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MISCONDUCT

MC 5.00

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| MC GENERAL |
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MC 5.00 GENERAL.

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF MISCONDUCT, IF THE POINT CANNOT BE HANDLED BY A SPECIFIC LINE (2) POINTS NOT COVERED BY ANY OTHER LINE IN THE MISCONDUCT DIVISION, OR (3) DECISIONS UNDER A STATUTORY PROVISION OTHER THAN A MISCONDUCT PROVISION, WHICH DO, NEVERTHELESS, DECIDE THE FACT OF "MISCONDUCT" OR "DISCHARGE".

Appeal No. 2133419. In the oil and gas industry, it is customary for employees working on vessels at sea to routinely alternate pre-determined periods of work on a vessel with pre-determined rest periods (home rotations). In this case, the claimant knew since beginning the job that the work schedule involved working 28 days on board the vessel followed by 28 days of home rotation, after which he would report back to work on the vessel. During home rotations, the claimant was required to take professional training, at the employer's expense, and respond to the employer's communications. The employer remained obligated to continue the benefits of employment. The claimant was paid on a bi-weekly basis for each day spent working on the vessel, but was not paid for the days spent on home rotation. After completing one such 28-days of work on the vessel, the claimant began a typical 28-day home rotation. During the period of home rotation, the claimant filed for unemployment benefits, knowing that he was scheduled to return to work on the vessel. HELD: Separation is an issue that requires an examination of all the facts and circumstances. The employment relationship in this case was not severed when the home rotation began, even though the claimant stopped performing services and earning wages. Employment relationships in the off-shore oil and gas industry that involve regular, rotating periods of extended off-shore work followed by extended periods of cessation in work and pay connected to a mutually understood return to work date continue until one party notifies the other that the employment relationship has been severed. In this case, the claimant notified the employer that the employment relationship had been severed, for purposes of unemployment benefits, when the claimant filed a claim for unemployment benefits. The claimant in such a situation voluntarily quits the work without good cause connected with the work. Disqualification under Section 207.045 of the Act. Cross referenced at MS 510.00, VL 135.20 and VL 510.40.

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 5.00 (2)****MC GENERAL**

Section 201.012 of the Texas Unemployment Compensation Act states, "'Misconduct' means 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 orderly work and the safety of employees.

The term 'misconduct' does not include an act in response to an unconscionable act of an employer or superior."

Appeal No. 1403-CA-78. The employer's personnel policy provided a multi-step disciplinary procedure for excessively absent employees, such procedure progressing in sequence, upon the occurrence of each unexcused absence, from warning to counseling to disciplinary suspension to discharge. Upon the occasion of her next-to-last unexcused absence, the claimant was advised that, upon her next unexcused absence, she would be suspended without pay for five days. Nonetheless, when the claimant was next absent without excuse, she was discharged even though she had never been suspended as required by the employer's policy. HELD: The employer did not comply with the terms of its own disciplinary procedure and the claimant did not have the benefit of progression through the required steps of the procedure prior to her discharge. Therefore, she did not feel that she would be discharged on the occasion of her last absence. The claimant's discharge without proper treatment under company policy was not for misconduct connected with the work.

Appeal No. 96-010354-10-090996. On June 14, 1996, the employer essentially placed the claimant on probation, by advising her that she had thirty days to improve her performance as manager or she would be terminated. On July 4, 1996, the employer decided to terminate the claimant, rather than affording her the entire thirty day probationary period, because the claimant's performance did not improve. HELD: If an employer determines during the probationary period that an employee has committed a dischargeable offense or is not going to improve, the employer is not obligated to afford the employee the entire thirty day probationary period before discharging the employee. The scope of our review is limited to whether the incident prompting the discharge would be considered misconduct connected with the work. In this case, the claimant's failure to improve her performance would be considered misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 5.00 (3)

MC GENERAL

Appeal No. 4492-CUCX-76. The claimant, who worked part time while attending college, was discharged because he had not attended a required technical training school. The employer had not afforded the claimant an opportunity to attend the training school because he knew that the claimant planned to seek other work when he earned his degree and, therefore, the \$1000.00 training school tuition fee, customarily paid by the employer, did not appear justified in the claimant's case. The claimant would have attended the training school had he been given the opportunity. HELD: Discharged for reasons other than misconduct connected with the work since the claimant had not been given an opportunity to attend the training school.

Appeal No. 3122-CSUA-76. The claimant was discharged because he was accident prone, had allegedly abused his sick leave, and had left the employer's premises without notice or permission on April 23, 1976. HELD: No misconduct connected with the work. The evidence showed that (1) as to his being accident prone, the employer's safety director and safety committee had found, after investigation, that the claimant had not been at fault in any of the seven accidents in which he had been involved; (2) his alleged abuse of sick leave consisted of his having accrued only six hours of sick leave at the time of his separation, which could not be considered misconduct connected with the work in the absence of evidence that the claimant had taken such leave without notice or when he was not genuinely entitled thereto; and (3) as to his absence without notice or permission on April 23, 1976, this was due to his having been mistakenly arrested and held incommunicado until 4:00 p.m., at which time he immediately returned to work, whereupon he was discharged.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 5.00 (4)

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| MC GENERAL |
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Appeal No. 1419-CA-76. The claimant was discharged allegedly because of his failure to report to work on time. This allegation was not supported by any evidence as to the number of times the claimant had been tardy or any specific occasion when he had been tardy. His discharge occurred on the day he had left the job site and returned with a policeman because he felt that his life was in danger following an incident with a co-worker. **HELD:** The claimant was discharged, not for any tardiness, but rather because he had brought a policeman to the job site. The claimant's bringing a policeman to the job site because he believed that his life was in danger was not an act of misconduct connected with the work.

Also see Appeal No. 370-CA-70 under MS 510.00 and Appeal No. 62-CA-65 under VL 505.00.

Also see, among others, Appeal No. 2027-CA-EB-76 under MC 435.00, suggesting that a finding of no misconduct may be based, in part, on the fact that a claimant was not warned.

Appeal No. 97-004948-10-050997. The claimant, a sales representative, was discharged for excessive tardiness after numerous verbal warnings. None of these warnings, however, specifically advised claimant his job was in jeopardy due to his tardiness. On his last day the claimant missed a previously scheduled mandatory sales meeting when he arrived late to work. **HELD:** Discharged for misconduct. Where the employer's repeated warnings are sufficient to put claimant on notice that certain behavior is unacceptable, it is unnecessary for the employer to further warn claimant his job is in jeopardy. (Also digested at MC 435.00).

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 15.00 - 15.05

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| MC ABSENCE |
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MC 15.00 ABSENCE.**15.05 ABSENCE: GENERAL.**

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF ABSENCE AS RELATED TO MISCONDUCT, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 15, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Appeal No. 87-18829-10-102887. The claimant was discharged after she failed to report to work for two workdays following her doctor's full release to return to work. The claimant had been off work due to a nonwork-related injury. She submitted no medical statement concerning the two days she failed to report to work. HELD: As the claimant's absences on the two days in question were not medically verified, they were in violation of a rule adopted by the employer to ensure orderly work, thus meeting the definition of misconduct prescribed by Section 201.012 of the Act.

Appeal No. 2407-CA-77. The claimant had received warnings for his poor attendance record. Nonetheless, he was absent from work on the day before his discharge and was late to work on the day of his discharge. HELD: Discharged for misconduct connected with the work. Disqualification under Section 207.044 of the Act.

Appeal No. 2090-CA-77. The claimant was discharged because of her attendance record. During a twenty-five day period, she had been absent four times, late to work seven times and had left work early on one occasion. All but one instance of absenteeism or tardiness were unexcused and only one absence was excused. HELD: Discharged for misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 1605-CA-77. The claimant was discharged because he failed to return to work until two work-days after he had completely recovered from an eye infection for which he had been off work. HELD: Discharged for misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 15.05 - 15.10****MC ABSENCE**

Appeal No. 601-CA-76. The claimant was discharged immediately upon telling the employer that he intended to take off work in order to keep a doctor's appointment. He was not given an opportunity to protect his job by deferring the doctor's appointment and had offered to make up the time lost by reason of the doctor's appointment. HELD: Discharged but not for misconduct connected with the work.

Appeal No. 502-CA-76. The claimant had been placed on probation because of his absences and tardiness during a three-month period. All of his attendance problems had been due to his father's illness and death and the settling of his father's estate. The claimant had always notified his immediate supervisor in advance of such absences or tardiness. After being placed on probation, the claimant punched in six minutes late on one occasion and, on another occasion, punched in exactly at starting time which, under the employer's rules, constituted a tardy. The claimant was discharged following the latter occasion because of his attendance record. HELD: Discharged for reasons other than misconduct connected with the work. The claimant's absence and tardiness were primarily due to compelling personal reasons and the claimant had always properly informed his immediate supervisor in advance of the reason for an absence or tardiness.

15.10 ABSENCE: NOTICE.

WHERE THE QUESTION OF NOTICE RATHER THAN ABSENCE ITSELF IS THE CHIEF CONSIDERATION.

Appeal No. 87-17008-10-092887. The claimant left work on Friday because he was feeling ill. He did not notify anyone of his departure although he was aware company policy required him to do so. When he arrived home, he notified the employer's dispatcher by telephone. On Monday, a doctor diagnosed the claimant as having food poisoning. He was terminated on Tuesday for failing to give notice of his departure from work on Friday. HELD: The claimant's failure to even attempt to advise anyone before he left constituted misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 15.10 (2)

MC ABSENCE

Appeal No. 87-18557-10-102387. The claimant failed to report to work for two days and failed to notify the employer either day because he was out of town caring for his sick mother. Previously, he had been formally reprimanded for failing to notify the employer of absences. The claimant was discharged when he reported back to work after the last absences. HELD: As the claimant did not establish that he had a compelling reason for failure to notify the employer that he would be absent, and as he had previously been reprimanded for the same offense, the claimant's discharge was for misconduct connected with the work.

Appeal No. 2333-CA-77. The claimant was replaced while on an informal leave of absence due to an industrial injury. He had made no effort in over two months' time to contact the employer to advise him of his condition or to inquire as to his job status. HELD: The claimant's lack of effort to protect his job in this situation constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 1629-CA-77. The claimant had been referred to a hospital by the employer's physician and was hospitalized due to illness. At the time of his hospital admission, the claimant notified the employer and, from time to time during his hospital stay, advised the employer of his progress. He was discharged from employment by being replaced before he recovered. HELD: Discharged for reasons other than misconduct connected with the work. Absence from work without notice to the employer of the reason for such absence constitutes misconduct connected with the work. However, in this case, the claimant had been justifiably absent due to illness, had properly notified the employer of his hospital admission and had made reasonable efforts thereafter to keep the employer advised of his continuing illness.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 15.10 (3)

MC ABSENCE

Appeal No. 1008-CA-77. The claimant was discharged for having been absent from work without notice. HELD: Discharged for reasons other than misconduct connected with the work. The claimant, who did not have a telephone, had made an agreement with her manager whereby, if she did not report for work within one hour after starting time, he would assume she was going to be absent and would call in a replacement for her for that day.

Appeal No. 947-CA-77. The claimant had been absent from work due to illness for five consecutive days. She had notified her immediate supervisor of her absence on each of the first two of such days but not on any of the three subsequent days. She was discharged for her failure to give notice of her absence on the latter days. HELD: Discharged for misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 617-CA-77. The claimant was absent from work for three consecutive days because of her emergency need to leave town to arrange for the funeral of a close relative and because of delays encountered in the funeral arrangements. On the morning of the first day of absence, the claimant's sitter notified the employer of the reason for the claimant's absence and that she would probably return the following day but, in any case, would contact the employer as soon as she returned. On the morning of the third day of absence, the claimant notified the employer of the delays encountered and her need to be absent that day. HELD: Discharged but not for misconduct connected with the work. The claimant had properly notified the employer and kept him reasonably informed of her situation.

