

Anytown ISD  
123 Main Street  
Anytown, Texas 77777

February 7, 2010

Re: Jane Doe, SSN# 123-45-6789

The employer appeals.

Please send notice of the hearing to our address above and to our counsel at:

James Ezell  
C/O TASB Risk Management Fund  
P.O. Box 400  
Austin, Texas 78767-0400

Sincerely,

A handwritten signature in black ink, appearing to be 'James Ezell', with a stylized, cursive-like script.

Business Manager

## Decision

We sent this decision on entitlement to Unemployment Benefits to the individual on this date.

**Issue:** Base Period Wages-School Wages

**Decision:** We can pay you benefits, if you meet all other requirements.

**Reason for Decision:** You do not have reasonable assurance of work for a school in the following school year or term. You have had a final separation from your former employment with a school.

**Law Reference:** Section 207.041 of the Texas Unemployment Compensation Act.

### Understanding your Decision

TWC monitors eligibility for benefits when a claimant first files a claim for unemployment insurance and every time weekly payments are requested. TWC has made a decision about this claimant's job separation or ongoing eligibility for UI benefits.

- If you disagree with this decision, file an appeal. Appeal each decision separately by the appeal deadline. If you fax your appeal, retain a copy of the confirmation sheet.
- A claimant can dispute or appeal a "we cannot pay you benefits" decision. TWC will notify you of the appeal hearing. Failure to participate may result in an adverse decision.
- Be aware that you may receive additional or revised decisions for the same claim.
- If you have questions, call the TWC Tele-Center handling your claim.

### Determination of Employer's Potential Chargeback

Chargeback does not apply to this decision since it does not involve a separation from last work.

### If You Disagree with this Decision

If you disagree with this decision, you may appeal. Fax or have any appeal you may file postmarked on or before 12-31-09. TWC will use the date we receive the fax to determine whether your appeal is timely. If you file your appeal by fax, you should retain your fax confirmation as proof of transmission. Please include a copy of this notice with Appeals correspondence. The Appeal must be in writing to this address:

Appeal Tribunal  
Texas Workforce Commission  
101 E. 15th Street  
Austin, TX 78778-0002  
FAX (512) 475-1135

Please see reverse for how to file an appeal.

BD630E 02/27/2007

Case No.:	11
Claim ID.:	12-06-09
Claim Date:	12-06-09
FOR HEARING IMPAIRED CLIENTS	
Relay Texas TDD No.:	1-800-735-2989
Voice No.:	1-800-735-2988

## Decision

We sent this decision on entitlement to Unemployment Benefits to the individual on this date.

**Issue:** Separation from Work

**Decision:** We can pay you benefits, if you meet all other requirements.

**Reason for Decision:** Our investigation found your employer laid you off from your last job at his or her convenience. This reason is not misconduct connected with the work.

**Law Reference:** Section 207.044 of the Texas Unemployment Compensation Act.

### Understanding your Decision

TWC monitors eligibility for benefits when a claimant first files a claim for unemployment insurance and every time weekly payments are requested. TWC has made a decision about this claimant's job separation or ongoing eligibility for UI benefits.

- If you disagree with this decision, file an appeal. Appeal each decision separately by the appeal deadline. If you fax your appeal, retain a copy of the confirmation sheet.
- A claimant can dispute or appeal a "we cannot pay you benefits" decision. TWC will notify you of the appeal hearing. Failure to participate may result in an adverse decision.
- Be aware that you may receive additional or revised decisions for the same claim.
- If you have questions, call the TWC Tele-Center handling your claim.

## Determination of Employer's Potential Chargeback

Your last employer is a reimbursing employer. Therefore, if we make any payments to you during your benefit year, we must include the amount paid on the quarterly bill for this account.

## If You Disagree with this Decision

**If you disagree with this decision, you may appeal. Fax or have any appeal you may file postmarked on or before 12-31-09.** TWC will use the date we receive the fax to determine whether your appeal is timely. If you file your appeal by fax, you should retain your fax confirmation as proof of transmission. Please include a copy of this notice with Appeals correspondence. The Appeal must be in writing to this address:

Appeal Tribunal  
Texas Workforce Commission  
101 E. 15th Street  
Austin, TX 78778-0002  
FAX (512) 475-1135

**Please see reverse for how to file an appeal.**

BD630F 02/27/2007

Case No.:	11
Claim ID.:	12-06-09
Claim Date:	12-06-09
FOR HEARING IMPAIRED CLIENTS	
Relay Texas TDD No.:	1-800-735-2989
Voice No.:	1-800-735-2988

# Notice of Telephone Hearing Texas Workforce Commission

Date Mailed: April 13, 2010

---

**Claimant:**

Jane Doe  
101 Elm Street  
Anytown, TX 77777

**Employer: PI**

Anytown ISD  
123 Main Street  
Anytown, TX 77777

SSN: 123-45-6789

Employer Account #: 99-999999-9

Hearing Date:

**TUESDAY, APRIL 27, 2010**

Hearing Start Time:

**9:15 A.M.**

For your hearing, call this number  
Between 8:45 AM. and 9:15 A.M.



**1-800-252-3749**

Hearing Officer:

**B. SKEPTICAL**

## WHAT YOU MUST DO:

**1. Send documents before the hearing.** You may have documents that are important to your case. If the document is not found in this packet, you must immediately fax or mail copies of these documents to the hearing officer and to the other party at the address listed above.

**2. Call in for your hearing.** This hearing will be held by telephone conference call. On the hearing date, call the toll-free number shown in the box above. Call *within 30 minutes before the hearing start time*. Give the operator the phone number where you can be reached when the hearing officer calls you back. If you call from a pay phone, be sure it can receive incoming calls.

**3. Warning:** If you fail to call in as instructed 30 minutes before the hearing start time, you may not be allowed to participate in the hearing. You will not have another opportunity to offer testimony unless you can establish good cause for failure to call in as instructed. Employers who are not parties of interest (indicated as **NPI** above) do not have the right to request a new hearing nor to appeal.

---

Appeal No. 9999999-1

Appeal Filed by: Employer

Appeal Date: 02/03/10

Initial Claim Date: 01/15/10

Determination Date(s): 01/22/10

B. SKEPTICAL, Hearing Officer

Texas Workforce Commission

101 E. 15<sup>TH</sup> Street, RM 410

Austin, TX 78778

Hearing Officer (512) 476-5289

Fax No. (512) 478-1492

---

**2 - A**

**Additional copies of this hearing notice packet were mailed to:**

TASB  
ATTN JAMES EZELL  
PO BOX 400  
AUSTIN TX 78767

## **Issues in Your Hearing**

(Additional issues, if any, are continued on Page 4.)

- Whether the claimant was separated from the last work as a result of a discharge based on work-connected misconduct or a voluntary quit without work-connected good cause. If claimant's discharge occurred while absent from work due to illness, or if claimant resigned from work upon the advice of a physician, claimant should immediately mail or fax to the hearing officer and opposing party a physician's statement to medically verify claimant's physical condition. Testimony alone as to a physical condition may be insufficient.
- 
- Chargeability of benefits paid to claimant which are based on wages from this employer. If employer is a reimbursing employer, benefits paid to claimant based on wages from this employer shall be billed to the employer.
- 
- Please notify your client of the hearing and forward to them copies of the hearing notice and attached Commission documents.



## Your Appeal Tribunal Hearing - Information and Instructions

### Hearing packet contents

TWC mails a Notice of Hearing and copies of the information we have to all hearing participants. This packet should contain:

- The date that TWC notified the claimant's last employer that the claimant applied for unemployment benefits. (This information is included only if relevant to the claim.)
- Any protests to the claim.
- Any information that TWC received in response to the claimant's claim.
- Any fact-finding statements that TWC took while investigating issue(s) on appeal.
- The appeal itself (either a letter or appeal form).

