APPEALS POLICY AND PRECEDENT MANUAL

CHARGEBACK

TABLE OF CONTENTS

APPEALS POLICY AND PRECEDENT MANUAL

CHARGEBACK

CH GENERAL

CH 5.00 GENERAL.

CASES INVOLVING CHARGEBACK POINTS NOT ELSEWHERE CLASSIFIED.

Appeal No. 1507-CAC-77. The employer had been incorrectly named as the claimant's last work on his initial claim and had filed a timely protest thereto, submitting facts establishing that the claimant's last separation from the employer's employment prior to the beginning date of the benefit year had been a disqualifying one. The employer was a base period employer (but not the last employing unit) with respect to the backdated initial claim subsequently filed by the same claimant. Following the latter, the employer was mailed a Notice of Maximum Potential Chargeback but failed to file a timely protest thereto. HELD: The employer, a base period employer, is not chargeable with benefits paid to the claimant, notwithstanding the employer's failure to file a timely protest to the Notice of Maximum Potential Chargeback sent to him, because in such a case information establishing the non-chargeability of the employer's account was already in the hands of the Commission before the Notice of Maximum Potential Chargeback was mailed to the employer. In such a case, the Commission's duty was to use such information to protect such base period employer's account, notwithstanding the employer's failure to timely protest the chargeback notice.

Appeal No. 2573-CAC-75. Where the initial claim which established the benefit year, with respect to which the employer was a base period employer, is disallowed because of the claimant's failure to name that employer as her correct last employer, the chargeback to the employer's account must be set aside.

APPEALS POLICY AND PRECEDENT MANUAL

CHARGEBACK

CH SEPARATION REQUIRED BY LAW, ORDINANCE, OR REGULATION

CH 10.00 SEPARATION REQUIRED BY LAW, ORDINANCE, OR REGULATION.

10.10 SEPARATION REQUIRED BY LAW, ORDINANCE, OR REGULATION: FEDERAL STATUTE.

Appeal No. 87-20329-10-112887. Section 274A of the Immigration and Nationality Act makes the employment of unauthorized aliens unlawful. The claimant had lost his social security card and was unable to present it to the employer as proof of citizenship. The employer discharged the claimant for failing to present proof of citizenship in a prompt manner. HELD: In discharging the claimant for failing to present proof of citizenship, the employer was complying with the mandate of Section 274A of the Immigration and Nationality Act (This confusing "dual" reference is due to the fact that the Immigration Reform and Control Act amended, inter alia, Section 274A of the Immigration and Nationality Act). Hence, the separation was required by Federal Statute and the employer's account was subject to protection from chargeback. (Also digested under MS 70.00 and MC 85.00.)

Appeal No. 577-CAC-74. The requirement of a Federal Statute that a former employee who was serving in the military service be returned to his job, in effect, was a requirement that an employee be laid off. Therefore, the employer's account will not be charged with benefits paid to the employee who had to be laid off.

10.20 SEPARATION REQUIRED BY LAW, ORDINANCE, OR REGULATION: REGULATION OF FEDERAL AGENCY.

APPLIES TO CASES IN WHICH THE SEPARATION WAS BROUGHT ABOUT BY THE APPLICATION OF A REGULATION PROMULGATED BY A FEDERAL AGENCY UNDER THE TERMS OF A FEDERAL STATUTE.

Appeal No. 215-CAC-72. U.S. Dept. of Transportation regulations have the same force and effect as a Federal Statute. If such regulations require that an employee not be allowed to continue in his job, the separation was required by a Federal Statute and the employer's account is not subject to charge.

APPEALS POLICY AND PRECEDENT MANUAL

CHARGEBACK

Appeal No. 643-CAC-74. When an employer is required by regulations of a Federal commission to divest itself of the complete television broadcasting portion of the employer's business, it was required to separate the employees of that portion of its business. The separation was required by a Federal Statute and the employer's account should not be charged.