Appeal No. 4317-CA-76. The claimant was discharged for an absence of one week necessitated by the illness of her minor child. The claimant gave notice of the necessity for such absence and her husband called in each day of her absence. HELD: Not discharged for misconduct connected with the work. The evidence showed that the claimant had given proper notice of the reason and necessity for her absence, her husband never having been advised that it was necessary for the claimant herself to call in on each subsequent day of her continuing absence.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 15.10 (4)

MC ABSENCE

Appeal No. 3655-CA-76. The claimant was absent from work due to illness. As he did not have a telephone, he asked a co-worker to give notice for him of his inability to report to work. The claimant was discharged for absence without notice because the co-worker failed to give notice on the claimant's behalf. HELD: Discharged for misconduct connected with the work, as it was the claimant's responsibility to notify the employer of an absence. Disqualification under Section 207.044.

Appeal No. 771-CA-76. The claimant had been discharged for her absence from work without notice due to illness. On the occasion in question, the claimant had called the office where she worked and, not receiving any answer, had thereupon called and left word with the employer's answering service. HELD: Not discharged for misconduct connected with the work. The claimant had taken reasonable steps to report to the employer her inability to be at work due to illness.

Appeal No. 7-CA-76. The claimant was called away during the night by a sudden family emergency in another town. As she left prior to the opening of the employer's switchboard, she asked another employee to notify the employer of her inability to be at work. She was discharged because of the other employee's failure to give such notice. HELD: Discharged but not for misconduct connected with the work. The evidence showed that the employer customarily permitted an employee to give notice of the necessity for an absence through another, as the claimant in this situation was compelled to do. Under these circumstances and in light of the emergency situation faced by the claimant, the other employee's failure to give notice on her behalf did not constitute misconduct connected with the work on the claimant's part.

Appeal No. 893-CA-76. The claimant had been injured on the job and was off work for three and a half months for this reason. During his absence, he was treated by his physician and a specialist, at the request of the employer's insurance carrier. When released as able to return to work, the claimant immediately contacted the employer and learned that he had been replaced.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 15.10 (5)

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| MC ABSENCE |
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Appeal No. 893-CA-76

(Cont'd)

HELD: The Commission found that the claimant had not voluntarily left his last work but, rather, had been discharged for reasons other than misconduct connected with the work. Regarding the latter, the Commission held that the claimant had reasonably assumed that the employer had been advised of his progress during his continuing absence since the employer's insurance carrier had been so advised.

Appeal No. 723-CA-76. The claimant was discharged after an absence of approximately ten consecutive days. She had given notice only with respect to the first day of such absence. She had been previously warned of the necessity for calling in when absent and had been aware that regular notice was required during any absence. HELD: Discharged for misconduct connected with the work in that she did not give daily notice of the necessity for her absence, as required by the employer's policy. Disqualification under Section 207.044.

Appeal No. 663-CA-76. The claimant was discharged for having left her place of work during working hours (due to her having become emotionally upset by an incident at work) without having notified a member of management that she was leaving. Such notice was required by company rule. Some member of management was always on duty but the person whom the claimant notified was not a member of management. HELD: Discharged for misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 660-CA-76. The claimant was discharged because she had been absent from work for two days without having called in. HELD: Although the employer had no specific policy requiring that an absent employee call in on a daily basis, the expectation that the claimant do so was not an unreasonable one. Hence, her failure to call in constituted misconduct connected with the work. Disqualification under Section 207.044. (Cross-referenced under MC 485.05.)

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 15.10 - 15.15

MC ABSENCE

Appeal No. 3673-CA-75. The claimant was arrested while at work and was replaced because, during the two scheduled work days following his arrest and detention, he did not notify the employer of his incarceration. HELD: The claimant's failure to keep the employer advised of his whereabouts on the two days that he missed from work because of his incarceration constituted misconduct connected with the work. (Also digested under MC 490.30.)

Appeal No. 3197-CA-75. The claimant was discharged for having failed, in violation of a known rule of the employer, to call in on four work days in a twelve-day period, on each of which four days he was absent from work. HELD: Discharged for misconduct connected with the work. Disqualification under Section 207.044.

15.15 ABSENCE: PERMISSION.

WHERE THE QUESTION OF PERMISSION RATHER THAN THE ABSENCE ITSELF IS THE CHIEF CONSIDERATION.

Appeal No. 2769-CA-77. The claimant was discharged for excessive absenteeism and for failing to produce according to the employer's standards. Her five absences in five months were all occasioned by the illness of her child, each requiring her presence, and were upon permission being granted by the employer. She performed her work to the best of her ability and had never been counseled regarding her performance or her absence. HELD: No misconduct connected with the work. The claimant did her job to the best of her ability and secured permission to be off when absences were required due to family illness. (Cross referenced under MC 15.20.)

Appeal No. 2308-CA-77. The claimant was discharged upon his timely return from an authorized leave of absence. The employer, although having assented to the claimant's request for time off, had concluded during his absence that it had placed an undue burden on his co-workers. HELD: No misconduct connected with the work. Although the claimant's absence had caused an extra workload to fall on other workers, he had been absent with the employer's permission.

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 15.15 (2)****MC ABSENCE**

Appeal No. 679-CA-77. The claimant was discharged because the employer believed that he had left work early without permission. HELD: No misconduct connected with the work as the evidence showed that the claimant, in fact, had proper permission from his immediate supervisor to leave work early.

Appeal No. 190-CA-77. The claimant was placed on leave of absence because she was unable to perform her usual work and had been told by her physician to cease such work. The employer had no other work for her to do. Her leave of absence guaranteed reinstatement whenever the claimant obtained an unconditional release to return to work. The claimant filed her initial claim shortly after being placed on leave of absence, at which time she was still unable to work. HELD: The claimant was separated by company action and not for misconduct connected with the work. No disqualification under Section 207.044. (However, the claimant was held ineligible under Section 207.021(a)(3) of the Act, as not able to work, from the date of her initial claim, forward.)

Appeal No. 4100-CA-76. Following warnings for absenteeism, the claimant was discharged for a subsequent absence of three consecutive work days, without notice or permission. HELD: Since the claimant had previously been warned concerning his absenteeism without permission yet had subsequently been absent without permission or proper notice to the employer, he was found to have been discharged for misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 3056-CA-76. The claimant was discharged because, during the last two weeks that he worked, he had been leaving work early. He had been doing so in order to obtain treatment for an arthritic condition. On each occasion, he had notified his immediate supervisor that he was leaving early and the supervisor had either expressly authorized him to leave work early or had acquiesced therein. The supervisor had the authority to forbid the claimant from leaving work early but had not exercised it. HELD: No misconduct connected with the work since the claimant's early departures were always with the express or implied approval of his superior.

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 15.15 - 15.20****MC ABSENCE**

Appeal No. 1040-CA-76. The claimant was discharged because he took longer than he had anticipated to attend to some personal business. He had secured prior permission to report to work late in order to attend to the matter. HELD: By notifying the employer in advance that, because of personal business, he might be late in reporting to work, and receiving the employer's permission therefore, the claimant put the employer on notice that he was attending to personal matters which could cause him to be delayed longer than expected. No misconduct connected with the work.

Appeal No. 1-CA-76. The claimant took one week's leave from his job for personal reasons. He had notified the employer's dispatcher of his intended absence. Although the dispatcher was the individual whom the claimant was obligated to notify in case of any absence or tardiness, he did not have the authority to approve leave requests. The claimant was replaced while absent. HELD: The claimant had not received permission to be off by any individual with the authority to grant such permission. Accordingly, the claimant's absence from work without such proper permission constituted misconduct connected with the work and a disqualification was assessed under Section 207.044.

15.20 ABSENCE: REASONS.**CONSIDERATION OF THE REASONS FOR ABSENCES.**

Appeal No. 87-08030-10-050587. A claimant's absence from scheduled work due to his incarceration for criminal charges arising from off-duty conduct, which charges the claimant has not denied (in this instance, entering a plea of no contest) and for which the claimant was assessed a fine and a jail sentence, constituted misconduct connected with the work. (Also digested under MC 490.30.)

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 15.20 (2)

MC ABSENCE

Appeals No. 86-04116-10-030487. The claimant was discharged after having missed work due to an alleged illness. He presented a doctor's statement to excuse this absence but the claimant neither spoke to nor saw the doctor on the day in question. The employer's policy required a valid doctor's excuse for any absence due to illness. Previously, the claimant had been reprimanded and warned that his attendance violations, including unexcused absences, were jeopardizing his job. HELD: The claimant's failure to produce adequate verification of his absence due to illness, after being warned that his job was in jeopardy, was misconduct connected with the work. The employer has a right to be provided with a doctor's excuse that is based on the claimant's actual contact with a doctor.

Appeal No. 86-01637-10-011587. The claimant witnessed a murder. The local police put him under protective custody, and did not allow him to return to work. The claimant, who had received death threats, was advised by the police that they could not guarantee his safety and that he should leave the state until the anticipated trial. Before acting on such advice, the claimant contacted the employer and was told that he could have his job back whenever it was safe for him to return to Texas. HELD: The claimant was unable to attend work for reasons beyond his control. It is not necessary for a person to risk his life returning to work when such danger stems from his willingness to testify on behalf of the State of Texas to protect the general welfare and safety of this State.

Appeal No. 91-11479-10-101491. Even if a claimant has been warned that his or her job is in jeopardy due to poor attendance, the claimant's subsequent absence from work due to the illness of a minor child in the claimant's care does not constitute misconduct connected with the work if the claimant gave proper notice of such absence to the employer, the child's condition is medically verified, there was no reasonably available alternative source of care for the child and the employer refused to allow the claimant a reasonable amount of time off during the child's illness.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 15.20 (3)

MC ABSENCE

Appeal No. 2877-CA-77. The claimant was discharged for excessive absenteeism. She had received a written warning for her excessive absenteeism and tardiness, which was frequently without proper personal notice as required by the employer's written rules. On the occasion of her last absence, another individual contacted the employer on the claimant's behalf and advised the employer that the claimant would not report to work because her infant child was sick. On that day, the claimant took the child to a doctor and, later that day, to a graduation ceremony. The claimant had several relatives in the area but made no attempt to arrange for someone else to take the child to the doctor or otherwise care for it so that she could report to work. HELD: The claimant's absence, after warning, due to the illness of a family member constituted misconduct connected with the work where she did not make a substantial effort to obtain other care for the child so that she would be able to report to work as scheduled. Disqualification under Section 207.044.

Appeal No. 614-CA-77. The claimant was discharged because he had been late to work (with advance notice) due to the illness of his daughter. Prior to that occasion, on another day he had left work thirty-five minutes early with permission and, on still another day, he had been absent all day, again with permission. All of the irregularities in attendance had been caused by the illness of his daughter. HELD: Discharged for reasons other than misconduct connected with the work, where all attendance problems were occasioned by the illness of his child, a circumstance over which he had no control, and where all instances of absenteeism or tardiness were upon notice and with permission.

Appeal No. 80-CA-77. On a scheduled work day, the claimant notified the employer that she would not be in because her child was ill. The claimant absented herself from work and was discharged. She falsely notified the employer that she had taken the child to a doctor and that the latter had advised her to stay home with the child. In fact, the claimant attended a fair while the

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 15.20 (4)

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| MC ABSENCE |
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Appeal No. 80-CA-77

(Cont'd)

child's grandparents cared for the child. HELD: Discharged for misconduct connected with the work as the claimant was absent from work without a valid excuse when she was needed by the employer. Disqualification under Section 207.044. (Also digested under MC 140.20.)

Also see Appeal No. 2769-CA-77 under MC 15.15.

