission decision had affirmed the denial of benefits on the basis that the 65% payment was wages, making claimant neither partially nor totally unemployed under Section 201.091 of the Act. Accordingly, the initial claim was disallowed under Sections 201.011(13), 201.011(20) and 208.001(a) of the Act because the claimant was not an unemployed individual.

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TPU 80.15 – 80.20

Appeal No. 853-CA-73. The claimant filed her initial claim while on leave of absence from her employer. Subsequently, she went back to work part time for the same employer. Her initial claim was initially disallowed under Sections 201.011(13), 201.011(20) and 208.001(a). **HELD:** The claimant filed a valid initial claim since she was unemployed within the meaning of Section 201.091 of the Act because, on the day she filed her initial claim, she performed no services and had no wages payable to her.

TPU 80.20 Compensation Not Payable or No Work Done: Shutdown (Stand by Pay).

Involves claimant's unemployment status during shutdown (e.g., total shutdown periods in excess of a week) of his regular employment.

TEC and General Electric Co. v. International Union of Electrical, Radio and Machine Workers et al, 352 S.W. 2d 252 (Texas Sup. Ct. 1961). The employer and the claimants' union had entered into a collective bargaining contract which provided for a vacation period to run concurrently with any plant shutdown, that all employees would take their vacation at the time of the shutdown whether eligible for the vacation or not, and that both those employees eligible at that time and those becoming eligible later in the same calendar year would receive pay for the vacation. Ordinarily, employees were not eligible for vacation, or for vacation pay, until they had been employed at least one year. The claimants in the present case were employees who had not passed their first anniversary date at the time of the inception of the shutdown but who did pass such anniversary date later in the same calendar year. When they did so, they received vacation pay for the period of the shutdown.

TPU 80.20(2)

HELD: The Court ruled that, in light of the collective bargaining contract and the other facts in the case, whether or not the claimants were entitled to benefits at the time of the shutdown vacation necessarily must be determined by facts subsequently occurring during the remainder of the calendar year. The Court held that the sums received by the claimants subsequent to the shut- down-vacation were wages for the shutdown-vacation period and that the claimants were consequently not totally unemployed during that time. (Cross-referenced under VL 495.00.)

Also see **TEC v. Huey**, et al under VL 495.00.

Appeal No. 2150-CSUA-77. In this case the Commission interpreted the guidelines promulgated by the Department of Labor with regard to receipt of benefits by nonprofessional school employees filing SUA claims for holiday shutdown periods (UIPL No. 21-77, Feb. 28, 1977). Para-professional employees, such as teacher's aides, are to be treated in the same manner as other nonprofessional school employees, such as cafeteria and janitorial workers. Guidelines provide that claims of nonprofessional school employees who file claims during periods when school is closed during an academic term or year shall be treated in the same manner as claims filed by individuals for regular unemployment benefits during plant shutdowns. If the holiday shutdown occurs between two successive academic terms or years, the nonprofessional employees are to be denied benefits if there is a reasonable assurance that such employees will perform services for the educational institution in the same capacity in the second of such academic years or terms.

TPU 80.20(2)

HELD: The claimant's unemployment was due to the closing of school for the Easter Holidays, which was not between two successive academic terms or years; she was a nonprofessional employee (teacher's aide); and her unemployment should be treated as though it was due to a temporary plant shutdown. See **Texas Employment Commission and General Electric Co. v. Inter- national Union of Electrical, Radio and Machine workers et al**, 352 S.W. 2d 252 (Texas Sup. Ct. 1961) under TPU 460.75. The claimant's salary was based solely on days worked. The claimant was entitled to benefits for the holiday period.

NOTE: This policy is applicable to SUA claims under current Federal SUA Guidelines. Effective January 1, 1978, claims of school personnel filed under the Texas Unemployment Compensation Act, as amended, will be denied "for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

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TPU 105.00

TPU Contract Obligation

TPU 105.00 Contract Obligation

Includes cases in which the claimant's contracts or agreements have an effect on determining his unemployment status.

Appeal No. 82-4799-10-0782. Substitute teachers may have reasonable assurance of continued employment within the meaning of Section 3(f) (now codified as Section 207.041) of the Act. In determining whether such reasonable assurance exists with regard to substitute teachers, the following criteria should be utilized: The school district must furnish to the Commission written statements which provide facts that the substitute teacher has been asked to continue in the same capacity for the following academic year. Simply placing the substitute teacher on a list for the following year does not establish reasonable assurance. It must be shown that both parties expect the relationship to resume at the beginning of the following year. The assurance must also be based on past experience with regard to the number of substitutes needed in the past.

Appeal No. 1876-CPUS-78. Prior to filing her initial claim, the claimant had last worked as a school crossing guard, employed by the City of Corpus Christi. She was laid off due to lack of work caused by the closing of the schools at the end of the spring semester and had a reasonable assurance that she would be reemployed by the City in the same capacity during the coming fall semester. **HELD:** Since the claimant was an employee of the City of Corpus Christi and not of any public-school district or any other educational institution, Section 207.041 of the Act was not applicable to her.

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TPU Self-Employment or Other Work

TPU 415.30 Self-Employment or Other Work: Salesman.

Where the claimant was engaged as a solicitor or salesman.

Appeal No. 780-CA-71. Even though a claimant may be working 40 hours a week at the time he files his initial claim, he was not performing "services" as that term is defined by Section 201.091 of the Act, if his remuneration did not exceed $5 or 25% of his benefit amount, whichever is greater. (However, such circumstances may require an investigation into the claimant's availability for work.)

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TPU 455.00 – 455.10

TPU 455.00 Time of Services

TPU 455.00 Time of Services

TPU 455.05 Time of Services: General.

Includes cases containing (1) a general discussion of the time during which services are, or must be, performed, (2) points not covered by any other subline under line 455, or (3) points covered by all three sublines.

Appeal No. 87-04539-10-031687. Claimant began working for the employer on April 1, 1985, working an average of 30 hours per week. Business declined and claimant was cut to working approximately 12 hours per week. Claimant filed an initial claim for benefits on January 8, 1987 and continued to work for the employer at the reduced schedule. **HELD:** The initial claim dated January 8, 1987 is a valid claim under Sections 201.011(13), 201.011(20) and 208.001(a) of the Act for a partially unemployed individual under Section 201.091 of the Act. The claimant is entitled to benefits, beginning January 8, 1987, under Section 207.044 of the Act, because the partial separation from work was due to a decline in business.

TPU 455.10 Time of Services: Full Time or Part Time.

Where the claimant was employed full time or part time, or in which he received remuneration for full time or part time employment.

Appeal No. 44-CA-77. Although he filed an initial claim for benefits on September 24, 1976, the claimant had been employed full time from January 1 through September 30, 1976. **HELD**: Since the claimant was not unemployed at the time, he filed his initial claim, his claim was disallowed under Sections 201.011(13), 201.011(20) and 208.001(a).

TPU Type of Compensation:

TPU 460.25 Type of Compensation: Damages or Other Award on Reinstatement.

Where the claimant has been awarded back wages or payment for loss of pay sustained by wrongful acts of the employer.

TEC v. Sara A. Busby and Farm Pac Kitchens, Inc., 457 S.W. 2d (Texas Civil Appeals 1970). As a result of an arbitrator's award, claimant was restored to her former employment status with retroactive pay to the date of separation less any money received from other employment or unemployment compensation during the interim. Therefore, claimant was not totally unemployed because the remuneration she received from the employer was wages.

Appeal No. 716-CA-75. The claimant, having been placed on a disciplinary suspension, filed a grievance and was reinstated with seniority credit and with full back pay. **HELD:** The claimant was not unemployed as of the date of the initial claim as he had received full back pay attributable to the period during which he filed his initial claim.

Appeal No. 9987-ATC-71 (Affirmed by 1206-CAC-71). Payments made to a claimant by an employer in accordance with Public Law 90-202, because of age discrimination, are considered as wages and are attributable to the period beginning with the date the claimant applied for work with the employer and was refused employment. (In this regard, the principle is analogous to the back-pay award cases.)

TPU 460.35 Type of Compensation: Dismissal or Separation Pay

Where the claimant was paid dismissal or separation pay, raising the question of his unemployment status for the period covered by the amount paid, or of whether certain payments constitute dismissal or separation pay.

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TPU 460.35 – 460.62

Appeal No. 3913-CA-49 (Affirmed by El Paso Court of Civil Appeals, on July 20, 1951 in Western Union v. TEC, 243 S.W. 2d 217). A claimant is not disqualified because of receipt of severance pay which is based on services prior to the date of separation because such severance pay did not apply to any period after the date of termination from work.

TPU 460.50 Type of Compensation: Gratuity.

Involves the question of whether a grant of money by the employer was a gift or a type of compensation for personal services.

Appeal No. 4702-CA-50. After the claimant was injured on the job, the employer kept him on the payroll and paid him for the next eighteen months because the employer wanted him to return to work if he later became able. **HELD:** The payments were mere gratuities and not wages, as the company was under no obligation to make them and the claimant performed no services, which element is necessary in order for remuneration to constitute wages.

TPU 460.62 Type of Compensation: Supplemental Unemployment Benefits.

Applies to cases which consider the effect of receipt of payments under a supplemental unemployment benefit plan upon claimant's unemployment status.

Opinion No. WW-13, the Attorney General of Texas 1-30-57. Receipt of supplemental unemployment benefits from trust funds accumulated and paid out under the provisions of the contract between the employer and the union does not preclude an individual from receiving benefits under the Texas Unemployment Compensation Act.

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TPU 460.75

TPU 460.75 Type of Compensation: Vacation or Holiday Pay.

Where the claimant received vacation or holiday pay, and the question arises as to whether it was remuneration for services or whether it was paid with respect to the period of unemployment.

Frances Olivarez, et al, v. Aluminum Corporation of America (Rockdale Works), 693 S.W. 2d 931 (Tex-1985). The claimant was one of 128 employees of ALCOA notified of an indefinite layoff due to economic conditions. At a meeting with employees prior to lay off, the employer announced that all vacations had been rescheduled by the company to coincide with the layoff and that employees would be required to take any accrued vacation leave during the layoff. Consequently, all employees took their vacation time and pay during the layoff period. A collective bargaining agreement in effect between ALCOA and its employees required ALCOA to pay weekly supplemental unemployment benefits if an employee was eligible for state unemployment benefits and not receiving vacation pay. ALCOA argued that the vacation pay was wages allocable to weeks subsequent to the layoff thereby rendering employees ineligible for unemployment benefits. The Commission ruled that the vacation payments, although wages, were not attributable to the period subsequent to lay off because the vacation pay was earned by prior service and the employees here did not voluntarily elect to accept their vacation pay during the period subsequent to the lay-off. The claimants were adjudged totally unemployed and awarded benefits for the time period designated as vacation by ALCOA. **HELD**: The Texas Supreme Court, basing their decision on the application of the substantial evidence review rule, held that the Commission decision awarding benefits was supported by substantial evidence and affirmed the Commission's award of benefits.

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TPU 460.75(2)

TEC and General Electric Co. v. International Union of Electrical, Radio and Machine Workers, et al, 352 S.W. 2d 252, (Texas Sup. Ct. 1961). The employer and the claimants' union had entered into a collective bargaining contract which provided for a vacation period to run concurrently with any plant shutdown, that all employees would take their vacation at the time of the shutdown whether eligible for the vacation or not, and that both those employees eligible at that time and those becoming eligible later in the same calendar year would receive pay for the vacation. Ordinarily, employees were not eligible for vacation, or for vacation pay, until they had been employed at least one year. The claimants in the present case were employees who had not passed their first anniversary date at the time of the inception of the shutdown but who did pass such anniversary date later in the same calendar year. When they did so, they received vacation pay for the period of the shutdown. **HELD:** The Court ruled that, in light of the collective bargaining contract and the other facts in the case, whether or not the claim- ants were entitled to benefits at the time of the shutdown-vacation necessarily must be determined by facts subsequently occurring during the remainder of the calendar year. The Court held that the sums received by the claimants subsequent to the shutdown- vacation were wages for the shutdown-vacation period and that the claimants were consequently not totally unemployed during that time. (Cross-referenced under TPU 80.20.)

Also see Appeal No. 3913-CA-49 under Code TPU 460.35. Claimants were laid off and, in addition to severance pay based on length of service, were given vacation pay for vacation earned but not taken. Claimants performed no services after severance. Claimants were not subject to disqualification for receipt of vacation pay because payment made was in lieu of vacation, being earned past service, and there could be no vacation after termination of employment. Case distinguished from situation where workers denied benefits when paid vacation paid during shutdown of plant but who returned to work after shutdown. Affirmed by El Paso Court of Appeals on July 20, 1951 in **Western Union v. TEC**, 243 S.W. 2d 217.

TPU 460.75(3)

Appeal No. 83-10723-10-0983. Vacation payments received by claimants, which were earned during an earlier period and are thus attributable to that period should not be used to hold an individual "not unemployed" during the period when they were received. (Also, more fully digested, for different holdings, under MS 60.05.)

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VL 5.00

VL GENERAL

VL 5.00 General

Includes cases which contain (1) a general explanation of the purpose of the unemployment compensation law, as it relates to the voluntary leaving disqualification, (2) discussion of the intended relationship between the voluntary leaving disqualification and other portions of the unemployment compensation laws, and (3) other voluntary leaving points which do not fall within any specific line in the voluntary leaving division of the code.

Appeal No. 1932-CA-77. A claimant who resigns because of dissatisfaction with working conditions or because of some other problems but does so without notice, as required by the claimant's contract with the employer, and without giving the employer any opportunity to remedy the situation, thereby quits work without good cause connected with the work.

Also see Appeal No. 398-CA-76 under VL 90.00.

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VL 40.00

VL Attendance at School or Training Course: Students

VL 40.00 Attendance at School or Training Course: Students.

Includes cases in which claimant's attendance at school or a training course, or his intention to do so in the near future, motivates his leaving work.

Appeal No. 94-008303-10-053194. The claimant worked for the employer one day each week and received public assistance benefits through the Aid to Families with Dependent Children (AFDC) program administered by the Texas Department of Human Services (TDHS). As a condition for the continued receipt of AFDC benefits, the claimant was required to participate in a training program jointly administered by TDHS and the Texas Workforce Commission. The claimant quit her job as it conflicted with the training program. **HELD**: As the claimant quit her job to remain eligible for AFDC benefits, the Commission held that her reason for quitting was urgent, compelling and necessary so as to make the separation involuntary. Accordingly, the claimant's disqualification under Section 207.045 of the Texas Unemployment Compensation Act was reversed under Section 207.046 of the Act.

Appeal No. 1626-CA-78. In February, the claimant, a full-time employee, advised the employer that, two weeks thereafter, he would no longer be available for full-time work as he planned to at tend barber college. The claimant requested, and was permitted, to continue working part-time until the employer could hire a replacement. In May, the claimant was notified that his services were no longer required because the employer had found a suitable full-time replacement. A full-time job had been available to the claimant at all times.

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VL 40.00(2)

HELD: Since the claimant worked part-time subsequent to quitting his full-time employment, it was held that the claimant had not quit his most recent work in order to attend an established educational institution; accordingly, no disqualification under Section 207.052 was in order. (However, the Commission disqualified the claimant under Section 207.045, holding that he had been voluntarily separated from his last work because he had restricted his hours of work, and held the claimant ineligible under Section 207.021(a)(4) because of his inadequate work search.)

Appeal No. 97-008948-10-082498. The claimant completed a one-day temporary job and, because she had enrolled in training, informed the employer she was no longer available for day jobs. The employer, a temporary agency, offered primarily daytime office work during the week. The claimant had enrolled in a computer training class that met 8:30 a.m. to 4:30 p.m., Monday through Friday. The Texas Workforce Commission had approved the claimant's training under Section 207.022. **HELD:** By severely restricting the hours she was willing to work for the employer, and thus eliminating the hours she initially agreed to work for this employer, the claimant, in effect, severed the employment relationship. The claimant left her last work voluntarily so that she could attend a class to receive training in computer work. The claimant's reasons for leaving her last work were personal and were not for good cause connected with the work. Although the claimant's training was approved by the Commission under Section 207.022 of the Act, this section does not protect a claimant from disqualification for having resigned from employment in order to begin training. Rather, Section 207.022 protects a claimant from disqualification for failing to search for work or accept an offer of suitable work after having begun the Commission approved training. Also digested at AA 40.00.

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VL 40.00(3)

Appeal No. 337-CA-77. The claimant had been attending college three nights a week. When hired, he was told that he would sometimes have to work nights. Near the end of his employment, the claimant was advised that, effective at the end of the current semester, he would have to work more nights than he had previously and, thus, that he would have to change his school hours at the end of the semester. Even though the claimant's college offered day classes equivalent to the night classes which he had been attending, the claimant refused to change his class schedule, and this caused his separation. **HELD:** The claimant voluntarily left his last work without good cause connected with the work. Disqualification under Section 207.045. (However, the Commission reversed the claimant's continuing disqualification under Section 207.052 of the Act because it held that, since the claimant continued attending school during the same hours as in the past and would have been willing to work the same hours that he had been working, the claimant had not left his last work for the purpose of attending an established educational institution.)

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VL 70.00

VL Citizenship or Residency Requirements

VL 70.00 Citizenship or Residency Requirements.

Includes cases in which claimant's separation from employment results from lack of citizenship, from failure to meet residence requirements, or from some other factor relating to citizenship or residence.

Appeal No. 86-3546-10-022787. The claimant worked for the employer, a school district, for almost six years as a paraprofessional teacher's aide. The employer realized about a year prior to her separation that the claimant had mistakenly failed to indicate on her teaching certificate application that she was not a U.S. citizen. Section 13.044 of the Texas Education Code provides that a teaching certificate could only be issued to a non-citizen if the applicant showed an intent of becoming a citizen. The claimant initially indicated she would apply for citizenship but later changed her mind, choosing not to become a U.S. citizen. Because it was illegal for the employer to continue to employ her, she was given notice. **HELD:** The claimant effectively resigned her position by failing to take action necessary for her to receive the required certification to teach. Disqualification under Section 207.045.

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VOLUNTARY LEAVING

VL 90.00

VL Conscientious Objection

VL 90.00 Conscientious Objection

Includes cases in which claimant left work because of religious scruples or ethical concepts.

Appeal No. 398-CA-76. The claimant, a cashier, had moral objections to having to sell books, magazines, or other items from the "adults only" section of the employer's newsstand. She did not know when she was hired that this would be part of her duties. However, because of her embarrassment, she did not make known to the employer her objection to this work but simply quit. Had she told the employer that she objected to part of her duties, the employer might have been able to make such arrangements that would alleviate the problem. **HELD:** Since the claimant did not complain to the employer, thereby denying him an opportunity to remedy the situation, her quitting was without good cause connected with the work. Disqualification under Section 207.045.

Also see Appeal No. 1932-CA-77 under VL 5.00.

Appeal No. 4901-AT-70 (Affirmed by 567-CA-70). The claimant's religion required full observance of Sunday as the Sabbath, especially the attendance of Sunday morning and evening worship services, which the claimant regularly attended. Although the claimant, at the time of her hiring, had objected to all Sunday work, because of her financial situation she agreed to work Sunday afternoons. Subsequently, the employer changed her working hours, which would have prevented her from attending worship services. When the employer refused to permit the claimant to be off work for worship services, the claimant quit. **HELD:** A claimant cannot be denied unemployment insurance where the denial would operate as an infringement of her constitutionally protected right to the free exercise of her religion. Accordingly, the claimant's leaving was found to have been based on good cause connected with the work. (Cross-referenced under VL 450.10.)

Also see AA 90.00 and MC 90.00.

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VL 135.00 – 135.05

VL Discharge or Leaving

VL 135.00 Discharge or Leaving.

VL 135.05 Discharge or Leaving: General.

Includes cases containing (1) general discussion as to whether there was a leaving or a discharge, (2) points on discharge or leaving not covered by any other subline under line 135, or (3) points covered by three or more sublines.

Appeal No. 764254-2. The claimant worked part-time for the employer and ceased reporting to work as scheduled after he secured a full-time position with another employer. However, the claimant never informed the employer he was quitting and was subsequently terminated by the employer in accordance with their attendance policy for failing to report to work as scheduled. **HELD:** Section 207.045 of the Act, which provides that an individual who is partially unemployed and who resigns that employment to accept other employment that the individual reasonably believes will increase the individual's weekly wage is not disqualified for benefits, applies to situations in which an employee actually provides a resignation to his employer. Since the claimant merely abandoned his part-time job and did not advise the employer, he was quitting to take another full-time job, he did not resign. Accordingly, the claimant is not entitled to the protection of Section 207.045 of the Act. Rather, the claimant is disqualified under Section 207.044 of the Act for violating the employer's attendance policy.

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VL 135.05(2)

Case No. 747862-2. The claimant stopped performing services for the employer, a home health care provider, when restrictions were placed on his license which prohibited his continued employment. The claimant was a registered nurse and had been hired with no restrictions on his occupational license, as the Board of Nurse Examiners had not yet received paperwork regarding disciplinary actions from other states. As a result of receiving paperwork showing disciplinary action in the state of Utah approximately ten years earlier, and after meeting with the claimant, restrictions were placed on the claimant's license that prohibited him from working for a home health care provider. The claimant notified the employer he would be unable to continue working for them immediately upon learning of the imposition of those restrictions, as he otherwise would have lost his occupational license. **HELD:** The claimant's work separation was voluntary and without good cause connected with the work, as he was responsible for maintaining his professional license, and it was his actions which ultimately resulted in the placement of restrictions on his license that prevented his continued employment.

Case No. 523756-2. The employer is a licensed staff leasing services company. It entered into a staff leasing services agreement with the client for which the claimant worked. The staff-leasing employer did not require employees to contact them at the end of an assignment for placement with another client. The client discharged the claimant for failing to comply with a reasonable request. In its response to the notice of initial claim from the TWC, the employer reported that the separation occurred when the claimant left the client location.

TEX 10-01-96

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VL 135.05(3)

HELD: A staff leasing agreement establishes a co-employer relationship between the client and the staff leasing company. Each entity retains the right to discharge a worker. If the staff leasing services company does not invoke the notice requirement in Section 207.045(i), then Section 207.045(i) is not applicable. In this case, by not invoking the notice issue in its response to the TWC, the staff leasing employer essentially ratified the actions of its co-employer client in relation to the work separation. Therefore, the Commission will analyze the separation from the client in determining qualification for benefits and, if applicable, chargeback to the account of the staff leasing services company. (Also digested at MC 135.05).

Case No. 428646. The claimant quit her job with the employer, a staff leasing services company, by submitting a resignation letter giving two weeks' notice to the employer's client. The employer had not given the claimant written notice to contact them on termination of her assignment at the client company. However, the claimant sent a copy of the letter to the staff leasing employer, thereby indicating that she was aware of her relationship with the employer. The claimant quit because of stress resulting from the demands of the job. The claimant did not discuss her concerns with the office manager of the client company and did not discuss her concerns with a representative of the staff leasing services company because she did not want to appear to be circumventing the client's authority. At the time she resigned, her assignment with the client company had not been completed, and work was still available for the claimant. **HELD:** The claimant voluntarily quit her job by sending a copy of her resignation letter to the staff leasing services company. Under the facts of this case, Section 207.045(i) does not apply. The claimant voluntarily quit without good cause connected with the work when she initiated her separation without first discussing her job dissatisfaction with the client and the staff leasing services company.

TEX 10-01-96

Appeals Policy and Precedent Manual
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VL 135.05(4)

Case No. 172562. The employer sold its business. The claimant was offered comparable work with the new owner but declined the offer. **HELD:** When a company purchases an employer's business and the new employer offers the claimant comparable employment, a rejection by the claimant of the new company's affirmative job offer will be considered a voluntary resignation without good cause connected with the work. (Also digested at MC 135.05.)

Appeal Number 99-011197-10-111299. The claimant was employed by a temporary help firm. The claimant was aware that the employer's policy required employees to make themselves available for reassignment within the 24-hour period immediately following the close of the last involved temporary position. The employer's policy indicated that availability for reassignment was to be accomplished via the employee signing in on the employer's availability logbook. While the claimant went to the employer's office within 24 hours of having been informed of the close of his last assignment, the claimant did not sign in the employer's availability logbook at that time and was thus not considered to be available by the employer. **HELD:** The claimant was voluntarily separated from his last position of employment without good work-connected cause. The employer's requirement that employees make themselves available by signing in the logbook constituted a reasonably promulgated policy and the claimant's failure to follow that policy constituted a failure on the claimant's part to make himself effectively available for reassignment as per Section 207.045(h) of the Act. The claimant was disqualified from the receipt of benefits.

Appeal No. 99-008549-10-090999. The claimant participated in a training program offered by the employer, earning an hourly rate while learning job skills. The claimant entered into the program with the knowledge that it was a work skills training program, designed to provide her with the skills needed to gain productive work. Separation occurred when she successfully completed the program.

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VL 135.05(5)

HELD: The Commission found that the claimant's separation from the skills training program was analogous to the circumstances in work study participant cases. The claimant's training was structured to continue only for the length of the work skills training program. As in the cases of work study participants, the work was not structured to continue beyond the end of her program participant status. When the program ended, the claimant's work ended. The claimant was aware when she entered into the program that this would be the case. Accordingly, the Commission held that the claimant voluntarily left the last work without good cause connected with the work. Cross-referenced at VL 495.00 and MC 135.05.