Appeal No. 163-AT-68 (Affirmed by 81-CA-68). The employer chose to qualify his nursing home for the benefits of Medicare. The Federal standards required that a licensed vocational nurse in an extended care facility must have had certain special training and must have passed a state board examination. The claimant was a licensed vocational nurse but had not had the required training and had not passed the state board examination. She obtained her license by waiver. The employer laid the claimant off solely to replace her with an LVN who met the Federal Statute to become an extended care facility, it cannot be found that claimant's separation was required because of a Federal regulation or Statute.

CH 10.30 SEPARATION REQUIRED BY LAW, ORDINANCE, OR REGULATION: STATE STATUTE.

APPLIES TO CASES IN WHICH THE SEPARATION WAS THE RESULT OF THE APPLICATION OF A STATUTE OF TEXAS OR SOME OTHER STATE.

Appeal No. 99-011775-10-121799. The employer is a horse racetrack which, in accordance with the Texas Racing Act, is subject to regulation by the Texas Racing Commission. The Texas Racing Act provides that, as to each horse racetrack participating in racing with pari-mutuel wagering, the Texas Racing Commission shall allocate the number of racing days which will constitute that track's annual racing season. The claimant in this case was an employee who was laid off at the end of the employer's allocated racing season. HELD: Although the employer could no longer conduct horse races without jeopardizing its license and, as a result, may have been forced by economic necessity to lay off the claimant, the separation was merely the indirect result of the application of a state statute. In accordance with the court's ruling in Retama Development Corp & Retama Park Management Co.,

APPEALS POLICY AND PRECEDENT MANUAL

CHARGEBACK

CH SEPARATION REQUIRED BY LAW, ORDINANCE, OR REGULATION

Appeal No. 99-011775-10-121799 (Con't)

L.C. v. TWC and Brown, 971 S.W.2d 136 (Tex. App.—Austin 1998), Section 204.022 (a) (2) of the Act is not applicable, and the employer's account is subject to charge. The Commission noted that Appeal No. 93-004252-10M-012194 was inconsistent with the holding in Retama v TWC, supra, and directed that this precedent be removed from the precedent manual.

In Retama Development Corp. & Retama Park Management Co., L.C. v. TWC and Brown 971 SW2d 136, (Tex.Civ. App – Austin, 1998), the Court upheld the Commission's decision charging the employer's account. The employer operated a racetrack under authority of the Texas Racing Commission. Due to an economic downturn, the employer requested permission from the Racing Commission to shut down two weeks earlier than originally authorized to do so by that Commission. The Racing Commission granted such permission, leading to the unemployment of claimant Brown and others. The Commission's decision charging the employer's account, distinguished Appeal No. 93-004252-10M-012194 (replaced by Appeal No. 99-011775-10-121799) on the basis that the employer had requested the shortened season, rather than having completed the previously authorized season as in the precedent case. The Court agreed with this distinction, but went on to dismiss the principle underlying the precedent, stating a separation must be required by statute for Section 204.022 to be applicable; it was insufficient to be merely an indirect result accompanying statutorily required regulation.

Appeal No. 87-18569-10-102287. The claimant was forced to resign after failing to pass the state dentistry exam. Under Articles 4548a and 4551a, Vernon's Annotated Civil Statutes, the employer could be charged with practicing dentistry without a license if they knowingly permitted the claimant to remain employed as a dentist. HELD: The claimant's separation was required by a Texas Statute because her continued practice of dentistry for the employer would have caused the employer to be in violation of state law.

CH SEPARATION REQUIRED BY LAW, ORDINANCE, OR REGULATION

Appeal No. 7176-CA-60. A claimant who is hired to work as a truck driver and is then unable to pass the test for a commercial driver's license, and is laid off because Article 6687b (Vernon's Texas Civil Statutes) prohibited him from operating a truck, is separated because of a State Statute.

Appeal No. 3629-CA-77. The claimant, a nursing home administrator, was involuntarily separated as a result of a suit instituted against her and the owner by the Texas Attorney General under the Texas Consumer Protection Act for misrepresenting the services provided by the nursing home. HELD: Although the claimant was not discharged by the employer, her separation was involuntary as a result of the action instituted by the Attorney General. The court's judgment lead the Commission to conclude that the claimant's separation was due to her involvement in work-related illegal actions and, accordingly, that she was discharged for misconduct connected with the work. The claimant was disqualified under Section 207.044 of the Act and, therefore, the employer's account was protected from chargeback. (Note that the claimant's separation was not deemed to have been required by a Texas Statute and that the employer's account was protected only because of the disqualifying nature of the claimant's separation, under Section 207.044 of the Act, and not because her separation had been statutorily required.) (Cross-referenced under MC 490.05.)

