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## **CHAPTER 212. DISPUTE RESOLUTION**

### **Subchapter A. General Provisions**

#### **Sec. 212.001. Procedures**

The manner in which disputed claims are presented, the reports on disputed claims required from claimants, employers, or other persons, and the conduct of hearings and appeals must be in accordance with rules adopted by the commission for determining the rights of parties to disputed claims.

#### **Sec. 212.002. Record**

- (a) A complete record shall be kept of proceedings in connection with a disputed claim.
- (b) Testimony at any hearing on a disputed claim shall be recorded.

#### **Sec. 212.003. Witness Fees**

- (a) A witness subpoenaed under this chapter is entitled to a fee at a rate set by the commission.
- (b) The witness fee is an expense of administering this subtitle.

#### **Sec. 212.004. Payment of Benefits Pending Appeal**

- (a) Except as otherwise provided by this section, benefits shall be paid in accordance with a final determination.
- (b) Benefits shall be paid promptly in accordance with:
  - (1) a determination or redetermination of an examiner;
  - (2) a decision of an appeal tribunal;
  - (3) a decision of the commission; or
  - (4) a decision of a reviewing court.
- (c) Subsection (b) applies without regard to:
  - (1) any provision of this subtitle under which benefits may be paid or denied; or
  - (2) the pendency of:
    - (A) a period to:

- (i) apply for reconsideration;
    - (ii) file an appeal; or
    - (iii) petition for judicial review;
  - (B) an application for reconsideration;
  - (C) an appeal; or
  - (D) a petition for judicial review.
- (d) Benefits paid under a determination, redetermination, or decision continue until the determination, redetermination or decision is modified or reversed by a subsequent redetermination or decision, and shall be paid or denied in accordance with the modifying or reversing redetermination or decision.

**Sec. 212.005. Chargeback on Reversal of Determination or Decision Allowing Benefits Prohibited; Exception**

- (a) Except as provided by Subsection (b), a chargeback may not be made to an employer's account because of payments having been made under a determination or decision to the claimant for any benefit period with regard to which the claimant is finally denied benefits by a modification or reversal of the determination or decision.
- (b) A chargeback shall be made to an employer's account for benefits paid to a claimant that are not in accordance with the final determination or decision under this subtitle if the benefits were paid due to the failure of the employer, or the employer's agents, to comply with Section 208.004.

**Sec. 212.006. Recovery of Benefits Paid**

- (a) Benefits paid to a claimant that are not in accordance with the final decision shall be:
  - (1) refunded by the claimant to the commission; or
  - (2) in the discretion of the commission, deducted from future benefits payable to the claimant under this subtitle.
- (b) Benefits paid that are not in accordance with the final decision are also collectible in the manner provided by Sections 213.031, 213.032, 213.033, 213.035, and 213.051 for the collection of past due contributions.

## **Subchapter B. Examiners**

### **Sec. 212.051. Determination by Examiner on Notification**

- (a) If the person for which a claimant last worked files a notification with the commission as provided by Section 208.004, an examiner shall determine:
  - (1) whether the claimant is disqualified from receiving benefits under Section 207.044-207.053;
  - (2) the resolution of any other issue affecting the claimant's right to receive benefits that arises under any other provision of this subtitle; and
  - (3) whether, if benefits are to be paid to the claimant, a chargeback is to be made to the person's account.
- (b) The examiner shall mail a copy of the determination to the claimant and:
  - (1) the person for which the claimant last worked;
  - (2) the branch or division for which the claimant last worked; or
  - (3) the address for mail service designated by a governmental employer.

### **Sec. 212.052. Determination by Examiner on Examiner's Own Motion**

- (a) If a notification as provided by Section 208.004 from the person for which a claimant last worked is not filed, and information on the claim or other information secured raises an issue affecting the claimant's right to benefits under this subtitle, an examiner shall determine whether the claimant is to receive benefits.
- (b) The examiner shall mail a copy of the determination to the claimant at the claimant's last known address.

### **Sec. 212.053. Determination Final; Appeal**

An examiner's determination is final for all purposes unless:

- (1) the claimant or the person or branch for which the claimant last worked and to whom the copy of the determination is mailed files an appeal from the determination not later than the 14th calendar day after the date on which the copy of the determination is mailed to the last known address of the claimant, person, or branch as shown by commission records;
- (2) an examiner files an appeal from the determination within the period specified in Subdivision (1); or

- (3) an examiner makes a redetermination as provided by Section 212.054.

**Sec. 212.054. Redetermination by Examiner**

- (a) Except as otherwise provided by this subsection, if an examiner discovers an error in connection with a determination or discovers additional information not previously available, the examiner, within the period specified in Section 212.053(1), may reconsider and redetermine the determination. An examiner may issue a redetermination to correct a clerical or machine error at any time during a claimant's benefit year.
- (b) An examiner's redetermination replaces the original determination and becomes final unless the claimant or the person for which the claimant last worked files an appeal from the redetermination not later than the 14th calendar day after the date on which a copy of the redetermination is mailed to the claimant's or person's last known address as shown by commission records.