Appeal No. 99-007057-10-072899. The claimant was employed by a temporary help firm. The claimant was aware that the employer's policy required employees to contact the employer for reassignment within 24 hours of the close of any temporary position and that contact for reassignment was to thereafter be made on a daily basis. A failure to maintain such contact was noted as possible cause for the denial of unemployment benefits. The claimant was contacted by an employer representative and informed that her most recent temporary assignment had ended. The claimant notified the employer at that time that she was available for reassignment. The employer had no further work available at that time. The claimant did not thereafter make herself available for reassignment on a daily basis. The claimant filed for unemployment benefits on the day following the close of her last assignment. **HELD:** The claimant was involuntarily separated under non-disqualifying circumstances. The claimant effectively made herself available for reassignment when she immediately informed the employer of her availability for further assignments when told of the ending of her temporary assignment. In doing so, the claimant fulfilled the requirement set out in Section 207.045(h) of the Act that the temporary help employee contact the temporary help firm for reassignment upon completion of the last assignment.

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VL 135.05(6)

Under Section 207.045(h) of the Act, the claimant was not re quired to call the temporary help firm on a daily basis to report her continued availability once she made herself available for reassignment during her initial contact with the employer where she was informed that her assignment had ended. The claimant was laid off due to a lack of work when, having made herself available for reassignment, no further work was offered. No disqualification under Section 207.044.

Appeal No. 97-006956-10*-061998. The employer, a staff leasing firm, had a policy that required employees to contact them within two days after the completion of an assignment. In this case, the claimant contacted the employer within that time frame. **HELD:** Where an employer's policy is less restrictive than the "next business day" requirement, as stated in Appeal No. 97-004610-10-042497 (also in VL--135.05), reason able time will be established on the basis of the employer's less restrictive policy. This precedent is also applicable to temporary help firms.

Appeal No. 96-009657-10-090297. The claimant worked as a substitute teacher for this employer, an independent school district, completing her last assignment on May 12, 1997. Shortly before the regular school year ended on May 22, 1997, the claimant requested her name be removed from the substitute teacher availability list so that she could travel overseas on a personal vacation beginning May 19, 1997. This request was granted. Had the claimant not removed her name from the availability list, continued work as a substitute teacher would have been available through June 27, 1997, when the summer session ended. The claimant had performed substitute teaching services during two previous summer sessions. **HELD:** At least in situations where one party has taken affirmative action to end the employment relationship prior to filing a claim and clearly lacked good cause connected with the work for quitting, the Commission will look to that affirmative action for a ruling on separation. Disqualified under Section 207.045. (Cross-referenced at MS 510.00).

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VL 135.05(7)

Appeal No. 86-000326-10-121786. Due to technological changes, the claimant's job was completely eliminated, and other employees had their work reduced or their jobs eliminated. The employer offered an incentive voluntary separation plan to its workers, resulting in more separations by senior employees thereby opening more positions for less senior employees who otherwise would have been laid off. The claimant, however, would have been subject to layoff due to her insufficient seniority. **HELD:** The claimant was terminated due to the elimination of her job and her insufficient seniority to qualify for transfer to another, comparable position. Furthermore, although some workers situated similarly to the claimant may have had the option of continued temporary work, the claimant was not offered such work. (Also digested under MC 135.30 and Cross-referenced under VL 495.00.)

Appeal No. 86-00443-10-121886. Due to economic conditions, the employer instituted a reduction in force in the claimant's department in accordance with the labor-management agreement. The workers had three options: 1) exercise bumping privileges, 2) opt to be placed on substitute status, or 3) accept permanent layoff. Because of her seniority, the claimant could have exercised her bumping privileges. However, she elected to be placed on substitute status. During the eleven weeks following the filing of her initial claim, the claimant worked eleven shifts on a substitute basis. She could have worked fifty-three shifts by exercising her bumping privileges. **HELD:** Citing the precedent holding in Appeal No. 27,633-AT-65 (Affirmed by 37-CA-66, VL 475.05), the Commission ruled that the claimant voluntarily separated from her last work without good work connected cause by failing to exercise her bumping privileges. (Cross-referenced under VL 495.00)

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VL 135.05(8)

Appeal No. 2198-CA-77. The fact that, after resigning with notice, a claimant continued working until a replacement could be trained and in order to assist the employer with tax forms, did not change the nature of the claimant's separation from a voluntary quit to a discharge. Such activities by a claimant after she gave notice of her intention to resign should reasonably be considered a part of the process of the claimant's voluntary separation from employment. (For a more complete digest, see VL 515.30.)

Appeal No. 1252-CA-77. The claimant, an employee of a temporary help service, failed to report for reassignment after the completion of the last assignment he was sent out on by the temporary help service. HELD: Because the claimant was separated when he failed to report for reassignment after completion of a temporary job, his separation was voluntary and without good cause connected with the work. Disqualification under Section 207.045.

In Appeal No. 263-CA-68, the claimant, also an employee of a temporary help service, completed a job assignment on a Friday and reported to the employer on the following Monday for reassignment, at which time he was advised that no other work was available. The claimant was not offered any further work until after he filed his initial claim. The employer required its employees to report back as soon as possible upon completion of a job assignment and there was no evidence that there would have been any work available had the claimant reported back on the intervening Saturday. **HELD:** Since the claimant reported to the employer subsequent to completing his last job assignment and since he was not offered work until after he had filed his initial claim, his separation was due to lack of work. No disqualification under Section 207.045 or Section 207.044.

Also see Appeal No. 300-CA-71 under VL 495.00 and cases under MC 450.50. (The above temporary help service cases are cross-referenced under MC 135.05.)

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VL 135.05(9)

Appeal No. 280-CA-76. While off duty, the claimant, a nursing home registered nurse, was telephoned by the employer's administrator and was asked to come in and discuss some charges which had been made by other employees against her. At the claimant's insistence, the administrator advised her of the nature of the charges (petty theft) and the claimant requested time to think about the matter. Shortly thereafter, she telephoned the administrator and stated that she would not be coming in to discuss the matter or to return to work. **HELD:** The claimant quit and was not discharged. Furthermore, her leaving was voluntary and without good cause connected with the work. Disqualification under Section 207.045.

Also see Appeal No. 86-14984-10-111886 under VL 495.00; Appeal No. 86-00326-10-121786 under MC 135.30; Appeal No. 27,633-AT-65 (Affirmed by 37-CA-66) under VL 475.00 and Appeal No. 87-11216-10-070287 under VL 235.40. Also see Appeal No.96-012206-10-102596 under MC 135.45.

Appeal No. 97-004610-10-042497. Claimant, a laborer with a temporary help firm, completed his last assignment on Thursday. The following Tuesday morning, he contacted the employer for reassignment, but no work was available. Claimant was well aware his unemployment benefits could be denied if he failed to contact the temporary help firm for reassignment on completion of a temporary job. **HELD:** Disqualified for leaving voluntarily without good cause. Here, claimant effectively abandoned his job by failing to contact the temporary help firm for reassignment within a reasonable time after completion of a temporary job. “Reasonable time” as used here means not later than the next business day.

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VL 135.10

VL 135.10 Discharge or Leaving: Absence from Work.

Where a decision was made upon the basis of whether, as a result of an absence from work, there was a leaving or a discharge.

Appeal No. 923-CA-77. The claimant had been off work due to an on-the-job injury and his doctor advised the employer that he would be released to return to work on October 1. The claimant remained off work for an additional three months because he was under the care of a different doctor for a different condition. At no time after his first doctor's release did the claimant contact the employer. He was replaced seven weeks after his first release. **HELD**: By remaining off work without informing the employer that he was still under a doctor's care for another condition, the claimant made no effort to protect his job and thus voluntarily left his last work without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 2997-CA-77. The claimant was hospitalized due to a serious nervous condition. She made no personal effort to inform the employer of her whereabouts, although she thought certain ones of her co-workers who knew of her whereabouts would tell the employer. Five days after her hospitalization, the claimant's husband informed the employer that she was hospitalized and would not be able to return to work. The employer, therefore, assumed that the claimant had resigned. He replaced her and in- formed her when she attempted to return to work three weeks later that she had been replaced. **HELD:** The claimant voluntarily left her last work without good cause connected with the work in that she did not make an adequate effort to protect her job. Disqualification under Section 207.045.

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VL 135.10(2)

Appeal No. 3288-CA-76. On the morning of the claimant's last day on the job, the claimant told her supervisor that she was ill, and the supervisor responded that she was needed. Later that day, the claimant left work to see a doctor but gave no notice to her supervisor or co-workers. When she returned to work more than a day thereafter, she was told that she had been replaced for having left work without notice. **HELD:** The claimant left her last work voluntarily without good cause connected with the work. Although she had good reason for being absent, her doing so without notice constituted a failure to take necessary steps to protect her job. The claimant's having told her supervisor earlier in the day that she felt ill was not notice that she would be going to the doctor later that same day. Disqualification under Section 207.045.

Appeal No. 3595-CA-75. The claimant had been off work on an authorized medical leave of absence due to an on-the-job injury. When she was finally released by her doctor to return to work, the claimant did not contact the employer but, instead, filed an initial claim. **HELD:** It is incumbent upon an employee, when released by her doctor following an approved medical leave of absence, to contact the employer to determine if work is still available. By filing her initial claim at a time when the employer-employee relationship had not been severed, the claimant thereby, in effect, voluntarily resigned without good cause connected with the work. Disqualification under Section 207.045.

Also see Appeal No. 2200-CA-76 and Appeal No. 2726-CA-77 under VL 235.25.

Appeal No. 3458-CA-75. A claimant who is off work on her doctor's advice due to an illness, with the prior permission of the employer, and who throughout her continuing absence keeps the employer advised of her status, has done all that is necessary to protect her job and is not subject to disqualification under either Section 207.045 or Section 207.044.

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VL 135.20

VL 135.20 Discharge or Leaving: Interpretation of Remark or Action of Employer or Employee.

Where the remarks or actions of either the employer or employee were considered in determining whether there was, in fact, a leaving or a discharge, usually where the intention of either the employer or employee was not clear

Appeal No. 2133419. In the oil and gas industry, it is customary for employees working on vessels at sea to routinely alternate predetermined periods of work on a vessel with pre-determined rest periods (home rotations). In this case, the claimant knew since beginning the job that the work schedule involved working 28 days on board the vessel followed by 28 days of home rotation, after which he would report back to work on the vessel. During home rotations, the claimant was required to take professional training, at the employer's expense, and respond to the employer's communications. The employer remained obligated to continue the benefits of employment. The claimant was paid on a bi-weekly basis for each day spent working on the vessel but was not paid for the days spent on home rotation. After completing one such 28-days of work on the vessel, the claimant began a typical 28-day home rotation. During the period of home rotation, the claimant filed for unemployment benefits, knowing that he was scheduled to return to work on the vessel. **HELD:** Separation is an issue that requires an examination of all the facts and circumstances. The employment relationship in this case was not severed when the home rotation began, even though the claimant stopped performing services and earning wages. Employment relationships in the off-shore oil and gas industry that involve regular, rotating periods of extended off-shore work followed by extended periods of cessation in work and pay connected to a mutually understood return to work date continue until one party notifies the other that the employment relationship has been severed. In this case, the claimant notified the employer that the employment relationship had been severed, for purposes of unemployment benefits, when the claimant filed a claim for unemployment benefits. The claimant in such a situation voluntarily quits the work without good cause connected with the work. Disqualification under Section 207.045 of the Act. Cross-referenced at MS 510.00 MC 5.00 and VL 510.40.

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VL 135.20(2)

Appeal No. 87-16658-10-092387. The employer's policy provided for discharge for any employee receiving three warnings for related or similar offenses. On her last day at work, the claimant was presented by her supervisor with a written reprimand which constituted her third warning. As the claimant's prior warnings had been for unrelated offenses, the claimant's discharge was not intended. Thinking that she was being discharged, the claimant refused to read the reprimand and walked off the job. She did not seek to clarify her status and did not return. **HELD:** The claimant voluntarily left her last work. As she made no attempt to clarify her status, under the circumstances, her leaving was without good cause connected with the work.

Appeal No. 87-11291-10-070187. The claimant alleged he was fired by a co-worker who was temporarily acting as the dispatcher. The co-worker had no authority to fire the claimant. On the following day, the owner emphatically told the claimant he was not fired and that the co-worker had no authority to fire him. The claimant insisted he had been fired and left. **HELD:** The claimant's refusal to return to work after the employer reassured him of his job was a voluntary separation without good work connected cause. The claimant could not reasonably think his co-worker had the authority to fire him particularly after the owner specifically informed him the next day that he had not been discharged.

Appeal No. 86-378-10-121886. The claimant, a secretary, felt she was not doing a good job for the employer because of stress. She discussed this concern with the supervisor, and he asked her to remain for two more weeks. The claimant interpreted this remark to mean she was discharged after two weeks. She thereafter stopped reporting to work. The claimant's supervisor never told her she was discharged, and he understood she had quit, the two weeks being considered her notice to the employer. **HELD:** The claimant had the burden of clarifying any doubts about her job status and as she failed to do so and left the employer with the impression that she had quit, the claimant's separation was voluntary and without good cause connected with the work.

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VL 135.20(3)

Appeal No. 1393-CA-77. The claimant, after having become involved in an argument with her co-worker, announced that she could no longer tolerate conditions and left. Her supervisor then began processing termination papers. Later, the claimant telephoned her supervisor and advised him that she did not intend to resign; however, the employer chose to treat her as having resigned. **HELD:** By leaving work and giving the employer the reasonable impression that she was resigning, the claimant voluntarily quit work without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 3875-CA-76. The claimant complained to the employer that she could not work with her supervisor anymore, as the supervisor was not performing his duties. The employer responded that, if she could not work with her supervisor, he (the employer) would have to do the claimant's job. The claimant thereupon punched out as she considered that she had been discharged. **HELD**: The employer's statement to the claimant that he would have to do her work if she could not work with her supervisor, did not constitute notice of her discharge. Accordingly, the claimant's separation was voluntary and without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 2176-CA-76. The claimant had been absent from work on a number of occasions. When the claimant became ill after work on her last day of work, she called the employer and the latter stated that he needed someone who was dependable. The claimant stated that she was sorry but made no further explanation nor did she ask for further explanation of the employer's remark. She did not thereafter report for work. **HELD:** By not reporting to work again after the employer made an ambiguous remark to her concerning her dependability and by not attempting to determine for certain the employer's intentions, the claimant voluntarily left her last work without good cause connected with the work. Disqualification under Section 207.045.

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VL 135.20(4) – 135.25

Appeal No. 3518-CA-75. During a heated discussion with the employer's manager regarding the claimant's absence without notice on the previous day and the employer's general working conditions, the claimant indicated that he could find better work elsewhere. To this, the manager responded that it would probably be best if he did so. **HELD**: The employer's manager's invitation to the claimant that, if he could secure better work elsewhere, he should probably do so, was not an unequivocal expression of the manager's intention to discharge the claimant. Consequently, the claimant's leaving was voluntary and without good cause connected with the work. Disqualification under Section 207.045.

VL 135.25 Discharge or Leaving: Leaving Prior to Effective Date of Discharge.

Where the claimant, being aware of a discharge to take effect in the near future, left prior to the effective date of such discharge.

Appeal No. 97-009174-10-082697. Even where the claimant gives more than two weeks' notice, the employer retains the option of accepting claimant's resignation at any time before the intended resignation date, and so long as the claimant is paid the usual wage through the end of that notice period, such early acceptance by the employer does not change the separation from a quit to a discharge. Accordingly, the claimant carries the burden in such cases of showing the voluntary leaving was for good cause connected with the work.

At its meetings on March 9 and March 23, 1988, the Commissioners adopted the following policy to apply to instances in which one party gives the other party notice of impending separation and the other party takes the initiative of terminating the employment relationship earlier:

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VL 135.25 (2)

1. The Commission recognized an expectation generally existing in the workplace that a party intending to terminate the employment relationship will customarily give two weeks' notice to the other party.
2. During such two-week period, early termination of the employment relationship by the party receiving such notice will not change the nature of the separation. The party first initiating the separation will continue to bear the burden of persuasion as to whether the separation was justified; that is, in the case of an involuntary separation, whether the claimant was discharged for misconduct connected with the work or, in the case of a voluntary separation, whether the claimant voluntarily left work without good cause connected with the work.
3. When more than two weeks' notice of impending separation is given and the party receiving the notice initiates a separation prior to the intended effective date, the nature of the separation, and thus the allocation of the burden of persuasion, will depend on the general circumstances in the case.

Appeal No. 87-02149-10-021288. On October 1, the claimant gave the employer notice of her intent to resign at the end of December, to enter other employment. She was requested by the employer, and she agreed, to refrain from discussing with her co-workers her intention to resign. The employer discharged the claimant after learning that she had discussed her resignation with a co-worker. **HELD:** The claimant was discharged for work-connected misconduct because her betrayal of the employer's confidence and failure to abide by her agreement constituted a mismanagement of a position of employment.

Appeal No. 87-2079-10-020988. The claimant, a truck driver, was notified on December 29 that December 31 would be his last day of work. He was to be laid off due to lack of work. The claimant became upset and left immediately.

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VL 135.25 (3)

HELD: The Commission applied their policy providing that when a party is given notice within a two-week time frame (of impending separation), early acceptance by the party receiving such notice will not change the nature of the separation. The employer here gave the claimant two days' notice and the claimant's early acceptance did not change the involuntary nature of the separation. The employer had the burden of showing misconduct on the part of the claimant. As there was no misconduct alleged in this instance, no disqualification under Section 207.044.

Appeal No. 87-00697-10-011488. On November 2, the claimant gave notice of his intent to quit his job in March of the following year. He further advised the employer that, during that time period, he intended to work under a decreased workload and would train only one particular individual to replace him. The employer accepted his resignation effective immediately. **HELD:** Recently adopted Commission policy provides that where a party gives in excess of two weeks' notice of separation and that notice is accepted immediately, the burden of persuasion will normally shift to the party accepting the notice early. As the employer accepted the claimant's notice early here, the separation will be considered a discharge. The burden of establishing that the claimant was discharged for work connected misconduct was found to have been met in that the claimant's actions of giving the employer an ultimatum that he would not perform to his usual standard during his notice period amounted to intentional malfeasance, thus constituting misconduct connected with the work on the claimant's part.

Appeal No. 96-011165-10-092696. On or about July 1, 1996, the claimant submitted a written notice of resignation to the employer, informing them that he would be resigning effective August 4, 1996. He intended to go to work for another company at that time. On July 25, 1996, the employer hired a replacement for the claimant, and the claimant's services were no longer needed as of that date.

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VL 135.25(4)

HELD: When the moving party gives more than two weeks' notice of an impending separation, and a separation actually occurs within two weeks of the stated effective date of the notice, the original moving party retains the burden of persuasion to establish the nature of the separation as either a voluntary quit or a discharge. The claimant in the instant case retains the burden of persuasion to establish the nature of the separation. This claimant resigned to accept other employment, which is a resignation for personal reasons and not for good cause connected with the work.

Appeal No. 87-00208-10-010488. The claimant was given two weeks' notice of impending termination by the manager who in the past had consistently and unfairly criticized him. The claimant left immediately because he was upset. **HELD:** The claimant was effectively discharged when given two weeks' notice of termination. As there was no evidence of any work-connected misconduct on the claimant's part, he was awarded benefits without disqualification under Section 207.044 of the Act even though he could have continued working two more weeks.

Appeal No. 86-20059-10-112387. On December 11, the claimant informed the employer that he would be leaving on January 30th of the following year. He was scheduled to report to active duty on February 4th. The employer only allowed him to work until December 15th. **HELD:** The Commission has adopted a policy that recognizes a general expectation in the workplace of two weeks' notice of separation. When a party gives notice in excess of two weeks and that notice is accepted before the intended effective date, the burden of persuasion shifts to the party accepting the notice early. In the instant case, the separation was treated as the employer's early acceptance of the claimant's notice. As the employer failed to meet its burden of establishing misconduct connected with the work on the claimant's part, no disqualification under either Section 207.045 or Section 207.044.

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VL 135.25(5)

Appeal No. 87-98680-1-1187 (Affirmed by 87-19987-10-111787). Approximately twelve weeks prior to the expiration date of his employment contract, the claimant notified one of the members of the employer's board of directors that he did not intend to renew the contract. Later that same day, the employer's board of directors chose to exercise their option in the employment contract of giving the claimant thirty days' notice of termination and paying him thirty days' salary plus vacation in lieu of working. The severing of the employment contract was made immediately effective. **HELD:** The claimant set in motion the circumstances which resulted in his separation. Citing the holding in Appeal No. 1760-CA-76 under VL 440.00, the Appeal Tribunal further held that when a claimant chooses to terminate his employment by not extending his contract when work is available for him, the claimant has voluntarily left his last work without good cause connected with the work. Disqualification under Section 207.045.

Also see cases under MC 135.25, MC 135.35 and VL 135.35.

Appeal No. 96-001500-10-020697. After several poor performance reviews, the claimant gave the employer notice of his intent to resign voluntarily three weeks hence. The employer elected to accept the claimant’s resignation immediately. Although the claimant performed no further services for the company, the employer paid the claimant his usual salary through the intended resignation date. **HELD:** A separation does not change from a quit to a discharge simply because the employer decides to accept the resignation immediately. Here, the employer has compensated the claimant for not working out the notice period, even if longer than the customary two weeks, by paying him through his intended resignation date. In this case, the claimant did not have good cause to resign voluntarily after poor performance reviews. (Also digested at MC 135.25).

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VL 135.35

VL 135.35 Discharge or Leaving: Leaving in Anticipation of Discharge.

Where claimant, believing he would be discharged or laid off, left to avoid such discharge.

Appeal No. 748-CA-77. The claimant, a cashier, quit work while her employer, a physician, was considering what should be done about a situation in which a patient asserted that she had paid the claimant $50 cash in part payment of a fee for medical services, when the receipt issued by the claimant, as well as the claimant's recollection of the transaction, indicated that the patient had paid only $20. At no time, including during a meeting with the claimant and the patient and the latter's family, did the employer accuse the claimant of theft or threaten her with discharge. **HELD:** The claimant did not have good cause connected with the work for quitting as she was not accused of theft or threatened with discharge. Disqualification under Section 207.045.

Appeal No. 28,213-AT-65 (Affirmed by 1231-CA-65). The claimant quit when he learned that a former employer would be taking over management in two weeks and that he would be unable to continue when the change was made. He quit at that time to enable his current employer to secure a replacement. **HELD:** Since he had had two weeks' employment remaining and his leaving had nothing to do with his last employer, the claimant voluntarily left his last work without good cause connected with the work. Disqualification under Section 207.045.

TEX 10-01-96

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 135.40

VL 135.40 Discharge or Leaving: Resignation Intended.

Where a claimant submitted his resignation to become effective at some future time but was discharged prior thereto and the question arose as to whether there was a "discharge" or "leaving".

See MC 135.25 and VL 135.25.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 138.00

VL 138.00 Disciplinary Action

VL 138.00 Disciplinary Action.

Includes cases where a claimant left work because of some disciplinary action on the part of the employer.

Appeal No. 87-20843-10-120987. The claimant became angry and quit after being reprimanded by the employer about her work prioritization. The claimant, normally a sales representative, had been filling in as the employer's receptionist at the time. **HELD:** The claimant quit without good cause connected with the work because her resignation was in response to a reasonable reprimand by the employer and an employer has the right to issue reasonable reprimands to its employees. Disqualification under Section 207.045.

Appeal No. 2888-CA-76. On her last regularly scheduled workday prior to her last day on the job, the claimant, a dentist's assistant, missed work because severe flooding in her neighborhood had prevented her traveling to work. She had properly and timely notified the employer and he had raised no objection at that time. On her next day at work, the employer, in the presence of patients, accused the claimant of lying and conspiring with other employees. He would not permit her to explain her absence; he simply invited her to leave if she did not like what he had to say. As this exchange took place in the presence of the employer's patients, the claimant felt embarrassed and resigned pursuant to the employer's suggestion. **HELD:** It should be regarded as a necessary incident of an employer's authority that he be permitted to reprimand employees for their failings. Furthermore, an employer should, within reason, even be permitted to enter an erroneous reprimand without the latter necessarily providing his reprimanded employee with good cause connected with the work for resigning. However, there is no reason why even a justified reprimand must be aired in humiliating and accusatory language in the presence of the general public. In this case, the employer's abusive and unwarranted reprimand of the claimant provided her with good cause connected with the work for her leaving.

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VOLUNTARY LEAVING

VL 138.00(2)

Appeal No. 1236-CA-76. The claimant, assistant manager of a chain convenience store, resigned because she had been reprimanded by the employer's administrative assistant. Although the latter was not the claimant's immediate supervisor, he had the authority to indicate to the claimant deficiencies in her work. The claimant was aware that the administrative assistant had such authority but resigned rather than respond to his corrections. **HELD:** Since criticism of the claimant's job performance was within the scope of the administrative assistant's duties, the claimant's voluntarily leaving because she objected to his criticism of her job performance was without good cause connected with the work. Disqualification under Section 207.045.

Also see Appeal No. 273-CA-77 under MC 135.45.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 150.00 – 150.15

VL Distance to Work

VL 150.00 Distance to Work

VL 150.05 Distance to Work: General.

Includes cases containing (1) a general discussion of distance to work, (2) points not covered by any other subline under line 150, and (3) points covered by all three sublines.

Appeal No. 886-CA-71. In the absence of a prior agreement to work at any of the employer's stores in the trade area, a claimant had good cause to quit rather than transfer to a store in a town twenty miles away.

VL 150.15 Distance to Work: Removal from Locality.

Applies to decisions in which the leaving was a result of (1) claimants' removal from the locality of the employer's premises, or (2) the removal of the employer's place of business to another locality.