NOTE: Examples of State Statutes which may be held to have required separations, thus justifying the protecting of an employer's account, are Article 4445, Section 10, and Article 4477-11 (Vernon's Texas Civil Statutes). The former provides that no person infected with a venereal disease shall knowingly expose another person to infection with such disease; the latter provides that all persons infected with tuberculosis, or who, from exposure to tuberculosis, may be liable to endanger others who may come in contact with them, shall strictly observe instructions of local health authorities in order to prevent the spread of tuberculosis, such instructions to possibly include home treatment and isolation or quarantine.

APPEALS POLICY AND PRECEDENT MANUAL

CHARGEBACK

CH 15.00 SEPARATION CAUSED BY MEDICALLY VERIFIABLE ILLNESS.

Appeal No. 87-00700-10-011288. The claimant suffered from multiple sclerosis which impaired her vision and, consequently, her performance as a data entry clerk. She was discharged for excessive errors. HELD: No charge to the employer's account because the separation was caused by a medically verified illness, even though the claimant was not disqualified from receiving benefits.

Appeal No. 87-02634-10-022588. By a doctor's statement, the claimant and the employer were advised that the claimant should discontinue for the remainder of her pregnancy any activities which required heavy lifting. Since such a restriction would impair the claimant's ability to perform her duties, and because of the employer's concern for her health, the claim-ant was discharged. HELD: A separation caused by the claimant's pregnancy is a separation caused by a medically verifiable illness within the meaning of Section 204.022 of the Act, thereby compelling the protection of the employer's account from chargeback. (Also digested under MC 235.40.)

APPEALS POLICY AND PRECEDENT MANUAL

CHARGEBACK

CH SEPARATION BY SALE OF ALL OR A PORTION OF THE BUSINESS

CH 20.00 SEPARATION BY SALE OF ALL OR A PORTION OF THE BUSINESS.

20.10 SEPARATION BY SALE OF ALL OR A PORTION OF THE BUSINESS: TRANSFER OF COMPENSATION EXPERIENCE.

INCLUDES CASES WHICH DISCUSS THE EFFECT OF TRANSFER OF THE PREDECESSOR EMPLOYER'S COMPENSATION EXPERIENCE TO SUCCESSOR EMPLOYER.

Appeal No. 559-CBW-65 (Commission Decision). When a joint application for partial transfer of compensation experience with respect to the establishment where a claimant worked is filed and approved by the Commission, there is no longer any possibility of charge against the former owner.

20.20 SEPARATION BY SALE OF ALL OR A PORTION OF THE BUSINESS: NO TRANSFER OF COMPENSATION EXPERIENCE.

INCLUDES CASES WHICH DISCUSS SITUATIONS WHERE SUCCESSOR EMPLOYER DOES NOT ACQUIRE PREDECESSOR EMPLOYER'S COMPENSATION EXPERIENCE.

Appeal No. 1604-CAC-77. The employer, a base period employer, on selling one of his businesses, offered the employees at that location the option of transferring to another location and continuing to work for the base period employer. HELD: The employees who declined such transfer, in effect, voluntarily left their work with the base period employer without good cause connected with the work, so that such employer's account was not chargeable with benefits paid to the claimants who declined the option to transfer.

APPEALS POLICY AND PRECEDENT MANUAL

CHARGEBACK

CH WHEN SEPARATION OCCURS

CH 30.00 WHEN SEPARATION OCCURS.

30.10 WHEN SEPARATION OCCURS: TRANSFER FROM ONE EMPLOYER'S ACCOUNT TO ANOTHER.

INCLUDES CASES WHICH DISCUSS THE EFFECT OF TRANSFER OF AN EMPLOYEE FROM ONE EMPLOYER'S ACCOUNT TO ANOTHER WITH OR WITHOUT KNOWLEDGE OF THE EMPLOYEE.