### Purpose of the hearing

The hearing is a fact-finding process that uses a question-and-answer method. Each side may present testimony, witnesses, and documents relevant to its case. The hearing officer will conduct a fair hearing, determine what is relevant, and make sure the record is complete. After the hearing, the officer will prepare a written decision based on the evidence. That decision will be mailed to you.

### What happens at a hearing

Your Notice of Telephone Hearing lists what issues the hearing will cover. The hearing is recorded and all proceedings are taken under oath. After explaining the law and procedures, the hearing officer will ask questions of each side and its witnesses in turn.

After all testimony is taken from one side, the same procedure is repeated for the other side. Wait your turn, as you may not interrupt while another person is testifying. The hearing officer will tell you when it's your turn to ask questions. Ask relevant questions that have not already been asked and answered. If you don't have any questions, let the hearing officer know.

### Evidence

Written evidence or documents such as letters, timecards, or doctors' statements may help your case. Photos, maps, or charts may also help explain what happened. Be ready to tell who prepared the evidence and how it helps your case. Send legible

copies of the documents to the hearing officer and the other side *before* the hearing. Do this even if you believe the Texas Workforce Commission or the other side already has them. If you don't, the documents may not be considered as evidence. Include only documents that relate directly to issues listed on the hearing notice.

### Special equipment

If you need access to a telephone, fax machine, or speakerphone to present witness testimony or documents, TWC can set up the equipment at a Texas Workforce Center in your area. We will try to provide as much privacy for your hearing as possible. To request the equipment, please contact your local Texas Workforce Center as soon as you know the time and date of your hearing. For a directory of TWC Workforce Centers, please visit [www.texasworkforce.org](http://www.texasworkforce.org).

Relay Texas customers may communicate with TWC at 1-800-735-2989 (TDD) or 1-800-735-2988 (Voice).

### Witnesses

You may present witnesses to support your case. Choose witnesses who actually saw or heard what happened. Notify them of the date and time of the hearing and arrange for them to be available at that time. When the hearing begins, give the hearing officer the telephone number where each witness can be reached for the hearing.

### Sworn statements

A sworn written statement—called an affidavit—is sometimes used when a witness is unavailable to testify at the scheduled hearing time. An affidavit cannot be given as much weight as live witness testimony because the person who made the sworn statement is unavailable to answer questions. If an affidavit is used, it must be specific and must be sworn to before a notary public.

### Do I need a lawyer?

The unemployment appeal process is designed for claimants and employers who don't have attorneys. The hearing officer will help you develop the facts, present your documents, and question the other

## 6 – A

side. However, an attorney or another person may represent you at your own expense.

### **Schedule conflicts**

Hearing postponements are not ordinarily granted. However, if you have a justifiable conflict, notify the hearing officer as soon as possible *before* your hearing. If you don't, a later request to reopen your hearing may be denied.

### **Failure to appear and requests to reopen**

If one side fails to participate in the hearing, the hearing officer may take testimony from those present and issue a decision based on that testimony. The side that failed to participate may request a reopening of the case, but must first establish good cause for the original nonappearance. If you want a hearing reopened, request it in writing no later than 14 days of the decision date.

### **Faxing your appeal or petition to reopen**

If you fax your appeal or petition to reopen, TWC must receive it no later than 14 days from the date the decision was mailed. Keep your fax confirmation as proof of transmission. TWC will use the date we receive the fax to determine whether your appeal is timely.

### **Interpreters**

The Appeal Tribunal will provide qualified interpreters. If you or any of your witnesses need an interpreter and you have not previously requested one, contact the hearing officer immediately.

### **Withdrawing an appeal**

Only the person who filed the appeal may withdraw it. If you wish to withdraw your appeal, please notify your hearing officer in writing or by telephone. The name, address, and phone number of the hearing officer are listed on the Notice of Telephone Hearing.

### **Time zones**

If you call from a time zone other than Central Standard Time, be sure to properly calculate the time difference.

### **Subpoenas**

A subpoena is a legal document issued by the hearing officer that orders an essential witness to testify or produce certain documents for the hearing. Before requesting a subpoena, ask the witness to voluntarily participate or furnish documents. If the witness refuses, call your hearing officer immediately. The subpoena process takes several days, so please allow plenty of time. The hearing officer determines if it is necessary to issue a subpoena.

### **Decision**

The Appeal Tribunal's written decision will resolve each issue, but it won't review in detail all testimony or documents given at the hearing. If you disagree with the decision, you may file a further appeal. The decision will explain how to file an appeal.

## Selected Sections of the Texas Unemployment Compensation Act

One or more of the following sections of the Texas Unemployment Compensation Act may be involved in your case, depending on the issues. Other sections of the Act not listed here may also be involved. If so, the hearing officer will explain them before your hearing.

**Discharge for Misconduct.** Section 207.044 of the Act states an individual is disqualified for benefits if the individual was discharged for misconduct connected with the individual's last work. Disqualification under this section continues until the claimant has returned to employment and worked for six weeks or earned wages equal to six times the individual's benefit amount.

**Definition of Misconduct.** Section 201.012 of the Act defines "misconduct" as the 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 the orderly work and safety of employees. The term "misconduct" does not include an act in response to an unconscionable act of an employer or superior.

**Voluntarily Leaving Work.** Section 207.045 of the Act states an individual who left the individual's last work voluntarily without good cause connected with the work is disqualified until the individual has returned to employment and worked for six weeks or earned wages equal to six times the individual's benefit amount, unless the individual left work to *move with a spouse* from the area where the individual worked. In that case, the claimant shall be disqualified for not less than six nor more than twenty-five benefit periods following the filing of a valid claim, as determined by the Commission according to the circumstances in each case.

No individual may be disqualified because the individual left work because of a *medically verified illness* of the claimant or claimant's minor child, injury, disability, or pregnancy if the individual is available for work. A medically verified illness of a minor child prevents disqualification under this section only if reasonable alternative care was not available to the child and the employer refused to

allow the individual a reasonable amount of time off during the illness.

*Military personnel* who do not reenlist have not left work voluntarily without good cause connected with the work.

An individual who is *partially unemployed* and who resigns that employment to accept other employment that the individual believes will increase the individual's weekly wage is not disqualified for benefits under this section.

A *temporary employee* of a temporary help firm is considered to have left the employee's last work voluntarily without good cause connected with the work if the temporary employee does not contact the temporary help firm for reassignment on completion of an assignment. A temporary employee is not considered to have left work voluntarily without good cause connected with the work under this subsection unless the temporary employee has been advised: (1) that the temporary employee is obligated to contact the temporary help firm on completion of assignments; and (2) that unemployment benefits may be denied if the temporary employee fails to do so.

**Benefit Eligibility Conditions.** Section 207.021 of the Act states an unemployed individual is eligible to receive benefits for a benefit period if the individual:

- (1) has registered for work at an employment office and has continued to report to the employment office as required by rules adopted by the Commission;
- (2) has made claim for benefits;
- (3) is able to work;
- (4) is available for work;
- (5) for the individual's base period, has benefit wage credits: (A) in at least two calendar quarters; and (B) in an amount not less than 37 times the individual's benefit amount;
- (6) after the beginning date of the individual's most recent prior benefit year, if applicable, earned wages in an amount equal to not less than six times the individual's benefit amount;

## 8 – A

(7) has been totally or partially unemployed for a waiting period of at least seven consecutive days; and

(8) participates in reemployment services such as a job search assistance service, if the individual has been determined, according to a profiling system established by the Commission, to be likely to exhaust eligibility for regular benefits and to need those services to obtain new employment, unless: (A) the individual has completed participation in such service; or (B) there is reasonable cause, as determined by the Commission, for the individual's failure to participate in those services.

**Filing; Information Notices.** Section 208.001 of the Act states, in part, that claims for benefits shall be made in accordance with rules adopted by the Commission. Each employer shall post and maintain, in places accessible to employees, printed notices giving general information about filing a claim for unemployment benefits.