Appeal No. 1282-CA-77. The claimant was discharged, after several warnings, because of his attendance record. Immediately before his discharge, he absented himself from work, with notice, in order to take his pregnant wife to a doctor. However, the evidence showed that the claimant did not take his wife to the doctor on the day he took off but, rather, did so on the next day when he had not been scheduled to work. The claimant presented no medical evidence of the necessity for taking his wife to the doctor on the day that he took off from work. HELD: Absenteeism or tardiness due to personal reasons, other than personal illness, or because of a claimant's failure to arrange other care for an ill family member, constitutes misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 2386-CA-77. The claimant, in reliance on the employer's general, but not invariable, practice of requiring Saturday work only every other Saturday, set her wedding date for one of the Saturdays she expected to be off work, June 11th. On June 6th or 7th, the claimant's supervisor notified her that no work would be scheduled for June 11th; however, on June 9th the company president notified all employees that they would be expected to work on June 11th. The claimant then requested of her supervisor that she be given the 11th off. This request being denied, she requested permission to speak to the president of the company. This permission was also denied by her supervisor as, in his opinion, it would "do no good" for the claimant to speak to the company president. The supervisor also told the claimant that, if she did not work on the Saturday in question, she should not

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 15.20 (5)

MC ABSENCEAppeal No. 2386-CA-77

(Cont'd)

bother to come in on the following Monday. When she called in on Tuesday, she was discharged for her Saturday absence. Other employees absent on the Saturday were neither discharged nor otherwise disciplined. **HELD:** Discharged but not for misconduct with the work. Although absence from work without permission usually constitutes misconduct connected with the work, where, as here, the claimant had first been told that no work would be required on the day in question, only to have this order later countermanded, and where her request to be off was denied by her immediate supervisor, and she was not permitted to take this decision to higher management, even though she had an important reason for wanting to be off, her absence from work did not constitute misconduct connected with the work.

Appeal No. 1983-CA-77. The claimant was discharged for failing to report to work after having been told that his continued absence could not be tolerated. He had been absent for five days on the occasion in question, the last two days without even calling in. The claimant's absence had been due to the repossession of his car and his efforts to recover it. **HELD:** Discharged for misconduct connected with the work. Notwithstanding the repossession of the claimant's car, he had transportation to work. He put the personal consideration of recovering his car above the retention of his job. Disqualification under Section 207.044.

Appeal No. 1790-CA-77. The claimant was discharged, after warnings, for having more than twenty-three unexcused absences during an eight-month period, all of which were due to family problems. **HELD:** Discharged for misconduct connected with the work. It was the claimant's responsibility to manage her personal problems in such a way as not to interfere with her work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 15.20 (6)

MC ABSENCE

Appeal No. 3834-CA-76. The claimant was discharged because he failed to present to the employer evidence of the reason for his absence from work, as requested. HELD: Discharged for misconduct connected with the work in that he failed to comply with a reasonable request of the employer. Disqualification under Section 207.044.

Appeal No. 2770-CA-76. The claimant was absent from work a great deal due to personal reasons, but was not discharged until after an absence from work of four days, due to illness. This fact was supported by medical evidence. Her last absence for personal reasons had been more than two weeks before her illness and ensuing absence. HELD: Discharged but not for misconduct connected with the work. The claimant's discharge took place when it did because of an absence due to the claimant's own illness and an absence for reason of personal illness does not constitute misconduct connected with the work.

Appeal No. 2480-CA-76. The claimant was on probation due to her attendance record. The condition of her probation was that she not be absent again for any reason. She was discharged because she was later absent from work due to her own personal illness of which the employer was duly notified. HELD: Absence from work due to illness, with due notice, does not constitute misconduct connected with the work. (Cross-referenced under MC 485.10.)

As to absences for personal illness, also see Appeal No. 87-03012-10-030488 and Appeal No. 832-CA-77 under MC 485.10.

Appeal No. 2055-CA-76. The claimant was absent from work from March 19 through March 30, 1976 for the asserted reason that he had arm trouble. He gave the employer proper notice but did not seek medical treatment. However, on March 30, he obtained a medical statement indicating his release as able to return to work as of March 31. The union contract provided that an employee will be discharged if absent for three days unless the reason for the absence is acceptable to the employer. HELD: Discharged for misconduct connected with the work. The claimant was absent for

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 15.20 (7)

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| MC ABSENCE |
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Appeal No. 2055-CA-76

(Cont'd)

a considerable time, assertedly for a fairly serious temporary disability, but did not seek medical treatment for it. The claimant's failure to seek medical treatment, therefore, reflected adversely on the validity of his reason for his absence. Disqualification under Section 207.044.

Appeal No. 1444-CA-76. The claimant, who lived and worked in Tyler, was discharged because she would not tell her supervisor the reason why she could not work on two successive workdays for which she wished to be absent. (The reason was that she was going to consult a physician in Dallas.) HELD: The claimant's telling the employer that she would not be at work as expected and her refusal to give him any clear information as to the reason therefor constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 1202-CA-76. The claimant was discharged for absenteeism. Out of the last eleven working days of the claimant's employment, she had been absent from work on six days, had left early on one occasion, and had arrived late to work on another occasion. Three of her absences had been due to her own personal illness, two of her absences had been due to the illness of her stepfather and one absence had been due to the claimant's car having been repossessed. On the occasion of her last absence, she had had a dental appointment but stayed away from work all day because she had felt that she was about to contract the flu. HELD: Discharged for misconduct connected with the work. Disqualification under Section 207.044. During a short period of employment, the claimant had had an excessive number of absences, several of which were not due to her own illness. As to her last absence, the claimant had had a dental appointment but was absent all day without a reasonable excuse.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 15.20 (8)

MC ABSENCE

Appeal No. 3033-CA-75. The claimant was discharged because he was seen at the employer's credit union on a day when he had failed to report to work due to illness. His discharge was based on the assumption that, if he was well enough to be at the credit union, he was well enough to work. HELD: No misconduct connected with the work. The evidence showed that the claimant went to the credit union on the day in question to borrow money to pay his doctor, who had declined to treat the claimant unless he paid at the time treatment was rendered.

Also see cases digested under MC 490.30.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 45.00 - 45.05

MC ATTITUDE TOWARD EMPLOYER**MC 45.00 ATTITUDE TOWARD EMPLOYER.****45.05 ATTITUDE TOWARD EMPLOYER: GENERAL.**

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF CLAIMANT'S ATTITUDE TOWARD EMPLOYER'S INTEREST, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 45, OR (3) POINTS NOT COVERED BY THREE OR MORE SUBLINES.

Appeal No. 86-2551-10-020687. The claimant, an attorney, was discharged because he disagreed with the employer. A senior partner had confronted the claimant about his conduct while taking a deposition. The employer insisted the claimant admit to being wrong, but the claimant continued to deny any wrong-doing. HELD: Not discharged for misconduct connected with the work. The senior partner was asking the claimant to change his opinion about a matter rather than asking him to perform a certain task a particular way. It was not shown that the claimant was refusing to adhere to his supervisor's instructions in the performance of his duties. The display of a negative attitude toward criticism by a superior is not sufficient in and of itself to constitute misconduct connected with the work.

Appeal No. 3063-CA-76. The claimant was discharged for her allegedly unsuitable reaction to criticism in that, during the three days following what she considered to be an unjustified reprimand, she spoke to the office manager only as business required. The claimant had not been counseled that her reaction to criticism was deemed unsuitable and might endanger her job. HELD: Within reasonable limits, an employee is entitled to react somewhat less than enthusiastically to a reprimand and a simple withdrawal from social contact with one's supervisor, except as business requirements dictate, does not constitute misconduct connected with the work, particularly where the employee has not been warned that her attitude and conduct are endangering her job.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 45.10

MC ATTITUDE TOWARD EMPLOYER**MC 45.10 ATTITUDE TOWARD EMPLOYER: AGITATION OR CRITICISM.**

WHERE A WORKER MAKES DISPARAGING REMARKS ABOUT HIS EMPLOYER OR HIS EMPLOYER'S BUSINESS, EITHER AT WORK OR ELSEWHERE; AND SITUATIONS IN WHICH A WORKER STIRS UP RESENTMENT AND DISSATISFACTION AMONG OTHER EMPLOYEES.

Appeal No. 98-001381-10-021099. The claimant voluntarily resigned because he was demoted from store director to a customer service representative. The demotion occurred when the employer learned from a third party that the claimant had misappropriated \$1,000 of the employer's money to assist a friend. The claimant admitted his guilt. This was a serious infraction, which normally resulted in discharge. The employer elected to demote the claimant and afford him an opportunity for rehabilitation based on his past employment record. HELD: Disqualified. Voluntary leaving without good cause connected with the work. When considering the seriousness of the offense, the demotion did not provide the claimant with good cause for quitting. The Commission distinguished this case from Appeal No. 2340-CA-77, MC 45.10, and noted that in the present case, it was claimant's illegal actions that ultimately resulted in the claimant's demotion and separation while in Appeal No. 2340-CA-77, the problem was one of attitude, which was not a violation of law and did not lead to a direct loss of a considerable sum of money to the employer.

Appeal No. MR 86-29-10-121986. The claimant was discharged after the employer received a letter from the claimant expressing her dissatisfaction with her job and pay. The letter suggested alternative solutions; however, the employer interpreted the letter as a demand for more money. The employer did not discuss the letter with the claimant before she was terminated. HELD: Not discharged for misconduct connected with the work. A poor attitude which is not accompanied by a refusal to work or prior warning that a poor attitude could lead to discharge, is not sufficient to establish misconduct.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 45.10 (2) – 45.15

MC ATTITUDE TOWARD EMPLOYER

Appeal No. 2340-CA-77. The claimant's unsatisfactory attitude toward her work, as reflected by her complaints about the work and her refusal to do certain tasks assigned to her, caused the employer to reduce the claimant from full-time to part-time work. HELD: Although the employer had several objections to the claimant's work, such objections were not sufficiently serious to cause the employer to completely terminate the claimant. Actions by the claimant which, in the employer's opinion, were not serious enough to justify complete termination, cannot be considered misconduct connected with the work.

45.15 ATTITUDE TOWARD EMPLOYER: COMPETING WITH EMPLOYER OR AIDING COMPETITOR.

WHERE A CLAIMANT ENGAGES IN BUSINESS IN COMPETITION WITH HIS EMPLOYER OR AIDS A COMPETITOR OF THE EMPLOYER.

Appeal No. 87-19403-10-110987. The claimant was discharged for having a conflict of interest with the employer. The claimant opened an agency which booked chartered bus service for organizations. The employer's business was that of directly providing chartered bus service. The claimant had access to the employer's business records and hid her association with her agency from the employer. Several of the employer's clients cancelled trips scheduled with the employer and rebooked through the claimant's agency. The final incident was claimant's working at her place of business on an afternoon when she had been given permission to be off work for other personal reasons. HELD: Discharged for misconduct. The claimant's participation in a business which was competing with the employer created a conflict of interest and, therefore, was mismanagement of her position of employment within the meaning of Section 201.012 of the Act.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 45.15 (2)

MC ATTITUDE TOWARD EMPLOYER

Appeal No. 87-16801-10-092587. The claimant was discharged for soliciting the employer's customers for a pump repair business he was thinking of starting. He told customers he could give faster service by working overnight. The customers complained to the employer and the claimant was discharged. HELD: Discharged for misconduct connected with the work. The solicitation of the employer's clients, for a business that would have been in direct competition with it, was an act of misconduct. It is not necessary to consider the absence of a non-competition agreement.

Appeal No. 86-14236-10-110586. The employer, a cigarette wholesaler, discharged the claimant because of his suspected involvement in a sale of cartons of cigarettes. Thirty cartons were missing from the employer's inventory. The owner of a retail store informed the employer that one of its employees had purchased fifteen cartons of cigarettes for cash from one of the employer's drivers. The employer did not receive the proceeds from the sale. The driver had received the cartons from the claimant. The claimant admitted selling the cigarettes to the driver but denied he obtained them from the employer. The employer was unable to definitely determine the rightful ownership of the cartons of cigarettes. HELD: Discharged for misconduct connected with the work. The claimant admitted to participation in the sale of products identical to the employer's product line outside of the ordinary course of business. This activity was in competition with the employer's business and carried a great risk of undermining the integrity of the employer's agents and the legal title of the employer's products. As such, the claimant's participation in the sale of cartons of cigarettes was in disregard of the employer's best interests and misconduct within the meaning of Section 207.044 of the Act. (Partially digested under MC 140.25 and cross-referenced under MC 140.30.)

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 45.15 (3) – 45.20****MC ATTITUDE TOWARD EMPLOYER**

Appeal No. 826-CA-77. The claimant was discharged because he had been considering bidding on the employer's janitorial service contract should it appear that the employer would not secure a contract renewal. After his discharge, the claimant bid on the contract. HELD: The mere fact that the claimant was considering bidding on the contract and going into business for himself and, in fact, did so after his termination, did not establish that he had clearly competed with the employer or otherwise been guilty of misconduct connected with the work.