Appeal No. 8427-ATC-69 (Affirmed by 79-CAC-70). When an employee is transferred at the convenience of the employer to another company which is a separate company with a different account number, although under the same general management and control, the separation from the first company is not under disqualifying circumstances and the employer's account is subject to charge.

Appeal No. 97-CAC-69. When a claimant is transferred at her own request from one of the employer's stores to another of the employer's stores having a different account number, the claimant's separation from the first store is voluntary in nature and that account number is entitled to protection if the claimant did not have good cause connected with the work for such leaving.

Also see cases reported under CH 20.20.

APPEALS POLICY AND PRECEDENT MANUAL

CHARGEBACK

CH WHEN SEPARATION OCCURS

CH 30.40 WHEN SEPARATION OCCURS: NATURE OF EMPLOYMENT RELATIONSHIP.

INCLUDES CASES WHICH DISCUSS THE PROBLEM OF WHETHER THERE WAS AN EMPLOYMENT RELATIONSHIP BETWEEN THE CLAIMANT AND EMPLOYING UNIT AND WHETHER SUCH RELATIONSHIP HAS CEASED.

Appeal No. 3229-CAC-75. The claimant was employed by the base period employer on a regular part-time basis and continued to be so employed until after the date the claimant filed his initial claim. HELD: The Appeal Tribunal decision, charging the base period employer's account with benefits paid the claimant, was set aside. Since the claimant had not been separated from the base period employer's employment at the time the initial claim was filed, no ruling could be made on the chargeback. (Cross-referenced under MS 510.00.)

Appeal No. 3555-CAC-76. The claimant, who had been working for the base period employer during a temporary time off from his regular job, left the base period employer's employment to return to his regular job at a time when continued employment with the base period employer was available. HELD: The claimant had left such base period employer's employment under disqualifying circumstances; thus, the employer was held not chargeable with benefits paid to the claimant.

Appeal No. 983-CAC-72. If a student is available for only summer work between semesters and leaves at a mutually agreed time to return to school, he voluntarily leaves the work without good cause connected with the work, even though he was hired for the summer only. Hiring programs for students such as this are to be encouraged, and the employer provided work for the claimant for as long as he was available for work. No charge to employer's account. (Also digested under VL 495.00.)

30.50 WHEN SEPARATION OCCURS: INDEPENDENT CONTRACT.

INCLUDES CASES WHICH DISCUSS THE EFFECT OF SEPARATION FROM INDEPENDENT CONTRACT RELATIONSHIP WITH RESPECT TO CHARGING EMPLOYER'S ACCOUNT.

Appeal No. 62-CA-65. Although the claimant's last work for the employer prior to the initial claim was on a contractual basis, the question of chargeability to the employer's tax account depends on the reason for the earlier separation from the employer's "employment" prior to which he had performed services for wages. (For a more detailed summary, see VL 505.00.)

30.60 WHEN SEPARATION OCCURS: EMPLOYMENT.

INCLUDES CASES WHICH DISCUSS THE EFFECT TO BE GIVEN TO DEFINITION OF TERM "EMPLOYMENT" WITH RESPECT TO CHARGING EMPLOYER'S ACCOUNT.

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.) (Also digested under MS 375.05 and cross-referenced under MS 620.00.)

APPEALS POLICY AND PRECEDENT MANUAL

CHARGEBACK

CH WHEN SEPARATION OCCURS

Appeal No. 43-ATC-68 (Affirmed by 3-CAC-68). The claimant worked for the employer in Texas until he was laid off due to a reduction in force. Subsequently, the claimant worked for the employer in Arkansas but voluntarily resigned without good work-connected cause. The claimant's wages earned in Texas were reported to the Texas Workforce Commission and the claimant's wages earned in Arkansas were reported to the Arkansas employment security agency. HELD: Employment as defined in Section Chapter 201 D of the Texas Unemployment Compensation Act is limited to employment in Texas or to employment outside Texas which is subject to the Texas Unemployment Insurance Tax. Furthermore, the term "employment" as used in the chargeback protection provision in Section 204.022 of the Act is limited to employment as defined in Chapter 201 D. Accordingly, the claimant's last employment for the purpose of 204.022 of the Act was that from which he was separated in Texas due to a reduction in force, not the later separation in Arkansas.