Appeal No. 2672-CA-76. The claimant, who resided in Denton, had commuted to work in Dallas, a distance of 30.8 miles. She quit work when the employer relocated its office to Richardson as this increased the claimant's travel distance to 40.6 miles. Apart from the extra distance and travel time involved, the additional travel expense, in the claimant's opinion, constituted an effective reduction in pay. **HELD:** The employer's relocation did not measurably increase the inconvenience borne by one who was already commuting a distance of more than thirty miles. Furthermore, even if the claimant's additional travel were to be regarded as tantamount to a reduction in pay, it was not substantial. Thus, neither of the reasons given by the claimant provided her with good cause connected with the work for her leaving. Disqualification under Section 207.045.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 150.15(2)

Appeal No. 1892-CA-76. In January 1976, the employer decided to move his business a distance of about ten miles. The claimant repeatedly stated to the employer, when asked, that she would not transfer as it was too far to drive. On the last day of operation in the old location, the claimant stated that she was willing to transfer. By that time, however, she had been replaced. She probably could have obtained transportation by sharing a ride with any one of the five employees residing in her neighborhood who did transfer to the new location. **HELD:** Since the distance by which the employer's plant was relocated was relatively small and since there were fellow employees from whom the claimant could have obtained transportation, the claimant's failure to obtain transportation and transfer to the new location constituted a voluntary quit without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 1112-CA-71. The claimant's employer relocated its operations from Fort Worth to Dallas. The employer offered all employees who would agree to the transfer a $.35 an hour raise in pay and the advance of any funds needed to repair their cars. One of the employees who agreed to the transfer availed himself of this latter offer and, further, arranged a carpool among the transferring employees. The claimant, however, resigned. **HELD:** The employer's relocation would have required the claimant to commute some 80 miles a day had he agreed to transfer, and the claimant had not agreed to transfer to Dallas when he accepted employment. Although the employer made some provisions to assist transferring employees, these were not sufficient to remove the good cause connected with the work for the claimant's leaving.

Also see cases under VL 150.20.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 150.20

VL 150.20 Distance to Work: Transportation and Travel.

Involves a leaving because of travel time or expenses, or inadequate transportation facilities.

Appeal No. 97-006341-10-060597. In the home health care referral industry, either the worker or the referral service may initiate reassignment. In this case, the claimant was removed from her current assignment at her own request because she was dissatisfied. When the employer offered claimant reassignment later that same week, claimant declined because the only way she could get to the new client's home was by bus. The employer had never furnished transportation. **HELD:** Separation is an issue that can only be determined after an examination of all the facts and circumstances. An employment relationship such as this one continues until one party clearly notifies the other party that the employment relationship has ended, even if there is some passage of time during which the employee performs no services and earns no wages. This employment relationship was ended by claimant's action of declining the new assignment offered to her. This action clearly notified the employer that the relationship had ended. Claimant's separation occurred when she refused reassignment, not when she requested removal from her previous client. Claimant's dislike of the only available means of transportation—riding the bus—does not constitute good cause to leave voluntarily, because transportation was claimant's responsibility. (Cross-referenced at VL 510.40 & VL 515.90).

Appeal No. 488-CA-76. The claimant was absent from work with notice for several days due to the necessity of repairing his car. When he reported back to work, he learned that he had been replaced. Although it was not disputed that transportation to the work site was the claimant's responsibility, the claimant made no effort to use public transportation facilities in order to get to work. **HELD:** Where it is a claimant's responsibility to arrange for his own transportation to work, failure of such transportation will subject a claimant to disqualification under Section 207.045 of the Act.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 150.20(2)

Appeal No. 6930-CA-60. Claimant lived in a small community approximately twenty-five miles from the employer's factory and had been riding to and from her job with a neighbor. She quit her job because she lost her only dependable means of transportation when her neighbor moved away. **HELD:** The Commission considered the following to be appropriate standards to be applied to cases of this type:

1. If the employer assumed the responsibility for transportation of an employee to work, the loss of transportation can be considered an involuntary separation on the part of the claimant if no other reasonable transportation is available. If other transportation is reasonably convenient and inexpensive, then the claimant's separation is a voluntary separation which will subject the claimant to a disqualification.
2. If the employer does not assume the responsibility for transportation of an employee to work, then transportation is the claimant's responsibility and any separation from work because of transportation problems would be a voluntary separation without good cause connected with the work.

The claimant in this appeal was responsible for providing her own transportation to the job and was forced to resign because she failed to provide herself with such transportation. Her resignation was a voluntary quit without good cause connected with the work. Disqualification under Section 207.045.

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VOLUNTARY LEAVING

VL 155.00 – 155.10

VL Domestic Circumstances.

VL 155.00 Domestic Circumstances.

VL 155.05 Domestic Circumstances: General.

Includes cases containing (1) a general discussion of leaving because of domestic circumstances, (2) points not covered by any other subline under line 155, and (3) points covered by three or more sublines.

Appeal No. 97-009604-30-090497. The claimant, a civilian, was separated from her work as a secretary at a U.S. Naval Hospital overseas when her husband, a Navy enlisted man, was transferred to a base in the United States. Government regulations prohibit such military facilities from continuing to employ military dependents once their enlisted sponsor is transferred out of the commuting area. **HELD**: The claimant's separation under these circumstances was a voluntary leaving with good cause connected to the work. No disqualification. (Cross reference at VL 305).

Appeal No. 1212-CA-66. A claimant who gave notice and quit be- cause his trouble with his wife was affecting his work and he could not get his personal affairs straightened out, left his work voluntarily without good cause connected with the work. Although the employer had told him he must get his personal problems straightened out or submit his resignation or he would be subject to discharge because his work was suffering due to his personal problems, the claimant quit at a time when his possible discharge was not under immediate consideration. Disqualification under Section 207.045.

VL 155.10 Domestic Circumstances: Children, Care of.

Where a claimant left work in order to care for children. (illness of children coded under "illness or death of others" subline, VL 155.35.)

Appeal No. 5156-AT-69 (affirmed by 589-CA-69). When a claimant leaves her work to care for her children during the summer while school is out, the separation is voluntary and without good cause connected with the work. Disqualification under Section 207.045.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 155.25 – 155-35

VL 155.25 Domestic Circumstances: Household Duties

Where a claimant left work because continuance at such employment would have made impossible, or difficult, the performance of household duties.

Appeal No. 6066-AT-69 (Affirmed by 635-CA-69). The claimant was physically able to work the seven hours required on her job but quit because she was not physically able to do her housework also and could not afford to hire a housekeeper. **HELD:** The claimant's leaving was without good cause connected with the work. Disqualification under Section 207.045.

VL 155.35 Domestic Circumstances: Illness or Death of Other.

Leaving work because of claimant's desire to care for an ill member of the family, or to attend a funeral, etc.

Appeal No. 2183-CA-76. The claimant quit work in order to accompany her husband who was moving to Dallas to undergo medical treatment. It was necessary for the claimant's husband to be close to the clinic where he was being treated and necessary for the claimant to assist in caring for him. **HELD:** The claimant's reason for leaving was not good cause connected with the work. Disqualification under Section 207.045. (Note: This decision was issued prior to the adoption of the spousal relocation provision in Section 207.045 of the Act.)

Appeal No. 3639-CA-75. The claimant notified the employer that she was going to be absent as she was leaving town temporarily to care for her terminally ill grandmother. Due to her grandmother's illness and funeral, the claimant was absent from work for about two weeks, during which time she was replaced. **HELD:** The claimant voluntarily left her last work without good cause connected with the work. Disqualification under Section 207.045.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 155.35(2) – 155.40

Appeal No. 387-AT-68 (Affirmed by 107-CA-68). During her off-duty hours, the claimant learned that her mother had been seriously injured in an automobile accident in Mexico and that it was necessary for her to go to her mother. She so advised her supervisor by phone that night and had her husband call the employer the next morning. She could give no definite date she would return and it was necessary for the employer to replace her. **HELD:** The claim-ant's leaving under such circumstances, without stating a definite date for her return to work, constituted a voluntary quit without good cause connected with the work. Disqualification under Section 207.045.

VL 155.40 Domestic Circumstances: Marriage.

Leaving employment to marry or because of an employer's rule against employing persons after marriage.

Appeal No. 2354-CA-77. The claimant was asked to resign because the employer's rules forbade simultaneous employment of married persons. When she did not resign, she was terminated. **HELD:** The employer's policy cannot be used by the Commission to disqualify a claimant as it is a policy endeavoring to prohibit the parties from exercising their constitutional right to marry. Furthermore, it is a well-known public policy that the government encourages marriage and will not be a party to enforcing rules which place impediments in the way of persons desiring to marry. The Commission held that the claimant's separation was an involuntary one and that she was not subject to disqualification under either Section 207.045 or Section 207.044 of the Act.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 180.00

VL Equipment

VL 180.00 Equipment.

Includes cases in which claimant left work for reasons such as: a lack of equipment to do the job, the defective nature of such equipment, or the employer's requirement that the claimant furnish certain equipment.

Appeal No. 5633-AT-63 (Affirmed by 9799-CA-63). A claimant has good cause to quit rather than operate a central air conditioning unit which he knew to be defective and which he had reason to believe would endanger lives and property. He had called the matter to the attention of management, but nothing was done about it for financial reasons. (Cross-referenced under VL 210.00.)

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 190.00

VL Evidence.

VL 190.00 Evidence.

VL 190.10 Evidence: Burden of Persuasion and Presumptions.

Applies to discussions as to which party has bur- den of persuasion, or as to legal adequacy of particular evidence to overcome presumptions relating to the application of the voluntary leaving provisions.

As to the medical verification described in Section 207.045 of the Act, see Appeal No. 87-16083-10-091487 under VL 235.25.

Appeal No. 96-009627-10-082296. A claimant worked on a concrete crew for the employer. The claimant developed a skin condition, so he consulted a medical doctor in the United States. The doctor prescribed a cream. Not satisfied with the medical treatment he received; the claimant consulted an allergist in Mexico. The claimant voluntarily resigned from his position of employment after being told by the allergist that he was allergic to dust and dirt and he should avoid working in this environment. **HELD:** Evidence presented by the claimant insufficient to satisfy the requirements of Section 207.045 of the Act to establish a voluntary resignation for health reasons as the claimant was not advised by his medical doctor in the United States to resign from his position of employment. Where a claimant has received conflicting medical opinions, the Commission will accord greater weight to the advice given by a physician in the United States or a physician duly licensed by a U.S. regulatory authority. Since the physician that the claimant consulted in the United States did not advise the claimant to resign, the claimant is deemed to have voluntarily resigned from his position of employment without good cause connected with the work. (Cross-referenced under VL 235.25)

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 190.15

VL 190.15 Evidence: Weight and Sufficiency.

Where weight or the sufficiency of evidence is a material factor in the decision.

Appeal No. 86-03568-10-022587. A physician's advice to "consider employment in another area" is not the equivalent of advice to quit the job nor is it sufficient evidence to establish that the claimant's quitting was for medical reasons. (Cross-referenced under VL 235.05.)

Appeal No. 3668-CA-75. The claimant testified that she had resigned because of what she considered to be harassment due to her union activities. However, she presented no testimony or other evidence regarding any specific act of harassment. **HELD:** The evidence was undisputed that the claimant voluntarily quit because of alleged harassment. However, since she produced no specific testimony or other evidence to support that allegation, she thereby failed to establish good cause connected with the work for leaving. Disqualification under Section 207.045.

Appeal No. 2606-CA-75. The claimant had allegedly resigned due to medical reasons and on the advice of her doctor. In connection with two separate appeal hearings, she was requested to produce documentation from her doctor, describing her physical condition at the time of her separation from work, and at all times subsequent thereto, and indicating whether or not the doctor had advised her to quit her last job because of her physical condition. The claimant failed to produce such documentation on either of the two occasions that it was requested of her. **HELD:** In light of the claimant's repeated failure to produce the requested documentary evidence of the asserted reason for her resignation, the Commission concluded that the evidence was insufficient to support a finding that the claimant's leaving was involuntary or, if voluntary, that it was based on good cause connected with the work. Disqualification under Section 207.045.

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VOLUNTARY LEAVING

VL 190.15(2)

Also see Appeal No. 2128-CA-77 under VL 235.05 and Appeal No. 87-16083-10-091487 under VL 235.25.

Appeal No. 1480-CA-72. Although the claimant contended in her testimony before the Appeal Tribunal that she had quit work because of poor working conditions, she had informed the employer, at the time of her quitting, that she was doing so in order to move to another area. By the time she filed her initial claim, the claimant had moved to the other area as indicated at the time of her quitting. **HELD:** The fact that the reason given by the claimant to the employer for her quitting was her desire to relocate and the fact that she did, in fact, so relocate after quitting, were sufficient to support a finding that her quitting was for personal reasons and not based on good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 7109-CA-60. A claimant's statement on the initial claim as the reason for separation is given great weight and is presumed correct until the contrary appears from sworn testimony of record. There is no hard and fast rule to the effect that a claimant is bound by the statement on his initial claim. A claimant will be bound by the statement on his initial claim where the preponderance of the evidence supports the statement on the initial claim and the claim- ant is seeking to change his original statement in order to remove a disqualification.

Also see Appeal No. 87-07136-10-042887 under MC 190.15 and PR 190.00.

Also see Appeal No. 87-20865-10-121487 under VL 515.65 and Appeal No. 87-16083-10-091487 under VL 235.25.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 195.00

VL 195.00

VL 195.00 Experience or Training.

Includes cases in which a claimant left work because such work did not fully utilize his skills, because he believed that he had insufficient experience or training to permit him to do the job, or because his employment did not present an opportunity for him to acquire the experience or training desired.

Appeal No. 214-AT-68 (Affirmed by 85-CA-68). The claimant quit because he felt he was not qualified for his job as foreman. He had not previously worked as a foreman but accepted the job and performed it for some time. The employer was not dissatisfied with the claimant's work as a foreman and he could have continued on the job. **HELD:** The claimant voluntarily quit work without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 32,403-AT-66 (Affirmed by 623-CA-66). The claimant quit with two days' notice after he learned there was no approved apprenticeship program offered by the employer and he would have to advance on his own initiative. **HELD:** Since the claimant had had no firm agreement with the employer at the time of hire as to what training or advancement he would receive from the employer, the claimant's voluntary quit was without good cause connected with the work. Disqualification under Section 207.045.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 210.00

VL Good Cause

VL 210.00 Good Cause.

This line is used to classify general discussions as to what constitutes "good cause" for voluntary leaving.

Good cause connected with the work for leaving, as that term is used in the law of unemployment insurance, means such cause, related to the work, as would cause a person who is genuinely interested in retaining work to nevertheless leave the job.

Appeal No. 1089-CA-72. A claimant has good cause connected with the work for quitting after making a reasonable effort to resolve legitimate complaints with management.

Also see Appeal No. 5633-AT-63 (Affirmed by 9799-CA-63) under VL 180.00.

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VL 235.00 – 235.05

VL Health or Physical Condition

VL 235.00 Health or Physical Condition.

VL 235.05 Health or Physical Condition.

Includes cases which contain (1) a general discussion of leaving work for safety or health reasons, (2) points not covered by any other subline under line 235, and (3) points covered by three or more sublines.

Appeal No. 87-2369-10-021988. The claimant, a preschool teacher, walked off the job because she felt her work was creating a good deal of stress. She was seeing mental health professionals, and submitted a statement from them that the job, her separation from work, and "other stresses in her life and other problems" all caused problems. On the claimant's last day of work, the employer heard the claimant speaking loudly to the children. When the employer inquired if there was a problem, the claimant walked off the job. **HELD:** The medical opinion dealing with the claimant only indicated that the job was one of several stressful situations the claimant was dealing with. The claimant failed to show that the employer's action was unreasonable, and thus her response of quitting was a quit without good cause connected with the work.

Appeal No. 87-16714-10-092587. The claimant quit because she was stressed and fatigued by her workload which the employer had made efforts to reduce. Unlike her co-workers, the claimant stayed at work until all her work was done rather than complete it the next day as allowed by the employer. This caused her undue stress and fatigue. **HELD:** The claimant did not have good cause connected with the work for quitting because she could have reduced her pace by leaving unfinished work for the next day. Disqualification under Section 207.045.

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VOLUNTARY LEAVING

VL 235.05(2) – 235.25

Appeal No. 2128-CA-77. Where a claimant left her last work due to alleged medical reasons but produced no medical verification thereof, the Commission held that, absent any verification, it was forced to conclude that the claimant had voluntarily left her last work without good cause connected with the work. Disqualification under Section 207.045.

Also see Appeal No. 2606-CA-75 under VL 190.15.

Appeal No. 3210-CA-75. The claimant left her job because the work was too hard and because, in her opinion, the standing re- quired by the work was causing her feet and legs to swell, thereby adversely affecting her health. She had not consulted a physician and thus had not been advised by a doctor to leave the job due to health reasons. She never made her complaints known to the plant foreman nor did she seek a transfer to other work. **HELD:** Since the claimant never advised the plant foreman of her health problem and never consulted a physician regarding it (and, thus, was never advised by a physician to quit work because of her health problem), the claimant's separation was voluntary and without good cause connected with the work. Disqualification under Section 207.045.

Also see Appeal No. 86-03568-10-022587 under VL 190.15, Appeal No.87-16083-10-091487 under VL 235.25 and Appeal No. 2177-CA-76 under VL 515.35.

VL 235.25 Health or Physical Condition: Illness or Injury.

Leaving work because of claimant's illness, or because of an injury he had received.

Appeal No. 87-21491-10-122387. A claimant who has had a work-related injury and requires medical attention but is told by the employer that he will be discharged if he takes time off for such purpose, has good cause connected with the work for quitting under Section 207.045.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 235.25(2)

Appeal No. 87-16083-10-091487. The claimant quit due to physical problems allegedly caused by job related stress. He neither mentioned the problem in his resignation letter nor offered any medical documentation to the Appeal Tribunal. **HELD:** Voluntary quit for personal rather than work related reasons. To be considered as having quit involuntarily for health reasons, a non-disqualifying separation, the claimant must have complied strictly with the requirements of Section 207.045 of the Act. That is, the claimant must have submitted medical verification of his illness, injury, or disability. As the claimant did not do this and did not mention health as a reason in his written resignation, claimant was disqualified under Section 207.045. (Cross-referenced under VL 190.10, VL 190.15 and VL 235.05.)

Appeal No. 96-009627-10-082296. A claimant worked on a concrete crew for the employer. The claimant developed a skin condition, so he consulted a medical doctor in the United States. The doctor prescribed a cream. Not satisfied with the medical treatment he received; the claimant consulted an allergist in Mexico. The claimant voluntarily resigned from his position of employment after being told by the allergist that he was allergic to dust and dirt and he should avoid working in this environment. **HELD:** Evidence presented by the claimant insufficient to satisfy the requirements of Section 207.045 of the Act to establish a voluntary resignation for health reasons as the claimant was not advised by his medical doctor in the United States to resign from his position of employment. Where a claimant has received conflicting medical opinions, the Commission will accord greater weight to the advice given by a physician in the United States or a physician duly licensed by a U.S. regulatory authority. Since the physician that the claimant consulted in the United States did not advise the claimant to resign, the claimant is deemed to have voluntarily resigned from his position of employment without good cause connected with the work. (Cross-referenced under VL 190.10)

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VOLUNTARY LEAVING

VL 235.25(3)

Appeal No. 87-14576-10-081587. The claimant was an alcoholic who, because of his condition, had left his position as bar manager to work in the Pro Shop of the employer's country club. After returning to his former position, the claimant again had alcoholic problems. At the employer's insistence, the claimant started attending Alcoholics Anonymous meetings. After a death in the family lead to a ten-day binge, the claimant saw a physician and checked into the VA hospital for tests. The claimant's physician advised the claimant to leave his bar manager position because of the proximity to alcohol. The claimant told the employer he was quitting to avoid the proximity to alcohol. He was offered a job in the Pro Shop and refused it because it was in the same building as the bar. **HELD:** Voluntary quit without good cause connected with the work because the claimant could have chosen to continue to work for the employer in a position that was not close to alcoholic beverages. Disqualification under Section 207.045.

Appeal No. 3557-CF-77. The claimant, a letter carrier suffering from arthritis and hypertension, was advised by his physician to inquire about disability retirement. The claimant made such inquiry at the employer's personnel office and applied for disability retirement and was not told at any time about the possibility of lighter work. The collective bargaining agreement between the claimant's bargaining unit and the employer set out the method by which an employee may seek light duty assignment and charged the employer's installation head with the implementation of the contract. The claimant, who was not aware of the contract provision regarding light duty assignment, reasonably believed that there was no light duty available and there was no evidence in the record to the contrary in that regard.

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VOLUNTARY LEAVING

VL 235.25(4)

HELD: Under the terms of the collective bargaining contract, the employer had the responsibility to at least mention to the claimant the contract provisions regarding application for light duty assignment but did not discharge that responsibility. Since the claimant was not aware of the contract provisions regarding application for light duty assignment and reason- ably believed that no such work was available, his separation, on the advice of his doctor and with no light work available, was involuntary. No disqualification under Section 207.045.

Also see Appeal No. 3312-CF-77 under VL 345.00.

Appeal No. 2726-CA-77. On the claimant's last working day, she encountered medical difficulties and was taken to the hospital. She told the employer that she would not be returning, and that the employer should get someone to replace her. While off work during this illness, the claimant learned that she had been replaced. She assumed that this meant that she had been discharged. As the claimant was under a medical restriction and thus felt that she could not resume her previous work for the employer, she did not attempt to return to her former job, nor did she ask for other work with the employer. **HELD:** Although the claimant was off work because of illness, by not attempting to protect her job by seeking rehire when again able to return to work, the claimant thereby voluntarily left her work without good cause connected with the work. Disqualification under Section 207.045.

Also see Appeal No. 3595-CA-75 under VL 135.10 and Appeal No. 2200-CA-76 in this subsection.

Appeal No. 2440-CA-77. A claimant who was off work due to illness and who made repeated attempts to protect her job, but who was not reinstated following her doctor's release and her attempted return to work, is not subject to disqualification under Section 207.045.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 235.25(5)

Appeal No. 2032-CA-77. More than four months prior to the day she quit work, the claimant had consulted a physician who advised her to obtain work requiring less talking, as she had a medical problem involving her jaw. The claimant, a directory assistance operator for a telephone company, thereupon exercised her seniority to secure a split shift, which was less taxing to her and which she continued on for a time until the office where she was working was closed. She was then sent elsewhere for two weeks' training, upon the conclusion of which, because of her seniority, she would probably have been able to obtain shift work again. After the first week of such training, which required eight hours continuous work daily and considerable talking, the claimant quit the work because of the problem she was again having with her jaw. At no time during the four months prior to her separation did the claimant consult a physician. **HELD:** Since the claimant had not consulted a physician during the four months prior to her separation and since, when she quit, the claimant had completed one week of a two week training program, upon the conclusion of which she probably would have been able to secure a split shift job similar to that which she had been able to perform despite her health problem, the claimant voluntarily quit her last work without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 1327-CA-77. The claimant quit work, stating to the employer that she was quitting to look for a better job. In fact, the claimant quit due to health reasons, as she had not fully recovered from recent surgery. **HELD:** By not telling the employer that she was leaving due to health reasons and not asking for a transfer to other work, the claimant deprived the employer of the opportunity to attempt to find work with his company which the claimant could perform. Accordingly, the claimant was held to have left her last work voluntarily without good cause connected with the work. Disqualification under Section 207.045.

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VL 235.25(6) – 235.40

Appeal No. 256-CF-77. The claimant, a U.S. Postal Service mail handler, was unable, due to a non-work-related back injury, to perform all the duties of his position. He was offered a promotion to a light duty job as a clerk, which medical evidence indicated he was able to do. He declined the promotion, preferring to remain as a mail handler, performing that part of such work of which he was capable. He was therefore terminated. **HELD:** Since the claimant refused a reasonable transfer, which constituted a promotion, to the only work, which was then able to perform, the claimant thereby effectively voluntarily left his work without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 2200-CA-76. The claimant was replaced by another person while she was off work, with notice, due to illness. The claimant filed her initial claim without having applied for reinstatement because she had been told by the employer that she had already been replaced. **HELD:** The claimant did not quit but was discharged and for reasons other than misconduct connected with the work. The case was distinguished from a case in which a claimant, without having been told that he has been replaced, files an initial claim after being medically released as able to work but without having applied for reinstatement with his former employer. No disqualification under Section 207.045 or Section 207.044.

Also see Appeal No. 2726-CA-77 in this subsection and Appeal No. 3595-CA-75 under VL 135.10.

VL 235.40 Health or Physical Condition: Pregnancy.

Where claimant left work because she was pregnant, or because of an employer's rule against employing pregnant women.

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VL 235.40(2)

Appeal No. 87-11216-10-070287. The claimant declined a job assignment from her employer, a temporary agency, because it required long periods of standing which her doctor had advised her against because she was pregnant. The claimant told the employer that she could not stand but did not tell the employer that this was her doctor's advice. The employer did not contact the claimant again. **HELD:** The claimant quit without work-connected good cause because she neglected to tell the employer of her doctor's advice, thus depriving the employer of an opportunity to find her suitable work. Disqualification under Section 207.045. (Cross-referenced under VL 135.05.)

TEC vs. Gulf States Utilities, 410 S.W. 2nd (Texas Civ. Appeals 1967, writ denied, n.r.e.). A claimant who leaves her job as required by company policy, upon reaching the fifth month of pregnancy, does not leave her work voluntarily. The court held that, had her separation been held to be voluntary because she had agreed long before separation to resign upon reaching the fifth month of pregnancy, the provisions of Section 207.071(a) of the Texas Unemployment Compensation Act would void such an agreement since it provides that an individual cannot contract away or otherwise waive his right to unemployment insurance.