**Exclusions from Chargebacks.** Section 204.022 of the Act states in substance, that benefits paid to a claimant shall not be charged to an employer's account if the claimant's last separation from the employer's employment prior to the beginning date of the claimant's benefit year:

- 1) was required by a federal statute;
- 2) was required by a state statute or municipal ordinance;
- 3) would have disqualified the employee under Section 207.044, 207.045, or 207.053 if the employment had been the employee's last work;
- 4) imposes a disqualification under Section 207.044, 207.045, or 207.053;
- 5) was caused by a medically verifiable illness of the employee or the employee's minor child;
- 6) was based on a natural disaster that results in a disaster declaration by the President of the United States;
- 7) was caused by a natural disaster, fire, flood, or explosion that causes an employee to be separated from his or her employer and thereby incapable of performing work;
- 8) was based on a disaster that results in a disaster declaration by the Governor;
- 9) resulted in the employee's resigning from partial employment to accept other employment that the employee reasonably believed would increase the employee's weekly wage;

10) was caused by the employer being called to active military service on or after January 1, 2003;

11) resulted from the employee leaving the workplace to protect the employee from family violence or stalking as evidenced by: (A) a protective order; (B) police records; and (C) medical documents;

12) resulted from a move from the employment area that: (A) was made with the employee's spouse who is a member of the U.S. military; (B) resulted from the spouse's permanent change of station longer than 120 days or a tour of duty longer than one year; or

13) was caused by the employee being unable to perform work as a result of a disability for which the employee is receiving disability insurance benefits under 42 U.S.C. Section 423.

**Failure to Apply for, Accept, or Return to Work.**

Section 207.047 of the Act states an individual is disqualified for benefits if during the individual's current benefit year the individual failed, without good cause, to apply for available, suitable work when directed to do so by the Commission, or to accept suitable work offered to the individual, or to return to the individual's customary self-employment (if any) when directed to do so by the Commission. Disqualification continues until the individual has returned to employment and worked for six weeks, or earned wages equal to six times the individual's benefit amount.

**Recovery of Benefits Paid.** Section 212.006 of the Act states that benefits paid to a claimant that are not in accordance with the final determination of an examiner or decision of an Appeal Tribunal, the Commission, or a reviewing court shall be refunded by the claimant to the Commission, or in the discretion of the Commission, deducted from future benefits payable to the claimant under this Act.

**Determination Final; Appeal.** Section 212.053 of the Act states, in part, an examiner's determination is final for all purposes unless the claimant or the person or branch for which the claimant last worked, and to whom a copy of the determination is mailed files an appeal from the determination not later than the 14<sup>th</sup> calendar day after that 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.

Benefits - Non-Monetary Determinations  
Fact Finding

SSN: [REDACTED] Case Nbr: 46  
Issue Nbr: 1 Type: FIRED Reason: FIRED - INTAKE STATEMENT  
Stmnt Nbr: 1 of: 3 Stmt of: Claimant Taken: 12-01-2006 08:37:13 AM

Name: [REDACTED] Title:  
Phone Stmt: Y Claim ID: 2006-11-26 Claim Dt: 11-26-2006 Rebuttal: N Footnote: N

Why were you fired? Reason you were given  
I WAS TERMINATED WITHOUT A SPECIFIC  
REASON GIVEN.

Name of the person who told you that you were fired:

[REDACTED]  
Title of the person who told you that you were fired:  
ADMINISTRATOR OFFICER

[REDACTED] - FROM PERSONNEL DEPT/

Did something specific happen that caused you to be fired?\_  
Y

Explanation:

I DONT KNOW WHY THEY LET ME GO. SHE SAID I USED BAD LANGUAGE,  
WHICH I DID NOT, I WALKED OUT OF A MEETING, [REDACTED] WAS  
GIVING ME  
A LOT OF PROBLEMS. INSTEAD OF [REDACTED] GOING UP TO MY SUPERVISOR HE WENT AND  
COMPLAINED WITH THE ASSISTANT MANAGER, I WAS CALLED TO THE OFFICE AND  
HE  
WAS SAYING A LOT OF LIES. SO I DECIDED TO WALK OUT OF THE MEETING  
BECAUSE I  
WAS NOT GOING TO BE PUTTING UP WITH ALL THIS LIES. THIS IS WHY I THINK  
THEY  
LET ME GO.

fired?\_

N

Did you do what you were warned about?\_

N

Explanation:

I DID NOT HAVE ANY WARNINGS.

-----END-----

\*\*\* No footnote entered \*\*\*

Benefits - Non-Monetary Determinations  
Fact Finding

SSN: [REDACTED] Case Nbr: 46  
Issue Nbr: 1 Type: FIRED Reason: INSUBORDINATION  
Stmnt Nbr: 2 of: 3 Stmt of: Employer Taken: 12-13-2006 02:06:12 PM

Name: [REDACTED] Title: PERSONNEL DIRECTOR  
Phone Stmt: Y Claim ID: 2006-11-26 Claim Dt: 11-26-2006 Rebutal: N Footnote: Y

What was reason for separation from work?  
\*\*\*EMPL MESSAGE\*\*\*SEE FOOTNOTE\*\*\*

----- END -----  
DATE & TIME MESSAGE LEFT: 12-13-06 @ 2:15 PM I UNDERSTAND THAT  
YOU ARE AN INVESTIGATOR WITH T.W.C. & THAT YOU NEED FINAL INCIDENT DETAILS,  
WITNESS STMTS FROM HEAD CUSTODIAN & ASST PRINCIPAL FOR THE UNEMPLOYMENT  
CLAIM FILED BY [REDACTED] I WILL GET THIS INFORMATION & RETURN  
THIS CALL NO LATER THAN 12-15-06 BY 2:30 PM I  
UNDERSTAND THAT IF THIS CALL IS NOT RETURNED, A DECISION ON PAYMENT OF THE  
CLAIM WILL BE MADE WITH THE INFORMATION THEN AVAILABLE. I WILL FAX  
THE INFORMATION TO [REDACTED]

Benefits - Non-Monetary Determinations  
Fact Finding

SSN: [REDACTED] Case Nbr: 46  
Issuc Nbr: 1 Type: FIRED Reason: INSUBORDINATION  
Stnt Nbr: 3 of: 3 Stnt of: Claimant Taken: 12-14-2006 08:20:06 AM

Name: [REDACTED] Title:  
Phonc Stnt: Y Claim ID: 2006-11-26 Claim Dt: 11-26-2006 Rebuttal: N Footnote: Y

What was reason for separation from work?  
\*\*\*\*CLMT MESSAGE\*\*\*SEE FOOTNOTE\*\*\*

----- END -----  
DATE & TIME MESSAGE LEFT: 12-14-06 @ 8:30 AM MESSAGE LEFT ON  
ANSWERING MACHINE FOR [REDACTED] ADVISED THAT INFORMATION  
NOW AVAILABLE REGARDING THEIR UNEMPLOYMENT CLAIM MAY PREVENT PAYMENT  
OF BENEFITS & THAT THIS INVESTIGATOR WITH. W. C. NEEDS TO SPEAK TO THEM TO  
SECURE ADDITIONAL INFORMATION REGARDING THE INFORMATION  
RECEIVED FROM EMPLOYER ALSO ADVISED THAT THIS CALL MUST BE  
RETURNED NO LATER THAN THE FOLLOWING DATE & TIME: 12-18-06 BY 12 PM  
AND THAT IF THE CALL IS NOT RETURNED, A DECISION ON PAYMENT OF THE CLAIM WILL  
BE MADE WITH THE INFORMATION THEN AVAILABLE.