APPEALS POLICY AND PRECEDENT MANUAL

CHARGEBACK

CH WAGES ERRONEOUSLY REPORTED

CH 40.00 WAGES ERRONEOUSLY REPORTED.

40.10 WAGES ERRONEOUSLY REPORTED: LIABILITY OF REPORTING EMPLOYING UNIT.

INCLUDES CASES WHICH DISCUSS THE QUESTION OF WHETHER THE EMPLOYING UNIT WHICH REPORTED THE WAGES WAS LEGALLY REQUIRED TO DO SO.

Appeal No. 764-CAC-76. The claimant had worked for the predecessor employer only after a joint application for transfer of experience tax rate had been filed and approved, after the predecessor had ceased operating under the number to which the joint application applied, and after the predecessor had acquired a number involved in the joint application. The claimant's wages from such subsequent employment having been, by virtue of the joint application, erroneously attributed to the account of the successor employer, it was held that such successor employer may secure correction of the error by having such wages deleted from its account, notwithstanding the successor's failure to timely protest the Notice of Maximum Potential Chargeback mailed to it.

Since the claimant in this case had never been on the payroll of either of the accounts involved in the joint application for transfer of experience rating, the successor-employer in such joint application was not one whose account was properly potentially chargeable with benefits as a result of the claimant's initial claim; hence, such successor waived no rights by its failure to protest the Notice of Maximum Potential Chargeback.

Appeal No. 3029-CAC-75. The evidence showed that the claimant, although appearing on the records of the Commission as having been employed by the base period employer, had not actually performed services for, or received wages from, that employer during her base period. HELD: The Appeal Tribunal decision affirming the chargeback determination was reversed and the employer's account was held not chargeable with benefits paid to the claimant.

Appeal No. 12,694-BW-64 (Removed to Commission under provisions of Section 212.105 of the Act). The employer furnishes temporary labor to its clients and carried the employees of a contractor-client on its payroll for the duration of a particular job, giving the client cash each week for a weekly payroll and then billing the client for such payments, adding additional charges. The claimant was hired, supervised, and paid by the client and the agency was serving only as a banker who advanced payroll funds and arranged for worker's compensation coverage. The agency was not the claimant's employer and the determination of charge was set aside.

Appeal No. 9533-BW-62 (Affirmed by 374-CBW-62). When a claimant is hired and controlled solely by a subcontractor, but his wages are paid him by the general contractor, and deducted from the subcontractor's progress payments, the wages should be reported by the subcontractor as the general contractor merely advanced the wages for and on behalf of the subcontractor who was the claimant's employer.

Appeal No. 140-CBW-55. An undercover agent who works for a detective agency, and who is put on the payroll of a company in accordance with an agreement between the company and the detective agency, is an employee of both companies. The detective agency must report and pay taxes on wages paid to the undercover agent for work as an undercover agent and the company must report and pay taxes on wages paid by the company for work as an employee of the company.

40.20 WAGES ERRONEOUSLY REPORTED: EXEMPTIONS.

INCLUDES CASES WHICH DISCUSS THE EFFECT OF THE EMPLOYER'S ERRONEOUSLY REPORTING WAGES FOR EMPLOYEES WHOSE SERVICES WERE EXEMPT UNDER THE STATUTE.

Appeal No. 88-05036-10-042188. The claimant last worked for a partnership in which he was a general partner and manager. He named this work as the last work on his initial claim. Without consulting the other partners, the claimant had reported to the Texas Workforce Commission wages paid to himself. HELD: A claimant

CH WAGES ERRONEOUSLY REPORTED

Appeal No. 88-05036-10-042188 (Cont'd)

cannot name a partnership as his last work if he was a partner, as he was actually self-employed and cannot show working for himself as his last work. The claimant was, therefore, not in "employment" as that term is defined in 201.041 of the Act and all wage credits erroneously reported by the employer for the claimant during his base period were deleted. As the deletion of such wage credits left no reported wage credits within the claimant's base period, the claimant's initial claim was disallowed under Section 207.021(a)(5) of the Act. (Also digested under MS 630.00 and cross-referenced under MS 600.10.)