Appeal No. 1206-CA-74. The Commission has consistently held that, when a claimant is separated from his last work due to illness or disability and the claimant kept his employer properly informed of his condition, the separation is not voluntary. Therefore, no disqualification is imposed under Section 207.045 of the Act. No different treatment can be given a claimant simply because her physical inability to work is due to pregnancy.

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VL 235.45

VL 235.45 Health or Physical Condition: Risk of Illness or Injury.

Considers the effect of leaving work because of fear of illness or injury.

Appeal No. 87-16605-10-091687. The claimant, a dental assistant at a state prison, performed work requiring physical contact with inmates exposed or possibly exposed to the AIDS virus. Dental instruments often pierced the claimant's rubber gloves, causing her to bleed. The claimant's psychiatrist advised the claimant to quit her job because of her understandable fear of contracting the AIDS virus through the blood and the resultant stomach aches and headaches suffered by her. **HELD:** Good cause connected with the work to quit because the claimant quit on her doctor's advice and because of her much higher risk of contracting AIDS as compared to that of the general public. The claimant's fear was justified by her close contact with a high-risk group and it was clearly work-related because she was required by her employer to work on individuals exposed to the AIDS virus. No disqualification under Section 207.045 of the Act.

Appeal No. 87-71846-1-0887 (Affirmed by 87-14494-10-081487). When an employer which is a health care facility provides an employee with protective clothing, such an employee does not have good cause to quit such work based on his or her asserted fear of contracting the AIDS virus. Disqualification under Section 207.045.

Appeal No. 1562-CA-78. A week prior to his separation, the claimant, a night security guard for a shopping mall, was assigned the additional duty of checking sixty-three air conditioning compressors located on the roof of the mall. The claimant was able to complete his tour of the roof on only two nights and was so severely frightened at the prospect of ascending the roof after having been caught there during a thunderstorm that he quit when the employer insisted that he perform the duty.

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VL 235.45(2)

HELD: The claimant's inability to complete his newly assigned duty due to his fear of walking about the roof of the shopping mall and the employer's insistence that he perform this duty provided the claimant with good cause connected with the work for quitting.

Appeal No. 279-CA-78. On his employment application, the claimant indicated that he had no physical problems which would be affected by working around dust. After a few days' work in another area, he was transferred to the employer's sandblasting area. On several occasions during the ensuing several days, the claimant indicated to his supervisor that he did not like working in that area; however, he gave no medical evidence to justify it. The claimant quit after several days, later indicating that this was due to his suffering allergic rhinitis for many years. At the hearing, he furnished a doctor's statement describing his ailment and indicating that he should work around dust as little as possible. **HELD:** The claimant did not establish good cause connected with the work for his leaving. Not only did he not reveal his ailment on his employment application, he did not advise his supervisor of his ailment. The claimant did not make proper efforts to protect his job by presenting medical evidence of his inability to work in the sandblasting area or by requesting a transfer for specific medical reasons. Disqualification under Section 207.045.

Appeal No. 1137-CA-77. Although the claimant had known at the time of his hiring that he would be working with a substance known as foam glass, he quit his job because he did not like working with the substance and believed that working with it without wearing a respirator was injurious to his health. However, his physician would not say definitely that working with foam glass was adversely affecting the claimant's health. Furthermore, respirators had been conveniently available, yet the claimant never requested one nor indicated that one was not available to him. **HELD:** The claimant did not have good cause connected with the work for quitting, as no firm medical evidence was presented to establish that it was necessary for him to quit for medical reasons. Disqualification under Section 207.045.

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VL 235.45(3)

Appeal No. 3049-CA-76. The claimant quit his job because he felt that the fumes and gases near where he was working were causing irritation to his lungs. However, he did not discuss the problem with his foreman before quitting and did not attempt to wear the respirator furnished by the employer to protect his lungs from fumes. **HELD:** Since the claimant did not discuss his problems with his foreman before leaving and did not attempt to wear the protective device furnished by the employer to prevent lung injury, the claimant's leaving was without good cause connected with the work. Disqualification under Section 207.045.

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VL 290.00

VL Leaving Without Notice

VL 290.00 Leaving Without Notice.

Includes cases which consider the question of the claimant's having left work without notice.

Appeal No. 87-09870-10-060987. The claimant, having received an unrestricted medical release from his doctor, returned to work after an absence of several months on medical leave. After working 45 minutes on the date of return, the claimant left without notice to his supervisor or anyone else in a management position, because he felt he was not physically able to do the work. **HELD:** The claimant had a duty to inform his supervisor or other management personnel that the work was beyond his physical capabilities in order to provide the employer an opportunity to take corrective action by giving him lighter duty or allowing him to seek further medical evaluation. Disqualification under Section 207.045.

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VL 305.00

VL Military Service

VL 305.00 Military Service

Includes cases in which a leaving of work was caused by the worker's imminent or actual entrance into military service.

Appeal No. 97-009604-30-090497. The claimant, a civilian, was separated from her work as a secretary at a U.S. Naval Hospital overseas when her husband, a Navy enlisted man, was transferred to a base in the United States. Government regulations prohibit such military facilities from continuing to employ military dependents once their enlisted sponsor is transferred out of the commuting area. **HELD:** The claimant's separation under these circumstances was a voluntary leaving with good cause connected to the work. No disqualification. (Cross reference at VL 155.05).

Appeal No. 5332-AT-68 (Affirmed by 632-CA-68). A claimant who quits his job two weeks before the date he expects to be inducted into military service leaves voluntarily without good cause connect- ed with the work. Had he given the full two weeks advance notice prescribed by the company, he would have been entitled to a leave of absence which would have protected his job. Disqualification under Section 207.045.

Appeal No. 29,795-AT-66 (Affirmed by 268-CA-66). A claimant who resigns his job, with adequate notice, to enlist in the U.S. Navy is subject to a disqualification under Section 207.045.

Appeal No. 70,067-AT-59 (Affirmed by 6941-CA-60). The claimant quit his job when he received a notice to report for a physical examination for induction into the Armed Forces. Had he requested a leave of absence, he could have, after passing his physical, continued working the thirty to ninety days before induction. Since he did not request a leave of absence, he left his work voluntarily without good cause connected with the work. Disqualification under Section 207.045.

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VOLUNTARY LEAVING

VL 315.00

VL New Work

VL 315.00 New Work.

This line is used only with reference to determinations as to what constitutes "new work" within the meaning of section 1603(A)(5) of the internal revenue code (effective august 5, 1954, section 3304(A)(5) of the federal unemployment tax act) or state labor standard provisions patterned after it. includes cases involving a new contract of hire or a transfer to a different type of work, a different department, or a different plant, of the same employer.

U.S. DEPARTMENT OF LABOR
Manpower Administration Bureau of Employment Security
Washington, D.C. 20210

Unemployment Insurance
Program Letter No. 984
September 20, 1968

TO: All State Employment Security Agencies

Subject: Benefit Determinations and Appeals Decisions Which Require Determination of Prevailing Wages, Hours, or Other Conditions of Work.

References: Section 3304(a)(5)(B) of Federal Unemployment Tax Act; Principles Underlying the Prevailing Conditions of Work Standard, September, 1950, BSSUI (Originally issued January 6, 1947, as Unemployment Compensation Program Letter No. 130).

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VL 315.00

Purpose and Scope

To advise State Agencies and appeal authorities of the interpretation of the phrase "new work" for the purpose of applying the prevailing wage and conditions-of-work standard in Section 3304(a)(5)(B) of the Federal Unemployment Tax Act, particularly in relation to an offer of work made by an employer for whom the individual is working at the time the offer is made.

This letter is prompted primarily by a current problem arising from a number of recent cases in which findings were not made with respect to prevailing wages, hours or other conditions of the work, because apparently it was not considered that "new work" was involved.

Federal Statutory Provision Involved

Section 3304(a)(5) of the Federal Unemployment Tax Act, the so-called labor standards provision, requires State unemployment insurance laws, as a condition of approval for tax credit, to provide that:

"(A) compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

"(B) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;".

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VL 315.00 (2)

Legislative History

The prevailing wage and conditions-of-work standard, originally in Section 903(a)(5)(B) of the Social Security Act and since 1939 in Section 3304(a)(5)(B) of the Federal Unemployment Tax Act, applies only to offers of "new work".[1] The hearings before Congressional committees and the reports of these committees furnish little aid in construing the term.[2] The Congressional debates, however, clearly indicate that the labor standards provision was included in the bill for the protection of workers.[3] The objectives of the provision are clearly set forth by the Director of the Committee on Economic Security, which prepared the legislation:

". . . compensation cannot be denied if the wages, hours, or other conditions of work offered are substantially less favorable to the employee than those prevailing for similar work in the locality. The employee cannot lose his compensation rights because he refuses to accept substandard work. That does not mean that he cannot be required to accept work other than that in which he has been engaged; but if the conditions are such that they are substandard, that they are lower than those prevailing for similar work in the locality, the employee cannot be denied compensation."[4]

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[1] Many State Laws extend its application by specifying that "no work shall be deemed suitable" which fails to satisfy the standard.

[2] 2The Report of the Committee on Ways and Means on the social security bill (H.R. 7260), House Report No. 615, 74th Cong., 1st Session, page 35, uses the term "new job" and this is copied in the Report of the Senate Committee on Finance, Senate Report No. 628, 74th Cong., 1st Session, page 47, but the term "new job" is itself ambiguous and there is no indication that it was used by either committee in a narrow or exclusive sense.

[3] See statement of Senator Harrison, Congressional Record, Volume 79, page 9271.

[4] **Hearings Before the Committee of Ways and Means, House of Representatives**, 74th Cong., 1st Sess., on H.R. 4120, pp. 137-38.

VL 315.00(3)

It is plain that the purpose of Section 3304(a)(5)(B) is to prevent the tax credit from being available in support of State unemployment compensation laws which are used, among other things, to depress wage rates or other working conditions to a point substantially below those prevailing for similar work in the locality. The provision, therefore, requires a liberal construction in order to carry out the Congressional intent and the public policy embodied therein. Interpretation is required, for the term "new work" is by no means unambiguous. But any ambiguity should be resolved in the light of such intent and public policy.

Interpretation of "New Work"

For the purpose of applying the prevailing conditions-of-work standard in Section 3304(a)(5)(B) of the Federal Unemployment Tax Act, an offer of new work includes (1) an offer of work to an unemployed individual by an employer with whom he has never had a contract of employment; (2) an offer of reemployment to an unemployed individual by his last (or any other) employer with whom he does not have a contract of employment at the time the offer is made, and (3) an offer by an individual's present employer of (a) different duties from those he had agreed to perform in his existing contract of employment, or different terms or conditions of employment from those in his existing contract.[5]

[5] The "group attachment" concept is outside the scope of this letter. "Group attachment" arises under the provisions of an industry-wide collective bargaining agreement between a group of workers and a group of employers whereby workers cannot be hired directly by individual employers but are referred to the employers by a hiring hall on a rotational basis and under which each worker has a legally enforceable right to his equal share of the available work with such employers. See Matson Terminals, Inc. vs. California Employment Commission, 151 P. 2d 202, discussed in the Secretary's decision with respect to Washington dated December 28, 1949, and the Secretary's decision in the California conformity case, Benefit Series, FLS 315.05.1.

VL 315.00(4)

This definition makes the determination of whether an offer is of "new work" depend on whether the offer is of a new contract of employment. This we believe is sound.

All work is performed under a contract of employment between a worker and his employer. The contract describes the duties the parties have agreed the worker is to perform, and the terms and conditions under which the worker is to perform them. If the duties, terms or conditions of the work offered by an employer are covered by an existing contract between him and the worker, the offer is not of new work. On the other hand, if the duties, terms, or conditions of the work offered by an employer are not covered by an existing contract between him and the worker, the offer is of a new contract of employment and is, therefore, new work.

But if the phrase "new work" were limited to work with an employer for whom the individual has never worked, it is plain that the purpose of Section 3304(a)(5)(B) would be largely nullified. It can make no difference, insofar as that purpose is concerned, that the unemployed worker is offered reemployment by his former employer rather than employment by one in whose employ he has never been. It can make no difference either in the application of the test. The question is whether the offer of reemployment is an offer of a new contract of employment. If the worker quit his job with the employer, or was discharged or laid off indefinitely, the existing contract of employment was thereby terminated. An indefinite layoff, that is, a layoff for an indefinite period with no fixed or determined date of recall, is the equivalent of a discharge.

The existence of a seniority right to recall does not continue the contract of employment beyond the date of layoff. Such a seniority right is the worker's right; it does not obligate the worker to accept the recall and does not require the employer to recall the worker. It only requires the employer to offer work to the holder of the right, before offering it to individuals with less seniority.

VL 315.00(5)

Any offer made after the termination is of a new contract of employment, whether the duties offered to the worker are the same or different from those he had performed under his prior contract or are under the same or different terms or conditions from those governed by his last employment. There is not, however, a termination of the existing contract when the worker is given a vacation, with or without pay, or a short-term layoff for a definite period. When the job offer is from an employer for whom the individual had previously worked, inquiry must be made as to whether the contract with the employer was terminated, and if so, how?

Although this has been more difficult for some to see, the situation is no different when an individual's present employer tells him that he must either accept a transfer to other duties or a change in the terms and conditions of his employment or lose his job. Applying the test, it is clear that an attempted change in the duties, terms or conditions of the work, not authorized by existing employment contract, is in effect a termination of the existing contract and the offer of a new contract. Not only is this a sound application of legal principles, but it is thoroughly in harmony with the underlying purpose of the prevailing conditions of work provision. That purpose would be largely frustrated if benefits were denied for unemployment resulting from the worker's refusal to submit to a change in working conditions which would cause these conditions to be substantially less favorable to a claimant than those prevailing for similar work in the locality. The denial of benefits in such circumstances would tend to depress wages and working conditions just as much as a denial of benefits for a refusal by an unemployed worker to accept work under substandard conditions. If a proposed change in the duties, terms, or conditions of work not authorized by the existing employment contract were not "new work", the prevailing wage and conditions of-work standard could be substantially impaired by employers who hired workers at prevailing wages and conditions, and thereafter reduced the wages or changed the conditions, thereby depriving workers of the protection intended to be given them by the prevailing wage and conditions-of-work standard. The terms of the existing contract, so important in this situation, are questions of fact to be ascertained as are other questions of fact.

VL 315.00(6)

The following are examples of offers of new work by the employer for whom the individual is working at the time of the offer:

a. A worker employed as a carpenter is offered work as a carpenter's helper as an alternative to a layoff.

b. A bookkeeper is transferred to a job as a typist.

c. The hours of work of a factory worker employed for an eight-hour day are changed to ten-hours a day.

d. A worker employed with substantial fringe benefits is informed that he will no longer receive such benefits.

e. A worker employed at a wage of $3 an hour is informed that he will thereafter receive only $2 an hour.

In each of these cases either the offered duties are not those which the worker is to perform for the employer under his existing contract of employment, or the offered conditions are different from those provided in the existing contract.

Applying the Prevailing Conditions-of-Work Standard

The prevailing wage and conditions-of-work standard does not require a claims deputy or a hearing officer to inquire into prevailing wages, hours, or working conditions in every case of refusal of new work, or to determine in every such case in which he denies benefits whether the wages, hours, or other conditions of offered work are substandard. This would be unnecessarily burdensome. However, a determination must be made as to prevailing conditions of work when (1) the claimant specifically raises the issue, (2) the claimant objects on any ground to the suitability of wages, hours, or other offered conditions, or (3) facts appear at any stage of the administrative proceedings which put the agency or hearing officer on notice that the wages, hours, or other conditions of offered work might be substantially less favorable to the claimant than those prevailing for similar work in the locality.

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VL 315.00(7)

State agency determinations and decisions at all levels of adjudication must reflect the State agency's consideration of prevailing conditions of work factors when pertinent. In particular, referees' decisions as to benefit claims must contain, in cases where issues arise as indicated above, appropriate findings of fact and conclusions of law with respect to the prevailing conditions-of-work standard. This is so whether the state ultimately determines the worker's right to benefits under the refusal-of-work provision of the State law or some other provisions, as, for example, under the voluntary quit provision. Since the Federal law requires, for conformity, that State laws include a provision prohibiting denial of benefits for refusal of new work where the conditions of the offered work are substantially less favorable to the individual than the conditions prevailing for similar work, there cannot be, under the State law, a denial in such circumstances regardless of the provision of State law under which the ultimate determination is made.

In applying the labor standards, the State agency must determine first whether the offered work is "new work". If it is "new work" a determination must be made as to (1) what is similar work to the offered work, and (2) what are the prevailing wages, hours, or other conditions for similar work in the locality, and (3) whether the offered work is substantially less favorable to the particular claimant than the prevailing wages, hours, or other conditions. The key words and phrases in this standard ("similar work", "locality", "substantially less favorable to the individual", and "wages, hours and other conditions of work") are discussed in detail in the Bureau's statement, Principles Underlying the Prevailing Conditions of Work Standard, Benefit Series, September, 1950, 1-BP-1, BSSUI (originally issued January 6, 1947, as Unemployment Compensation Program Letter No. 130).

Please bring this letter to the attention of State agency and Appeal Board personnel engaged in benefit claim adjudication at all levels.

Rescissions: None

Sincerely yours, Robert C. Goodwin, Administrator

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VL 315.00(8)

Appeal No. 578-CA-70. A claimant has good cause to refuse transfer to another position which pays substantially less than the wage most commonly paid for such work in the area.

Appeal No. 7618-AT-69 (Affirmed by 794-CA-69). A claimant does not have good cause for quitting rather than changing to a different occupation when the change would have been temporary, and the wage offered was not substantially lower than that paid in that occupation in the area and the claimant would have suffered no reduction in pay. Disqualification under Section 207.045.

Appeal No. 5981-AT-69 (Affirmed by 645-CA-69). A claimant does not have good cause connected with the work for quitting if she could have accepted a transfer to another job which would have posed no threat to her health, safety or morals and the wage and working conditions would have been the same as on the job she had been performing and were not less favorable than similar work in the area. Disqualification under Section 207.045.

Appeal No. 1698-AT-69 (Affirmed by 222-CA-69). A claimant has good cause to quit when he is to be transferred from day hours to night hours, a change in job conditions which would be less favorable to him.

Appeal No. 89-CF-69. A claimant had good cause to quit her new job with the employer because there were no separate restroom facilities, thereby making working conditions less favorable than those prevailing for similar work in the locality. (Cross-referenced under VL 515.70.)

Appeal No. 6755-AT-68 (Affirmed by 789-CA-68). A claimant does not have good cause to quit rather than accept a reduction in wage of 6.3 percent, when the employer was forced to reduce wages of all non-production employees due to an adverse turn in business, and it is shown that claimant's wage after the reduction would not have been substantially less than the prevailing wage for similar work in the area. Disqualification under Section 207.045.

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VL 345.00

VL Pension

VL 345.00 Pension.

Includes cases in which the claimant left employment in order to qualify for or to receive some form of pension, or because he could not qualify under his employer's pension plan.

American Petrofina v. TEC, et al, 795 S.W.2d 899 (Tex. App. Beaumont 1990). The employer instituted a change in the manner in which lump-sum retirement benefits were to be calculated for all employees retiring after a certain date. The two claimants' benefits would thereby have been reduced 23% and 24%, respectively. However, both claimants elected early retirement prior to the effective date of the employer's change. **HELD:** The court held that the Commission's decision that the claimants had not voluntarily left their last work without good cause connected with the work was consistent with prior Commission precedents holding that workers who have accrued benefits reduced without their consent have good cause connected with the work for resigning. The Commission ruling on the claimants' unemployment insurance entitlement did not constitute a ruling that the employer was guilty of an unfair labor practice, thereby intruding into an area preempted by federal law.

Appeal No. 3312-CF-77. The claimant, a U.S. Postal Service employee who was disabled except for light work, elected to take disability retirement. However, according to the claimant's doctor's report, he was able to do light work of the type he was doing at the time he retired. **HELD:** Since the work the claimant was performing at the time of his separation fit the light duty standards set by his doctor, the claimant's leaving was voluntary and without good cause connected with the work. Disqualification under Section 207.045.

Also see Appeal No. 3557-CF-77 under VL 235.25.

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VOLUNTARY LEAVING

VL 350.00(2)

Appeal No. 1120-AT-72 (Affirmed by 249-CA-72). A claimant does not have good cause connected with the work for quitting because she has earned the maximum allowed without affecting her Social Security payments which she receives as a widow.

Appeal No. 4386-AT-69 (Affirmed by 481-CA-69). A claimant had good cause connected with his work for requesting early retirement when the employer had recommended that the claimant accept early retirement and, after claimant's refusal to do so, the employer demoted the claimant and pointed out continued failure on the job would threaten his job and future retirement benefits.

Appeal No. 859-CA-68. A claimant's mandatory retirement under the employer's pension plan at an age and time determined by the employer is not a voluntary leaving. It is an action by the employer under the employer's retirement policy, constituting a discharge because of attaining a certain age and not for misconduct connected with the work. No disqualification under Section 207.045 or Section 207.044 of the Act.

Appeal No. 21,141-AT-65 (Affirmed by 475-CA-65). No disqualification is in order under Section 207.045 when a claimant accepts early retirement on the advice of her doctor due to her physical condition.

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VL 360.00

VL Personal Affairs

VL 360.00 Personal Affairs

Includes cases which involve personal reasons for leaving not contemplated by any of the other lines in the voluntary leaving division of the code.

Appeal No. 2400-CA-76. The claimant, a crew member of a shrimp boat, stated on his last voyage that he wanted to go on a vacation after the completion of the voyage. Therefore, he did not seek work on the next voyage nor did the employer attempt to hire him for it. **HELD:** By not attempting to obtain further employment with the employer, the claimant voluntarily left his last work without good cause connected with the work. Disqualification under Section 207.045.

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VL 365.00 – 365.15

VL Prospect of Other Work

VL 365.00 Prospect of Other Work.

VL 365.05 Prospect of Other Work: General.

Includes cases involving (1) a general discussion of prospects of other work, (2) points not covered by any other subline under line 365, and (3) points covered by three or more sublines under line 365.

Appeal No. 1256-CA-77. The claimant, employed as a cashier and waitress in a restaurant, resigned while there was still work available because she wanted to seek office work. **HELD:** The claimant voluntarily left her last work without good cause connected with the work. Disqualification under Section 207.045.

VL 365.10 Prospect of Other Work: Characteristics of Other Work.

Appeal No. 31,958-AT-68 (Affirmed by 481-CA-66). A claimant who quit without notice to go into business for himself was disqualified under Section 207.045.

VL 365.15 Prospect of Other Work: Definite.

Where the claimant's justification for leaving one job is predicated upon the question of his having had reasonably definite or certain prospects of other employment.

Appeal No. 2541-CA-76. The claimant was asked to come to work for a former employer and agreed to work for him through March 31 but not thereafter, as she had another job beginning April 1. She worked through March 31, never advising the employer that she could work for him longer. The employer would originally have employed her for an indeterminate time had she not said that she was available for work only through March 31. The other job failed to materialize, and the claimant thereupon filed her initial claim.

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VL 365.15(2) – 365.25

HELD: As the claimant had stated to the employer that she could work only through March 31, and the employer would have been willing for her to work longer, it is the claimant who brought about her work separation, voluntarily and without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 1301-CA-76. The claimant resigned from his last work, with notice, in order to take another job. When the new job failed to materialize, the claimant promptly reapplied for his old job but was not reinstated because he had been replaced during the period of notice which he had given. **HELD:** By resigning in order to accept other employment which did not materialize, the claimant thereby voluntarily left his last work without good cause connected with the work. Disqualification under Section 207.045.

Also see VL 135.25 and MC 135.25.

VL 365.25 Prospect of Other Work: Uncertain.

Where the claimant's justification for leaving a job is affected by his lack of reasonably definite or certain prospects of other employment.

Appeal No. 2396-AT-68 (Affirmed by 304-CA-68). A claimant does not have good cause connected with the work to quit a job when his acceptance by another employer is conditioned upon his passing a test. The claimant failed the test and thus the other work did not materialize. The claimant probably could have protected his job by asking for time off to take the test for the better job.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 385.00

VL Relation of Alleged Cause to Leaving

VL 385.00 Relation of Alleged Cause to Leaving.

Includes cases in which there is a discussion of whether the claimant's reason for leaving work was too remote from the time of leaving to constitute a cause thereof; also, whether the alleged reason for leaving was the primary cause of the separation.

Appeal No. 87-00274-10-122987. The claimant voluntarily re-signed approximately four weeks after his hours were reduced from 47 hours per week to 10 hours per week, such reduction caused by lack of work. The reduction did not affect the claimant's hourly wage. The reasons given by the claimant for his resignation were his inability to meet his expenses because of such reduced hours and, further, his having found another job (which did not materialize). **HELD:** The amount by which his hours had been reduced did not provide the claimant with good cause because the claimant had accepted this change in his hiring agreement by continuing to work four weeks after the change occurred. Furthermore, the claimant's decision to leave was based on his assumption that he had found another job which would provide more hours. Disqualification under Section 207.045. (Cross-referenced under VL 450.153.)

Appeal No. 86-09201-10-052687. The claimant accepted the job as the employer's shipping supervisor, a salaried position, with the understanding that little overtime would be required and there would be no overtime pay. Almost immediately after starting work for the employer, the claimant was working 60 to 80 hours per week and continued to do so. The claimant did not complain about the overtime until shortly before resigning. He resigned after some ten months of work when told that the overtime would continue.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 385.00(2)

HELD: As the claimant continued working for the employer for almost one year after discovering that he would be expected to work overtime hours and that he would not be paid for any work beyond 40 hours per week, the claimant's quitting was without good cause connected with work. (Cross-referenced under VL 450.35.)