Appeal No. 658-CA-76. The claimant was discharged because he was believed to be competing with the employer. The claimant was conducting some research at home which was similar to the work he was doing for the employer but the research was for the purpose of seeking work with a former employer located in Florida. HELD: Discharged for reasons other than misconduct connected with the work. The mere fact that the claimant conducted research at his home was not enough to establish that the claimant was trying to compete with the employer.

45.20 ATTITUDE TOWARD EMPLOYER: COMPLAINT OR DISCONTENT.

INVOLVES A WORKER'S COMPLAINTS ABOUT, OR HIS DISSATISFACTION WITH HIS EQUIPMENT, HIS FELLOW EMPLOYEES, OR OTHER WORKING CONDITIONS.

Appeal No. 87-11058-10-062987. The claimant was discharged for complaining that she felt people were taking advantage of her. Earlier, she had been required to clean some cooking utensils that the other cooks refused to clean. The claimant had not used the utensils and was forced to work past her scheduled hours. HELD: Not discharged for misconduct connected with the work. A legitimate complaint about one's working conditions cannot be considered work-related misconduct.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 45.20 (2)

MC ATTITUDE TOWARD EMPLOYER

Appeal No. 87-6928-10-042787. The claimant was discharged for insubordination after objecting to the employer's calling the employees collectively "worthless bastards". The employer had discovered that employees were placing calls to sexually oriented businesses during working hours. The claimant had not made any of the calls and took offense to the employer's statement. HELD: Not discharged for misconduct connected with the work. The claimant was provoked into responding to the derogatory remark made by the employer.

Appeal No. 86-2005-10-011587. The claimant was discharged after she expressed some displeasure at a last-minute withdrawal of permission for time off. The claimant had received permission to take time off about two weeks earlier. The claimant's replacement decided to have a party, which the manager wanted to attend and the permission was withdrawn one or two days before the claimant wanted to take off. HELD: Not discharged for misconduct connected with the work. Her reluctance concerning the last-minute arrangement, especially in light of the employer's lack of business necessity in requesting such a change, does not rise to the level of misconduct connected with the work.

Appeal No. 3217-CA-77. Where the only evidence of alleged misconduct on a claimant's part is his occasional complaints about being on-call a disproportionate amount of time and the evidence shows that he had been asked to take far more than his share of on-call time, the claimant's complaints do not constitute misconduct connected with the work.

Appeal No. 2870-CA-77. The claimant was discharged because he continually harassed the employer's payroll clerk about the correctness of his pay, even after the clerk had several times explained to the claimant how the computer had figured his pay, and also because the claimant admitted that he had altered his son's time card. HELD: The claimant's actions constituted misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 45.20 (3)****MC ATTITUDE TOWARD EMPLOYER**

Appeal No. 2625-CA-77. The claimant, a bartender, was discharged because, several months prior to his separation, he had discussed with club patrons his dissatisfaction with his pay and because he had not followed the proper channels in seemingly voicing his objection to the manner in which tips were distributed. HELD: Discharged for reasons other than misconduct connected with the work. The evidence showed that the claimant had been reprimanded for discussing with patrons his dissatisfaction with his pay but that he ceased this practice. His statement about the manner of distributing tips was found to have been meant in jest and did not reveal that he was violating company procedure by taking his complaints to someone other than his immediate supervisor.

Appeal No. 97-CA-76. The claimant, who was a company pilot normally on-call 24 hours per day, left town temporarily for personal reasons but left a telephone number where he could be reached by his wife. During his absence, the claimant's wife received a call from the claimant's supervisor regarding a flight. The supervisor used rude and abusive language with the claimant's wife when he found the claimant to be out. The claimant was contacted and reported to the employer's office in time for the flight. However, he was discharged by his supervisor when he requested that the supervisor refrain from being rude to his wife in the future. HELD: The claimant was discharged because he protested the supervisor's use of abusive language toward his wife which did not constitute misconduct connected with the work.

Appeal No. 3583-CA-75. The claimant was discharged because she continued to complain about not having been called to the telephone on one occasion, even after it had been explained to her that the person who had called had not left his name or number and had declined to state that the call was an emergency one. The latter was the only type of call for which, under the employer's rules, an employee could be summoned from his work station at any time other than a break period. HELD: The claimant's continuing to complain to the office manager, after the latter had repeated several times a reasonable explanation of the telephone incident, amounted to misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 45.25 - 45.30

MC ATTITUDE TOWARD EMPLOYER

MC 45.25 ATTITUDE TOWARD EMPLOYER: DAMAGE TO EQUIPMENT OR MATERIALS.

INVOLVES THE CLAIMANT'S WILLFUL OR CARELESS DESTRUCTION OF PROPERTY, AS REFLECTING A DISREGARD FOR THE EMPLOYER'S INTEREST.

Appeal No. 84021-AT-61 (Affirmed by 8195-CA-61). A claimant who deliberately damaged the employer's presses was held guilty of misconduct and disqualification was assessed under Section 207.044. (Cross-referenced under MC 485.50.)

MC 45.30 ATTITUDE TOWARD EMPLOYER: DISLOYALTY.

DISCUSSION AS TO WHETHER A CLAIMANT'S ACTIONS REFLECT A DISLOYAL ATTITUDE TOWARD THE EMPLOYER. INCLUDES CASES INVOLVING CLAIMANT'S DISLOYALTY TO THE UNITED STATES GOVERNMENT.

Appeal No. 86-3455-10-022587. The claimant, a minority shareholder, was discharged after he threatened he would leave the company to begin his own company if his demands to buy stock were not met. These threats were made to several directors. HELD: Discharged for misconduct connected with the work. The claimant's threats violated his duty of loyalty to the company.

Appeal No. 2708-CSUA-76. The claimant, a deputy sheriff, was discharged because, during an election for sheriff, he had supported a candidate other than the incumbent. The claimant's campaign activities had not interfered with his job performance. HELD: The claimant's support of a candidate other than the incumbent did not constitute misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 45.35 – 45.40

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| MC ATTITUDE TOWARD EMPLOYER |
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45.35 ATTITUDE TOWARD EMPLOYER: INDIFFERENCE.

LACK OF INTEREST OR REGARD FOR EMPLOYER'S INTERESTS.

Appeal No. 3379-CA-75. The claimant was discharged because, in the opinion of her employer, she had manifested a poor attitude toward her job and a lack of initiative in her work. However, she had never refused any job assignment and had never been warned that her poor attitude and lack of initiative, if persisted in, would result in her discharge. **HELD:** Since the claimant had never refused any job assignment and had never been warned that her inadequacies, if continued, would lead to her discharge, the evidence in the record was deemed insufficient to support a conclusion that the claimant had been guilty of misconduct connected with the work.

MC 45.40 ATTITUDE TOWARD EMPLOYER: INJURY TO EMPLOYER THROUGH RELATIONS WITH PATRON.

INCLUDES DISCOURTESY TO OR NEGLECT OF A PATRON, OR CRITICISM OF THE EMPLOYER'S SERVICE OR PRODUCT TO A CUSTOMER.

Appeal No. 2914-CA-76. The claimant was discharged for habitual tardiness and for her rudeness to co-workers and to her employer's patients. The claimant had been previously warned about her tardiness. **HELD:** The claimant's habitual tardiness and her rudeness to patients and co-workers constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 657-CA-76. The claimant was discharged because, after a period of improvement following warnings, he again began excessively discussing his personal activities and using rude and uncomplimentary language while making service calls on the premises of the employer's customers. **HELD:** The temporary improvement in the claimant's behavior following his last warning demonstrated that he was capable of acceptable work. His failure to continue in this regard constituted misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 45.40 (2)- 45.55

MC ATTITUDE TOWARD EMPLOYER

Appeal No. 3139-CA-75. The claimant was discharged because a check which he had given to one of the employer's customers (with whom the claimant normally did business) was dishonored by the bank. This happened because the claimant's estranged wife had, without the claimant's knowledge, drawn money out of his bank account. The claimant promised to make the check good but, through error, the matter was referred to the district attorney before he could do so. Although the claimant promptly sent a money order for the amount in question to the district attorney, as the latter had instructed him to do, he was discharged. HELD: Since the claimant had acted promptly and in good faith to correct the situation, he was found not to have been guilty of misconduct connected with the work.

MC 45.50 ATTITUDE TOWARD EMPLOYER: BRINGING LEGAL ACTION AGAINST THE EMPLOYER.

INCLUDES CASES WHERE THE DISCHARGE WAS CAUSED BECAUSE CLAIMANT BROUGHT LEGAL ACTION AGAINST HIS EMPLOYER OR ABUSED A RECOGNIZED LEGAL RIGHT.

Appeal No. 3534-CA-76. The claimant was discharged because he had threatened to file a lawsuit to obtain a bonus to which he believed he was entitled. HELD: Since the claimant had reasonably believed that his complaint about the bonus was justified and had voiced his complaint through proper channels before threatening to sue, his actions did not constitute misconduct connected with the work.

45.55 ATTITUDE TOWARD EMPLOYER: FILING SUIT FOR WORKER'S COMPENSATION.

INVOLVES CASES WHERE CLAIMANT'S DISCHARGE WAS CAUSED SOLELY BECAUSE HE BROUGHT SUIT OR FILED A CLAIM FOR WORKER'S COMPENSATION.

Appeal No. 5660-AT-69 (Affirmed by 612-CA-69). A claimant's refusal to settle or abandon his claim for workmen's compensation does not constitute misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 85.00

MC CONNECTION WITH THE WORK**MC 85.00 CONNECTION WITH THE WORK.**

APPLIES TO CASES WHICH DETERMINE WHETHER THAT ACT FOR WHICH THE CLAIMANT WAS DISCHARGED WAS CONNECTED WITH HIS WORK OR IN THE COURSE OF HIS EMPLOYMENT.

Appeal No. 87-20326-10-112587. The claimant was discharged for assaulting a co-worker during off duty hours and away from the employer's premises. The incident was the result of a dispute which had arisen at work four days earlier and had continued until the assault on the evening preceding the claimant's discharge. HELD: Although the assault had occurred away from the employer's premises, as it was the result of a dispute that arose at work and was carried on at work for several days, it was sufficiently connected with the work to warrant disqualification under Section 207.044 of the Act. (Cross-referenced under MC 390.20.)

Also see Appeal No. 87-20329-10-112887 under CH 10.10 and MS 70.00.

Appeal No. 86-9822-10-061187. The claimant was absent only one day because he had been jailed on a murder charge. However, as the murder received a great deal of publicity and retaining the claimant would have an adverse affect on business, the claimant was discharged. He was later convicted of voluntary manslaughter. HELD: Discharged for misconduct connected with the work. The claimant was guilty of an intentional violation of the law and, as the murder received a great deal of publicity, had the employer retained the claimant the business would have been adversely affected. (Also digested under MC 490.05.)

Also see Appeal No. 88-8751-10-063088 under MC 490.05.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 85.00 (2)

MC CONNECTION WITH THE WORK

Appeal No. 88277-AT-62 (Affirmed by 8676-CA-62 and TEC vs. Macias Cause No. 5632, El Paso Civ. App. 6-3-64). While on vacation, the claimant was arrested, charged, and subsequently convicted of unlawful possession of a narcotic drug. The employer discharged the claimant because it was the employer's policy that any employee arrested for violation of narcotics laws would be discharged. Disqualification assessed. The Court of Civil Appeals held that an employee who is discharged for a willful violation of a known rule of the employer cannot be paid unemployment insurance since this is a discharge for misconduct connected with the work. (Cross-referenced under MC 485.46.)