Employer Response to Notice of Application for UI Benefits

SSN: [REDACTED] [REDACTED]  
Claim Date: 11-26-2006 Claim Type: IC PGM: REG Claim ID: 2006-11-26

Employer: [REDACTED]  
Correct Last Employer: Y  
Monctarily Eligible: Y  
EDI:

Notice Sent: 12-04-2006  
Duc: 12-18-2006  
Claimant Separation Reason: FIRED

Responded: 12-11-2006  
Response Type: Confirmation #:  
Employer Separation Reason: FIRED  
TWC Action: ROUTE ONLY  
Current Investigator: MARCO CORDOVA

Employment Information

Date Range Worked: Thru  
Gross Wages Earned:

---

Wages In Licu Of Notice: Paid Thru:  
On Temporary Layoff: Recall Date:  
Paid Vacation Days: Paid Thru:

---

Responder's Name: TWC Account:  
Responder's Title: Phone:  
Contact Person: Phone:

---

----- Additional Information Regarding Separation -----

Issue Decision Log

SSN: [REDACTED]  
Case Nbr: 1  
Issue Nbr: 1 of 2 Type: **FIRED** Reason: **PERFORMANCE**

Program: **REG** Claim ID: **2006-10-01** Claim Type: **IC** Claim Dt: **10-01-2006**

LEU: [REDACTED] **MSD**  
Late LEU Response: **N** Interested Party: **Y** Charged: **Yes**

Other Employer:

Decision Date:	<b>10-24-2006</b>	Weeks Disqualified:	
Mailed Date:	<b>10-25-2006</b>	Deductible Amount:	
Begin Date:	<b>10-01-2006</b>	State:	
End Date:		Incident Date:	

Claimant Failed to Respond: **Y**

Qualified: **Y**

Rationale: **PD - EMP AWARE OF CLMTS MISCONDUCT & CHOSE TO CONT EMPTO END OF CONTRACT. NO FINAL INC. EMP INITIATED SEP & FAILED TO PROVE MISCONDUCT. CLMT GIVEN BENEFIT OF DOUBT**

Conclusion: **FIRED-NOT DISCHARGED FOR MISCONDUCT-NOT DISQUALIFIED**

Marco Corva

**IMPORTANT**

Protect your interests! Use the Internet, call, fax or have your response postmarked on or before 12-18-06.

The person named above filed an application for unemployment benefits naming you and/or your organization as the last place worked before filing. State law requires we notify you of this action. If you are an employer covered by the Texas Unemployment Compensation Act, the decision the Texas Workforce Commission (TWC) renders on this application could affect the amount of taxes or reimbursements you pay.

**How do I protect my appeal rights?** To receive a copy of any determination TWC makes and to protect your right to appeal, respond on or before 12-18-06, complete the reverse side of this form in detail, and be prepared to answer any additional questions.

**How do I submit my response?** You have four response options. Only one is necessary to protect your interests.  
• Respond by using the Internet at [www.texasworkforce.org/ui/er.html](http://www.texasworkforce.org/ui/er.html) Enter the Social Security Number and Access Key found above. At the completion of your entry you may print a confirmation sheet as proof of your response.

or  
• Call TWC at (956) 984-4700 or (800) 819-9488, Monday through Friday, between 8:00 a.m. and 5:00 p.m. central time to respond verbally. A Customer Service Representative (CSR) will take your information. When completing the call the CSR will give you an 11-digit confirmation number. You must speak with a CSR and receive a confirmation number. Leaving a voice message does not constitute a response. Record the number in the spaces below and keep this notice for your records.

or    

- Fax the notice to (956) 984-4701. When faxing, be sure to include both sides of the page.

or  
- Mail a copy of this notice and any attachments to the TWC address located in the upper left-hand corner.

**Please Note:** We may allow the applicant an opportunity to respond in a fact finding interview, if the information you submitted does not agree with his/her initial statement. If you want to participate during the initial interview, please indicate so in your response. TWC will notify you how you may participate. The applicant gave the following statement when he/she filed the application for unemployment benefits.

**REASON NO LONGER EMPLOYED**  
FIRED                      Verbal statement by telephone  
I WAS TERMINATED WITHOUT A SPECIFIC REASON GIVEN.

If you have difficulty interpreting the applicant's statement, call TWC at the telephone number listed above.

Case No.: 46  
Claim ID.: 11-26-06  
Claim Date: 11-26-06

## Work Separation Details

Please answer the following questions and mark (X) in the appropriate box.

## General Information

1. Applicant's name (as it appeared on your payroll): Name: [REDACTED]

2. Applicant's Social Security Number: SSN: [REDACTED]

3. Dates worked: 3a. Start Date: [REDACTED] 3b. Last Date Worked: [REDACTED]

4. Did you give the applicant advance notice of work separation?  YES  NO

4a. If no, did you pay the applicant wages instead of providing advance notice of work separation (wages in lieu of notice)?  YES  NO  
If No, skip to Number 5

4b. How many days notice did you pay? No. of Days: [REDACTED]

4c. What dates did the pay cover? Beginning Date: [REDACTED] Ending Date: [REDACTED]

5. Reason no longer employed:  
 Permanent Layoff  Fired  Quit  Reduced Hours  Never Worked Here  
 or  
 Temporary Layoff with Recall Date: [REDACTED] Recall Date: [REDACTED]

6. If the applicant is laid off temporarily:

6a. Have you or will you pay the applicant vacation pay during the layoff?  YES  NO

6b. If yes, how many paid holidays or vacation days did or will the applicant receive? No. of Days: [REDACTED]

6c. Dates pay covered or will cover: Beginning Date: [REDACTED] Ending Date: [REDACTED]

## Detailed Separation Information

7. Provide a detailed explanation of the separation attaching additional pages if necessary. TWC may disclose to the applicant any information you provide. If the applicant was fired, include relevant company policies, any warnings given, the date and nature of the last incident causing the termination, and the name of the person who discharged the applicant. If the applicant quit, include the specific reason given for quitting and whether the applicant gave any notice. For layoffs, include the specific reason for the layoff. NOTE: Failing to provide complete information may cause inappropriate benefit payments and raise employer taxes.

Detailed Explanation:

Claimant was fired for misconduct connected with the job.

TWC will mail a copy of the decision to the address on the other side of this form.

Please indicate any address changes on the front of this form prior to returning it to TWC.

Preparer's Signature: [REDACTED]

Date: [REDACTED]

Title: Risk Manager

Telephone Number: [REDACTED]

TWC Account Number: [REDACTED]

Contact Person: [REDACTED]

Telephone Number: [REDACTED]

Completed forms, inquiries, or corrections to the individual information contained in this form should be sent to the TWC office listed on the other side of this form. AA individuals may receive and review information that TWC collects regarding that individual by sending an e-mail to [open.records@twc.state.tx.us](mailto:open.records@twc.state.tx.us) or writing to TWC Open Records Unit, 101 E 15th St., Room 264, Austin, TX 78778-0001.

# Supplemental Evidence

**SAMPLE DISCIPLINARY WARNING FORM**

Name Jane Doe Hire date 8/1/2007  
Position Cook Department/campus HS kitchen

Description of current problem requiring corrective action:

*Language, use of profanity in kitchen. Arguing with co-workers.*

Previous attempts to deal with problem (explain in detail):

*None, 1st warning*

Employee's comments:

*Jane said someone else started it.*

Correction needed:

*Profanity has no place in the kitchen or on school property. You should act professionally at all times. Please see handbook.*

Note: Failure to correct problem may result in further disciplinary action, including termination of employment.

Gordon Ramsay, Head Chef. 9/18/09  
Supervisor signature Date

I have received a copy of this form. I understand that my signature does not necessarily mean that I agree with the contents.

Verbal warning only  
Employee signature Date



**SAMPLE DISCIPLINARY WARNING FORM**

Name Jane Doe Hire date \_\_\_\_\_  
Position Cook Department/campus HS Kitchen

Description of current problem requiring corrective action:  
*2nd warning for profanity. Jane called a co-worker a b- and was arguing with the kids who wanted extra french fries.*

Previous attempts to deal with problem (explain in detail):  
*Verbal warning given on 9/18/09*

Employee's comments:  
*Chef is always too tough on us. Melinda won't listen to me. She always picks on me.*

Correction needed:  
*You are expected to be professional at all times. Profanity is never acceptable. Any further arguing can result in termination.*

\*Note: Failure to correct problem may result in further disciplinary action, including termination of employment.