Appeal No. 1831-CA-77. About a month before the claimant quit work, her supervisor had given her certain directions about over- time and compensatory time. During the ensuing month, she was able to work within the framework of her supervisor's guidelines and the employer's formal policy on overtime. Had the claimant been unable, for a good reason, to comply strictly with the overtime policy, alternative arrangements could have been made; however, the claimant did not raise the issue at any time during her last month. **HELD:** Since the claimant continued to work for the employer for about a month after the conversation which caused her to quit, she did not have good cause connected with the work for quitting at the time that she did. Disqualification under Section 207.045.

Appeal No. 31,891-AT-66 (Affirmed by 452-CA-66). Although the claimant contended, she quit because, some two months prior to her separation, her supervisor had complained of her taking off one day for a dental appointment, she admittedly told the employer she was resigning to look after her three children. **HELD:** Since the claimant worked for weeks after the incident of which she complained and such incident, as she described it, was not serious, the reason she gave the employer for leaving was deemed the primary reason. Disqualification under Section 207.045.

Also see Appeal No. 87-10684-10-061987 under VL 500.25 and Appeal No. 87-2916-10-022488 under VL 500.35.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 440.00

VL Termination of Employment

VL 440.00 Termination of Employment.

Includes cases which include separation from employment based upon contract expiration, sale of claimant's interest in business, separation by mutual agreement, or imposition of terms which are different from those existing at the time of the hiring, and which raise a question of whether there was an offer of a new job. Cases which raise a question of compliance with section 1603(a)(5) of the internal revenue code or of state labor standards provisions patterned thereafter should be coded to line 315, "new work".

Appeal No. 1689-CA-77. The claimant, president and minority stockholder of the employer corporation, was advised by the majority stockholders that they no longer wished to be associated with him and that, if he refused to resign from the presidency and sell his stock, he would be voted out of the office of president. **HELD:** Although according to the stock sale agreement, the claimant agreed to resign his position as president, he was actually discharged by the majority stockholders since his only real choice was whether he would be unemployed with or without the funds he could receive from the sale of his stocks. Finding no misconduct connected with the work on the claimant's part, the Commission imposed no disqualification under either Section 207.045 or Section 207.044.

Appeal No. 1760-CA-76. The claimant had a contract to work overseas for the employer for two years. Three months prior to the end of the term of his original contract, he was offered a one-year extension of the contract. He declined the offer, advising the employer that he would be returning to the United States upon the completion of his two-year contract. **HELD:** By choosing to terminate his employment by not extending his contract when continued work was indisputably available for him, the claimant voluntarily left his last work without good cause connected with the work. Disqualification under Section 207.045. (Cited in Appeal No. 87-98680-1-1187 (Affirmed by 87-19987-10-111787) under VL 135.25.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 440.00(2)

Appeal No. 264-CA-72. When a claimant sets in motion the circumstances which result in his separation by disposing of his stock, Section 207.045 of the Act is applicable even though the claimant works for the new stockholders a short period of time to acquaint them with the operation of the business.

Appeal No. 179-CA-65. The claimant, a principal stockholder and president of the employer bank, was aware that the bank's bylaws required the president to be a board member and a board member, in turn, to be a stockholder. He voluntarily sold all his stock in the bank and because of the requirements of the bylaws, resigned as president the day after the sale. **HELD:** The claimant's separation was tantamount to a voluntary resignation without good cause connected with the work. Disqualification under Section 207.045.

Also see Section 5(f) (now codified as Section 207.051) of the Act.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 450.00 – 450.10

VL Time

VL 450.00 Time.

VL 450.05 Time: General.

Includes cases containing (1) a general discussion of time, (2) points not covered by any other subline under line 450, or (3) points covered by three or more sublines.

Appeal No. 87-19666-10-111387. After being released to return to work from an injury, the claimant told the employer that she was no longer available to work Thursday evenings or weekday mornings at her waitress job because she had decided to enroll in a religious class and in school. The times for which the claimant was available were not open on the employer's schedule. **HELD:** The claim- ant voluntarily resigned without good cause connected with the work because she precluded her return to work by placing new restrictions on the time, she was available for work. Disqualification under Section 207.045.

VL 450.10 Time: Days of the Week.

Where claimant left work because he objected to working a particular day, or number of days, in the week.

See Appeal No. 4901-AT-70 (Affirmed by 567-CA-70) under VL 90.00.

VL 450.15 Time: Hours.

VL 450.152 Time: Hours: Irregular.

Where work was left because of the employer's refusal of the worker's request for irregular hours, or because of the worker's objection to a requirement that he work such hours.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 450.15(2)

Appeal No. 1977-CA-76. The claimant quit work because he could not be assured of regular employment as the employer did not guarantee forty hours of work per week. Work was available for the claimant with this employer when he resigned. **HELD:** The fact that the claimant could not be assured regular employment did not provide him with good cause connected with the work for quitting. Disqualification under Section 207.045.

Appeal No. 1379-CA-76. The claimant, a nurse's aide, was originally hired to work a forty-hour week. Later, the employer wanted to double the number of patients for whom the claimant was to be responsible, but she declined to take on the added responsibility. Thereafter, her working hours were reduced by about 50% and she was placed on an as-needed basis. When she was told that she would have to accept the reduced work schedule or quit, she quit. **HELD:** The reduction in the claimant's hours by half and her change from regular to as-needed basis amounted to such a substantial change in the claimant's hiring agreement as to have provided her with good cause connected with the work for her quitting.

Appeal No. 899-CA-76. The claimant had no set hours but was on call seven days a week. He resigned because he was averaging only twenty to thirty hours per week. **HELD:** Since the claimant knew when he was hired that his hours of work would be variable, he did not have good cause connected with the work for quitting. Disqualification under Section 207.045.

VL 450.153 Time: Hours: Long or Short.

Involves leaving work because the hours were either too long or too short.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 450.153(2)

Appeal No. 2076-CA-77. The claimant's hours were temporarily reduced for one week in order to alleviate an overstaffing problem in the department where she worked. When the claimant asked her, the claimant's immediate supervisor did not know the reason for the reduction. The claimant made no further inquiry of anyone in authority but simply decided, without notice, to not report for work at all. When the employer's manager called to find out why the claimant was not at work, her husband told him that she had resigned. **HELD:** By simply not showing up for work, without notice, during a week in which she was to work reduced hours, without making inquiry beyond her immediate supervisor as to the duration of the reduction, the claimant voluntarily left her last work without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 4042-CA-76. Because of the decline in business, the weekly hours of the claimant and other full-time employees were reduced from 40 hours to about 25 hours and the claimant was required to work a split shift. Because of the split shift, the claimant's childcare and transportation costs were as much, if not more than, they were before her hours were reduced. As it appeared that the reduction in hours would continue, the claimant gave notice and quit. **HELD:** Since the claimant's hours and earnings were substantially reduced by the employer in a manner which assured that the fixed expenses of the claimant's working would not be reduced, she had good cause connected with the work for quitting.

Appeal No. 1628-CA-76. The claimant quit work because she was reduced from full-time work (forty hours per week) to the part-time schedule (thirty hours per week) which she had originally worked. **HELD:** The claimant did not have good cause connected with the work for quitting since the reduction was not substantial and was simply a return to the same part-time schedule for which she had originally been hired. Disqualification under Section 207.045.

Also see Appeal No. 87-00274-10-122987 under VL 385.00.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 450.154 – 450.20

VL 450.154 TIME: Hours: Night.

Leaving because of objection to, or insistence upon, night work.

Appeal No. 615-CA-71. The claimant and her husband both worked for the employer but on different shifts. They were aware the employer would not allow them to work the same shift. When the claimant's husband chose to work the day shift and the claimant refused to transfer to the night shift, it was held that she quit voluntarily without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 13201-AT-70 (Affirmed by 119-CA-71). A claimant who has been working as a cook on the day shift for four years and cannot work nights because of family responsibilities, has good cause to quit rather than transfer to the night shift.

Appeal No. 8623-AT-69 (Affirmed by 36-CA-70). A claimant who is hired to work the day shift and makes known to the employer at the time of hire that she cannot work a night shift, has good cause to quit rather than accept transfer to a night shift.

Also see Appeal No. 184-CA-78 under MC 255.305.

VL 450.20 Time: Irregular Employment.

Where the leaving occurred because of the worker's objection to the irregularity of the employment relationship. Cases classified to this subline are distinguished from "hours: irregular" in that the former relate to the irregularity of the employment relationship, whereas the irregular hours cases are those in which the employment relationship continues steadily over a period of time, but the hours vary.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 450.00(2)

Appeal No. 99-001852-10-022300. The claimant worked four hours for the employer on December 27, 1999. He did not work a full shift on this date due to inclement weather. The claimant did not work on December 28, 1999, due to inclement weather. The employer sent crews back to work December 29, 1999, since the weather had cleared up. However, the claimant did not report for work on this date. The claimant returned to work on December 30, 1999 and worked this day and the following day. The claimant filed his initial claim for benefits on December 28, 1999. The claimant knew he should return to work when the weather improved. **HELD:** The employment relationship continues whenever inclement weather causes a brief cessation of work, such as in this case, of three days or less. When a claimant files a claim during this time, a separation occurs, and the claimant must show good cause connected with the work to avoid a disqualification for leaving without good cause connected with the work. The record reflects no evidence that the claimant had good cause connected with work for quitting, therefore, we will reverse the Appeal Tribunal decision by disqualifying the claimant from the receipt of benefits under Section 207.045 of the Act. (Also digested at MS 510.00).

Appeal No. 2398-CA-76. The claimant was employed by a temporary help service. Prior to the completion of an assignment of an expected duration of about thirty days, she resigned without notice, because she had an interview that day for a permanent job and wanted to be available for that and other permanent work, as she no longer regarded clerical work as suitable. **HELD:** Since the claimant had been aware of the clerical and temporary nature of the job when she accepted it, her preference for other types of work did not provide her with good cause connected with the work for quitting. Furthermore, her desire to attend a permanent job interview did not provide her with such good cause either. Disqualification under Section 207.045.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 450.20(2)

Appeal No. 1197-CA-71. Claimant's work was in a type of work where an occasional day or two off due to bad weather is not unusual and he knew he should report back when the weather cleared. When he failed to do so and then filed his initial claim, he, in effect, abandoned his job without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 5076-CA-52. The claimant was an oil drilling crew member. It was necessary to shut down the claimant's rig for four days while it was being moved to a new location. All crew members were expected to report for work as soon as the rig reached its new location. The claimant failed to report as expected, and thus was replaced, because he was attending to personal business. **HELD:** In the oil drilling business, it is customary for the drilling crew to be temporarily idle while the rig is being moved to a new location and for the crew to report for work as soon as the rig reaches its new location. In this case, neither the claimant nor the employer considered the claimant's employment terminated when the rig temporarily ceased operations in order to be moved. By failing to report for work as expected, the claimant voluntarily quit work without good cause connected with the work. Disqualification under Section 207.045.

LV 450.30 Time: Leave of Absence or Holiday.

Leaving because of the employer's refusal of the worker's request for time off or a leave of absence, or because of a requirement that the worker work on a holiday.

Appeal No. 719-CA-77. The claimant had previously worked for the employer for three years and was discharged. Thereafter he was rehired without reinstatement of fringe benefits. He quit eight months thereafter because he was denied a two-week paid vacation. In view of his rehire date and the fact that his fringe benefits were not reinstated when he was rehired, he would not have been entitled to a two-week paid vacation until four months thereafter. **HELD:** The denial of the requested paid vacation did not provide the claimant with good cause connected with the work for leaving. Disqualification under Section 207.045.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 450.30(2) – 450.35

Appeal No. 3399-CA-75. The claimant, a dispatcher, quit work after his request for a leave of absence had been denied. He had made the request because of an incident in which a driver had called him names, using vulgar terms, and had thereafter attempted to hit the claimant. The general manager had counseled both the claimant and the other employee, but the claimant believed that he needed a leave of absence in order to calm down. **HELD:** The claimant's quitting because of the denial of his requested leave of absence was without good cause connected with the work since the employer's general manager took reasonable steps to resolve the situation and there had been no further incidents which would have justified the claimant's quitting. Disqualification under Section 207.045.

VL 450.35 Time: Overtime.

Leaving work because the employer refused the worker's request for overtime, or because of the employer's insistence that the worker perform overtime work.

Appeal No. 683-CA-78. The claimant quit primarily because, on two occasions, she had been promised overtime work but was not given such work because changes in work schedules removed the necessity for it. There was no agreement at the time of her hiring that the claimant would be given overtime work. **HELD:** There was no agreement at the time of her hiring that the claimant would be given overtime work and the fact that, on several occasions, the employer thought that he would need overtime but then did not, did not give the claimant good cause connected with the work for quitting. Disqualification under Section 207.045.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 450.35(2) – 450.40

Appeal No. 2626-CA-76. The claimant had previously quit work for the employer as a convenience store manager because of working conditions, including having to work excessively long hours to fill in for employees who did not report for work. She was subsequently rehired at one of the employer's stores as a cashier with the assurance that she would be expected to work overtime only in unexpected emergencies. On her first day, the claimant was not relieved at the end of her eight-hour shift. Despite complaints to the employer, she worked twelve hours without relief and quit. **HELD:** Since the claimant had been assured that her store had a full crew and that she would be expected to work overtime only in unexpected emergencies, her quitting after not being relieved after twelve hours on duty was based on good cause connected with the work.

Appeal No. 3667-CA-75. The claimant, a salaried employee who had been hired to work fifty hours per week, later began to be expected, along with other employees, to work 52 to 55 hours a week without overtime pay. He discussed the matter with management, but nothing was done as it was necessary to the business that everyone work some overtime as needed. The claimant felt that he should not have to work overtime hours without overtime pay so he quit. **HELD:** Since the increase in hours was not a substantial change in his hiring agreement and since the claimant was not being discriminated against, his quitting was without good cause connected with the work. Disqualification under Section 207.045.

Also see Appeal No. 86-09201-10-052687 under VL 385.00.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 450.40 Time: Part Time or Full Time.

Leaving work because the employer refused the worker's request for part-time or full-time work, or because the worker objected to part-time or full-time work.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 450.40(2) – 450.55

Appeal No. 597-CA-78. A claimant who was working 36 hours a week on a regular basis and whose weekly hours were reduced by 20% and changed to an irregular basis, thereby impeding her work search, had good cause connected with the work for quitting.

Appeal No. 374-CA-74. The claimant was hired to work three days a week and quit because she was reduced to one day's work a week. **HELD:** The two-third's reduction in the amount of work provided the claimant constituted a substantial change in her hiring agreement which provided her with good cause connected with the work for quitting.

Appeal No. 38-CA-72. If a claimant's reduction from full-time to part-time work was at the claimant's request, any period of unemployment would be attributable to the claimant and a disqualification would be in order under Section 207.045 of the Act.

Also see Appeal No. 370-CA-70 under MS 510.00 and cases under VL 500.752.

VL 450.55 Time: Temporary.

Leaving work because of the worker's objection to, or insistence upon, temporary employment.

Appeal No. 2755-CA-77. The claimant had previously worked for the employer for twelve years and quit work to enter self- employment. At that time, she was told that the employer would have full-time work for her any time she wanted it. Thereafter, she worked for the employer on a temporary job which lasted two days. She completed that job and told the employer that she was available for occasional, future temporary assignments. At all times, the employer had had regular full-time work for her.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 450.55(2)

HELD: Although the claimant completed the temporary assignment for which she had been called, since she had previously voluntarily quit the same employment in order to enter self-employment and had then been told by the employer that regular, full-time work would be available to her should she again desire it, the claimant was under some duty to let the employer know if she was available for more than the temporary job assignment. Her failure to do so amounted to a voluntary leaving without good cause connected with the work.

Disqualification under Section 207.045.

Appeal No. 89-CA-64. At the time claimant accepted a two-week temporary job, the employer offered her a permanent full-time job, which she declined. On the following day, the claimant advised the employer that she had reconsidered the offer but, by then, the permanent full-time vacancy had been filled. **HELD:** By declining the offer of permanent full-time work, the claimant in effect limited herself to the temporary job. Under such circumstances, she effectively voluntarily left her last work without good cause connected with the work. Disqualification under Section 207.045.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 475.00 – 475.05

VL Union Relations

VL 475.00 Union Relations.

VL 475.05 Union Relations: General.

Includes cases containing (1) a general discussion of leaving because of union relations, (2) points not covered by any other subline under line 475 and, (3) points covered by three or more sublines.

Appeal No. 209-CA-73. Pursuant to the collective bargaining agreement between the National Maritime Union, the claimant's union, and various tanker companies, including the employer, National Shipping Rules were adopted by a joint labor management board. The Rules provided that, when a seaman became eligible for, and availed himself of, vacation leave, a relief seaman was to be hired to replace him during his absence. The Rules further provided that, in order to protect the vacationing seaman's seniority, the relief seaman was to be separated when the regular seaman returned to duty. The claimant worked as a vacation relief cook and, under the Rules and collective bargaining agreement, was allowed to work only until such time as the regular cook returned from vacation. **HELD:** Since the National Shipping Rules were adopted pursuant to the collective bargaining agreement by a joint labor-management board, the Rules must be imputed to the employer as well as to the claimant's union and the claimant must be deemed to have had no greater control over the adoption of the Rules than the employer. Accordingly, a seaman separated under the circumstances in this case was actually discharged within the meaning of Section 207.044 of the Act and under circumstances which reflected no misconduct connected with the work on his part. No disqualification under Section 207.045 or Section 207.044.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 475.05(2) – 475.10

Appeal No. 27,633-AT-65 (Affirmed by 37-CA-66). A claimant who, when notified of a reduction in force in his job classification, resigns rather than exercise his bumping privilege and accept a transfer to a different type of work pursuant to the terms of the agreement between the employer and the claimant's union, leaves voluntarily without good cause connected with the work. Under the terms of the agreement, had the claimant accepted the transfer, he would have received his regular rate of $2.72 per hour for thirty days and then been reduced to $2.27 per hour, the rate customarily payable for the job to which he would have been transferred. Disqualification under Section 207.045. (Cited as controlling in Appeal No. 86 00443-10-121886, digested under VL 135.05 and Cross-referenced under VL 495.00.)

VL 475.10 Union Relations: Agreement with Employer.

Where the worker's decision to leave work is motivated by the alleged violation, by the employer, of an employer-union agreement. Includes only those cases dealing with employer-union agreement not specifically covered by any other subline under line 475.

Appeal No. 671-CA-69. Although not a union member, the claim- ant had been a member of the bargaining unit covered by a con- tract between the employer and the union. The contract provided for a grievance procedure and for certain conditions which must be met before an employee could be assigned Sunday work. The claimant was assigned Sunday work without such conditions having been met. She objected to the assignment but did not file a grievance and quit when she was again assigned Sunday work. **HELD:** Since the claimant was assigned Sunday work contrary to the employer union contract and despite her objections, her resignation was for good cause connected with the work regardless of whether or not she resorted to the grievance procedure to compel the employer to adhere to the terms of the employer-union contract.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 495.00

VL Voluntary

VL 495.00 Voluntary.

Includes cases in which the decision is based upon a finding as to whether or not the leaving was "voluntary".

Appeal No. 99-008549-10-090999. The claimant participated in a training program offered by the employer, earning an hourly rate while learning job skills. The claimant entered into the program with the knowledge that it was a work skills training program, designed to provide her with the skills needed to gain productive work. Separation occurred when she successfully completed the program. **HELD:** The Commission found that the claimant's separation from the skills training program was analogous to the circumstances in work study participant cases. The claimant's training was structured to continue only for the length of the work skills training program. As in the cases of work study participants, the work was not structured to continue beyond the end of her program participant status. When the program ended, the claimant's work ended. The claimant was aware when she entered into the program that this would be the case. Accordingly, the Commission held that the claimant voluntarily left the last work without good cause connected with the work. Cross-referenced at VL 135.05 and MC 135.05.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 495.00(2)

TEC v. Clara Huey, et al, 342 S.W. 2d 544 (Texas Sup. Ct. 1961). The employer and the union entered into an agreement providing for vacation with pay if a person had been employed one year or more as of May 1. No provision was made either for employees who had worked less than one year or for a plant shutdown. The vacation period was set by the employer between June 1 and September 30. The claimant and others had not worked a full year by May 1 and were not entitled to vacation pay. No work was available for them when the employer decided, over the objection of the union, to partially shut down the plant during the period May 21 through June 4. (Cross-referenced under TPU 80.20.) The court stated that the test to determine the reason for separation under such contract was to ask, "for whose primary benefit is the shutdown?". If the plant is shut down for the benefit or convenience of the employer, those employees who were laid off without pay and who meet eligibility requirements of the Commission, are entitled to benefits without disqualification. If the union seeks or demands a vacation shutdown for the benefit of all employees, then their vacation would be voluntary, and they would not be entitled to benefits. **HELD:** The court determined that: (1) the plant was shut down for lack of orders and to change styles; hence for the employer's benefit; (2) the contract did not state that all employees must take a vacation, paid or not, during shutdown; (3) there was no provision in the contract for vacations for employees with less than one year seniority; and (4) the union never agreed that vacation should be by shutdown. Accordingly, it was held that the claimants did not leave their work voluntarily without good cause.

Also see General Electric case under TPU 80.20.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 495.00(3)

Appeal No. 86-14984-10-111886. In an effort to avoid layoffs, the employer offered a monetary incentive to workers who opted to leave their work. Had layoffs been necessary, workers would have been laid off by seniority. However, the claimant, because of her seniority, would not have been subject to layoff. In the end, layoffs were not necessary as sufficient workers, including the claimant, elected to accept the monetary incentive and leave work. The claimant asserted that she had taken this action in order to permit a less senior co-worker to continue working. **HELD:** As the claimant could have, because of her seniority, continued working, her election to accept the employer's monetary incentive and leave the work constituted leaving the work voluntarily without good cause connected with the work. (Cross-referenced under VL 135.05.)

Also see Appeal No. 86-00326-10-121786 under MC 135.30 and VL 135.05, involving similar facts except that the claimant had not had sufficient seniority to be protected from layoff. There, then Commissioners held the claimant to have been discharged for reasons other than misconduct connected with the work.

Appeal No. 98-001421-10-021099. The claimant was a student at Prairie View A & M University and was a participant in the university's work study program. Student status was a requirement for participation in the work study program. Upon her graduation in August 1998, the claimant ceased her participation in this program.

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Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 495.00(4)

HELD: The Commission found the current case similar to **Appeal No. 86-2055-10-012187** and **Appeal No. 983-CAC-72.** In the current case, the claimant's participation in the work study program had not been structured to extend beyond her graduation and the end of her student status. When the claimant graduated, she was no longer able to meet the requirements for participation in the work study program. Therefore, the Commission does not agree with the Appeal Tribunal's conclusion that the claimant was discharged. Rather, the Commission concludes that the claimant voluntarily left her last work in the work study program without good cause connected with the work. It is the opinion of the Commission that work-study programs for students are to be encouraged. Therefore, this case is designated as a precedent at VL 495.00, and Appeal No. 2472-CA-77 (VL 495.00) of the Commission Appeals Policy and Precedent Manual was expressly overruled and removed from the precedent manual.

Appeal No. 983-CAC-72. If a student is available for only summer work between semesters and leaves at a mutually agreed time to return to school, he voluntarily leaves the work without good cause connected with the work, even though he was hired for the summer only. Hiring programs for students such as this are to be encouraged, and the employer provided work for the claimant for as long as he was available for work. No charge to the employer's account. (Also digested under CH 30.40; cross-referenced under MC 135.05 and MC 450.55.)

Appeal No. 86-2055-10-012187. The claimant, a student, last worked as a temporary warehouse assistant under the employer's temporary cooperative student summer employment program. The claimant had intended to return to school at the end of the summer vacation but later changed his mind. The employer was unable to retain the claimant because the temporary job was structured to end concurrent with the end of summer.

Appeals Policy and Precedent Manual
VOLUNTARY LEAVING

VL 495.00(5)

HELD: The Commission expressly applied the policy established by Appeal No. 983-CAC-72 (digested under this subsection and under CH 30.40) although the claimant had indicated at the end of the agreed upon period that he did not intend to return to school. The Commission specifically noted that the claimant's job had not been structured for the retention of the claimant beyond the agreed upon period. Therefore, the Commission concluded that the claimant had voluntarily left his last work without good cause connected with the work. No charge to the employer's account. (Cross-referenced under CH 30.40, MC 135.05 and MC 450.55.)

Also see Appeal No. 86-00443-10-121886 under VL 135.05 and Appeal No. 27,633-AT-65 (Affirmed by 37-CA-66) under VL 475.05.

Appeal No. 300-CA-71. When a claimant works for a firm which supplies businesses with temporary workers, the fact that the employer had no work for the claimant on Saturday is not sufficient to establish the claimant was separated due to lack of work. The claimant had worked on Friday, further work was available on Monday, and it is not uncommon for businesses to be closed and to have no work available over a weekend. When the claimant failed to report for further work on Monday, he thereby left his last work voluntarily without good cause connected with the work. Disqualification under Section 207.045.

Also see Appeal No. 1252-CA-77 and Appeal No. 263-CA-68 under VL 135.05.

Appeal No. 1259-CA-67. A former employer asked the claimant to work on a temporary basis for three weeks. The claimant lived in Dallas and the job was in Dallas, but the employer had the claimant paid by Manpower of Fort Worth as the claimant's employer. The claimant did not report to Manpower for further assignment upon being laid off from this temporary job.

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VL 495.00(6)

HELD: While the Commission has consistently held that a person who secures work through the offices of an organization which provides employers with temporary employees on a contract basis must inquire whether such organization has other work to which he may be assigned in order to avoid a disqualification under Section 207.045 of the Act, no disqualification assessed because it would have been unreasonable to expect the claimant to be available for work in Fort Worth when she lived in Dallas.