Appeal No. 938-CA-78. The employer, who was in the business of buying, feeding, and selling cattle, guaranteed a bank note for the claimant, at her request, so that the employer could buy and feed some cattle for her to enable her to earn some extra income. When payment on the note came due, the claimant refused to pay the employer what she owed him, for which refusal she was discharged. **HELD:** Although the business deal between the employer and the claimant was not a specific part of any of the claimant's office duties, it was definitely connected with the work in that the employer agreed to finance the claimant in the cattle feeding operation only because she had been a reliable employee and desired to make some extra money for herself through her connection with him. As the claimant gave no justifiable reason for her refusal to pay the employer what she owed him, her actions constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 1813-CA-77. The employer's policy provided that credit card accounts which were not promptly paid were "stopped" and notice was given to all employees not to accept further charges on a "stopped" account. If an employee accepted a charge on a card which had been "stopped", the employee was required to pay the employer the amount of the charge which the employee had accepted on the "stopped" account. The employee was then allowed to collect the charge on the "stopped" account from the customer who had made the charge. The claimant was discharged when a customer complained to the employer that the claimant had

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 85.00 (3)

MC CONNECTION WITH THE WORKAppeal No. 1813-CA-77

(Cont'd)

collected a \$3.00 collection fee, in addition to the amount due, on an account for which the claimant had reimbursed the employer under the above-described policy. HELD: The employer, by its policy of selling returned credit card charges to its employees who originally accepted them, chose to exchange its right to control the collection of those charges in return for immediate collection from the employees of the sum due. Since the employer sold all of its rights in the account with respect to which the claimant eventually sought to collect a service charge, the claimant's collecting such a charge was not misconduct connected with the work.

Also see Appeal No. 87-09130-10-051387 under MC 485.46 in which it was held that a claimant's failure of a test for the presence of illegal drugs constituted misconduct connected with the work although the employer, prior to discharging the claimant, had not observed any evidence of impairment of the claimant's job performance.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 90.00

MC CONSCIENTIOUS OBJECTION**MC 90.00 CONSCIENTIOUS OBJECTION.**

INCLUDES CASES WHERE CLAIMANT WAS DISCHARGED FOR REFUSING TO WORK UNDER CERTAIN CONDITIONS BECAUSE OF CONSCIENTIOUS OBJECTION ON ETHICAL OR RELIGIOUS GROUNDS.

Appeal No. MR 86-2479-10-020687. The claimant was discharged for abandonment of the job. He had requested a one-week leave of absence to attend an annual conference required by his religion, the Worldwide Church of God. The request was denied but the claimant took off anyway. **HELD:** Not discharged for misconduct connected with the work. The claimant was discharged while exercising religious rights guaranteed under the United States Constitution. Denial of unemployment benefits to the claimant would violate the Free Exercise Clause of the First Amendment.

Also see AA 90.00 and VL 90.00.

Appeal No. 872-CA-67. A claimant who is converted to a religious organization which holds Saturday as the Sabbath and thereafter refuses to work on Saturday because of his faith, and is discharged as a result, is not guilty of misconduct connected with the work.

Appeal No. 22817-AT-65 (Affirmed by 704-CA-65). A claimant who has not worked on Sundays and refuses to do so because of religious scruples, is not guilty of misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 135.00 - 135.05

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| MC DISCHARGE OR LEAVING |
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MC

135.00 DISCHARGE OR LEAVING.

135.05 DISCHARGE OR LEAVING: GENERAL.

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF LEAVING OR DISCHARGE, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 135, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Appeal No. 764254-2. The claimant worked part-time for the employer and ceased reporting to work as scheduled after he secured a full-time position with another employer. However, the claimant never informed the employer he was quitting and was subsequently terminated by the employer in accordance with their attendance policy for failing to report to work as scheduled. **HELD:** Section 207.045 of the Act, which provides that an individual who is partially unemployed and who resigns that employment to accept other employment that the individual reasonably believes will increase the individual's weekly wage is not disqualified for benefits, applies to situations in which an employee actually provides a resignation to his employer. Since the claimant merely abandoned his part-time job and did not advise the employer he was quitting to take another full-time job, he did not resign. Accordingly, the claimant is not entitled to the protection of Section 207.045 of the Act. Rather, the claimant is disqualified under Section 207.044 of the Act for violating the employer's attendance policy.

Case No. 523756-2. The employer is a licensed staff leasing services company. It entered into a staff leasing services agreement with the client for which the claimant worked. The staff-leasing employer did not require employees to contact them at the end of an assignment for placement with another client. The client discharged the claimant for failing to comply with a reasonable request. In its response to the notice of initial claim from the TWC, the employer reported that the separation occurred when the claimant left the client location. **HELD:** A staff leasing agreement establishes a co-employer relationship between the client and the staff leasing company. Each entity retains the right to discharge a worker. If the staff leasing services company does not invoke the notice requirement in Section 207.045(i), then Section 207.045(i) is not applicable. In this case, by not invoking the notice issue in its response to the TWC, the staff-leasing employer essentially *ratified* the actions of its co-employer client in relation to the work separation. Therefore, the Commission will analyze the separation from the client in determining qualification for benefits and, if applicable, chargeback to the account of the staff leasing services company. (Also digested at VL 135.05)

Case No. 172562. The employer sold its business. The claimant was offered comparable work with the new owner but declined the offer. **HELD:** When a company purchases an employer's business and the new employer offers the claimant comparable employment, a rejection by the claimant of the new company's affirmative job offer will be considered a voluntary resignation without good cause connected with the work. (Also digested at VL 135.05.)

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 135.05 (2)****MC DISCHARGE OR LEAVING**

Appeal No. 99-008549-10-090999. The claimant participated in a training program offered by the employer, earning an hourly rate while learning job skills. The claimant entered into the program with the knowledge that it was a work skills training program, designed to provide her with the skills needed to gain productive work. Separation occurred when she successfully completed the program. **HELD:** The Commission found that the claimant's separation from the skills training program was analogous to the circumstances in work study participant cases. The claimant's training was structured to continue only for the length of the work skills training program. As in the cases of work study participants, the work was not structured to continue beyond the end of her program participant status. When the program ended, the claimant's work ended. The claimant was aware when she entered into the program that this would be the case. Accordingly, the Commission held that the claimant voluntarily left the last work without good cause connected with the work. Cross referenced at VL 135.05 and VL 495.00.

Appeal No. 87-7940-10-051187. The claimant was discharged during his vacation. He had told the employer he would be interviewing for another job during his paid vacation. When the claimant called to check if he could return to work, he was told that his resignation had already been accepted. The claimant was not hired for the other job. **HELD:** No disqualification under Section 207.044. The claimant did not resign before leaving for his vacation. Since the employer's early discharge of the claimant was based on the unfounded assumption that the claimant meant to quit when he told his employer that he would be interviewing for another job during his vacation, the claimant was discharged for reasons other than misconduct connected with the work.

Appeal No. 87-13371-10-073187. The claimant, who felt management wanted to replace him, told his supervisor that if the owner wanted him to leave, he would leave at the end of that week. Later, he told the secretary he would be willing to stay another three to four weeks to see if the conflicts could be resolved. On Friday of that week, the claimant's supervisor advised him he was considered to have quit effective that day. **HELD:** The claimant never made an unequivocal expression of an intention to resign. The employer is the party who made the actual decision that the employment relationship would, in fact, be severed. Thus, the claimant was discharged and did not voluntarily quit. As no evidence of misconduct on the claimant's part was presented, no disqualification under Section 207.044.

Tex 10-01-96

MISCONDUCT

MC 135.05 (3)

MC DISCHARGE OR LEAVING

Appeal No. 1069-CA-76. The claimant, a student, told the employer that he was going to have to quit work. The employer then offered the claimant part-time work, which the claimant accepted. He worked on this part-time basis for about two months, when he was told that he could not justify a part-time employee. HELD: The claimant had not quit, but had been discharged and for reasons other than misconduct connected with the work. The present case was distinguished from those situations in which a claimant's hours of work are, at his request, reduced from full-time to part-time. In the present case, the claimant's original intention was to completely give up working; it was at the employer's insistence that he had been allowed to continue working on a part-time basis, on which basis he continued working for about two months until he was discharged.

Appeal No. 1259-CA-67. A former employer asked the claimant to work on a temporary basis for three weeks. The claimant lived in Dallas and the job was in Dallas but the employer had the claimant paid by Manpower of Fort Worth as the claimant's employer. The claimant did not report to Manpower for further assignment upon being laid off from his temporary job. HELD: The Commission has consistently held that a person who secures work through the offices of an organization which provides employers with temporary employees on a contract basis must inquire whether such organization has other work to which he may be assigned in order to avoid a disqualification under Section 207.045 of the Act. However, no disqualification was assessed in this case because it would have been unreasonable to expect the claimant, a Dallas resident, to be available for work in Fort Worth.

Also see cases digested under VL 135.05, dealing specifically with employees of temporary help services.

Also see Appeal No. 983-CA-72 and Appeal No. 86-2055-10-012187 under VL 495.00.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 135.15

MC DISCHARGE OR LEAVING**MC 135.15 DISCHARGE OR LEAVING: CONSTRUCTIVE DISCHARGE.**

WHERE THE CLAIMANT ACTUALLY LEFT EMPLOYMENT, BUT UNDER CONDITIONS THAT RAISE A QUESTION AS TO WHETHER HE WAS CONSTRUCTIVELY DISCHARGED, AS WHEN HIS JOB WAS ABOLISHED, OR WHEN THERE WAS NO JOB OF THE DESCRIPTION FOR WHICH HE WAS HIRED, OR WHEN HE WAS ORDERED TO WORK UNDER CONDITIONS THAT WERE NOT IN HIS CONTRACT OF EMPLOYMENT.

Appeal No. 967-CA-77. The claimant was an officer as well as an employee of the employer corporation. On the advice of his attorney, he resigned his corporate office in order to protect himself from potential personal liability for some questionable actions which the corporation had taken. The employer considered the claimant as having resigned from his employment altogether and not merely from his corporate office. When the claimant protested to the employer that he had intended only to resign from his corporate office, he was discharged. HELD: Since the claimant had never exhibited any desire to resign from his employment, but only a desire to resign from his corporate office, and since his employment in general was independent and separable from his position as a corporate officer, it was concluded that the claimant had not voluntarily resigned but, rather, had been discharged and for reasons other than misconduct connected with the work.

Appeal No. 735-CA-67. The claimant, an office manager, was assigned the additional position of secretary-treasurer of the employer-corporation. She worked in this dual capacity for several months until she requested of the employer's president that she be relieved of the duties of secretary-treasurer because she felt unqualified therefor and feared that she might be held liable, in part, for the corporation's obligations incurred in the face of its declining financial conditions. He informed her that she would not be needed at all if she would not continue working as secretary-treasurer. The claimant resigned from the latter position immediately and the position of officer manager, effective six weeks

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 135.15 (2)

MC DISCHARGE OR LEAVINGAppeal No. 735-CA-67

Con't

thereafter. HELD: Although the claimant subsequently submitted a resignation, the employer had, in effect, served notice of discharge on her when its president refused to grant her request to continue working as office manager only. Accordingly, the claimant's separation was brought about by the employer's action and her separation was thus considered under Section 207.044. Since a corporate officer may be held liable for corporate obligations in a variety of situations, the claimant's unwillingness to serve as such was reasonable, considering the employer's precarious financial conditions, and did not constitute misconduct connected with the work.

Appeal No. 71906-AT-60 (Affirmed by 7092-CA-60). In the shrimp industry it is the custom for a new captain to bring his own crew. Therefore, when the claimant's captain quit on the completion of a trip, the claimant was laid off by the employer and a new captain was hired who had his own crew. The claimant's involuntary separation was not due to any misconduct connected with the work on his part.

Appeal No. 6844-CA-59. While the claimant was on vacation, her employer leased the business and the claimant and the lessee could not reach agreement on terms and the claimant did not work further. HELD: The separation occurred when the employer leased the business, in effect terminating the claimant's job. No disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 135.25****MC DISCHARGE OR LEAVING****MC 135.25 DISCHARGE OR LEAVING: DISCHARGE BEFORE EFFECTIVE DATE OF RESIGNATION.**

WHERE CLAIMANT, UPON GIVING NOTICE THAT HE INTENDED TO RESIGN AS OF A CERTAIN DATE, WAS ADVISED BY THE EMPLOYER THAT HE NEED NOT WORK UNTIL THAT DATE.

