

APPEALS POLICY AND PRECEDENT MANUAL

TOTAL AND PARTIAL UNEMPLOYMENT

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TPU 20.00 - 20.10

TPU AMOUNT OF COMPENSATION

TPU 20.00 AMOUNT OF COMPENSATION.

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 80.00 - 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.

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 re-employment 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 - 80.15

TPU COMPENSATION NOT PAYABLE OR NO WORK DONE

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.

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

TPU COMPENSATION NOT PAYABLE OR NO WORK DONE

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.

**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

APPEALS POLICY AND PRECEDENT MANUAL**TOTAL AND PARTIAL UNEMPLOYMENT****TPU 80.20 (2)****TPU COMPENSATION NOT PAYABLE OR NO WORK DONE**

TEC and General Electric Co. v. International Union of Electrical,
Radio and Machine Workers et al (Cont'd)

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 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 shutdown-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 shut-downs. 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. HELD: The claimant's unemployment was due to the closing of school for the Easter Holidays, which was not between

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TPU 80.20 (3)

TPU COMPENSATION NOT PAYABLE OR NO WORK DONE

Appeal No. 2150-CSUA-77

(Cont'd)

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. International 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 415.30

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 TIME OF SERVICES

TPU 455.00 TIME OF SERVICES.

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.

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).

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TPU 460.25

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.)

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TPU 460.35 - 460.50

TPU TYPE OF COMPENSATION

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.

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.

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.

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TPU 460.62

TPU TYPE OF COMPENSATION

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 TYPE OF COMPENSATION

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 layoff 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 layoff. 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)

TPU TYPE OF COMPENSATION

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 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 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.

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TPU 460.75 (3)

TPU TYPE OF COMPENSATION

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)