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VOLUNTARY LEAVING

VL 500.00 – 500.05

VL Wages

VL 500.00 Wages

VL 500.05 Wages: General.

Includes cases containing (1) a general discussion of leaving because of wages, (2) points not covered by any other subline under line 500, and (3) points covered by three or more sublines.

Appeal No. 94-009914-10-062794. The claimant, a restaurant waitress, quit work because of the employer's policy which required all waitresses on a shift to share in making up cash register shortages. **HELD:** As more than one waitress had access to the employer's cash drawer, the employer's policy was unreasonable and thus the claimant had good cause connected with the work for quitting.

Appeal No. 87-15411-10-083187. The employer required the claimant's participation in the employer-administered pension plan by monthly contribution. When the claimant discovered she had been under-credited for her contributions by about $1,400.00 she spoke several times to the employer and his attorney about the discrepancy. When the employer failed to account for the claimant's past contributions, told the claimant her required monthly contributions would be increased, and refused to consider the claim- ant's objections to the increase, the claimant quit. **HELD:** The employer's continued mishandling of the claimant's pension plan contributions and his inability to account for a substantial portion of the funds gave the claimant good cause connected with the work for quitting. Additional good cause was provided by the employer's act of increasing the claimant's contributions while his management of her prior contributions was not fully explained.

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VL 500.05(2)

Appeal No. 96-014008-10-121296. The claimant, a sales manager, left voluntarily when the employer adopted a new compensation method tied to higher performance standards. If met, those standards would allow both the claimant and the employer to benefit financially. Although the claimant had consistently met the prior standards, which were tied to a national average, she was unsure whether she would be able to meet the new standards and quit. **HELD:** The claimant did not have good cause to leave voluntarily under these circumstances. Where the performance-based compensation plan is reasonable, the claimant has a duty to keep the job long enough to determine whether the performance standards can be met and whether the resulting compensation will be adequate.

Appeal No. 230-CA-77. The claimant, an experienced employee, quit her job when she learned that a new employee hired to work in another department but temporarily working in the claimant's department, was paid a higher wage than the claimant. **HELD:** The claimant did not have good cause connected with the work for quitting. The new employee had considerable relevant experience and was hired to work in another department where the duties were more complex than those of the claimant. Moreover, when she complained of the disparity in rates of pay, the claimant had been offered a 25-cent per hour increase which she did not accept but resigned her job instead. Disqualification under Section 207.045.

Appeal No. 1578-CA-76. The claimant, truck driver for a charitable institution, quit work because (1) he did not receive a raise although he was promised a raise if his work was satisfactory and his work had never been criticized and (2) he had been told that he, like other employees, would be expected to donate to the employer one afternoon's work per week.

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VL 500.05(3)

HELD: Since, at the time of his hiring, there had been no agreement that the claimant would receive a raise of a certain amount within any set period of time and since, although the claimant may have been told that he would be expected to donate some of his work time, the claimant was, in fact, paid for all time worked and there was no evidence that he would not have been paid for all time worked if he did not choose to volunteer some time, the claimant's leaving was voluntary and without good cause connected with the work. Disqualification under Section 207.045.

VL 500.10 Wages: Agreement Concerning.

Where claimant left work because his pay was not increased or was reduced in violation of his understanding with, or as promised by, the employer; or because he was paid less than the agreed-on rate.

Appeal No. 2631-CA-77. The claimant had formerly owned the newspaper for which she last worked, having been retained as a salaried employee after she sold the business. About one month after the sale, the claimant was put on a commission basis, selling advertising. Since her commission rates were much lower than she had previously been paid and some of her advertising accounts were taken away from her, which resulted in a significant decrease in her earnings, the claimant resigned. **HELD:** In view of the change in the claimant's hiring agreement and the resulting substantial decrease in her earnings, the claimant had good cause connected with the work for quitting.

Appeal No. 87-10684-10-061987. The employer changed the claimant's compensation method from $12.25 per hour to a 3.5% commission on sales. The claimant tried the commission method for nearly two months, then quit because he realized he would need to sell nearly twice as much as he had been to earn the same amount as his hourly rate had provided. **HELD:** The claimant's decision to work under the new pay method for about two months did not necessarily constitute acceptance of the new pay method but, rather, was the claimant's attempt to make an informed decision as to whether the new pay method was going to be adequate prior to quitting. No disqualification under Section 207.045.

(Cross-reference under VL 385.00.)

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VL 500.10(2)

Appeal No. 599-CA-76. In March, the employer's president promised the claimant a raise, both of them aware that any such action required the approval of the employer's board of directors. At no time thereafter did the claimant remind the president of his promise. When the September board meeting produced no raise for her, the claimant quit. **HELD:** Since the claimant realized that the employer's president did not have the authority to grant her a raise without the approval of the employer's board of directors and since the claimant did not remind the president of his conditional promise, the claimant's quitting was without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 651-CA-72. A claimant does not have good cause connected with the work for quitting a job because his salary was not raised, if he is being paid the wage agreed on at the time of hire.

Appeal No. 452-CA-68. A claimant has good cause to quit a job after the employer assigns her additional responsibilities and promises her a raise and such raise is not forthcoming after a reasonable period of time (in this case, ten months).

Appeal No. 393-CA-67. The claimant had not been told when hired that he would have to make up any cash shortages. He tried to work out an arrangement where he could check to see how and where the shortages occurred. When this could not be arranged, there was absolutely no way he could check on how shortages occurred. The shortages continued to occur, and, for eight days' work, the claimant received net pay of $37.25 (he had been hired at a rate of $250 a month). **HELD:** Since the claimant had no way of protecting himself from having to make up the shortages, which amounted to a substantial reduction in his salary, and since he had not been told at the time of his hiring that such deductions would be made from his salary, the claimant had good cause connected with the work for quitting. (Cross-referenced under VL 500.30.)

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VL 500.25 – 500.30

VL 500.25 Wages: Expenses Incident to Job.

Leaving work because the expenses incident thereto had a material effect upon a claimant's net income.

Appeal No. 5979-CA-57. A claimant has good cause to quit his job when he is working solely on a commission basis one hundred miles from his home, has to pay all of his own expenses, and is unable to realize any profit from his sales. (Cross-referenced under VL 500.50.)

Also see Appeal No. 87-10325-10-061887 under VL 500.45.

VL 500.30 Wages: Failure or Refusal to Pay.

Where claimant left work because the employer withheld part or all of his pay, deducted short- ages from his pay, refused to make up back wage payments, made payment of wages subject to a further condition, etc. Also, where full or partial payment of wages was not made because of some error on the part of the employer.

Appeal No. 87-01256-10-012088. The claimant quit because, despite her complaints, the employer did not pay her on designated paydays. Although the claimant did not threaten to quit because of this, she did remind the employer of her need to be timely paid. **HELD:** The claimant did not condone the late paydays simply because she did not threaten to quit if she were not timely paid. Rather, it was sufficient for the claimant to apprise the employer of her need for timely paydays. No disqualification under Section 207.045.

Appeal No. 1375-CA-77. The claimant quit work because he was receiving his pay from a few days to ten days after the scheduled pay days. The paycheck given the claimant on December 17, 1976, was not honored until January 6, 1977, on which day the claimant quit. **HELD:** An employee should be able to rely on the employer paying wages on scheduled paydays. When an employer does not meet regularly scheduled paydays, its employees have reason to question its ability to continue to pay for work performed. Under the circumstances, the claimant had good cause connected with the work for quitting.

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VL 500.30(2)

Appeal No. 657-CA-77. The claimant had worked for the employer for almost four years. During the two months prior to the claimant's separation, she had been late on one occasion. On the day she quit work, she received pay one day late due to the employer's financial difficulties. **HELD:** Since the claimant was paid on the day following the normal payday and there was no evidence that the employer had established a pattern of delaying payment or making only partial payment to its employees, the employer was not failing substantially in its responsibility to pay its employees. Accordingly, the claimant did not have good cause connected with the work for quitting. Disqualification under Section 207.045.

Appeal No. 4076-CA-76. A claimant who has had his pay delayed by the employer on three occasions during a four-month term of employment has good cause connected with the work for quitting.

Appeal No. 2444-CA-EB-76. A claimant who is not paid for the actual number of hours he had worked, despite his several complaints to the employer, has good cause connected with the work for quitting.

Appeal No. 1326-CA-75. During the last two months of her employment, the claimant and other employees frequently received paychecks which were not honored upon first presentation at the bank. The employer made the checks good but sometimes took as long as three weeks to do so. Moreover, there was frequently a five-dollar bank charge which was not reimbursed by the employer. The claimant and others called this situation to the employer's attention but the situation continued and the claimant quit. **HELD:** The claimant had good cause connected with the work for quitting.

VL 500.35 Wages: Former Rate, Comparison With.

Discussion of the sufficiency of claimant's wages as compared with his former earnings.

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VL 500.35(2)

Appeal No. 806011-3. A claimant who quits work, rather than accept a reduction in pay caused by the claimant's work-connected misconduct, which the employer clearly establishes, does not have good cause connected with the work for leaving unless the claimant can establish the pay cut would be in excess of twenty-five percent.

Appeal No. 84-05367-10-051485. The employer and the claimants' union entered into a new collective bargaining agreement which provided for a reduction in wages of approximately 46%, with other benefits being frozen. Following the agreement's ratification by the union membership but prior to its effective date, the claimants, all of whom were union members, disagreed with the reduction in wages and exercised their option of resigning and accepting a lump sum special resignation payment. **HELD:** As a general rule, a wage reduction of 20% or more is substantial and will provide a claimant with good cause connected with the work for voluntarily resigning rather than submit to such reduction in wages. In the present case, the claimants were justified in refusing to continue to work under the newly ratified collective bargaining agreement because of the substantial reduction in pay. (Cross-referenced under MC 255.302.)

Appeal No. 97-003975-10-041697. The claimant, a maintenance worker assigned to the Lubbock territory, left voluntarily when his $150 per month car allowance was discontinued effectively reducing his pay 11%. Car allowances were not authorized in any other territory, and the employer made the change to keep its pay structure uniform. **HELD:** The Commission will examine the entire compensation package to determine whether a salary reduction is 20% or more; if so, good cause will be found. Here, elimination of claimant's car allowance does not provide him with good cause to quit because it reduced his pay only 11%.

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VL 500.35(3)

Appeal No. 87-2916-10-022488. The claimant voluntarily quit his job due to a decrease in salary. The claimant originally worked for the company in New York, earning $10.00 per hour. After he was transferred to Texas, the claimant's wage was reduced to $6.50 per hour. He worked on the job for two weeks, then realized he was not making enough money. **HELD:** The 35% decrease in the claimant's pay constituted a substantial change in the hiring agreement. As the claimant was not informed of the change until he arrived in Texas, it was reasonable for him to not quit immediately upon learning of the decrease in salary but, rather, to attempt to make the situation work prior to quitting. No disqualification under Section 207.045. (Cross-referenced under VL 385.00.)

Appeal No. 1436-CA-78. The claimant was transferred from his position as assistant foreman on the employer's night shift to that of receiving clerk on the employer's day shift. Although, in the latter position, the claimant was to be paid the same wage as the day shift's assistant foreman, because of shift differential in pay his transfer resulted in a wage reduction of approximately 8%. The claimant quit because of this reduction in pay. **HELD:** An 8% reduction in pay is not a substantial reduction giving good cause connected with the work for a voluntary quit. Disqualification under Section 207.045.

Appeal No. 351-CA-77. The claimant was to be laid off due to lack of work from her job of electrical assembler which paid $6.43 per hour. She resigned rather than accept the more strenuous job as a janitor at $5.97 per hour, a 7.2% reduction in pay. **HELD:** Since the position offered the claimant was more strenuous than her previous position and would have represented a 7.2% reduction in pay, the claimant had good cause connected with the work for quitting.

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VL 500.35(4) - 500.40

Appeal No. 873-CA-76. The claimant, a welder earning $4.50 per hour, was laid off due to lack of work but was offered continued employment as a helper at $3.84 per hour. The claimant declined the offer. **HELD:** Since the reduction in pay amounted to only 15% and since the claimant could have accepted the lower paying job and continued working while seeking other employment, the claim- ant voluntarily quit without good cause connected with the work. Disqualification under Section 207.045.
Also see cases digested under VL 500.75.

VL 500.40 Wages: Increase Refused.

Leaving because a requested increase in wages was refused.

Appeal No. 1095-CA-77. The claimant resigned because she had been unable to face her co-workers since she did not receive a promotion which she had believed she was going to receive. She had not been promised the promotion, nor even offered a promotion, and could have continued working in the same job at the same pay. No one connected with management had told the claimant's co-workers that she was being considered for the promotion. **HELD:** Since the employer had had only a preliminary discussion with the claimant regarding the new job and had never offered it to her, the claimant did not have good cause connected with the work for quitting. Disqualification under Section 207.045.

Appeal No. 274-CA-76. The claimant, a salesclerk, received a $60 per month pay increase when her immediate supervisor was transferred, and a new office manager was assigned. The claimant was expected to assist the new office manager during a brief transitional period; however, her duties were still essentially those of a salesclerk and she did not have to work any overtime as a result of the change in office managers. She demanded an additional pay increase over and above the $60 per month pay increase she had been given. The demand was based on a prospective increase in the duties expected of her; however, this increase in duties had not taken place. When she was not granted the additional pay increase, the claimant resigned without notice.

VL 500.40(2) – 500.50

HELD: Since the evidence in the record failed to establish that the claimant's wage increase demand was reasonably warranted by any substantial change or increase in her job responsibilities, the claimant's leaving was without good cause connected with the work. Disqualification under Section 207.045.

VL 500.45 Wages: Living Wage.

Where justification for leaving is based upon a de- termination as to whether earnings constituted a living wage.

Appeal No. 87-10325-10-061887. The claimant, a commission sales agent, was provided with a $400 weekly training allowance for the first 16 weeks of employment, after which period the weekly allowance was reduced to $180. The claimant performed to the best of his ability but was unable to increase his sales to the level expected by the employer and needed by the claimant to produce a living wage. The claimant resigned after his sales did not improve by a deadline mutually agreed upon by the claimant and the employer. **HELD:** After the claimant's training allowance was substantially reduced, his inability, despite his best efforts, to realize any profits from his sales provided him with good cause to quit. A claimant has good cause to quit his job when he is working on a commission basis and is unable to realize any profits from his sales. (Cross-referenced under VL 500.50.)

Also see Appeal No. 5979-CA-57 under VL 500.25.

VL 500.50 Wages: Low.

Leaving because of worker's contention that the wages were too low.

See Appeal No. 5979-CA-57 under VL 500.25 and Appeal No. 87- 10325-10-061887 under VL 500.45.

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VL 500.60 – 500.75

VL 500.60 Wages: Minimum.

Discussion of the sufficiency of claimant's wages as compared to the amounts set up in state or federal minimum wage laws.

Appeal No. 985-CA-70. When an employer is subject to the Texas Minimum Wage Act, a claimant has good cause to quit her job if the employer is not paying her the Texas minimum wage.

Appeal No. 173-CA-70. A claimant has good cause connected with the work for quitting when an employer, who is subject to the Federal Fair Labor Standards Act, does not pay the claimant overtime pay of not less than one and one-half times his regular rate of pay after forty hours in a workweek as required by that Act.

VL 500.75 Wages: Reduction.

VL 500.751 Wages: Reduction: General.

Involves a reduction of wages under circumstances other than those specified in one of the other subheadings of this subline or covered by three or more subheadings in this subline.

Appeal No. 732-CA-78. Regardless of whether a reduction in his remuneration would have alone provided a claimant with good cause connected with the work for quitting, where the claimant was not notified of the reduction until two weeks after it became effective, the retroactive nature of the change in the claimant's remuneration provided him with good cause connected with the work for quitting.

Appeal No. 12,355-AT-71 (Affirmed by 1408-CA-71). A claimant does not have good cause connected with the work for quitting rather than exercising bumping privileges when his pay would have been reduced from $4.24 an hour to $3.72 per hour, which latter wage was not substantially less favorable than that paid for similar work in the locality. Such bumping privileges were provided for in the company-union contract. Disqualification under Section 207.045.

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VL 500.751(2) – 500.752

Appeal No. 598-CA-70. A claimant has good cause to refuse to exercise his bumping privileges when the reduction in wage would have been in excess of thirty percent. No disqualification under Section 207.045.

Also see cases digested under VL 315.00 and VL 500.35.

VL 500.752 Wages: Reduction: Hours: Change in.

Where claimant left because a decrease in hours resulted in a reduction in wag- es or where an increase in regular hours without a proportionate pay increase resulted in a lower rate of pay.

Appeal No. 87-01720-10-020188. The claimant had been working at minimum wage two hours per day, 5 days a week, on a job that was approximately 36 miles round trip from her home. On December 12th, the claimant was informed that effective December 21st, her hours would be reduced to one hour per day. She immediately quit to seek other work because she determined that the reduction in hours would not justify her commuting costs. **HELD:** The Commission concluded that the proposed reduction in hours would constitute a substantial change in the hiring agreement and the claimant therefore had good work-connected cause for quitting the job.

Appeal No. 19,545-AT-65 (Affirmed by 281-CA-65). The claimant worked on a regular, part-time basis as a salad maker and cook. Her hourly rate of pay differed according to the type of work she did. She was offered full-time work as a cook which had been part of her duties on certain days but quit rather than accept the offer. Acceptance of the offered job would have resulted in an initial reduction in the claimant's hourly rate of pay for work as a cook (from $1.86 per hour to $1.75 per hour); however, the pay rate would have exceeded that prevailing for similar work in the area for a person of the claimant's qualifications.

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VL 500.752(2) – 500.755

HELD: Since the pay rate for the offered job was consistent with the prevailing wage and the claimant had had no other employment prospects, she did not have good cause connected with the work for quitting even though her pay in the full-time job as a cook would have meant some reduction from what she had been making on a part-time basis as a cook.

Disqualification under Section 207.045. Also see cases under VL 450.40.

VL 500.753 Wages: Reduction: Overtime without Compensation.

Quitting because claimant was required to work beyond his usual working hours (overtime) without pay, or without adequate increase in pay.

Appeal No. 55,399-AT-59 (Affirmed by 5784-CA-57). A claimant working 54 hours a week has good cause connected with the work for leaving when assigned extra duties which would require working sixty hours a week without overtime compensation.

Also see cases under VL 450.35.

VL 500.754 Wages: Reduction: Territory, Change in.

Leaving because a change in claimant's working territory resulted in a wage reduction. These cases generally are those of commission salesmen and route salesmen.

Appeal No. 87-00458-10-010888. The employer changed the claimant's vending routes to include 5% commission accounts in addition to the 12% commission accounts she had been servicing. The result was a $400 per month decrease from the claimant's average monthly income of $1700. The claimant complained about the decrease and quit when management took no steps to resolve the complaint. **HELD:** The substantial decrease in pay resulting from the change in vending routes constituted good cause connected with the work for leaving.

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VL 500.755

VL 500.755 Wages: Reduction: Type of Work or Materials: Changes in.

Quitting because an actual or prospective transfer to work of another type or to work on different materials would result in a reduction in pay.

Appeal No. 86-15472-10-110786. The claimant had injured his hand and was released to return to work but did not have full hand coordination and strength. The employer transferred the claimant to another department, resulting in a pay cut from $6.37 to $5.25 per hour, for fear the claimant could not safely operate the radial saws. The claimant quit rather than accept the pay cut. **HELD:** In light of the employer's legitimate concern over the claimant's ability to per- form his usual duties, the employer had the right to place the claimant in a less dangerous job. The reduction in pay, although significant, was not so substantial as to give the claimant good cause connected with the work for quitting. Disqualification under Section 207.045.

Appeal No. 309-AT-70 (Affirmed by 85-CA-70). A claimant has good cause connected with the work for quitting when the employer advised her, she is being transferred from her responsible position to a job of a routine clerical nature at a reduction in salary from $450 to $400 per month and does not advise her that the change would be temporary.

Appeal No. 32,722-AT-66 (Affirmed by 740-CA-66). The claimant had been working as an advertising salesperson at $110.00 a week and reluctantly accepted the job of director of that department at $125 per week with the understanding it would be temporary until a new director could be hired. She freely agreed to step down when told the employer had a chance to hire a director; however, she quit when she discovered her salary had been decreased to $110 a week. **HELD:** Since her increase in pay was given in conjunction with her temporary assumption of the duties of director, the claimant should have known that to step down from these duties would mean a return to her original salary. Accordingly, the reduction in the claimant's salary did not provide her with good cause connected with the work for quitting. Disqualification under Section 207.045.

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VL 500.755(2)

Appeal No. 81,028-AT-61 (Affirmed by 7914-CA-61). The employer found it necessary to reduce the force in the claimant's department. In accordance with the contract between the employer and the claimant's union, the claimant, who had been earning $2.96 an hour, was offered continued employment in the highest classification in another department to which his seniority entitled him, which would have paid him $2.33 an hour. **HELD:** Since the provision for transfer of the kind offered the claimant was provided for in the contract between the employer and the claimant's union, the claimant's leaving was without good cause connected with the work. Disqualification under Section 207.045.

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VL 505.00

VL 505.00 Work, Definition of

VL 505.00 Work, Definition of

Includes cases which contain discussions as to what constitutes "work" within the meaning of the voluntary leaving disqualification; i.e., whether it means "most recent work", covered employment, regular permanent work as distinguished from temporary, stopgap, etc.

Appeal No. 62-CA-65. After a short period of working as a laborer for the employer, the claimant, at his own instigation, negotiated a contract with the employer to provide window-cleaning services for the employer on an independent contractual basis. The contract was later terminated by the employer due to lack of work. **HELD:** Sections 207.045 and 207.044 of the Act provide for a possible disqualification based upon the claimant's separation from his last work, whether that be covered or exempt "employment" or independent contract work or other work. In the present case, the claimant was separated from his last "work", his independent contractual association with the employer, due to lack of work, a non-disqualifying separation under Section 207.045 and Section 207.044 of the Act. On the other hand, the chargeback provisions in Section 204.022 of the Act provide for the protecting of an employer's account where the claimant's last separation from the employer's employment, prior to the benefit year, was under disqualifying circumstances under Section 207.045 or Section 207.044 of the Act. In the present case, since the services performed by the claimant for the employer on a contractual basis did not constitute "employment", the separation occurring upon the termination of the contract was not a separation from the employer's "employment" and could not be the basis for a decision on the chargeability of benefits to the employer's account.

VL 505.00(2)

(It was then held that the claimant's last separation from the employer's "employment" occurred when the claimant, at his instigation, was terminated from his work as a laborer and began working as an independent contractor. As that separation was deemed to have been disqualifying in nature under Section 207.045 of the Act, the employer's account was protected from chargeback under Section 204.022 of the Act.) (Also digested under CH 30.50 and cross-referenced under MC 5.00.)

Also see Appeal No. 370-CA-70 under MS 510.00.

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VL 510.00 – 510.35

VL 510.00 Work, Nature of

VL 510.05 Work, Nature of: General

Includes cases containing (1) a general discussion of leaving because of the nature of the work, (2) points not covered by any other subline under line 510, and (3) points covered by three or more sublines.

Appeal No. 1047-CA-71. Although the claimant was dissatisfied with the duties she was required to perform, she quit without discussing the situation with her employer in an attempt to work things out. Accordingly, her leaving was voluntary and without good cause connected with the work. Disqualification under Section 207.045.

VL 510.35 Work, Nature of: Light or Heavy.

Leaving because of insistence upon light work or objection to heavy work.

Appeal No. 25,831-AT-65 (Affirmed by 942-CA-65). The claimant quit her job as a fountain waitress because she had had surgery and felt the work was too hard for her. She quit without notice and without giving the employer a reason. **HELD:** Since the claimant quit without notice and without giving the employer an opportunity to remedy the situation to which she objected, her quitting was without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 4140-AT-63 (Affirmed by 9588-CA-63). The claimant worked several years as a welder and was then transferred to the forge shop where she had to handle hot pieces of metal weighing more than seventy-five pounds. She tried to perform the work but found it to be beyond her capacity. She quit after her request for more suitable work was denied. **HELD:** Since the claimant was transferred to much heavier work which, despite her good faith efforts, was impossible for her to perform, her quitting was with good cause connected with the work.

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VL 510.40

VL 510.40 Work, Nature of: Preferred Employer or Employment.

Leaving because of the worker's preference for other work or another employer.

Appeal No. 2133419. In the oil and gas industry, it is customary for employees working on vessels at sea to routinely alternate predetermined periods of work on a vessel with predetermined rest periods (home rotations). In this case, the claimant knew since be- ginning the job that the work schedule involved working 28 days on board the vessel followed by 28 days of home rotation, after which he would report back to work on the vessel. During home rotations, the claimant was required to take professional training, at the employer's expense, and respond to the employer's communications. The employer remained obligated to continue the benefits of employment. The claimant was paid on a bi-weekly basis for each day spent working on the vessel but was not paid for the days spent on home rotation. After completing one such 28-days of work on the vessel, the claimant began a typical 28-day home rotation. During the period of home rotation, the claimant filed for unemployment benefits, knowing that he was scheduled to return to work on the vessel. **HELD:** Separation is an issue that requires an examination of all the facts and circumstances. The employment relationship in this case was not severed when the home rotation began, even though the claimant stopped performing services and earning wages. Employment relationships in the off-shore oil and gas industry that involve regular, rotating periods of extended off-shore work followed by extended periods of cessation in work and pay connected to a mutually understood return to work date continue until one party notifies the other that the employment relationship has been severed. In this case, the claimant notified the employer that the employment relationship had been severed, for purposes of unemployment benefits, when the claimant filed a claim for unemployment benefits. The claimant in such a situation voluntarily quits the work without good cause connected with the work. Disqualification under Section 207.045 of the Act. Cross referenced at MS 510.00, MC 5.00, VL 135.20.