APPEALS POLICY AND PRECEDENT MANUAL

CHARGEBACK

CH FINALITY OF DETERMINATION

CH 50.00 FINALITY OF DETERMINATION.

INCLUDES CASES WHICH DISCUSS THE FINALITY OF A PRIOR DETERMINATION TO CHARGE OR NOT CHARGE AN EMPLOYER'S ACCOUNT.

Appeal No. 986-CAC-79. The employer filed a late protest to a Notice of Maximum Potential Chargeback and, on appeal from a Decision of Potential Chargeback charging the employer's account, an Appeal Tribunal decision was issued which affirmed the charging of the employer's account. Meanwhile, the claimant had filed a disagreement to a monetary determination, alleging additional base period wages from the same employer. An investigation disclosed that the claimant was entitled to additional base period wage credits as some of his base period wages had been reported by the employer under an erroneous social security number. Accordingly, a further Notice of Maximum Potential Chargeback was issued to the employer, reflecting the correct amount of the claimant's base period wages from the employer and the correct amount of benefits chargeable. The employer filed a timely protest thereto. A Notice of Decision of Potential Chargeback, indicating that benefits were not chargeable, was issued to the employer on the same day that the Appeal Tribunal decision, affirming the charging of the employer's account, was issued. The employer then filed a late appeal to the Commission from that Appeal Tribunal decision. HELD: The Appeal Tribunal decision and the earlier Decision of Potential Chargeback, upon which it was based, were set aside and the more recent Decision of Potential Chargeback, ruling that benefits were not chargeable, was permitted to remain in full force and effect. A ruling of maximum potential chargeback which is based on an erroneous indication of maximum benefits chargeable and which is not timely protested does not become final if a subsequent, corrected Notice of Maximum Potential Chargeback is timely protested. A notice of Maximum Potential Chargeback which incorrectly recites the maximum benefits potentially chargeable does not satisfy the notice requirement of Section 204.023 of the Act. (Also digested under PR 430.20.)

APPEALS POLICY AND PRECEDENT MANUAL

CHARGEBACK

CH FINALITY OF DETERMINATION

Appeal No. 1487-CAC-77. Duplicate Notices of Maximum Potential Chargeback were mailed to an employer on different dates and the employer timely protested the later notice; the ruling on such latter notice and the protest thereto was that benefits were not chargeable. HELD: Prior decisions to the contrary at earlier stages of the same case, including prior Appeal Tribunal decisions, were set aside, and the employer's account was held not chargeable with benefits paid to the claimant.

Appeal No. 521-CAC-77. A base period employer failed to file an appeal from a chargeback decision within the statutory time limit for such an appeal. The Appeal Tribunal decision affirmed the chargeback decision, Form B-78, charging the employer's account. HELD: Since the employer's appeal had been untimely filed, the Appeal Tribunal decision was set aside and the employer's appeal was dismissed for want of jurisdiction, leaving in full force and effect the chargeback decision charging the employer's account with benefits paid the claimant.

Appeal No. 2808-CAC-76. Where a base period employer is notified, with respect to a certain benefit year, that its account would be protected from chargeback, that base period employer's account will be protected from chargeback on that same separation in a subsequent benefit year, notwithstanding such base period employer's failure to file a timely protest of chargeback in such subsequent benefit year.

Appeal No. 439-CAC-74. If a claimant is disqualified because of her separation from the employer in a prior benefit year, and the Appeal Tribunal decision is allowed to become final, the employer's tax account will be protected from charge in a subsequent benefit year on the same separation, regardless of whether the employer files a timely protest of chargeback in the second benefit year.

Appeal No. 2170-AT-71 (Affirmed by 317-CA-71). There can be no finality to a determination which fails to rule on chargeability to the account of the last employer who paid a claimant wages during the base period where the employer filed a timely protest to the initial claim.

Also see cases reported under CH 60.00.

CH TIMELINESS OF PROTEST OR APPEAL

CH 60.00 TIMELINESS OF PROTEST OR APPEAL.

INCLUDES CASES WHICH DISCUSS THE EFFECT OF AN EMPLOYER'S FAILURE TO FILE A TIMELY PROTEST FROM A CHARGEBACK NOTICE OR A TIMELY APPEAL FROM A CHARGEBACK DETERMINATION.