Gordon Ramsay 10/24/09  
Supervisor signature Date

I have received a copy of this form. I understand that my signature does not necessarily mean that I agree with the contents.

Jane Doe 10/25/09  
Employee signature Date



**SAMPLE DISCIPLINARY WARNING FORM**

Name Jane Doe Hire date \_\_\_\_\_  
Position Cook Department/campus HS Kitchen

Description of current problem requiring corrective action:

Jane said the ratatouille looked like "s—" when serving. Several Co-workers and students overheard her. After service, she slammed the freezer door shut.

Previous attempts to deal with problem (explain in detail):

1 verbal on 9/18/09  
written warning on 10/24/09

Employee's comments:

Correction needed:

Recommend termination

Note: Failure to correct problem may result in further disciplinary action, including termination of employment.

Gordon Ramsay 1/10/10  
Supervisor signature Date

I have received a copy of this form. I understand that my signature does not necessarily mean that I agree with the contents.

Refused to sign  
Employee signature Date



**SAMPLE EMPLOYEE EXIT REPORT**

Name Jane Doe Dates employed 8/1/07 - 1/10/10

Position Cook Department/campus HS Kitchen

Forwarding address \_\_\_\_\_  
\_\_\_\_\_

Phone \_\_\_\_\_

**Check appropriate type of termination:**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Dismissal | <input type="checkbox"/> Retirement          |
| <input type="checkbox"/> Nonrenewal           | <input type="checkbox"/> Reduction in force  |
| <input type="checkbox"/> Resignation          | <input type="checkbox"/> Extended disability |
| _____ With notice                             | <input type="checkbox"/> Other _____         |
| _____ Without notice                          |  |

**Check all reasons for leaving (to be completed for all voluntary resignations):**

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Moving from district | <input type="checkbox"/> Family circumstances           | <input type="checkbox"/> Took a new position       |
| <input type="checkbox"/> Returning to school  | <input type="checkbox"/> Dissatisfied with type of work | <input type="checkbox"/> Position w/other district |
| <input type="checkbox"/> Other: _____         |   |  |

Comments: Resigned  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Check-out procedures**

Where applicable, review and discuss the following items:

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Health insurance       | <input checked="" type="checkbox"/> Return of district property                          | <input type="checkbox"/> Authorization for release of employment information |
| <input type="checkbox"/> Group life insurance   | <u>X</u> Keys <u>X</u> Equipment   |  |
| <input type="checkbox"/> Unemployment insurance | _____ Books _____ Other  |  |
| <input type="checkbox"/> Disability insurance   | <input type="checkbox"/> Notification to court and recipient of child or spousal support |  |
| <input type="checkbox"/> Compensatory time      |  |  |

Comments \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Interviewed by Business Manager - H.R.

Date 1/10/10



	<p>All District employees shall perform their duties in accordance with state and federal law, District policy, and ethical standards. [See DH(EXHIBIT)]</p> <p>All District employees shall recognize and respect the rights of students, parents, other employees, and members of the community and shall work cooperatively with others to serve the best interests of the District.</p> <p>Employees wishing to express concern, complaints, or criticism shall do so through appropriate channels. [See DGBA]</p>
VIOLATIONS OF STANDARDS OF CONDUCT	<p>Employees shall comply with the standards of conduct set out in this policy and with any other policies, regulations, and guidelines that impose duties, requirements, or standards attendant to their status as District employees. Violation of any policies, regulations, or guidelines may result in disciplinary action, including termination of employment. [See DCD and DF series]</p>
DISCIPLINARY ACTION	<p>Disciplinary action, including the immediate physical removal of an employee from his or her work site, will follow thoughtful consideration of an employee's violation or misbehavior and its impact on the school/District.</p> <p>When disciplinary action becomes necessary, including the immediate physical removal of an employee from his or her work site, care shall be taken to the extent possible to respect the employee's privacy and to handle the situation discreetly.</p>
REMOVAL FROM WORK SITE	<p>The immediate physical removal of an employee from his or her work site shall be prohibited except in situations where there is danger of physical or emotional harm to self or others, in the case of a potentially illegal act or unethical conduct, or wherein the ability to provide meaningful instruction to students would be adversely affected. Removals shall be in compliance with Family Code Chapter 261 relating to child abuse or neglect and indecency with a child, and any state or federal law or court order.</p>
SAFETY REQUIREMENTS	<p>All employees shall adhere to District safety rules and regulations and shall report unsafe conditions or practices to the appropriate supervisor.</p>
HARASSMENT OR ABUSE	<p>Employees shall not engage in prohibited harassment, including sexual harassment, of:</p> <ol style="list-style-type: none"> <li>1. Other employees, as defined at DIA.</li> <li>2. Students, as defined at FFH. [See FFG regarding child abuse and neglect]</li> </ol> <p>While acting in the course of their employment, employees shall not engage in prohibited harassment, including sexual harassment, of other persons, including Board members, vendors, contractors, volunteers, or parents.</p>
RELATIONSHIPS WITH STUDENTS	<p>Employees shall not form romantic or other inappropriate social relationships with students. Any sexual relationship between a student and a District employee is always prohibited, even if consensual. [See FFH]</p>
TOBACCO USE	<p>Employees shall not use tobacco products on District premises, in District vehicles, or at school or school-related activities. [See also GKA]</p>
ALCOHOL AND DRUGS	<p>Employees shall not manufacture, distribute, dispense, possess, use, or be under the influence of any of the following substances during working hours while at school or at school-related activities during or outside of usual working hours:</p>

1. Any controlled substance or dangerous drug as defined by law, including but not limited to marijuana, any narcotic drug, hallucinogen, stimulant, depressant, amphetamine, or barbiturate.
2. Alcohol or any alcoholic beverage.
3. Any abusable glue, aerosol paint, or any other chemical substance for inhalation.
4. Any other intoxicant, or mood-changing, mind-altering, or behavior-altering drugs.

An employee need not be legally intoxicated to be considered "under the influence" of a controlled substance.

**EXCEPTIONS** An employee who manufactures, possesses, or dispenses a substance listed above as part of the employee's job responsibilities, or who uses a drug authorized by a licensed physician prescribed for the employee's personal use shall not be considered to have violated this policy.

**NOTICE** Each employee shall be given a copy of the District's notice regarding drug-free schools. [See DI(EXHIBIT)]

A copy of this policy, a purpose of which is to eliminate drug abuse from the workplace, shall be provided to each employee at the beginning of each year or upon employment.

**ARRESTS AND CONVICTIONS** An employee who is arrested for any felony or any offense involving moral turpitude shall report the arrest to the principal or immediate supervisor within three calendar days of the arrest. An employee who is convicted of or receives deferred adjudication for such an offense shall also report that event to the principal or immediate supervisor within three calendar days of the event.

**MORAL TURPITUDE** Moral turpitude includes but is not limited to:

1. Dishonesty; fraud; deceit; theft; misrepresentation;
2. Deliberate violence;
3. Base, vile, or depraved acts that are intended to arouse or gratify the sexual desire of the actor;
4. Felony possession, transfer, sale, distribution, or conspiracy to possess, transfer, sell, or distribute any controlled substance defined in Chapter 481 of the Health and Safety Code;
5. Acts constituting public intoxication, operating a motor vehicle while under the influence of alcohol, or disorderly conduct, if any two or more acts are committed within any 12-month period; or
6. Acts constituting abuse under the Texas Family Code.

**DRESS AND GROOMING** The dress and grooming of District employees shall be clean, neat, in a manner appropriate for their assignments, and in accordance with any additional standards established by their supervisors and approved by the Superintendent.