At its meetings on March 9 and March 23, 1988, the Commissioners adopted the following policy to apply to instances in which one party gives the other party notice of impending separation and the other party takes the initiative of terminating the employment relationship earlier:

- (1) The Commission recognized an expectation generally existing in the work place that a party intending to terminate the employment relationship will customarily give two weeks' notice to the other party.
- (2) During such two-week period, early termination of the employment relationship by the party receiving such notice will not change the nature of separation. The party first initiating the separation will continue to bear the burden of persuasion as to whether the separation was justified; that is, in the case of an involuntary separation, whether the claimant was discharged for misconduct connected with the work or, in the case of a voluntary separation, whether the claimant voluntarily left work without good cause connected with the work
- (3) When more than two weeks' notice of impending separation is given and the party receiving the notice initiates a separation prior to the intended effective date, the nature of the separation, and thus the allocation of the burden of persuasion, will depend on the general circumstances in the case.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 135.25 (2)

MC DISCHARGE OR LEAVING

Appeal No. 90-04461-10-041790. The claimant, an alarm monitor for a security company, gave more than seven weeks' notice of his intent to resign due to a personality conflict with a fellow employee and his supervisor's allegedly unfair treatment of the claimant in regard to this conflict. The claimant's letter of resignation contained some obscene language. The employer accepted the claimant's resignation effective immediately. HELD: The employer's early effectuation of the claimant's resignation constituted, in effect, a discharge. As the tone of the claimant's letter was insubordinate and as the sensitive nature of the claimant's work should have made him realize that the employer would not allow him to continue working after receipt of the claimant's letter, the claimant's actions constituted misconduct connected with the work under Section 207.044 of the Act.

Appeal No. 88-4246-10-033088. The claimant was discharged because she refused to repress some shirts after quality control had informed her that they needed to be refinished. Although the claimant's main job was to press pants, she knew how to press shirts and had done so before. She refused to refinish the shirts because she had done them to the best of her ability and did not believe she would improve the shirts by repressing them. After it notified the claimant of her discharge, the employer kept the claimant on for another five days so that it could hire a replacement. HELD: The Commission did not agree with the Appeal Tribunal's conclusions that the employer's keeping the claimant on an extra five days showed that the discharge was for the employer's convenience. Rather, it concluded that five days after the misconduct was a reasonable amount of time for the employer to keep the claimant working while it looked for a replacement. The claimant's refusal to refinish the shirts constituted mismanagement of her position within the meaning of Section 201.012 of the Act and thus misconduct connected with the work. Disqualification under Section 207.044. (Cross-referenced under MC 385.00.)

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 135.25 (3)

MC DISCHARGE OR LEAVING

Appeal No. 87-02149-10-021288. On October 1, the claimant gave the employer notice of her intent to resign at the end of December, to enter other employment. She was requested by the employer, and she agreed, to refrain from discussing with her co-workers her intention to resign. The employer discharged the claimant after learning that she had discussed her resignation with a co-worker. HELD: The claimant was discharged for work-connected misconduct because her betrayal of the employer's confidence and failure to abide by her agreement constituted a mismanagement of a position of employment.

Appeal No. 87-00697-10-011488. On November 2, the claimant gave notice of his intent to quit his job in March of the following year. He further advised the employer that, during that time period, he intended to work under a decreased workload and would train only one particular individual to replace him. The employer accepted his resignation effective immediately. HELD: Recently adopted Commission policy provides that where a party gives in excess of two weeks notice of separation and that notice is accepted immediately, the burden of persuasion will normally shift to the party accepting the notice early. As the employer accepted the claimant's notice early here, the separation will be considered a discharge. The burden of establishing that the claimant was discharged for work-connected misconduct was found to have been met in that the claimant's actions of giving the employer an ultimatum that he would not perform to his usual standard during his notice period amounted to intentional malfeasance, thus constituting misconduct connected with the work on the claimant's part.

Appeal No. 87-00208-10-010488. The claimant was given two weeks' notice of impending termination by the manager who in the past had consistently and unfairly criticized him. The claimant left immediately because he was upset. HELD: The claimant was effectively discharged when given two weeks' notice of termination. As there was no evidence of any work-connected misconduct on the claimant's part, he was awarded benefits without disqualification under Section 207.044 of the Act even though he could have continued working two more weeks.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 135.25 (4)

MC DISCHARGE OR LEAVING

Appeal No. 86-20059-10-112387. The claimant was separated from this employer when he gave notice of his intent to resign. On December 11, the claimant informed the employer that he would be leaving on January 30 as he had been called to active military service and was to report for such duty on February 14. The claimant was allowed to continue working until December 15, when he was removed from the schedule.

HELD: Commission policy provides that where a party gives notice in excess of two weeks and such notice is accepted before the intended effective date, the burden of proof will usually shift to the party accepting the notice early. Since the claimant in this case gave the employer approximately six weeks' notice, which was accepted early, the separation becomes a discharge. The claimant was terminated simply because he gave the employer notice of intent to quit in the future. Thus, he was discharged for reasons other than misconduct connected with the work.

Also see cases under MC 135.35, VL 135.25 and VL 135.35.

Appeal No. 96-001500-10-020697. After several poor performance reviews, the claimant gave the employer notice of his intent to resign voluntarily three weeks hence. The employer elected to accept the claimant's resignation immediately. Although the claimant performed no further services for the company, the employer paid the claimant his usual salary through the intended resignation date. HELD: A separation does not change from a quit to a discharge simply because the employer decides to accept the resignation immediately. Here, the employer has compensated the claimant for not working out the notice period--even if longer than the customary two weeks--by paying him through his intended resignation date. In this case, the claimant did not have good cause to resign voluntarily after poor performance reviews. (Also digested at VL 135.25).

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 135.30

MC DISCHARGE OR LEAVING**135.30 DISCHARGE OR LEAVING: INVOLUNTARY SEPARATION (LAYOFF).**

DISCUSSIONS AS TO WHETHER THE SEPARATION WAS VOLUNTARY.

Appeal No. 87-17297-10-092987. Due to a business slowdown, the employer offered all employees a severance package in order to reduce the work force. The claimant was required to sign the acceptance form by a certain date or risk being laid off and losing all benefits. The claimant signed the agreement prior to the imposed deadline. **HELD:** The claimant did not have the option of retaining her job because layoffs were imminent. The claimant would have lost all her benefits if she refused the package. Therefore, her separation constituted an involuntary layoff. No disqualification under Section 207.044.

Appeal No. 86-00326-10-121786. Due to technological changes, the claimant's position as plant assigner was eliminated completely. Layoffs based on seniority were scheduled to go into effect. The employer offered an incentive voluntary separation plan which opened up some positions for less senior employees who were going to be laid off. Despite this action, the claimant was still subject to layoff due to insufficient seniority. The claimant then signed up for the "termination" package offered to workers displaced due to technological changes as per union contract. The claimant was notified that she would be involved in the layoff. Although there was some temporary work available, none was offered to the claimant. **HELD:** No disqualification under Section 207.044. The claimant was terminated because her position was eliminated due to technological changes. She had insufficient seniority to be placed in other equal or similar categories. Payments made to her as a result of the separation were the contractual "termination" payments. Although some workers may have had the option of continued temporary work, the claimant was not offered such work. (Also see Appeal No. 86-14984-10-11886, digested under VL 495.00, involving similar facts except that the claimant had sufficient seniority to be protected from layoff. There, the Commission held the claimant's separation to have been

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 135.30 (2)

MC DISCHARGE OR LEAVING

Appeal No. 86-00326-10-121786 (con't)

voluntary.) (Also digested under VL 135.05 and cross-referenced under VL 495.00.)

Appeal No. 87-28015-1-0588 (Affirmed by 87-6732-10-052788). As provided for in the controlling collective bargaining agreement, the claimant volunteered to be laid off in place of a less senior employee who had been scheduled for layoff. Further work had been available to the claimant had he not taken this action. HELD: As continued work had been available to the claimant had he not volunteered to be laid off in place of a less senior employee, his separation was voluntary and without good cause connected with the work. Disqualification under Section 207.045.

Also see cases under VL 495.00.

Appeal No. 88-6395-10-051988. In September, the employer laid off a number of employees and, at that time, the claimant asked to be laid off also as she wanted to return to her family in Louisiana. Her supervisor told her she would be laid off the next time the employer instituted a layoff. On the following February 10th, the claimant's supervisor asked the claimant if she still wished to be included in the employer's next layoff. As she responded affirmatively, her supervisor told her she would be laid off on February 26th. The claimant canceled her apartment lease and moved all of her personal belongings to Louisiana. On February 22nd, 25th and 26th, the claimant's supervisor repeatedly assured the claimant that she would be laid off on February 26th. However, on that date, a different supervisor informed the claimant she could not be laid off and the employer's controller as well as its personnel director informed her that her supervisor did not have the authority to tell the claimant that she would be laid off. At that point, the claimant left work and relocated to Louisiana. HELD: The claimant did not have good cause connected with the work for leaving by relying on her supervisor's assurances that she would be laid off and making plans to move out of state based on those assurances. Rather, as the claimant had twice asked to be included in a layoff that presumably would not otherwise have included her, her reason for leaving did not constitute good cause connected with the work. Disqualification under Section 207.045.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 135.30 (3)

MC DISCHARGE OR LEAVING

Appeal No. 2653-CA-77. The claimant filed an initial claim during a period when he was off work due to compressor breakdown. After he filed his initial claim, the claimant was told that he could report back to work several days thereafter but he failed to do so. HELD: The claimant was unemployed at the time he filed his initial claim because he had been laid off by the employer due to a lack of work at that particular time and not for any misconduct connected with the work on his part.

Appeal No. 1056-CA-77. The claimant had worked for several months as an employee, presenting lectures. This arrangement was terminated because it was making no money for the employer and, during the claimant's last month of work for the employer, he worked as an independent contractor on a one-month contract, preparing taped lectures. Upon the completion of the contract, no further work was available other than work again as a lecturer. However, this would have been as an independent contractor, not as an employee, and the claimant declined the offer. HELD: The claimant was last separated prior to his initial claim when he completed the one-month work as an independent contractor. This work was correctly named as his last work on his initial claim and his right to benefits was determined by reference to the reason for his separation from the independent contracting work. Since the claimant was separated when the work was completed and no further work was available to him, he was involuntarily separated for reasons other than misconduct connected with the work.

Appeal No. 913-CA-77. The claimant's attendance record had been unsatisfactory but she was laid off due to a lack of materials for her to work on. HELD: Discharged for reasons other than misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 135.30 (4)

MC DISCHARGE OR LEAVING

Appeal No. 508-CUCX-77. The claimant performed services for a chemical company. He was, without his knowledge, placed by the chemical company on the payroll of a temporary employment service. The claimant was laid off by the chemical company due to lack of work and did not apply to the temporary employment service for another assignment because he did not know that it was his employer. **HELD:** The claimant was laid off due to lack of work when the chemical company ran out of work for him to do. As the claimant was not aware that he was on the payroll of the temporary help service, he was not obligated to report to the temporary help service for a further job assignment. No disqualification under Section 5(a) or Section 5(b) (now codified as Section 207.045 and Section 207.44, respectively).

Also see cases digested under VL 135.05, dealing specifically with employees of temporary help services.

Appeal No. 3197-CA-76. On a Friday, the claimant, a nursing home administrator, was given the next two days off (which were regularly scheduled work days) and was told by the employer's owner that her work was satisfactory but that he would contact her on the following Monday about her continued employment. She was asked to surrender her keys and advised to remove her personal belongings. She was not contacted on the following Monday or thereafter and, on Wednesday, received a check made out on the previous Friday, paying her wages through that date. The claimant assumed she had been discharged. **HELD:** Since the claimant was not contacted by the owner and then was sent a check paying her through the last day she worked, she did not voluntarily leave her last work; rather, she was discharged and for reasons other than misconduct connected with the work.

Appeal No. 414-CA-76. The claimant was laid off from her last work when the client for which she worked did not renew its janitorial service contract with her employer. **HELD:** The claimant was laid off due to the expiration of the employer's contract and not because of any misconduct connected with the work on her part.