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VL 510.40(2)

Appeal No. 97-006341-10-060597. In the home health care referral industry, either the worker or the referral service may initiate re- assignment. In this case, the claimant was removed from her current assignment at her own request because she was dissatisfied. When the employer offered claimant reassignment later that same week, claimant declined because the only way she could get to the new client's home was by bus. The employer had never furnished transportation. **HELD:** Separation is an issue that can only be determined after an examination of all the facts and circumstances. An employment relationship such as this one continues until one party clearly notifies the other party that the employment relation- ship has ended, even if there is some passage of time during which the employee performs no services and earns no wages. This employment relationship was ended by claimant's action of declining the new assignment offered to her. This action clearly notified the employer that the relationship had ended. Claimant's separation occurred when she refused reassignment, not when she requested removal from her previous client. Claimant's dislike of the only available means of transportation—riding the bus—does not constitute good cause to leave voluntarily, because transportation was claimant's responsibility. (Cross referenced at VL 150.20 & VL 515.90)

Appeal No. 2238-CA-77. The claimant, a machine operator, was offered a job as a supervisor trainee, a somewhat heavier job. He was told that, if he could not do the work of a supervisor trainee, he would be returned to the operator's job. He sustained an injury while working as a supervisor trainee. When he was released by his physician, he insisted on being given the trainee job, although it had become clear that the work was too heavy for him and that he could not have performed all the duties of that job. The claimant was offered reinstatement in the operator's job, but he refused, and the employer would not put him in any other job.

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VL 510.40(3)

HELD: Since the claimant was physically unable to perform the duties of the job that he last held and would not return to his former job, the claimant's leaving was voluntary and without good cause connected with the work. Disqualification under Section 207.045.

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VL 515.00 – 515.05

VL Working Conditions

VL 515.00 Working Conditions.

VL 515.05 Working Conditions: General

Includes cases containing (1) a general discussion of leaving because of working conditions, (2) points not covered by any other subline under line 515, and (3) points covered by three or more sublines.

Appeal No. 2610-CA-77. Dissatisfaction with working conditions is generally not considered to be good cause connected with the work for quitting unless the claimant can show that the conditions were intolerable. Although such a showing was not made in this case, the fact that the claimant had been forced to perform janitorial duties which her job description of bookkeeper did not include, when considered in combination with deteriorating working conditions, provided the claimant with good cause connected with the work for quitting.

Appeal No. 1123-CA-77. The claimant quit work because, despite her repeated objections during an eleven month period and the employer's repeated promises to take corrective actions, the employer failed to pay the claimant for all of her sick leave time and failed to allow her time off for lunch, both contrary to the original hiring agreement, and failed to pay for her overtime work as promised. **HELD:** The employer's inaction, despite the claimant's frequent complaints and his frequent assurances, provided the claimant with good cause connected with the work for quitting.

Appeal No. 502-CA-77. Dissatisfaction with working conditions, under which the claimant had worked for two years, did not provide the claimant with good cause connected with the work for quitting. Disqualification under Section 207.045.

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VL 515.05 – 515.15

Appeal No. 3613-CA-76. A claimant who quits work because of some dissatisfaction with working conditions without affording the employer any opportunity to resolve the situation thereby voluntarily quits without good cause connected with the work.

Also see Appeal No. 86-14984-10-11886 under VL 495.00, holding that an employee who, because of seniority, is protected from layoff but who accepts the employer's monetary incentive and quits work, assertedly to protect the job of a less senior co-worker, thereby voluntarily quits work without good cause connected with the work.

Also see the Employee Polygraph Protection Act of 1988, P.L. 100-347, digested under MC 485.83.

VL 515.15 Working Conditions: Agreement, Violation of.

Where claimant left work because of alleged violation of working agreement by employer.

Appeal No. 86-13688-10-091586. As a result of an amendment to the Texas Education Code, all public-school educators were required to pass the Texas Examination of Current Administrators and Teachers (TECAT). The claimant, a teacher, resigned rather than submit to the TECAT exam because it assertedly sought to measure literacy only and not actual competency in a teacher's subject area; thus, it was arguably not reasonably job-related. **HELD:** The claimant's separation was voluntary without good cause connected with the work. The requirement that the claimant submit to the TECAT exam did not constitute a substantial change in the claimant's hiring agreement and did not threaten the claimant with any tangible harm. Furthermore, the requirement to submit to the exam was reasonably job-related. Disqualification imposed under Section 207.045.

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VL 515.15(2)

Appeal No. 2690-CA-77. When the claimant accepted promotion to the job of assistant branch manager, which entailed a transfer from Beaumont, Texas, to Omaha, Nebraska, he did so with the understanding that he would be in charge of all but one phase of the employer's Omaha operation. After the claimant had worked in Omaha for a time, it came to his attention that he did not, in fact, possess the authority that he had been promised he would have. He, therefore, sought to transfer back to Beaumont and, when he could not be given such transfer, he resigned. **HELD:** The employer materially violated its agreement with the claimant and failed to take any action to remedy such violation when offered the opportunity, thereby providing the claimant with good cause connected with the work for quitting.

Appeal No. 514-CA-77. The claimant, a traveling sales representative, quit work because of the excessive travel required. When hired, her territory was north and west Texas and Oklahoma, subject to an agreed gradual reduction in the amount of travel to be required of her. Also, the El Paso area was to be assigned to another territory, but this was done only temporarily. Also, it had been agreed that the claimant was to receive assistance from a specialist in opening new accounts, but never did. Instead of decreasing pursuant to the claimant's employment agreement, the travel required of the claimant increased throughout her employment. **HELD:** The claimant had good cause connected with the work for quitting, in that the employer had violated her hiring agreement in several material aspects, the cumulative result of which was that the claimant's job made excessive travel demands upon her.

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VL 515.15(3)

Appeal No. 2902-CA-75. The claimant, who had been working for the employer as a waitress on a part-time basis, agreed to transfer to full-time work as a cook, with the understanding that she could return to waitress work whenever she wanted to. When the claimant, upon the advice of her doctor that she should not continue cooking, sought to revert to work as a waitress, she was not permitted to do so and, therefore, quit. **HELD:** The claimant's quitting was voluntary but the employers' failure to abide by his agreement that the claimant could revert to waitress work whenever she wanted to do so provided the claimant with good cause connected with the work for quitting.

Case No. 177177. The claimant, a teacher, had taught for three years in the State of Texas under a temporary permit. For the claimant to continue teaching, a passing score on the Examination for Certification of Educators in Texas (ExCET) and the certification that this would have provided were necessary. The claimant took only one part of the exam during the summer. The claimant was separated from employment after she failed to receive a passing ExCET test score. **HELD:** Under these circumstances, the claimant's failure to become certified by the time school started for another year was a mismanagement of her position and constituted misconduct connected with the work.

Disqualified under Section 207.044. In so ruling, the Commission expressly overruled the holding in Appeal No. 86-13685-10-092586 that failure to secure certification in a timely manner was analyzed as inability and thus not disqualifying.

VL 515.20 Working Conditions: Apportionment of Work.

Leaving work because of some objection as to the distribution of work. The use of this line is restricted to grievances which are not connected with union requirements.

Appeals Policy and Precedent Manual
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VL 515.20(2) – 515.25

Appeal No. 87-11378-10-070287. The claimant resigned after being told by the employer that he would be expected to do the work alone while his co-worker was on vacation. The employer denied the claimant's request for a helper beforehand because work was slow, and the co-worker would be gone only two weeks but told the claimant that help may be available if needed. **HELD:** The claimant did not have good cause connected with the work to quit because he had not yet experienced the increased workload but resigned in anticipation of it without knowing if he would, in fact, need a helper.

Appeal No. 1978-CA-77. The claimant, a nurse's aide, was transferred to laundry work at her own request. Thereafter, the laundry workload increased because there were more patients. Also, the janitor quit, and the claimant was given certain of his minor duties to perform. She quit the work because of the increased workload. **HELD:** Since the claimant was paid for all the time she put in, was not required to work overtime, and was not assigned any janitorial work which was not reasonably within the scope of the duties as a laundry worker, the claimant's quitting was without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 1962-CA-77. The claimant quit work because she was required to do work which had previously been assigned to another worker, even though the other worker had nothing to do and the claimant was busy. Furthermore, when she complained of the matter, she was transferred to another part of the plant, her complaints about what she considered unfair treatment were not listened to, and she was insulted by the manager. **HELD:** The claimant had good cause connected with the work for quitting.

VL 515.25 Working Conditions: Company Rule.

Where a claimant left work because of some objection to his employer's requirements, applicable to an entire class of employees, or to all employees, which were generally known and enforced.

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VL 515.25(2)

Appeal No. 507-CA-78. The claimant, a convenience store clerk, walked off the job when ordered by her supervisor to instruct her son and her niece to leave the store. The son and niece had made purchases in the store on the occasion in question but the supervisor reminded the claimant of the company policy, of which she had been aware, prohibiting an employee's relative from being present in a store when the employee was on duty. The claimant questioned the application of the policy to the particular situation but did not seek clarification from the store owner until after she gave her keys to her supervisor and walked off the job. **HELD:** The claimant could have determined the employer's policy, without leaving her workstation. Consequently, her walking off the job without first seeking to clarify the policy with the store owner constituted a voluntary quit without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 2340-CUCX-76. The claimant originally worked for this employer full-time as a mechanic. When the volume of business declined, he was offered the option of continuing to work as a mechanic, but only on a half-time basis, or of continuing to work full time but spending half of that time working on the sales floor. As the latter would have required dealing with the public, he would have had to wear his hair shorter than he had been accustomed. As the claimant did not wish to do this, he quit. **HELD:** On the sales floor, the claimant would have been dealing with the public. Hence, the employer's request that the claimant upgrade his grooming standards was not an unreasonable one. Accordingly, the claimant did not have good cause connected with the work for quitting. Disqualification under Section 207.045.

Appeal No. 52-CA-72. A claimant does not have good cause to quit rather than secure a doctor's release as requested by the employer.

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VL 515.25(3) – 515.30

Appeal No. 545-CF-60 (Affirmed by 41-CF-60). A claimant does not have good cause to quit rather than take a company sponsored lie detector test which, at the time of hire, he had agreed to take in the event a shortage occurred.

As to polygraph or other examinations, see MC 485.83.

VL 515.30 Working Conditions: Duties or Requirements Outside Scope of Employment.

Where claimant quit because he was assigned duties other than those for which he had been hired, or because his employer required him to do something which ordinarily would not be done under such an employment relationship.

Appeal No. 2198-CA-77. The claimant, a bookkeeper, left her last work because of a change in her job assignment whereby she would be expected to do some janitorial duties. She had never done janitorial work before and the chemicals used in the cleaning aggravated an allergic condition for which the claimant had been consulting a specialist. Although the claimant gave notice of her intention to quit as of March 11, 1977, she worked a total of 51 hours between March 11, 1977, and April 15, 1977, training her replacement and assisting the employer in filling out tax forms. **HELD:** The fact that, after resigning, the claimant continued working until a replacement could be trained and in order to assist the employer with tax forms, did not change the nature of the separation from a voluntary quit to a discharge. As to the merits of her separation, the employer's substantial alteration in the claimant's working conditions, and the claimant's allergic condition, which was aggravated by this change, provided the claimant with good cause connected with the work for quitting.

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VL 515.30(2)

Appeal No. 1836-CA-76. The claimant, who was primarily employed as a truck driver, quit work rather than empty some trash cans as he had been instructed. He did not want to do this task because he did not think it was part of his duties. Although he had never carried out trash before, he had previously done other tasks while not occupied in driving a truck and had taken orders from supervisors in several different departments. **HELD:** In view of the fact that the claimant was not employed solely as a truck driver, the employer's order was a reasonable one and the claimant did not have good cause connected with the work for quitting rather than obey such order. Disqualification under Section 207.045.

VL 515.35 Working Conditions: Environment.

Involves a leaving because of objections to the location or physical conditions surrounding the work.

Appeal No. 2177-CA-76. The claimant was last employed at a sewage plant site. The fumes and stench assertedly caused him to have headaches and convulsions and made it impossible for him to retain his food. He, therefore, quit work, although he had not been advised by a doctor to do so, as he had at no time sought medical advice for his problem. **HELD:** Absent a doctor's advice that a claimant's job was adversely affecting his health, a claimant's voluntary separation for reasons of personal health shall not be found to have been based on good cause connected with the work. Disqualification under Section 207.045.

Also see Appeal No. 3210-CA-75 under VL 235.05.

VL 515.40 Working Conditions: Fellow Employee.

Leaving because of a specific annoyance from a fellow employee while on the job, or because of a general dislike of a fellow employee.

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VL 515.40(2) – 515.45

Appeal No. 23-CA-77. The claimant quit her job because she allegedly had been threatened by a co-worker who possessed a gun. However, the claimant did not at any time complain to management about the matter because the co-employee was a friend and the claimant felt that such a complaint would be disloyal. **HELD:** Since, among other things, the claimant did not report the matter to management, because of a feeling of friendly loyalty rather than fear of harm, she did not have good cause connected with the work for quitting. Disqualification under Section 207.045.

Appeal No. 1409-CA-76. A claimant has good cause connected with the work for quitting where a co-worker has cursed her on numerous occasions and, despite the claimant's several complaints to management, management has taken no corrective action.

VL 515.45 Working Conditions: Method or Quality of Workmanship.

Where the claimant left because of some objection as to the manner in which the work was to be performed, or to the quality of workmanship, or materials used.

Appeal No. 2182-CA-76. The claimant, a topstitcher in a garment factory, was assigned to work sewing linings in garments because work as a topstitcher had run out. Having worked less than one day sewing linings, the claimant quit because she found the work burdensome as it involved making repairs on incorrectly sewn garments. **HELD:** Since the work of sewing linings did not involve a pay reduction and was somewhat similar to the work the claimant had been doing, she did not have good cause connected with the work for quitting. Disqualification under Section 207.045.

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VL 515.50 – 515.60

VL 515.50 Working Conditions: Law and/or Morals.

Where claimant left because he was expected to violate the law or some principle of good moral conduct.

Appeal No. 285-CA-78. The claimant, a nursing home assistant administrator, resigned because the employer was falsifying records in order to retain its classification as a skilled nursing home. Participation in such falsification could have jeopardized the claimant's license. **HELD:** Since the claimant's professional license would have been jeopardized by her continued association with the employer, which was falsifying records, the claimant had good cause connected with the work for resignation.

Appeal No. 27,037-AT-65 (Affirmed by 1156-CA-65). A claimant who does not tell her superior she disapproves of the language he is using and does not ask him to discontinue it in her presence, has failed to give the employer an opportunity to take corrective measures. When she quits, without notice, for this reason, she does not have good cause connected with the work for leaving. Disqualification under Section 207.045.

Appeal No. 150-CA-40. A claimant who resigns rather than sell chances on a punchboard, which was unlawful and which the employer cautioned her to handle in a secret manner, has good cause connected with the work for leaving.

LV 515.60 Working Conditions: Production Requirement or Quantity of Duties.

Leaving because the work required was excessive or insufficient or because of speed requirements.

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VL 515.60(2)

Appeal No. 4704-CA-76. The claimant, the employer's bookkeeper/secretary, complained to the employer about the continual interference with her bookkeeping duties caused by her having to answer the phone, greet customers, and obtain merchandise from the warehouse. The claimant quit when the employer told her that her work routine was not going to change. **HELD:** Since the claimant suffered no financial or physical losses as the result of her problems at work, she did not have good cause connected with the work for quitting. Disqualification under Section 207.045.

Appeal No. 2696-CA-76. About a month prior to her separation, the claimant, a grocery delicatessen clerk who had originally agreed to work some nights, had been assigned to work three nights a week rather than one or two nights a week as previously. She quit work because she assertedly had more work to do at nights, including some occasional overtime hours (for which she was compensated), because there was no part-time help at nights. **HELD:** Since the night work to which the claimant was assigned was consistent with her original hiring agreement and the work previously performed by her and since the overtime hours worked by her were insubstantial and, at any rate, were compensated, the claimant's assignment to increased night work did not provide her with good cause connected with the work for quitting. Disqualification under Section 207.045.

Appeal No. 2594-CA-76. The claimant quit her work because she was not able to meet even the low temporary quota for the new operation she was performing. However, she was not being threatened with discharge but, in fact, was being given special training in order to improve her proficiency. **HELD:** Since the claimant was not in danger of being discharged at the time she quit and was being given special training to help her meet the temporary quota, her leaving was without good cause connected with the work. Disqualification under Section 207.045.

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VL 515.60(2) – 515.65

Appeal No. 76-CA-76. A claimant who quits work because of an anticipated increase in her work load, which was to follow a period of additional training to assist her in meeting the increase, does not have good cause connected with the work for quitting when she has not undergone the training nor had the increased quota imposed upon her nor, necessarily, made any effort to meet the increased quota.

VL 515.65 Working Conditions: Safety.

Leaving because working conditions were unsafe.

Appeal No. 87-20865-10-121487. The claimant suffered an on-the-job injury when a dirt wall collapsed in an excavation, he was working in. The matter was reported to the federal Occupational Safety and Health Administration (OSHA). The latter advised the claimant that the walls of the excavation should have been shored- up. While off work due to the injury, the claimant requested the employer to provide shoring in accordance with OSHA regulations. The employer did not comply. The claimant then resigned upon release by his doctor due to his concern about the safety of the job. Subsequent to the separation, the employer was investigated, cited and penalized by the OSHA for safety violations including failure to shore excavations. **HELD:** As a result of the OSHA investigation, sufficient evidence existed to show that unsafe working conditions existed where the claimant was required to work. The claimant gave the employer an opportunity to rectify the unsafe conditions, but the employer refused. In light of the claimant's legitimate concern for his safety and the employer's refusal to take corrective measures, the claimant had good work-connected cause to quit the job. (Cross-referenced under VL 190.15.)

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VL 515.65(2)

Appeal No. 86-01017-10-010887. The claimant quit his job as a boilermaker because he feared for his life when required to work in the rain on a steel framework 60 feet above ground in order to meet the employer's deadline. **HELD:** The claimant had good cause connected with the work for quitting because he was required to work under life-threatening conditions.

Appeal No. 957-CA-77. The claimant, a taxi driver, quit his job because the cars which he drove were in substandard condition. He was particularly upset with two of the vehicles which had leaky exhaust systems. He complained about the matter once, about a month before his discharge. On or about the claimant's last day of work, he was assigned one of the two cars with leaky exhausts, as his regular car was in for repairs. The claimant refused to drive the car with the leaky exhaust. As there was no other car available, he resigned. **HELD:** The evidence was not sufficient to support a conclusion that the claimant's working conditions were so hazardous that he could not continue working. The claimant made only one complaint to the employer of his dissatisfaction with the working conditions; if conditions were truly unsafe, he should have made more frequent complaints about the condition of the employer's cars. Accordingly, the claimant did not have good cause connected with the work for quitting. Disqualification under Section 207.045.

Appeal No. 3474-CUCX-76. The claimant was employed as a security guard at a motel. The day before the claimant quit, the desk clerk received notification of a bomb threat, repeated several times. Law enforcement officers checked out the threat and found no bomb. After the officers left, the threat was repeated. The officers refused to return, believing that the threats were hoax. The claimant thereupon called the motel manager and the branch manager of the security service. Those persons were upset at the claimant's having called at 5 a.m. and seemed to make light of any danger to which the claimant may have been exposed. The claimant was upset at the matter having been treated lightly and quit without notice and without seeking a transfer or taking up with higher management his dissatisfaction with the matter's having been taken lightly.

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VL 515.65 – 515.80

HELD: Some degree of danger is implicit in the job of security guard and, absent extraordinary circumstances, instances of personal danger should not provide a security guard with good cause connected with the work for quitting since it might be said that he assumed that risk when he accepted the job. Since the risk to which the claimant was subjected was not extraordinary and the threat had been checked out, the nonchalance of those later notified of the threat, which was the primary reason for the claimant's quitting, did not provide the claimant with good cause connected with the work for quitting, particularly since the claimant neither complained to higher management nor requested a transfer to an- other assignment. Disqualification under Section 207.045.

Appeal No. 2083-CA-76. A claimant who quits work because of unsafe working conditions, of which he had not been aware when he took the job and with respect to which he has made numerous complaints to the employer which, despite assurances, have not been acted upon, has good cause connected with the work for quitting.

Also see cases under VL 235.45.

VL 515.70 Working Conditions: Sanitation.

Leaving work because of unsanitary conditions.

See Appeal No. 89-CF-69 under VL 315.00.

VL 515.80 Working Conditions: Supervisor.

Leaving because of some annoyance of claimant by the supervisor, or because of general dislike of supervisor.

Appeal No. 87-17200-10-092987. A claimant who twice requests that the employer cease addressing him by means of a racial slur ("nigger") has good work-connected cause to quit work when the employer persists in such conduct. (Cross-referenced under MC 390.20.)

Also see Appeal No. 87-18554-10-102687 under MC 390.20.

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VL 515.80(2)

Appeal No. 2782-CA-77. Shortly after the claimant reported to work on her last day, her fiancée, a fellow employee, told her that he had been discharged. The manager who had discharged the claimant's fiancée noticed the claimant and her fiancée together. He told the fiancée to leave and told the claimant, in crude terms that, if she did not straighten up, she could leave. The claimant had never before been spoken to in that way by the manager. She became upset and quit, as she felt that the manager's actions indicated that he had a grudge against her. **HELD:** Since the employer's manager had never been rude to the claimant before, the single emotional outburst by the manager, in the stressful context of his having just discharged another individual, did not provide the claimant with good cause connected with the work for quitting. Disqualification under Section 207.045.

Appeal No. 1452-CA-77. The claimant quit her job because she began feeling extremely nervous and felt that she was being unduly harassed by the employer by his constant corrections of her work. Although the claimant was advised by her doctor to quit work if it was adversely affecting her health, she did not mention ill health at the time of her quitting nor at any other time did she mention to the employer that his actions might be causing her distress. **HELD:** Since the claimant did not discuss the matter with the employer, did not present the employer with any medical evidence of the necessity for her quitting, and gave the employer no opportunity to correct the behavior to which she objected, the claimant did not have good cause connected with the work for leaving. Disqualification under Section 207.045.

Appeal No. 1493-CA-76. After the claimant began working for the employer, she found that her supervisor had a tendency to engage in emotional outbursts upon the slightest provocation. She complained to the supervisor and to a vice-president of the company about these outbursts. After one such outburst, the claimant requested a transfer and, when she found that a transfer was not available, she resigned.

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VL 515.80(3) – 515.90

HELD: The claimant had good cause connected with the work for quitting and had exhausted all means available to her to correct the situation in an effort to keep her job.

Also see cases under VL 138.00.

VL 515.85 Working Conditions: Temperature or Ventilation.

Leaving work because of temperature or ventilation.

Appeal No. 127-CA-76. The claimant quit work after having complained to the employer's office manager to no avail about having to work in an office in which, for no reason, the temperature was set at 85 or 90 degrees and in which unpleasant working conditions were brought about by the actions of the employer's nurse-receptionist. The employer refused to meet with the claimant and other complaining employees. **HELD:** In view of the conditions under which she was having to work and the fact that she had, without success, sought correction of such conditions, the claimant's quitting was with good cause connected with the work.

VL 515.90 Working Conditions: Transfer to Other Work.

Where a leaving occurred because the claimant objected to being transferred to other work, or because a desired transfer to other work was not affected.

Appeal No. 97-008709-30-081397. After a month on the job, the claimant was told her job performance as a meat wrapper in a grocery store was unsatisfactory, and she was going to be transferred to a comparable position as either a cashier or a deli clerk. The claimant resigned without notice rather than accept the proposed reassignment. **HELD:** An employer may reassign workers to different positions within the same enterprise where doing so is reasonable, and the job location, pay rate and working conditions are substantially similar. A worker so transferred must try out the new position for a reasonable time before quitting. Here, the claimant failed to do so and thus did not have good cause to leave voluntarily.

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VL 515.90(2)

Appeal No. 97-006341-10-060597. In the home health care referral industry, either the worker or the referral service may initiate reassignment. In this case, the claimant was removed from her current assignment at her own request because she was dissatisfied. When the employer offered claimant reassignment later that same week, claimant declined because the only way she could get to the new client's home was by bus. The employer had never furnished transportation. **HELD:** Separation is an issue that can only be determined after an examination of all the facts and circumstances. An employment relationship such as this one continues until one party clearly notifies the other party that the employment relationship has ended, even if there is some passage of time during which the employee performs no services and earns no wages. This employment relationship was ended by claimant's action of declining the new assignment offered to her. This action clearly notified the employer that the relationship had ended. Claimant's separation occurred when she refused reassignment, not when she requested removal from her previous client. Claimant's dislike of the only available means of transportation—riding the bus—does not constitute good cause to leave voluntarily, because transportation was claimant's responsibility. (Cross referenced at VL 150.20 & VL 510.40).

Appeal No. 1643-CA-77. The claimant quit her job because she was to be transferred from senior patient representative to receptionist, although her pay would have remained the same. She considered the action as a demotion as many entry level persons were assigned to work as receptionists. **HELD:** The employer has the right to establish and fill positions with whatever personnel it desires. The fact that many entry level personnel were employed as receptionists did not establish that the claimant was being demoted, as there was to be no decrease in pay. Furthermore, there was no evidence that the transfer would have caused the claimant any hardship. Accordingly, the claimant's quitting was without good cause connected with the work. Disqualification under Section 207.045.