DATE ISSUED: 04/01/2005

UPDATE 75

DH(LOCAL)-X

**This online presentation of your district's policy is an electronic representation of TASB's record of the district's currently adopted policy manual. It does not reflect updating activities in progress. The official, authoritative manual is available for inspection in the office of the Superintendent. [See BF (LOCAL) for further information.]**

CODE OF ETHICS AND STANDARD PRACTICES  
FOR TEXAS EDUCATORS

Statement of Purpose. The Texas educator shall comply with standard practices and ethical conduct toward students, professional colleagues, school officials, parents, and members of the community and shall safeguard academic freedom. The Texas educator, in maintaining the dignity of the profession, shall respect and obey the law, demonstrate personal integrity, and exemplify honesty. The Texas educator, in exemplifying ethical relations with colleagues, shall extend just and equitable treatment to all members of the profession. The Texas educator, in accepting a position of public trust, shall measure success by the progress of each student toward realization of his or her potential as an effective citizen. The Texas educator, in fulfilling responsibilities in the community, shall cooperate with parents and others to improve the public schools of the community.

Enforceable Standards.

1. Professional Ethical Conduct, Practices, and Performance.

Standard 1.1. The educator shall not knowingly engage in deceptive practices regarding official policies of the school district or educational institution.

Standard 1.2. The educator shall not knowingly misappropriate, divert, or use monies, personnel, property, or equipment committed to his or her charge for personal gain or advantage.

Standard 1.3. The educator shall not submit fraudulent requests for reimbursement, expenses, or pay.

Standard 1.4. The educator shall not use institutional or professional privileges for personal or partisan advantage.

Standard 1.5. The educator shall neither accept nor offer gratuities, gifts, or favors that impair professional judgment or to obtain special advantage. This standard shall not restrict the acceptance of gifts or tokens offered and accepted openly from students, parents, or other persons or organizations in recognition or appreciation of service.

Standard 1.6. The educator shall not falsify records, or direct or coerce others to do so.

Standard 1.7. The educator shall comply with state regulations, written local school board policies, and other applicable state and federal laws.

Standard 1.8. The educator shall apply for, accept, offer, or assign a position or a responsibility on the basis of professional qualifications.

## 2. Ethical Conduct Toward Professional Colleagues.

Standard 2.1. The educator shall not reveal confidential health or personnel information concerning colleagues unless disclosure serves lawful professional purposes or is required by law.

Standard 2.2. The educator shall not harm others by knowingly making false statements about a colleague or the school system.

Standard 2.3. The educator shall adhere to written local school board policies and state and federal laws regarding the hiring, evaluation, and dismissal of personnel.

Standard 2.4. The educator shall not interfere with a colleague's exercise of political, professional, or citizenship rights and responsibilities.

Standard 2.5. The educator shall not discriminate against or coerce a colleague on the basis of race, color, religion, national origin, age, sex, disability, or family status.

Standard 2.6. The educator shall not use coercive means or promise of special treatment in order to influence professional decisions or colleagues.

Standard 2.7. The educator shall not retaliate against any individual who has filed a complaint with the SBEC under this chapter.

## 3. Ethical Conduct Toward Students.

Standard 3.1. The educator shall not reveal confidential information concerning students unless disclosure serves lawful professional purposes or is required by law.

Standard 3.2. The educator shall not knowingly treat a student in a manner that adversely affects the student's learning, physical health, mental health, or safety.

Standard 3.3. The educator shall not deliberately or knowingly misrepresent facts regarding a student.

Standard 3.4. The educator shall not exclude a student from participation in a program, deny benefits to a student, or grant an advantage to a student on the basis of race, color, sex, disability, national origin, religion, or family status.

Standard 3.5. The educator shall not engage in physical mistreatment of a student.

Standard 3.6. The educator shall not solicit or engage in sexual conduct or a romantic relationship with a student.

Standard 3.7. The educator shall not furnish alcohol or illegal/unauthorized drugs to any student or knowingly allow any student to consume alcohol or illegal/unauthorized drugs in the presence of the educator.

19 TAC 247.2

---

DATE ISSUED: 08/15/2005  
LDU-33-05  
DH(EXHIBIT)-X

---

**This online presentation of your district's policy is an electronic representation of TASB's record of the district's currently adopted policy manual. It does not reflect updating activities in progress. The official, authoritative manual is available for inspection in the office of the Superintendent. [See BF (LOCAL) for further information.]**

## Employee handbook receipt

Name Jane Doe  
Campus/department Kitchen / HS

I hereby acknowledge receipt of my personal copy of the Gay Town ISD Employee Handbook. I agree to read the handbook and abide by the standards, policies, and procedures defined or referenced in this document.

Employees have the option of receiving the handbook in electronic format or hard copy.

### *Insert directions for accessing electronic format here.*

Please indicate your choice by checking the appropriate box below:

- I choose to receive the employee handbook in electronic format and accept responsibility for accessing according to the instructions provided.
- I choose to receive a hard copy of the employee handbook.

The information in this handbook is subject to change. I understand that changes in district policies may supersede, modify, or render obsolete the information summarized in this booklet. As the district provides updated policy information, I accept responsibility for reading and abiding by the changes.

I understand that no modifications to contractual relationships or alterations of at-will employment relationships are intended by this handbook.

## Local considerations

This form documents receipt of the handbook by the employee and acknowledges the employee's responsibility to abide by the policies and procedures of the district. This form should be included in duplicate as separate pages with one page that can be removed from the handbook and forwarded to the central office or some other location.

Distribute this receipt separately if electronic and hard copy formats are made available to employees. This text can be used to document the employee's choice. Include directions for accessing the information electronically (e.g., provide URL or specific steps).

Consider how policy changes will be communicated to employees as they occur.

Reiterate the employee's understanding that the handbook will not change the employment relationship.

## Employee conduct and welfare

## Local considerations

### Standards of conduct

*Policy DH*

All employees are expected to work together in a cooperative spirit to serve the best interests of the district and to be courteous to students, one another, and the public. Employees are expected to observe the following standards of conduct:

- Recognize and respect the rights of students, parents, other employees, and members of the community.
- Maintain confidentiality in all matters relating to students and coworkers.
- Report to work according to the assigned schedule.
- Notify their immediate supervisor in advance or as early as possible in the event that they must be absent or late. Unauthorized absences, chronic absenteeism, tardiness, and failure to follow procedures for reporting an absence may be cause for disciplinary action.
- Know and comply with department and district policies and procedures.
- Express concerns, complaints, or criticism through appropriate channels.
- Observe all safety rules and regulations and report injuries or unsafe conditions to a supervisor immediately.
- Use district time, funds, and property for authorized district business and activities only.

All district employees should perform their duties in accordance with state and federal law, district policies and procedures, and ethical standards. Violation of policies, regulations, or guidelines may result in disciplinary action, including termination. Alleged incidents of certain misconduct by educators, including having a criminal record, must be reported to SBEC not later than the seventh day the superintendent first learns of the incident. See *Reports to the State Board for Educator Certification*, page \_\_\_\_ for additional information.

The sample text in this paragraph provides a general description of expected standards of conduct for all school employees. See Policy DH (Local) for specific provisions adopted by your district. Edit this text to reflect the standards of conduct expected of district employees.



# Texas Workforce Commission Appeal Tribunal



TWC Building  
Austin, Texas 78778

11-23-2009  
Date Mailed

### CLAIMANT:

[Redacted Claimant Information]

Appeal No. [Redacted]

S.S. No. [Redacted]

I. C. Date 05/10/2009

Appeal Filed By: Employer

Date Appeal Filed: 06/22/2009

**Notice:** The attached decision of the Appeal Tribunal will become final unless, within **FOURTEEN (14) DAYS** after the date mailed, further action is taken in accordance with the instructions contained in this decision. The last day on which you may file an appeal is 12-07-2009. This date takes into account any official Texas State or Federal holiday which would extend the appeal time limit.