Also see Appeal No. 86-02537-10-020587 under MS 510.00 and cases digested under VL 495.00.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 135.35

MC DISCHARGE OR LEAVING**135.35 DISCHARGE OR LEAVING: LEAVING IN ANTICIPATION OF DISCHARGE.**

WHERE THE CLAIMANT LEFT IN ANTICIPATION OF A DISCHARGE, OR RESIGNED WHEN TOLD HE WOULD HAVE HIS CHOICE OF RESIGNING OR BEING DISCHARGED.

Appeal No. 87-10432-10-061787. On her last day of work, the claimant was told by the assistant manager that he had found out she was to be fired that day by the district manager. The claimant left because she was upset and wanted to be spared further humiliation. In fact, the district manager did intend to discharge the claimant for her low sales. The claimant had consistently had lower sales than most of her co-workers but she had not previously been warned that her job was in jeopardy. HELD: The claimant was actually separated from her job by her employer when she was told by the assistant manager, a person in authority, that she was to be discharged by the district manager. Thus, it was not unreasonable for the claimant to conclude that she was discharged. As there was no showing of misconduct connected with the work on the claimant's part, no disqualification under Section 207.044.

Appeal No. 2028-CA-77. A claimant who resigns after having been given a choice of resigning or being discharged, will be treated, for the purposes of the law of unemployment insurance, as having been discharged and the question of whether or not the claimant should be disqualified, due to the circumstances surrounding her separation, will be considered under Section 207.044 of the Act.

Also see MC 135.25 and VL 135.25.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 135.45

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| MC DISCHARGE OR LEAVING |
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135.45 DISCHARGE OR LEAVING: SUSPENSION FOR MISCONDUCT.

INVOLVES THE QUESTION OF WHETHER CLAIMANT WAS SUSPENDED FOR MISCONDUCT IN STATES HAVING A PROVISION FOR DISQUALIFYING A CLAIMANT WHO IS SUSPENDED FOR MISCONDUCT.

Appeal No. 273-CA-77. The claimant, a convenience store manager, was suspended for three days because she refused to take a polygraph examination requested of her because of shortages occurring at her store. All employees were told when hired that they would be required to take a polygraph examination in the event of shortages and the claimant had submitted to them in the past. Because a reinventory confirmed some shortages, upon the conclusion of her suspension, the claimant was offered a position as a clerk at another store with a reduction in salary of approximately 30 percent. The claimant declined the offer. HELD: The claimant was actually terminated at the time she was placed on suspension as she ceased performing services or receiving wages and was, therefore, unemployed. Her separation was caused by her refusal to take a polygraph examination which, since the claimant had been aware of the employer's policy requiring submission to such examinations and had previously acceded to it, constituted misconduct connected with the work. Disqualification under Section 207.044. (Also digested under TPU 80.05 and cross-referenced under VL 138.00.)

Appeal No. 96-011228-10-100196

The employer reprimanded the claimant for failing to call in when she knew she would be coming in late. When the employer reviewed the claimant's personnel file, he discovered that she had been reprimanded two weeks earlier for being late. The employer dismissed the claimant at the beginning of her shift the next day. The claimant appealed. HELD: An employer may change its decision regarding the severity of discipline used even up to dismissal as long as this is done within a reasonable time after the initial decision.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 135.45 (2)

MC DISCHARGE OR LEAVING

Appeal No. 96-012206-10-102596. The claimant was suspended for three days, without pay, as a result of unexcused absences. At the end of the suspension, the claimant informed her supervisor that she was quitting. She quit because she believed she had not violated company policy. HELD: The separation occurred when the claimant quit and not when she was suspended. Thus, the claimant was disqualified for quitting without good cause connected with the work. When an individual receives a suspension for three days or less, and the individual chooses not to return after the end of the suspension, the case generally will be decided as a voluntary separation. A disqualification under Section 207.045 should be imposed unless it is shown that the employer did not act in good faith in imposing the suspension or that the manner in which it was imposed was extremely egregious.

Please cross reference at VL 135.05.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 135.50

MC DISCHARGE OR LEAVING

135.50 DISCHARGE OR LEAVING: AFTER INDEFINITE LAYOFF.

WHERE CLAIMANT TENDERS RESIGNATION WHILE ON INDEFINITE LAYOFF.

Todd Shipyards Corp. vs. TEC, 245 S.W. 2d 371 (Court of Civil Appeals, Galveston-1951, Ref. n.r.e). A claimant who is laid off for an indefinite period, without pay, but retains seniority rights and certain fringe benefits, but submits his resignation while on layoff is held to have been separated when placed in layoff status as the employer-employee relationship ceased on that date.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 140.00 - 140.05

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| MC DISHONESTY |
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MC 140.00 DISHONESTY.**140.05 DISHONESTY: GENERAL.**

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF DISHONESTY, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 140, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Appeal No. 87-5452-10-033187. The claimant was discharged for actions considered to be dishonest and in violation of a company rule prohibiting dishonesty. The claimant requested and received \$1300 from the employer's savings plan. He received a second check for \$1300 by mistake the following month. He kept the second check until the employer discovered the error two months later. The employer discharged him for failing to report the duplicate payment. HELD: Discharged for misconduct connected with the work. The claimant was under a duty to report the second payment and his failure to do so violated the employer's rule prohibiting dishonesty.

Appeal No. 87-02596-10-021888. The claimant, a telephone company service representative, was discharged for having prepared a continuous service verification letter for a customer, knowing the letter to be false. The claimant knew that the customer intended to use the letter in applying for the amnesty program administered by the U.S. Immigration and Naturalization Service. HELD: As the claimant prepared the continuous service verification letter knowing it to be false, the claimant's action constituted mismanagement of her position of employment and thereby was misconduct connected with the work.

Also see cases digested under MC 485.30.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 140.05 - 140.10

MC DISHONESTY

Appeal No. 2914-AT-69 (Affirmed by 343-CA-69). A claimant who willfully misrepresents facts to his employer for the purpose of obtaining reimbursement of funds, which reimbursement is not due him, is guilty of misconduct warranting disqualification under Section 207.044.

Appeal No. 5599-AT-68 (Affirmed by 677-CA-68). A claimant who uses his position with the employer in order to obtain for himself certain fringe benefits from the employer's customers, is guilty of misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 53836-AT-56 (Affirmed by 5681-CA-56). A claimant who is discharged because she asked the employer what he meant, after he made insinuating remarks about her honesty, is not guilty of misconduct connected with the work.

140.10 DISHONESTY: AIDING AND ABETTING.

WHERE A CLAIMANT ALLOWED HIS EMPLOYER TO BE DEFRAUDED BY OTHERS, BY HELPING OR PERMITTING ACTS OF DISHONESTY TO BE COMMITTED WITHOUT INFORMING HIS EMPLOYER OR TRYING TO PREVENT THEM.

Appeal No. 2327-CA-77. The claimant, an experienced room service waiter, was discharged for having knowingly cooperated with a guest of the employer hotel, in defrauding the hotel of the sum of \$24.00 by altering records of charges. HELD: The claimant's active participation in a scheme to defraud his employer constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 3685-CA-76. The claimant was discharged for having provided food and beverages to certain patrons of the snack bar where she worked, without having recorded the purchases on her cash register, contrary to company policy. HELD: Discharged for misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 140.10 - 140.20****MC DISHONESTY**

Appeal No. 2957-CA-76. The claimant was discharged for having permitted a customer to leave the store where the claimant worked without the customer paying for certain merchandise. The claimant's motive in permitting the customer to leave with the merchandise was to test the honesty of another employee. However, she had not conferred with management as to her plan nor had it been her duty to test the honesty of other employees. HELD: The claimant's actions, in the absence of any consultation with management about her intention to determine the honesty of the other employee, constituted misconduct connected with the work.

140.15 DISHONESTY: CASH SHORTAGE OR MISAPPROPRIATION.

WHERE CASH WAS CONVERTED OR MISAPPROPRIATED.

Appeal No. 2612-CA-77. The claimant was discharged for having stolen \$155 from the employer. HELD: Discharged for misconduct connected with the work. Disqualification under Section 207.044 .

140.20 DISHONESTY: FALSEHOOD.

WHERE CLAIMANT GAVE A FALSE REASON FOR AN ABSENCE, OR MADE FALSE STATEMENTS ABOUT EMPLOYER, FELLOW EMPLOYEES OR AMOUNT OF WORK DONE.

Appeal No. 2454-CA-77. The claimant was discharged, after verbal and written warnings, because of her attendance record. She was absent a total of twenty- one days during a four month period. Her last absence, allegedly for medical reasons, was supported by a medical certificate which was not regular on its face, in that it did not appear to have been issued by a physician and the name of the hospital referred to in the certificate was misspelled. The authenticity of the certificate could not be verified by the employer as the claimant could not give the doctor's name or telephone number. HELD: The claimant's actions constituted misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 140.20 (2)

MC DISHONESTY

Appeal No. 1005-CA-77. The claimant was discharged for having stated that he had been hospitalized for the entire four months that he was off work due to injury when, in fact, he had not been hospitalized for the entire time. HELD: The claimant's misrepresentation constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 80-CA-77. On a scheduled work day, the claimant notified the employer that she would not be in because her child was ill. The claimant absented herself from work and was discharged. She falsely notified the employer that she had taken the child to a doctor and that the latter had advised her to stay home with the child. In fact, the claimant attended a fair while the child's grandparents cared for the child. HELD: Discharged for misconduct connected with the work as the claimant was absent from work without a valid excuse when she was needed by the employer. Disqualification under Section 207.04. (Also digested under MC 15.20.)

Appeal No. 2030-CA-76. The claimant was discharged because, in an attempt to increase his pay, he had reported that he was on jury duty during a period of time after he had actually been released from jury duty. HELD: The claimant's misrepresentation of his whereabouts, in an effort to increase his wages, constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 15483-AT-64 (Affirmed by 731-CA-64). The claimant witnessed a fight on the job but denied any knowledge of it to the employer. She was discharged because the employer had obtained proof she was a witness. HELD: The claimant's telling the employer an untruth and being unwilling to cooperate with him in his efforts to learn the facts constituted misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 140.20 - 140.25

MC DISHONESTY

Appeal No. 7581-CA-61. The claimant misrepresented to the employer that he had cut his hand in the performance of his duties. As a result of the misrepresentation, the claimant's medical expenses were paid by the company and he was compensated for lost time. When the employer learned the truth, the claimant was discharged. **HELD:** The claimant's actions constituted misconduct connected with the work and a disqualification under Section 207.044 was assessed.

140.25 DISHONESTY: FALSIFICATION OF RECORD.

WHERE CLAIMANT HAS GIVEN FALSE INFORMATION ON APPLICATION FOR WORK OR ON RECORDS IN THE COURSE OF HIS EMPLOYMENT OR HAS DESTROYED SUCH RECORDS.

Case No. 747872-2. The claimant was fired for falsifying his employment application. The claimant checked "no" to a question regarding criminal "convictions" within the last seven (7) years. The employment application did not inquire as to whether the claimant had ever pled guilty or no contest to a criminal charge. Some four (4) years earlier, the claimant had been charged with, and pled guilty to, assault with bodily injury, a Class A misdemeanor. The claimant received deferred adjudication for the offense which consisted of two years' probation and a fine. The claimant successfully completed probation and paid the required fine. **Held:** Not discharged for misconduct connected with the work. The claimant did not falsify his employment application. In light of the claimant's successful completion of the conditions of his probation, the claimant's response to the conviction question was, according to state law, correct. Specifically, the Texas Code of Criminal Procedure [Vernon's Ann.C.C.P. Art. 42.12§(5)(a) & (c)] provides, in summary and in part, that "...the judge may, after receiving a plea of guilty or plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on community supervision." Upon satisfying the terms of probation, "...if the judge has not proceeded to adjudication of guilt, the judge shall dismiss the proceedings against the defendant and discharge him."

