

## APPEALS POLICY AND PRECEDENT MANUAL

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**I**

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**N**

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**O**

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**Q**

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**R**

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**U**

(No cases selected)

**V**

(No cases selected)

**W**

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**Z**

(No cases selected)

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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.

**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.

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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.

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 back-pay 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.

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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.

**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.

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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.

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In TEC v. E-Systems, Inc., 540 S.W.2d 761 (Tex. Civ. App.--Waco 1976, writ re-  
f'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 claim-  
ants 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.

**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 neigh-  
bor 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 Amend-  
ment of the U.S. Constitution required that parties receive adequate notice de-  
tailing 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 preg-  
nancy was not disqualified from receipt of unemployment benefits.

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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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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 re-affirmed.

**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

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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.

#### 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.

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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.

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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.

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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.

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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).

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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 (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.

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**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.

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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 dismissed 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.

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**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.