### Appearances:

#### Date/Location

#### For Claimant

#### For Employer

11/05/2009  
Telephone

[Redacted]

JAMES EZELL, Attorney  
[Redacted] Child Nutrition Director  
[Redacted] Asst Child Nutrition Director  
[Redacted] Production Supervisor  
[Redacted] Storeroom Manager  
[Redacted] Team Leader  
[Redacted] Cook

11/20/2009  
Telephone  
(Continuance)

[Redacted]

SAME AS ABOVE AND  
[Redacted] Asst Superintendent  
for Business Management (No Testimony)

EMPLOYER: PI: X NPI:      Account No. 99-99 [Redacted]

[Redacted] ISD  
[Redacted]  
[Redacted]

JAMES EZELL  
C/O TASB  
PO BOX 400  
AUSTIN TX 78767-0400

**A-1ATE (907) DATES ARE SHOWN AS MONTH, DAY, & YEAR.**

**CASE HISTORY:** A determination dated June 5, 2009 approved the claimant's claim for the payment of benefits without disqualification under Section 207.044 of the Texas Unemployment Compensation Act. The employer appealed.

The employer was notified that as a reimbursing employer the chargeback provisions of the Texas Unemployment Compensation Act do not apply to the employer and the employer will be billed for benefits based on wage credits from this employer.

**ISSUES:** The issues in this case include:

Whether the claimant separated from the last work as a result of a discharge based on work-connected misconduct or a voluntary quit without good work-connected cause.

As a reimbursing employer, any benefits paid to the claimant will be billed to the employer's account.

**FINDINGS OF FACT:** Prior to filing an initial claim for unemployment benefits with the effective date of May 10, 2009, the claimant last worked from May 15, 2007, through May 14, 2009, as a server for the named employer.

The claimant was discharged for saying that food prepared for the students looked like "shit" in the presence of co-workers and for closing a large walk-in freezer door while people were still inside, which was not in accordance with common practice and which was considered inappropriate by the employer. Both incidents occurred on the last day the claimant worked. Prior to the final incident, the claimant had been warned that her job was in jeopardy for using inappropriate language and for inappropriate behavior.

**CONCLUSIONS:** Section 207.044 of the Act provides that an individual who was discharged for misconduct connected with the individual's last work is disqualified for benefits until the individual has returned to employment and worked for six weeks or earned wages equal to six times the individual's benefit amount.

Section 201.012 of the Act defines misconduct to mean 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 the orderly work and the safety of employees, but does not include an act in response to an unconscionable act of an employer or superior.

There was some conflict in the testimony in this case. The findings of fact are based on the most credible evidence presented. The employer's testimony was given greater weight because it was corroborated by multiple witnesses. The Appeal Tribunal concludes that the claimant's language was vulgar and inappropriate and her behavior in closing the freezer door was inappropriate and, as she had been previously warned that her job was in jeopardy due to inappropriate language and behavior, she was discharged for misconduct connected with the work. Therefore, the claimant is subject to disqualification under Section 207.044 of the Act. The determination dated June 5, 2009, approving benefits without disqualification, will be reversed and the claimant will be disqualified under Section 207.044 of the Act beginning May 10, 2009, and continuing until the claimant has returned to employment and either worked six weeks or earned wages at least equal to six times the claimant's weekly benefit amount.

Section 205.013 of the Act provides that at the end of each calendar quarter the Commission shall bill each reimbursing employer for an amount equal to the amount of the regular benefits plus one-half (1/2) of the amount of the extended benefits paid during such quarter which are attributable to service in the employ of such employer, except that a state, a political subdivision of a state, or any instrumentality of any states or political subdivisions of a state, that is a reimbursing employer shall pay 100 percent of the extended benefits paid, and reimbursements shall be paid by the reimbursing employer to the Commission.

Since the employer is a reimbursing employer and also a base period employer, Section 205.013 of the Act requires that any benefits paid to the claimant that are attributable to service with this employer be billed to this employer.

Section 212.006 of the Act provides that benefits paid to a claimant that are not in accordance with the final determination of an examiner or decision of an Appeal Tribunal, the Commission, or a reviewing court shall be refunded by the claimant to the Commission, or in the discretion of the Commission, deducted from future benefits payable to the claimant under this Act.

**DECISION:** The determination dated June 5, 2009, approving benefits without disqualification, is reversed and the following decision is entered: The claimant is disqualified under Section 207.044 of the Act beginning May 10, 2009, and continuing until the claimant has returned to employment and either worked six weeks or earned wages at least equal to six times the claimant's weekly benefit amount.

The notice to the employer regarding reimbursements is correct. The employer will be billed for benefits paid to claimant based on wage credits from this employer.

The claimant is advised that this decision may result in an overpayment which the claimant will be liable to repay if the claimant received benefits during the period covered by this decision. In that event, the claimant will receive a Notice of the Overpaid Amount Resulting From Appeals Decision at a later date detailing the amount of the overpayment. **The Notice of Overpaid Amount is NOT an appealable document. The overpayment results from this Appeal Tribunal decision. Therefore, if the claimant disagrees with the creation of this overpayment, the claimant must file a written appeal to this Appeal Tribunal decision within 14 calendar days of the date this Appeal Tribunal decision was mailed.** The date of the mailing and the last date to appeal the Appeal Tribunal decision are listed on the coversheet of the Appeal Tribunal decision. Instructions for filing an appeal are attached as the last page to the Appeal Tribunal decision.



D. Lynn  
Hearing Officer



# Texas Workforce Commission Appeal Tribunal



## INSTRUCTIONS

IF YOU WISH TO REQUEST A REVIEW OF THIS CASE BY THE COMMISSION, YOU MAY FILE AN APPEAL BY WRITING DIRECTLY TO **COMMISSION APPEALS, TWC BUILDING, 101 E. 15<sup>th</sup> STREET, RM 678, AUSTIN, TX 78778** OR FAX **512-475-2044**. YOUR APPEAL MUST BE WITHIN **FOURTEEN (14)** DAYS FROM THE DATE THIS DECISION WAS MAILED TO YOU. PLEASE INCLUDE IN YOUR APPEAL: THE CLAIMANT'S SOCIAL SECURITY NUMBER, THE APPEAL NUMBER, AND DATE DECISION MAILED.

IF YOU DID NOT APPEAR AND OFFER EVIDENCE AT THE HEARING BEFORE THE APPEAL TRIBUNAL, YOU MAY REQUEST A NEW HEARING IF YOU WISH TO CONTEST THIS DECISION AND IF YOU HAVE GOOD CAUSE FOR YOUR NONAPPEARANCE. YOU MAY FILE A REQUEST BY WRITING DIRECTLY TO **APPEAL TRIBUNAL, TWC BUILDING RM 406, AUSTIN TX 78778** OR FAX **512-475-1135** OR YOU MAY HAVE A FORM COMPLETED AT ANY LOCAL COMMISSION OFFICE. YOUR REQUEST MUST GIVE THE REASONS WHY YOU WERE NOT ABLE TO APPEAR AND MUST BE WITHIN **FOURTEEN (14)** DAYS FROM THE DATE THIS DECISION WAS MAILED TO YOU. PLEASE INCLUDE IN YOUR REQUEST: THE CLAIMANT'S SOCIAL SECURITY NUMBER, THE APPEAL NUMBER, AND DATE DECISION MAILED.

IF THE **FOURTEENTH (14)** DAY FROM THE DECISION MAILING DATE FALLS ON A TEXAS STATE OR FEDERAL HOLIDAY, THE TIME LIMIT FOR FILING A REQUEST FOR A NEW HEARING OR AN APPEAL WILL BE EXTENDED THROUGH THE NEXT WORKING DAY. ANY REQUEST FOR A NEW HEARING OR APPEAL MADE PRIOR TO THE DATE THIS DECISION WAS MAILED WILL NOT BE TREATED AS A PROPER AND TIMELY REQUEST FOR REHEARING OR APPEAL FROM THIS DECISION.

IF YOU FAX YOUR APPEAL OR PETITION TO REOPEN, TWC MUST RECEIVE IT NO LATER THAN 14 DAYS FROM THE DATE THE DECISION WAS MAILED.

IF YOU FILE YOUR APPEAL BY FAX, YOU SHOULD RETAIN YOUR FAX CONFIRMATION AS PROOF OF TRANSMISSION.

TWC WILL USE THE DATE WE RECEIVE THE FAX TO DETERMINE WHETHER YOUR APPEAL IS TIMELY.