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VL 515.90(2)

Appeal No. 4633-CA-76. A claimant who quits work by refusing to transfer to other work in lieu of being discharged for poor performance, with no reduction in pay intended, because she believed a decrease in pay would be involved but who does not seek to clarify the matter with the employer, thereby quits work without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 4599-CA-76. The claimant's job in Tyler was eliminated. Under union contract, he had the right to displace ("bump") other employees in the employer's other Texas locations. Although the claimant had exercised this privilege before, he did not wish to do so on this occasion because the nearest location as to which he had seniority was not within commuting distance of his home. He was also offered the opportunity to exercise his seniority rights and retain a job by moving to Memphis, Tennessee or Dallas, Texas, which he did not choose to do. Under the contract, such failure would cause a loss of seniority, which would result in the loss of his job. **HELD:** As the claimant had been aware of and had accepted the provisions of the union contract, including the provisions as to systemwide transfers if offered a position away from his home base, his failure to transfer when his job in Tyler was abolished amounted to a voluntary leaving of work without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 3711-CA-76. The claimant quit work rather than accept a transfer to another department. The transfer would not have resulted in any change in the claimant's rate of pay, hours, or working conditions, and was to have been made because of a shortage of qualified personnel in the department to which the claimant was to have been transferred. **HELD:** Since the transfer was based on the employer's production requirements and would not have involved any change in the claimant's hours, rate of pay, or working conditions, her quitting was without good cause connected with the work. Disqualification under Section 207.045.

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VL 515.90(3)

Appeal No. 3186-CA-75. During the claimant's two weeks absence for medical reasons, the claimant's job was changed from truck driver to tree trimmer, the job for which he had originally been hired. Although the claimant's pay would have been the same, he declined to accept the change when he returned from his leave. **HELD:** The claimant did not have good cause connected with the work for quitting in view of the fact that there would have been no decrease in his pay and the work to which he was to be transferred was that for which he had originally been hired. Disqualification under Section 207.045.

Appeal No. 28,998-AT-66 (Affirmed by 119-CA-66). A claimant does not have good cause to quit work rather than transfer to another of the employer's stores located in the same metropolitan area but further away from her home, where the claimant had previously submitted to such transfers and the proposed location would still have been within reasonable commuting distance. Disqualification under Section 207.045.

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The following materials represent a selection of cases that are considered to be illustrative and/or useful in reaching decisions in unemployment insurance benefits cases. These materials do not represent all published cases decided under the Texas Unemployment Compensation Act.

1.

In **American Petrofina v. TEC, et al**, 795 S.W.2d 899 (Tex. App.-Beaumont 1990), the Court of Appeals held that the Commission's ruling that claimants who voluntarily resigned prior to the effective date of the employer's reduction in their lump-sum retirement benefit had done so with good work-connected cause did not constitute an intrusion into an area preempted by federal law.

2.

In **TEC v. Amlin**, 343 S.W.2d 249 (Tex. 1961), the Supreme Court ruled that claimants who were laid off without pay during a plant shutdown ordered by the employer did not leave work voluntarily without good cause connected with the work and were entitled to unemployment compensation benefits, even though they would have received a vacation period during the shutdown under union contract if they had had more seniority.

3

In **Beaumont v. TEC**, 753 S.W.2d 770 (Tex. App.--Houston [1st Dist.] 1988, n.w.h.), the Court of Appeals upheld an agency ruling disqualifying under Section 207.045 an employee of a temporary help agency who, after her temporary assignment ended, failed to notify that agency that her assignment had ended and she was available for work before she filed her claim for benefits.

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4

In **TEC v. Briones**, 601 S.W.2d 818 (Tex. Civ. App.--Eastland 1980, writ ref'd n.r.e.), the Court of Civil Appeals held that holiday pay paid during a plant shutdown was wages and thus the claimant in question was entitled only to a partial payment as a partially employed individual under Section 201.091 of the Act.

5

In **Brown v. TEC,** 540 S.W.2d 758 (Tex. Civ. App.--Waco 1976, writ ref'd n.r.e.), the Court of Civil Appeals held that in order for claimants to be disqualified under Section 207.048 of the Act, the work stoppage had to be the claimant's work stoppage, that is a strike, and that the claimants in this case could not be disqualified because the work stoppage had been initiated by the employer by way of a lockout.

6

In **Brown v. TEC**, 801 S.W. 2d 5 (Tex. App. Houston 1990, writ denied), the Court of Appeals held that the claimant had sufficient notice of the need to file a timely appeal. The fact that receiving two determinations mailed on the same date, one holding her eligible and one holding her disqualified confused the claimant, did not grant jurisdiction to the TEC. Appeal rights for each determination were fully explained in writing.

7

In **Burton v. TEC**, 743 S.W.2d 690 (Tex. App.--El Paso 1987, writ denied), the Court of Appeals upheld an agency ruling disqualifying the claimant under Section 207.044 where the claimant was discharged because she became abusive and insubordinate when confronted with a written reprimand for violating policy by complaining to someone other than her immediate supervisor.

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8

In **TEC v. Busby**, 457 S.W.2d 170 (Tex. Civ. App.--Amarillo 1970, writ ref'd n.r.e.), the Court of Civil Appeals ruled that an award of reinstatement with backpay constituted "wages" such that the claimant had not been unemployed at the time of the initial claim, and thus the initial claim was disallowed and benefits paid needed to be repaid to the Commission, under Section 214.002 of the Act.

9

In **TEC v. Cady**, 563 S.W.2d 387 (Tex. Civ. App.--Dallas 1978, no writ), the Court of Civil Appeals upheld the authority of the legislature, which had set specific time limits within which a party must appeal adverse rulings, against a constitutional challenge that the (then existing) ten day notice period was insufficient to satisfy the constitutional requirements of due process of law. The employer presented no evidence as to when the notice had been received.

10

In **TEC v. Child**, Inc., 738 S.W.2d 56 (Tex. Civ. App.--Austin, 1987, writ denied), the Court of Appeals ruled that employees of a federally funded Head Start program were not employees of an educational institution as the primary thrust of the program was social development. Thus, the claimant was not disqualified under Section 207.041 of the Act during the period of a summer vacation.

11

In **City of Dallas v. TEC**, 626 S.W.2d (Tex. App.--Texarkana 1981, no writ), the Court of Appeals held that a discharge due to a failure to take a polygraph test, where a claimant had not agreed to take such a test at the time of hiring, was a discharge for reasons other than misconduct connected with the work. The Court also enunciated the more general principle that good cause for termination does not necessarily equate with misconduct resulting in disqualification from unemployment compensation benefits. This case was decided before the current definition of misconduct was added as Section 201.012 of the Act.

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12

In **Cuellar v. TEC et al**, 825 F.2d 930 (5th Cir. 1987), the U.S. Court of Appeals for the Fifth Circuit held that it is a violation of due process when a disqualifying decision is based on an affidavit which conflicts with the claimant's no less credible firsthand testimony when the claimant was not aware of the affidavit prior to the Appeal Tribunal hearing and the hearing officer denies the claimant's request for a continuance to subpoena the affiant for purposes of confrontation and cross-examination.

13

In **DeLeon v. TEC**, 529 S.W.2d 268 (Tex. Civ. App.--Corpus Christi 1975, writ ref'd n.r.e.), the Court of Civil Appeals upheld an agency ruling that the claimant was not available for work under Section 207.021(a)(4) of the Act where he was available only for temporary work because he had filed a grievance to be reinstated in his former job.

14

In **TEC v. Johnnie Dodd Automotive Enterprise, Inc.**, 551 S.W.2d 171 (Tex. Civ. App.--Waco 1977, writ ref'd n.r.e.), the Court of Civil Appeals was convinced that a former employer had not been mailed a notice of initial claim; therefore it set aside a ruling on a chargeback notice that the employer would be charged because it had protested late and remanded the case for a hearing on the merits.

15

In **Edwards v. TEC**, 936 S.W. 2d 462 (Tex. App. Ft Worth 1996, no writ), the Court of Appeals held that the claimant's signed written admission of the existence of a policy was sufficient evidence for the Commission to conclude that the policy did exist. The employer's policy requiring employees in possession of merchandise to also be in possession of a receipt for those items was reasonable and violation of the policy constituted misconduct connected with the work. The policy was construed to mean that an employee is in violation of the policy if they are in possession of merchandise on the premises without a receipt and are not on their way to a cash register. Taking a detour to perform duties, while in possession of merchandise without a receipt, was properly seen by the Commission as a violation of the employer's policy.

16

In **Elena Francisco, Inc v. TEC**, 803 S.W.2d 884 (Tex. App. San Antonio 1991, writ denied), the Court of Appeals held that there was substantial evidence to support the Commission's granting of unemployment benefits when the claimant testified under oath that he did not smoke marijuana at work and the employer did not produce any physical evidence or testimony from coworkers to rebut this denial.

17

In **TEC v. E-Systems, Inc.,** 540 S.W.2d 761 (Tex. Civ. App.--Waco 1976, writ ref'd n.r.e.), the Court of Civil Appeals ruled that where claimants had been laid off prior to a strike, did not participate in the strike by either paying union dues or participating in the picket line, but did refuse recall during the strike, the claimants were not disqualified under Sections 207.047 or 207.048 of the Act. Their separation from work was caused by a layoff, not by a labor dispute, and they had the right to refuse recall under the new work provisions of Section 207.047 of the Act.

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18

In **Garza v. TEC**, 577 S.W.2d 765 (Tex. Civ. App.--San Antonio 1979, no writ), the Court of Civil Appeals held that the Texas Unemployment Compensation Act did not create an irrebuttable presumption of receipt, and that receipt by a neighbor authorized by the claimant to receive mail is receipt by the claimant and thus the claimant's late appeal was properly dismissed.

19

In **Gonzalez v. TEC**, 653 S.W.2d 308 (Tex. App.--San Antonio 1983, no writ), the Court of Appeals held that procedural due process as required by 14th Amendment of the U.S. Constitution required that parties receive adequate notice detailing the reasons giving rise to the hearing and that benefits cannot be denied on a theory not covered by the notice.

20

In **TEC v. Gulf States Utilities Co**., 410 S.W.2d 322 (Tex. Civ. App.--Eastland 1966, writ ref'd n.r.e.), the Court of Civil Appeals relied on the 207.071 nonwaiver clause to hold that a woman who was forced to quit work in the 5th month of her pregnancy and who was willing and medically able to continue working at that time but for an employer rule requiring "resignation" in the 5th month of pregnancy was not disqualified from receipt of unemployment benefits.

21

In **Haas v. TEC**, 683 S.W.2d 462 (Tex. App.--Dallas 1984, no writ), the Court of Appeals ruled that a store clerk had committed misconduct when he sold items contrary to store policy by failing to check identifications for liquor sales and by selling for less than retail, and specifically held that misconduct need not be wanton, willful, or deliberate under the definition contained under Section 201.012 of the Act.

22

In **TEC v. Hansen**, 342 S.W.2d 551 (Tex. 1961), the Supreme Court held that notwithstanding a union contract which allowed the employer to shut down the plant for a unified vacation, workers who had no vacation time and had no work available to them could not be deemed disqualified under Section 207.045 of the Act and were entitled to unemployment benefits.

23

In **TEC v. Hayes**, 360 S.W.2d 525 (Tex. 1962), the Supreme Court held that any claimant, whether or not a student and irrespective of whether wage credits were earned in full-time or part-time employment, who for personal reasons lays such time or hour restrictions on his availability for work as to effectively detach himself from the labor market is not available for work under Section 201.021(a)(4) of the Act and is thus ineligible for unemployment benefits.

24

In **TEC v. Hodson**, 346 S.W.2d 665 (Tex. Civ. App.--Waco 1961, writ ref'd n.r.e.), the Court of Civil Appeals held that a member of the striking union who was originally disqualified under Section 207.048 of the Act, but who thereafter voluntarily crossed his union's picket line in an attempt to return to work and was refused employment because his job had been filled, was from that point forward unemployed through no fault of his own and not subject to disqualification under Section 207 048 of the Act.

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25

In **TEC v. Holberg**, 440 S.W.2d 38 (Tex. 1969), the Supreme Court held that where a claimant's only work search activity in a 4 to 5 month period was to register at a union hall and contact 3 to 4 potential employers, the claimant was unavailable for work under Section 207.021(a)(4) of the Act and thus ineligible for unemployment benefits. The Redd principle that the agency could require a work search under the broad statutory directive of Section 207.021(a)(4) was reaffirmed.

26

In **TEC v. Huey**, 342 S.W.2d 544 (Tex. 1961), the Supreme Court ruled that notwithstanding a union contract which allowed the employer to shut down the plant for a unified vacation, workers who had no vacation time and had no work available could not be deemed disqualified under 207.045 of the Act.

27

In **TEC v. Hughes Drilling Fluids**, 746 S.W.2d 796 (Tex. Civ. App.--Tyler 1988, writ granted), the Court of Appeals held that an "at-will" employee who continued to work for the employer after being notified of a drug testing policy accepted that policy as part of the terms and conditions of employment. The policy was reasonable and the claimant's refusal to submit to a urine sample amount to misconduct.

28

In **TEC & G.E. v. International Union of Electrical, Radio and Machine Workers**, 352 S.W.2d 252 (Tex. 1961), the Supreme Court held that where a collective bargaining agreement stated vacation periods would run concurrently with a plant shutdown, workers who either had enough seniority to get paid at the time of the shutdown or who would have enough seniority to be paid later in the calendar year were not totally unemployed and not entitled to unemployment benefits. The Court also held that an agreement to implement such an arrangement was not a waiver of rights prohibited under Section 207.071 of the Act. The Court indicated that workers who had claims denied because they would subsequently reach an anniversary date and receive vacation pay but did not in fact remain employed or receive such vacation payments, could have claims subsequently or retroactively filed.

29

In **Kaminski v. TEC** 848 S.W. 2d 811 (Tex. App. Houston 1993, no writ), the Court of Appeals held that the employer had a reasonable drug testing policy that the claimant had acquiesced to as a condition of continuing employment. Since the employer was a private, non-governmental employer, the claimant's employment raised no constitutional right to privacy.

30

In **Keen v. TEC**, 148 S.W.2d 211 (Tex. Civ. App.--Galveston 1941, no writ), the Court of Civil Appeals held that an individual who resigned work in order to attend school, who was attending school full-time, and who was not available for any work which would interfere with his school was unavailable for work.

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31

In **TEC v. Kirkland**, 445 S.W.2d 777 (Tex. Civ. App.--El Paso 1969, no writ), the Court of Civil Appeals held that a claimant who for 14 consecutive weeks was only available for a temporary assignment of one week or less because he expected to be enrolled in a VA training program at any time was unavailable for work under Section 207.021(a)(4) of the Act and thus ineligible for unemployment benefits.

32

In **Kraft v. TEC**, 418 S.W.2d 482 (Tex. 1967), the Supreme Court held that striking employees who had been replaced, and who thereafter crossed the picket lines but were refused employment, were from that point forward not subject to disqualification under 207.048 of the Act.

33

In **Lairson v. TEC**, 742 S.W.2d 99 (Tex. Civ. App.--Fort Worth 1987, n.w.h.), the Court of Appeals held that an employer's rule requiring an employee to inform a supervisor within two hours of scheduled starting time that the employee would be late or absent was reasonable and that violation of a company rule adopted to ensure orderly work did not need to be intentional to fit the definition of misconduct. The Court indicated that the violated rule must be reasonable.

34

In **Levelland ISD v. Contreras**, 865 S.W. 2d 474 (Tex App. Amarillo 1993, writ denied), the Court of Appeals held that misconduct had not been shown when the evidence introduced at trial established that the claimant had never been told not to engage in the behavior for which he was fired. While there was some evidence to show that warnings were given prior to discharge, no specifics as to the time, place or content of the warnings was introduced.

35

In **TEC v. Lewis,** 777 S.W.2d 817 (Tex. App. Ft. Worth 1989, no writ), the Court of Appeals held that a party who files a late appeal after receiving an incorrectly addressed determination must show when it received the notice in order demonstrate that it did not receive notice in time to file the appeal. Evidence produced to show when the person responding to the notice received it is not the equivalent of showing when the employer (in this case a corporate entity) actually received the notice

36

In **Madisonville ISD v. TEC**, et al, 821 S.W.2d 310 (Tex. App.--Corpus Christi 1991, writ denied), the Court of Civil Appeals held that a public school teacher who submitted his resignation after receiving "notice of proposed nonrenewal" of his contract for the coming year, a notice not based on any misconduct on his part, under circumstances which made it unlikely that the employer school board would reconsider its proposed action and which, at any rate, would have resulted in his discharge had he unsuccessfully requested a hearing and reconsideration by the employer board, did not voluntarily resign without good cause connected with the work and thus should not be disqualified for benefits.

37

In **Maintenance Management, Inc. v. TEC**, 557 S.W.2d 561 (Tex. Civ. App.--San Antonio 1977, writ ref'd n.r.e.), the Court of Civil Appeals affirmed the Commission's ruling that an employer waived its right to protest the claim by not filing the protest under either Section 208.004 or Section 204.023 of the Act within the statutory time period (then 10 days). The employer had argued that it had been misled about protest rights by an individual not employed by the Commission but sharing office space with the Commission.

38

In **Martinez v. TEC**, 570 S.W.2d 28 (Tex. Civ. App.--Corpus Christi 1978, no writ), the Court of Civil Appeals held that where an overpayment was caused solely by a Commission error (wage credits for another worker were included in the claimant's wage credit calculations) the overpayment was not collectible under Section 214.002 because there was no nondisclosure or misrepresentation by the claimant or by another.

39

In **Meggs v. TEC**, 234 S.W.2d 453 (Tex. Civ. App.--Fort Worth 1950, writ ref'd), the Court of Civil Appeals upheld a disqualification under Section 207.045 of the Act, where a wife left her last work to care for her sick husband, because her leaving was not for good cause connected with the work.

40

In **Mercer v. Ross,** 701 S.W.2d 830 (Tex. 1986), the Supreme Court held that Section 201.012 of the Act, as to mismanagement, requires intent or such a degree of carelessness as to evidence a disregard of the consequences. Mere inability does not fit the definition, regardless of whether the inability inconveniences or causes costs to the employer.

41

In **Mollinedo v. TEC**, 662 S.W.2d 732 (Tex. App.--Houston [1st Dist.] 1983, writ ref'd n.r.e.), the Court of Appeals held that a claimant who had received excess benefits because of duplicate reporting of wage credits by an employer was still required to repay the overpaid benefits under Section 214.002 of the Act. The case specifically distinguished the Martinez case, 570 S.W.2d 28, on the theory that in the Martinez case the error was solely caused by the Texas Workforce Commission.

42

In **TEC v. Morgan**, 877 S.W. 2d 11 (Tex. App. Houston 1994, no writ), the Court of Appeals held that a claimant's request for help and offer to perform less taxing physical duties precluded a finding of misconduct. The claimant, who had been released for full duty by his physician, was asked by the employer to perform his normal job duties. He was fired for refusing to work after he informed the employer that because of his physical condition he would require assistance in order to complete his job assignment. The court noted that there had been no repeated warnings for performance problems and that the claimant had been unable to see a doctor again because of an ongoing dispute regarding his workers' compensation claim.

43

In **TEC v. Oliver**, 691 S.W.2d 819 (Tex. Civ. App.--Houston [1st Dist.] 1985, no writ), the Court of Civil Appeals held that the Commission had no authority to recoup an overpayment under the terms of Section 214.002 of the Act in a situation where the claimant had been paid benefits based upon his separation but was later reinstated with backpay, thereby disallowing the claim and resulting in an overpayment, because there had been no nondisclosure or misrepresentation of a material fact by the claimant. The Court discussed only Section 16(d) and not Section 212.006 of the Act.

44

In **TEC v. Potts**, 884 S.W.2d 879 (Tex. App.-Dallas 1994, no writ), the Court of Appeals held that a claimant who consistently misfiles orders or who fails to follow simple, written procedures engages in mismanagement and neglect. The fact that a claimant does follow procedures after being reprimanded demonstrates an ability to do the job and does not negate a finding of misconduct.

45

In **R.C.W. v. TEC**, 619 S.W.2d 35 (Tex. Civ. App.--Eastland 1981, no writ), the Court of Civil Appeals held that where an employer, in anticipation of a strike by another union, laid off the workers in question, the workers had not initiated the work stoppage and Section 207.048 of the Act would not apply.

46

In **Redd v. TEC**, 431 S.W.2d 16 (Tex. Civ. App.--Corpus Christi 1968, writ ref'd n.r.e.), the Court of Civil Appeals stated that any individual who is mandatorily retired is not subject to disqualification under Section 207.045 of the Act. This case also held that the TWC could require a work search under the broad statutory directive of Section 207.021(a)(4).

47

In **Retama Development Corp. & Retama Park Management Co., L.C. v. TWC** and Brown 971 SW2d 136, (Tex.Civ. App – Austin, 1998), the Court upheld the Commission's decision charging the employer's account. The employer operated a racetrack under authority of the Texas Racing Commission. Due to an economic downturn, the employer requested permission from the Racing Commission to shut down two weeks earlier than originally authorized to do so by that Commission. The Racing Commission granted such permission, leading to the unemployment of claimant Brown and others. The Commission's decision charging the employer's account, distinguished Appeal No. 93-004252-10M012194 (CH 10.30 of the Appeals Policy and Precedent Manual) on the basis that the employer had requested the shortened season, rather than having completed the previously authorized season as in the precedent case. The Court agreed with this distinction but went on to dismiss the principle underlying the precedent, stating a separation must be required by statute for Section 204.022 to be applicable; it was insufficient to be merely an indirect result accompanying statutorily required regulation.

48

In **TEC v. Ryan**, 481 S.W.2d 172 (Tex. Civ. App.--Texarkana 1972, no writ), the Court of Civil Appeals found that the claimant's use of company property for his own benefit off company time could fit the definition of misconduct connected with the work and thus affirmed the Commission's disqualification of the claimant under Section 207.044 of the Act. This case was decided before the current definition of misconduct was added as Section 201.012 of the Act.

49

In **TEC v. Tates**, 769 S.W. 2d 290 (Tex. App. Amarillo 1989, no writ), the Court of Appeals held that the fact that the claimant improved for a short while after each job performance warning was evidence that the claimant was able to perform the job. The claimant mismanaged his position and engaged in neglect that placed the employer's property in jeopardy when he repeatedly made errors in his job as a warehouse counterman.

50

In **Texaco, Inc. v. TEC**, 508 S.W.2d 957 (Tex. Civ. App.--Houston [1st Dist.] 1974, writ ref'd), the Court of Civil Appeals held that an employee who was forced to retire after reaching age 65 under the terms of lifetime pension plan did not voluntarily terminate his employment without good cause connected with the work and thus was not subject to disqualification under Section 207.045 of the Act.

51

In **Todd Shipyards Corporation, et.al. v. TEC** et.al., 245 S.W.2d 371 (Tex. Civ. App.--Galveston 1951, writ ref'd n.r.e.), the Court of Civil Appeals held that claimant was unemployed within the meaning of Section 201.091 of the Act during the period of time when he performed no services and when no wages were due him.

52

In **TEC v. Torres**, 804 S.W.2d 213 (Tex. App.--Corpus Christi 1991, n.w.h.), the Court of Civil Appeals held that when the reason for discharge is neglect that endangers property of the employer, the neglect must be intentional or must show such carelessness that it indicates a disregard for the consequences. Mere failure to perform tasks to the satisfaction of the employer, without more, does not constitute misconduct which disqualifies an employee from benefits.

53

In **TEC v. Torvik,** 797 S.W.2d 195 (Tex. App. Corpus Christi 1990, no writ), the Court of Appeals held that not all elements included in the statutory definition of "misconduct connected with the work" require a showing of intent. A conclusion of misconduct can exist without a showing of intent if a claimant is discharged for mismanagement of a position of employment by action or inaction, neglect that places in jeopardy the lives or property of others, or violation of a policy or rule adopted to ensure orderly work and the safety of employees. Only the elements of intentional wrongdoing or malfeasance and intentional violation of a law require an intentional state of mind on the part of the employee. The claimant unsuccessfully argued that due to his mental illness (and lack of intent) his action of fighting with a coworker and customer could not be characterized as misconduct.

54

In **Western Union Tel. Co. v. TEC**, 243 S.W.2d 217 (Tex. Civ. App.--El Paso 1951, writ dism'd w.o.j.), the Court of Civil Appeals reasoned that severance payments made under a union contract (and based upon length of service) were for prior services rendered and were not earned after discharge, and thus, would have no effect on the receipt of unemployment compensation benefits.

55

In **Worley v. TEC**, 718 S.W.2d 62 (Tex. App.--El Paso 1986, no writ), the claimant, under a voluntary early retirement reduction in force plan, was placed on a leave of absence for 12 months at 65% of his pay, at which time he would have enough seniority to retire. In addition to paying the reduced wage, the employer continued to pay the claimant's insurance benefits and maintained all other company benefits (except leave accrual). All normal payroll deductions were made. The Court of Appeals held the claimant was not unemployed during the period of the paid leave of absence even under the definition of a partially unemployed individual under Section 201.091 of the Act because he earned more than 125% of his weekly benefit amount.

56

In **TEC v. York** 948 S.W. 2d 352 (Tex. App. Dallas 1997, no writ), the Court of Appeals held that Texas Employment Commission may act with a quorum of Commissioners, even if one of the three seats on the Commission is vacant. This is true even if the vacancy belongs to the Commissioner Representing the Public, who is the Chair when the Commission decides unemployment insurance cases. Acting with a mere quorum does not violate the Texas Unemployment Compensation Act or the Constitutional principles of Due Process and Equal Protection.