

Texas Workforce Commission

A Member of Texas Workforce Solutions

Tom Pauken, Chairman

Ronald G. Congleton
Commissioner Representing
Labor

Andres Alcantar
Commissioner Representing
the Public

Larry E. Temple
Executive Director

August 20, 2009

The Honorable Jim Dunnam
Chairman, Select Committee on Federal Economic Stabilization Funding
Texas House of Representatives
State Capitol Building, Room E2.202
Austin, Texas 78701

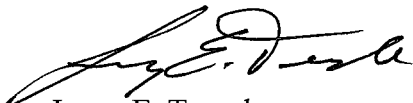
Dear Chairman Dunnam:

As requested in your letter dated August 19, 2009, I have enclosed information detailing TWC's Commission Rules and Precedents that establish the disqualification from Unemployment Insurance (UI) benefits for individuals who are available for part-time work only.

As my staff informed Leslie Lemon in your office, we are analyzing and compiling the data on UI claimants receiving partial payments of UI benefits due to having part-time employment. I will provide that information to you as soon as it is available.

Should you need additional information or assistance, please do not hesitate to contact me at (512) 463-0735.

Sincerely,



Larry E. Temple
Executive Director

Enclosure

TWC Rules and Commission Precedents Related to Individuals Seeking Only Part Time Work While Receiving UI Benefits

There are no Texas statutes that require “available for work” in §207.021(a)(4) of the TUCA to mean available for full-time work. Federal law leaves the interpretation of whether “available for work” includes available for part-time work up to the States.

Rules

Effective August 15, 2004, the Commission addressed the issue of “available for work” within its rules under 40 Texas Administrative Code §815.28, Work Search Requirements, only to the extent to specify that,

(a)... “A claimant is required to register for work, to actively seek work and be available for work, as well as accept suitable work.” ...

(1) “A claimant shall be considered available for work during the time the claimant is making a reasonable search for suitable work as defined by this section.”

...

(C) “Unreasonable limitations by a claimant as to salary, hours, or conditions of work indicate that a claimant is not making a reasonable search for suitable work.”

Commission Precedents

The Commission has adopted ad hoc rules by adopting certain appeals cases as precedents that further interpret the meaning of “available for work”

The Commission Appeals precedents, located in the Appeals Policy and Precedent Manual, are published on the web at http://www.twc.state.tx.us/ui/appl/app_manual.html. It should be noted that the precedents listed in the Appeals Policy and Precedent Manual are limited to their facts. Adjudicators may reason from the precedents to address similar situations, however, all of the facts of each of these cases are not present when viewing the precedent manual.

The following is a list of appeals cases adopted by the Commission as precedent that are listed within the Section of the Appeals and Precedent Manual concerning Able and Available (“AA”):

Applicable precedents listed under AA 40.00 ATTENDANCE AT SCHOOL OR TRAINING COURSE-STUDENTS –

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

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

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

(1977 precedent case)

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

(1976 precedent case)

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

Applicable precedent listed under AA 155.35 DOMESTIC CIRCUMSTANCES: ILLNESS OR DEATH OF OTHERS--

(1976 precedent case)

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

Applicable precedent listed under AA 375.25 RECEIPT OF OTHER PAYMENTS: OLD AGE AND SURVIVOR'S INSURANCE –

(1977 precedent case)

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

Applicable precedent listed under AA 450.20 TIME: IRREGULAR EMPLOYMENT.

(1977 precedent case)

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

Applicable precedents listed under AA 450.40 TIME: PART-TIME OR FULL-TIME—

(1976 precedent case)

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

(1976 precedent case)

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

Applicable court cases listed within the appendix of the Appeals Policy and Precedent Manual concerning Section 207.021(a)(4):

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.

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.

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.