**Subchapter C. Appeal Tribunals**

**Sec. 212.101. Establishment of Appeal Tribunals**

- (a) The commission shall establish one or more impartial appeal tribunals to hear and decide disputed claims if the establishment of those appeal tribunals is necessary to ensure prompt disposal of cases on appeal.
- (b) An appeal tribunal is composed of a salaried examiner.

**Sec. 212.102. Action by Appeal Tribunal**

Unless the appeal is withdrawn, an appeal tribunal shall affirm or modify the determination of the examiner after giving the parties reasonable opportunity for fair hearing.

**Sec. 212.103. Notice of Appeal Tribunal Action**

The parties to an appeal shall be notified of the appeal tribunal's decision and the reasons for the decision.

**Sec. 212.104. Decision Considered Final Commission Decision**

The decision of an appeal tribunal is the final decision of the commission unless further appeal is initiated as provided by Section 212.151 not later than the 14th day after the date the decision is mailed.

**Sec. 212.105. Removal or Transfer of Claim Pending before Appeal Tribunal**

- (a) The commission may remove to itself or transfer to another appeal tribunal the proceedings on a claim pending before an appeal tribunal.

- (b) A quorum of the commission shall hear a proceeding removed to the commission under Subsection (a).
- (c) The commission promptly shall mail to the parties before it a copy of its findings and decision.

**Sec. 212.106. Rules Regarding Hearings Conducted by Telephone Conference**

The commission by rule shall develop procedures to ensure that an appeal tribunal makes every effort in a hearing conducted by telephone conference under this subchapter to obtain all relevant facts and evidence from the parties to the appeal.

**Subchapter D. Commission Review**

**Sec. 212.151. Review of Appeal Tribunal Decision**

The commission may:

- (1) on its own motion:
  - (A) affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in the case; or
  - (B) direct the taking of additional evidence; or
- (2) permit any of the parties to the decision to initiate a further appeal before the commission.

**Sec. 212.152. Notice of Commission Action**

The commission promptly shall mail to the parties before it a copy of its findings and decision.

**Sec. 212.153. Finality of Commission Decision**

A decision of the commission becomes final 14 days after the date the decision is mailed unless before that date:

- (1) the commission by order reopens the appeal; or
- (2) a party to the appeal files a written motion for rehearing.

**Subchapter E. Judicial Review of Commission Decision**

**Sec. 212.201. Commencement of Judicial Review; Defendants**

- (a) A party aggrieved by a final decision of the commission may obtain judicial review of the decision by bringing an action in a court of competent jurisdiction for review of the decision

against the commission on or after the date on which the decision is final, and not later than the 14th day after that date.

- (b) Each other party to the proceeding before the commission must be made a defendant in an action under this subchapter.

**Sec. 212.202. Standard of Judicial Review; Exceptions Not Necessary**

- (a) Judicial review under this subchapter is by trial de novo based on the substantial evidence rule.
- (b) It is not necessary in a judicial proceeding under this subchapter to enter exceptions to the rulings of the commission.

**Sec. 212.203. Exhaustion of Remedies**

- (a) A party claiming to be aggrieved by a final decision of the commission may not obtain judicial review of the decision unless the party has exhausted the party's remedies before the commission as provided by this subtitle.
- (b) The exhaustion of those remedies does not include a motion for rehearing.

**Sec. 212.204. Filing of Action**

An action under this subchapter must be filed:

- (1) in the county of the claimant's residence; or
- (2) if the claimant is not a resident of this state, in:
  - (A) Travis County;
  - (B) the county in this state in which the claimant's last employer has its principal place of business; or
  - (C) the county of the claimant's last residence in this state.

**Sec. 212.205. Petition; Supersedeas**

- (a) A petition in an action under this subchapter must state the grounds on which review is sought.
- (b) A petition for judicial review does not act as a supersedeas.

**Sec. 212.206. Commission Considered Party to Judicial Review; Notice of Petition**

- (a) The commission is considered a party to any judicial action involving a final decision of the commission.
- (b) A petition to bring an action under this subchapter must be served on:
  - (1) a member of the commission; or
  - (2) a person designated by the commission.
- (c) As many copies of the petition as there are defendants must be left with the party served under Subsection (b). The commission immediately shall mail one copy of the petition to each defendant.
- (d) Service in compliance with this section constitutes completed service on all defendants.

**Sec. 212.207. Representation of Commission**

The commission may be represented in any judicial action involving a final decision of the commission by any qualified attorney who:

- (1) is a regular salaried employee of the commission; and
- (2) has been appointed for that purpose by the attorney general.

**Sec. 212.208. Precedence over Other Civil Actions**

An action under this subchapter shall be given precedence over all other civil cases except cases arising under the workers' compensation laws of this state.

**Sec. 212.210. Appeal Bond Not Required**

An appeal bond is not required in an appeal from a decision of a trial court in an action under this subchapter.