NOTE: Also see the Commission's policy statements on timeliness under PR 5.00.

Appeal No. 1486-CAC-77. An employer which does not file a timely protest to the Notice of Maximum Potential Chargeback (Form C-66) is chargeable with benefits paid the claimant, without regard to the reason for separation, because such employer has, under Section 204.024 of the Act, waived its right to protest such chargeback.

Appeal No. 1267-CAC-77. The employer, a base period employer, had been named as the last employer on the claimant's initial claim. Thereafter, a Notice of Claim Determination was issued which, based on the claimant's last separation from the employer's employment prior to the initial claim, disqualified the claimant and ruled that the employer's tax account would not be charged. That determination became final without appeal. Subsequently, a Notice of Maximum Potential Chargeback was mailed to the employer, requesting information regarding the same separation previously ruled on, and the employer filed a late protest thereto. HELD: The determination that, among other things, the employer's account would not be charged as a result of the particular separation, became final without appeal. That determination was held to be of binding effect, and the employer's account was not charged, even though the employer did not file a timely protest to the subsequent Notice of Maximum Potential Chargeback regarding the same separation.

APPEALS POLICY AND PRECEDENT MANUAL

CHARGEBACK

CH TIMELINESS OF PROTEST OR APPEAL

Appeal No. 2735-CAC-76. An employer protest of chargeback has been timely filed when it is shown by sworn testimony that the protest had been placed in the custody of the U.S. Postal Service within the statutory time limit for filing a timely protest, notwithstanding the fact that the protest was not postmarked until after such protest period had expired.

(Compare cases and material cited under PR 430.20.)

Appeal No. 2683-CAC-76. The employer, a base period employer, filed a timely appeal from the Notice of Decision of Potential Chargeback but had not filed a timely protest to the earlier Notice of Maximum Potential Chargeback. The Appeal Tribunal dismissed the employer's appeal for want of jurisdiction. HELD: Since the employer filed a timely appeal from the Notice of Decision of Potential Chargeback, the Appeal Tribunal decision, dismissing the employer's appeal for want of jurisdiction, was set aside. However, since the employer had not filed a timely protest to the Notice of Maximum Potential Chargeback, thereby waiving its right under Section 204.024 of the Act to protest such chargeback, the decision charging the employer's account was affirmed.

Appeal No. 1650-CAC-76. The base period employer's Notice of Maximum Potential Chargeback bore a name different from that under which the claimant had worked for the employer. Upon consulting a Commission representative as to what to do about responding in such a situation, the employer was told by the Commission representative to wait until his (the employer's) bookkeeper returned from vacation and then to send in his protest; for that reason, the employer's protest was not timely filed. HELD: Since the employer had acted on the advice of a Commission representative, the protest of chargeback was deemed to have been timely filed.

APPEALS POLICY AND PRECEDENT MANUAL

CHARGEBACK

CH TIMELINESS OF PROTEST OR APPEAL

Appeal No. 400-CAC-76. A Joint Application for Transfer of Experience rating had been made and approved and two Notices of Maximum Potential Chargeback were thereafter issued, one relating to the predecessor and one to the successor. The successor timely protested the predecessor's chargeback but was late in protesting its own (having given in its protest of the predecessor's chargeback the true reason for the separation from the successor). HELD: The successor filed a timely protest of chargeback in that it provided the Commission with sufficient notice of its desire to protest the charging of either account and of the fact that the claimant's last separation from the successor employer's employment had occurred under disqualifying circumstances. Consequently, the Commission assumed jurisdiction and protected the successor employer's account.

Appeal No. 439-CAC-74. If a claimant is disqualified because of her separation from the employer in a prior benefit year, the employer's tax account will be protected from charge in a subsequent benefit year on the same separation, regardless of whether the employer files a timely protest of chargeback in the second benefit year.

Appeal No. 62,935-AT-58 (Affirmed by 6303-CA-58). There is substantial compliance with the appeal requirements of Section 212.053 if a party acts on instructions of a Commission representative and fails to file a timely appeal because of these instructions.