## INSTRUCCIONES

EN CASO DE QUERER SOLICITAR A LA COMISION UNA REVISION DE LA PRESENTE CAUSA, SE PUEDE APELAR ESCRIBIENDO DIRECTAMENTE A LA SIGUIENTE DIRECCION **COMMISSION APPEALS, TWC BUILDING, 101 E. 15<sup>TH</sup> STREET, RM 678, AUSTIN, TX 78778** O POR FAX **512-475-2044**. LA APELACION DEBE INTERPONERSE DENTRO DE UN PLAZO DE **CATORCE (14)** DIAS SUBSIGUIENTES A LA FECHA DE ENVIO DE LA PRESENTE RESOLUCION. SIRVASE INCLUIR EN SU APELACION EL NUMERO DE SEGURO SOCIAL DEL/DE LA RECLAMANTE, EL NUMERO DE LA APELACION Y LA FECHA DE ENVIO DE LA RESOLUCION.

EN CASO DE NO HABER COMPARECIDO PARA OFRECER PRUEBAS EN LA AUDIENCIA ANTERIOR Y DE QUERER IMPUGNAR LA RESOLUCION, Y SI HA TENIDO UNA CAUSA JUSTIFICADA PARA NO COMPARECER, PUEDE SOLICITAR UNA NUEVA AUDIENCIA, ESCRIBIENDO DIRECTAMENTE A LA SIGUIENTE DIRECCION **APPEAL TRIBUNAL, TWC BUILDING RM 406, AUSTIN TX 78778** O POR FAX **512-475-1135** O LLENANDO EL FORMULARIO CORRESPONDIENTE EN CUALQUIER OFICINA LOCAL DE LA COMISION. DICHA SOLICITUD, EN LA QUE HAY QUE INDICAR POR QUE MOTIVO(S) NO PUDO COMPARECER, DEBERA PRESENTARSE DENTRO DE UN PLAZO DE **CATORCE (14)** DIAS SUBSIGUIENTES A LA FECHA DE ENVIO DE LA PRESENTE RESOLUCION. SIRVASE INCLUIR EN SU APELACION EL NUMERO DE SEGURO SOCIAL DEL/DE LA RECLAMANTE, EL NUMERO DE LA APELACION, Y LA FECHA DE ENVIO DE LA DECISION.

EN CASO DE QUE EL DECIMOCUARTO (CATORCEAVO) DIA SUBSIGUIENTE A LA FECHA DE ENVIO DE LA RESOLUCION, CAIGA EN UN DIA OFICIALMENTE FERIADO EN EL ESTADO DE TEJAS O EN EL PAIS DE LOS ESTADOS UNIDOS, SE PRORROGARA EL PLAZO PARA APELAR O SOLICITAR NUEVA AUDIENCIA PARA INCLUIR EL PROXIMO DIA LABORABLE. TODA SOLICITUD DE APELACION O DE NUEVA AUDIENCIA QUE SEA PRESENTADA ANTES DE LA FECHA DE ENVIO DE LA PRESENTE RESOLUCION, NO SERA CONSIDERADA COMO DEBIDA Y OPORTUNAMENTE PRESENTADA.

SE USTED VA A ENVIAR POR FAX SU APELACION O SOLICITUD DE REAPERTURA LA TWC DEBE RECIBIRLA A MAS TARDAR 14 DIAS POSTERIORES A LA FECHA EN QUE SE LE ENVIO LA DECISION POR CORREO.

SI PRESENTA LA APELACION POR FAX, GUARDE COPIA DE LA TRANSMISION FAX COMO PRUEBA DE HABERLO ENVIADO.

LA TWC USARA LA FECHA EN QUE RECIBAMOS EL FAX PARA DETERMINAR SI SU APELACION ES OPORTUNA.

How much can this cost you?

**IMPORTANT**

Protect Your Interests! Fax, or have any response postmarked on or before 01-04-10 .

**THIS IS NOT A BILL.** TWC will bill you at the end of each calendar quarter (three month period) for the amount of benefits paid during the course of that quarter.

WAGE INFORMATION				
QUARTER(S) USED	WAGES ON RECORD	SOURCE (if Other Than Quarterly Report)	PAGE	UNIT
JUL AUG SEP 2008	8,166.66	EXAMINATION OF HARDCOPY C-4	1	
OCT NOV DEC 2008	8,166.66	EXAMINATION OF HARDCOPY C-4	1	
JAN FEB MAR 2009	12,249.99	EXAMINATION OF HARDCOPY C-4	1	
APR MAY JUN 2009	12,249.99	EXAMINATION OF HARDCOPY C-4	1	

**Maximum Reimbursable Amount: \$10,556.00\***

The person noted above filed an application for unemployment benefits naming you as his/her last employer before 12-06-09 , the effective date of the claim. We used the wages above to calculate the amount of benefits. Please check the amounts against your records. Inaccurate wage information could result in improper payment of unemployment benefits and/or extra charges to you. Report errors promptly. If any amount is incorrect, you may request a review of the TWC wage records to correct possible machine or clerical errors. Wage record accuracy is the only issue for which this notice provides protest rights. A separate notification addressed all other issues including the pay/no pay decision.

**Please Note:** The Maximum Reimbursable amount is based on the total amount of benefits available to this person. If the person does not draw all available benefits, the reimbursable amount could be less. TWC calculates your reimbursable amount using only the benefits actually paid. \*If, during periods of high unemployment, Texas activates extended benefits and the person receives extended benefits, 100 percent of the first week of extended benefits plus 50 percent of any subsequent weeks paid will be charged to your account. The Federal Government will pay the remaining 50 percent.

**INSTRUCTIONS**

Reply to this notice only if you want to request a review of TWC wage records. To request a review: (1) Provide a brief explanation of the error in the space below. Attach additional pages if necessary. (2) Enter the correct wage amounts below. (3) Mail a copy of this notice and any attachments to the Texas Workforce Commission address located in the upper left hand corner or FAX them to (512) 936-3250 . If you have any questions, please call (512) 463-2999 .

QUARTER(S)	CORRECTED AMOUNT
JUL AUG SEP 2008	
OCT NOV DEC 2008	
JAN FEB MAR 2009	
APR MAY JUN 2009	

Claim Date: 12-06-09
FOR HEARING IMPAIRED CLIENTS
Relay Texas TDD No.: 1-800-735-2989

THIS IS NOT A BILL. TWC will bill you at the end of each calendar quarter (three month period) for the amount of benefits paid during the course of that quarter.

WAGE INFORMATION				
QUARTER(S) USED	WAGES ON RECORD	SOURCE (If Other Than Quarterly Report)	PAGE	UNIT
JULAUGSEP 2007	13,512.24	EXAMINATION OF HARDCOPY C-4	1	
OCTNOVDEC 2007	13,845.24	EXAMINATION OF HARDCOPY C-4	1	
JANFEBMAR 2008	13,845.24	EXAMINATION OF HARDCOPY C-4	1	
APRMAYJUN 2008	13,845.24	EXAMINATION OF HARDCOPY C-4	1	

Maximum Reimbursable Amount: \$ 7,840.00 \*

The claimant named above filed an application for state Extended Benefits naming you as his/her last employer before the effective date of the claim. This notice provides the maximum amount that could be charged to your account. We used the wages above to calculate the amount of extended benefits the claimant could receive. TWC previously mailed you a Wage Verification Notice, which allowed you to review the TWC wage records and correct possible machine or clerical errors.

**Please Note:** Reimbursing state agencies, reimbursing political subdivisions, and group political subdivisions, are charged 100 percent for any extended benefits paid to the claimant. The Maximum Reimbursable amount is the total amount of extended benefits available to the claimant. If the claimant does not draw all available extended benefits, the reimbursable amount could be less.

Claim Date: 11-02-08	
FOR HEARING IMPAIRED CLIENTS	
Relay Texas TDD No.:	1-800-735-2989
Voice No.:	1-800-735-2988