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APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

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| MC DISHONESTY |
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Appeal No. 87-60996-1-0687 (Affirmed by 87-11745-10-070987). When hired for a position as security guard for a security company, the claimant certified on his employment application that he had never been arrested for any offense other than a minor traffic violation. Five months later, the employer learned that the claimant had twice previously been arrested and that he had pleaded guilty to aggravated assault and paid a fine. The claimant was discharged. HELD: An employer should be entitled to expect employees to fill out employment applications in a truthful manner. The claimant's failure to do so constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 86-15444-10-112586. The claimant was discharged because the employer found he failed to list a misdemeanor conviction, driving while intoxicated, on a security clearance application. Although the claimant did list a previous felony conviction, he failed to list the misdemeanor because he mistakenly believed that no conviction had been entered on his record. HELD: Not discharged for misconduct connected with the work. Because the claimant listed a more serious conviction on the application, it does not appear that the claimant was attempting to hide his criminal record but, rather, failed to list it because of his misunderstanding of the legal disposition of the case. The employer was put on notice that the claimant had such a record which was available to the employer for closer inspection.

Appeal No. 1426-CA-77. The claimant was discharged for having failed to keep his promise to do work for which he had, by his own actions, improperly obtained his pay before doing the work. HELD: The claimant's failure to do the work which he had agreed to do in order to make restitution to the employer for payroll funds that he had obtained improperly constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 834-CA-77. The claimant was discharged for having falsified her employment application and her pre-employment medical history questionnaire, in that she failed to reveal in either document, although asked in both, that she had had a disabling back injury. HELD: The claimant's falsification of her employment application and her medical history questionnaire constituted misconduct connected with the work. Disqualification under Section 207.044.

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APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

Appeal No. 95-014287-10-101895. In August 1991 the claimant completed his work application for the employer and, in response to a specific question on the application, he indicated that he had not previously worked for the employer. In May 1995, the employer discovered that, in fact, the claimant had previously worked for the employer in 1982 and had been discharged for attendance violations. The employer's application had expressly indicated that giving false information on the application is grounds for immediate discharge. The claimant was discharged. HELD: Falsification by misrepresentation or omission of material information on an employment application, generally speaking, constitutes misconduct connected with the work, no matter when such fact is discovered. Consequently, the precedent decision relied upon by the Appeal Tribunal, Appeal No. 127-CA-77 (holding that it is not reasonable to hold that false information which was given almost two years before the claimant's discharge should constitute work-connected misconduct) is specifically overruled and deleted from the precedent manual. The holding in the present case is adopted as a precedent. Disqualification under Section 207.044 of the Act.

Appeal No. 87-10312-10-061687. The claimant was discharged when the employer learned that the claimant had omitted one previous employer from her work history on her application form submitted two years earlier. The claimant omitted this prior employer because she worked there a week or less and received no wages. For those reasons, she did not believe she had "worked" for the prior employer. HELD: Because of the brevity of the previous employment and the lack of wages, it was reasonable for the claimant to believe that the prior employment had no bearing on her employment application. Furthermore, the claimant had performed well for the employer for two years after filing the application in question. The Commission held that the claimant's omission of one prior employer from her application form submitted two years earlier did not constitute misconduct connected with the work.

Appeal No. 3276-CA-76. The claimant was discharged because he had placed his supervisor's initials on his (the claimant's) expense account on one occasion and, on four other occasions, had had some other person or persons place the supervisor's initials on his expense accounts. The claimant had known that his supervisor was supposed to approve such expense accounts. HELD:

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APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 140.25 (4) - 140.30

Although there was nothing in the record to establish that the claimant had intended to obtain any money other than what was justly due him by way of reimbursement, his actions clearly violated the employer's known policy and constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 3570-AT-69 (Affirmed by 432-CA-69). A claimant's failure to report his previous arrests on his application for work, because he was afraid he would not be hired if he listed them, constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 315-CA-78. On the Monday following the Thanksgiving Holiday, the claimant turned in a record indicating that he had made outside sales on that date. In fact, the claimant had been home sick that day. He falsified the record because company policy provided that the Thursday and Friday of the Thanksgiving weekend would be paid days off only if the worker actually worked the following Monday. The reason given by the claimant for his deception was his difficult financial situation caused by his wife's long and expensive hospitalization. For this reason, the claimant could not do without the three days' pay he would have lost telling the truth. Prior to the deception, the claimant had been considered a good employee and had received only one minor reprimand during his twenty months' term of employment. HELD: The claimant's attempting, by lying to the employer, to gain three days' pay to which he was not entitled constituted misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 140.30 (2)

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| MC DISHONESTY |
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Also see Appeal No. 86-14236-10-110586, more fully digested under MC 45.15, in which the Commission held guilty of misconduct connected with the work a claimant who had been suspected of theft of the employer's merchandise for resale, a suspicion which the employer was unable to definitely validate. There, the basis for the Commission's decision was the fact that the claimant's actions constituted competition with the employer and was potentially damaging to the employer's relations with its customers.

140.30 DISHONESTY: PROPERTY OF EMPLOYER, CONVERSION OF.

TAKING OF EMPLOYER'S PROPERTY AND PUTTING TO
EMPLOYEE'S OWN USE.

Case No. 302389. The employer discovered that the claimant, a custodian, had a trash bag of items that were found double bagged on her cart. When the claimant was sent home so the incident could be further investigated, the claimant wanted to take the items. Her request was denied. The investigation determined that these items were not trash or lost, but were taken out of the classrooms without authorization. The claimant was discharged for possession and control of the property of others, without authorization. HELD: Although claimant denied during the hearing that she had stolen the items, the employer provided a witness with firsthand testimony who indicated that he discovered the items double bagged on claimant's cart and when sent home, claimant wanted to take these items with her. The Commission concluded that this evidence was sufficient to establish that the claimant had possession and control of the items with intent to remove them from the school's premises, regardless of whether she ultimately succeeded in removing the items from the premises. The Commission concluded that the employer had presented sufficient evidence to overcome the claimant's firsthand denial, and therefore, the claimant was discharged for intentional wrongdoing and thus misconduct connected with the work. (Also digested at MC 190.15).

Appeal No. 87-20113-10-112487. The employer had allowed the claimant and other employees to take home items from the store as long as the information was kept in a log. The employer stopped the practice and directed that all items be returned. The

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 140.30 (3)

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claimant removed one page from the log which listed stereo equipment he had at his house. He was discharged because it appeared he was attempting to misappropriate merchandise by the removal of information. HELD: The claimant's removal of the page from the log without the employer's knowledge was an act of poor judgment, at the least, and reflective of an intent to misappropriate merchandise. The claimant's action constituted misconduct connected with the work.

Appeal No. 1879-CA-76. The claimant was discharged when she was found to be attempting to leave the employer's premises with a handbag made by a co-worker with the employer's materials and valued at \$2.00. The claimant had not secured permission to remove the handbag. HELD: Discharged for misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 1435-CA-76. The claimant was discharged for attempting to take from the club for which he worked food valued at \$5.00 and \$10.00, for which he had not paid. HELD: Discharged for misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 921-CA-77. The claimant was discharged for unauthorized removal of company property from the employer's premises. He had unintentionally removed the employer's gauges, thinking them to be his own, and had left behind a set of his own gauges which he had brought to the employer's premises to test for accuracy. HELD: Since the claimant's unauthorized removal of the employer's gauges was unintentional and there was no evidence in the record to support a conclusion that he violated a company rule by using company time to check his personal gauges, no misconduct connected with the work on the claimant's part was established.

Appeal No. 627-CA-77. The claimant was discharged because he was found in unauthorized possession of the employer's goods. He was indicted, pleaded guilty and was sentenced to a term of imprisonment. HELD: Discharged for misconduct connected with the work. Disqualification under Section 207.044.

Also see Appeal No. 86-14236-10-110586 under MC 45.15.

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MISCONDUCT

MC 140.32

MC DISHONESTY

140.32 DISHONESTY: SERVICES OF EMPLOYER, UNAUTHORIZED USE OF.

USING FACILITIES OR SERVICES, IN VIOLATION OF COMPANY RULE, WITHOUT PERMISSION OR KNOWLEDGE OF EMPLOYER.

Appeal No. 87-689-10-011188. The claimant, a telephone operator, was discharged for placing a non-emergency long distance telephone call from her home at no charge, without the employer's knowledge or permission. At the time she placed the call, she was suffering from depression and anxiety, for which she was under a doctor's care. The claimant submitted medical records indicating that she had poor decision-making ability characterized by confusion and impulsive behavior. The claimant knew, however, that it was improper for her to place such a call. HELD: Discharged for misconduct connected with the work. The claimant's placing of a non-emergency no-charge long distance call from her home, without the employer's permission, constituted misconduct connected with the work. Despite the claimant's medically-verifiable illness, she knew placing such a call without permission was improper.

Appeal No. 1992-CA-77. The claimant was discharged because, on the employer's time, he sold stock for a relative, using the employer's office space and equipment to make the sale, and missed an important sales meeting because of these activities. HELD: Discharged for misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 554-CA-77. The claimant was discharged for having made an unauthorized charge on a company gasoline credit card. On his last day of work, the claimant reported to his job site, 22 miles from his home, and learned that there would be no work that day due to rain. The claimant, as was customary, was the last to leave the job site. He then discovered that he did not have enough gasoline to drive home and, since he had no money, charged \$5 worth of gasoline on the employer's credit card. HELD: The claimant's actions amounted to misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 140.32 (2)

MC DISHONESTY

Appeal No. 2458-CA-76. The claimant was discharged for having made personal calls on the company telephone and for having made, on one occasion, a long distance personal call on the company telephone, which call he immediately reported and offered to pay for. HELD: Discharged for misconduct connected with the work. An employee should know that he is not supposed to make personal long distance calls on the employer's telephone without specific authorization, even if he agreed to pay for them. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 155.00

MC DOMESTIC CIRCUMSTANCES**MC 155.00 DOMESTIC CIRCUMSTANCES.**

INCLUDES CASES WHERE DOMESTIC CIRCUMSTANCES RENDERED CLAIMANT INCAPABLE, UNWILLING, OR UNABLE TO PERFORM HIS DUTIES, OR RESULTED IN INSUBORDINATION OR REFUSAL TO OBEY INSTRUCTIONS OR WHERE INTERFERENCE ON JOB BY SPOUSE CAUSED CLAIMANT'S DISMISSAL.

Appeal No. 1033-CA-77. The claimant was discharged because of an argument between the claimant's husband and the employer's assistant store manager concerning the claimant's having attempted to exchange merchandise for cash, in violation of store policy. The incident occurred on the claimant's day off and, although she was in the employer's store, she was not present when the incident occurred. HELD: Misconduct connected with the work may not be based on the actions of the claimant's spouse, in which actions the claimant did not participate. No disqualification under Section 207.044.

Appeal No. 14,658-AT-64 (Affirmed by 553-CA-64). The claimant was discharged because her husband came to the employer's place of business and interfered with her work. On several occasions, he upset her to the point that she was unable to continue working. The employer's manager warned the claimant that her husband must not interfere with her work. HELD: The claimant's personal differences with her husband adversely affected the employer's business. Her failure to prevent her domestic affairs from interfering with her work constituted misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 190.00 - 190.10

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MC 190.00 EVIDENCE.

190.10 EVIDENCE: BURDEN OF PERSUASION AND PRESUMPTIONS.

APPLIES TO DISCUSSIONS AS TO WHICH PARTY HAS BURDEN OF PERSUASION, OR AS TO LEGAL ADEQUACY OF PARTICULAR EVIDENCE TO OVERCOME PRESUMPTIONS RELATING TO APPLICATION OF THE MISCONDUCT PROVISION.

Appeal No. 2028-CA-77. The claimant, a registered nurse, was discharged because the employer believed, based on the complaints of patients and other employees, that she had mishandled medications and had misinstructed one of the new personnel in the handling of narcotics. The claimant denied these allegations under oath and the employer presented no firsthand testimony in support of them. HELD: Since the claimant denied under oath the allegations of misconduct and since the employer presented only secondhand testimony, the employer did not carry its burden of proving that the claimant had been guilty of misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 190.10 (2) - 190.15

MC EVIDENCE

Appeal No. 1181-CF-77. The claimant was discharged because of errors in surveys made by the crew of which he was a member. HELD: Since the evidence showed that the errors could have been caused by the claimant or by other members of the crew, none of which apart from the claimant had been discharged, and since occasional error is a normal incident of surveying work, the employer did not carry its burden of proving that the claimant had been discharged for misconduct connected with the work.

Also see Appeal No. 86-04275-10-031387 under MC 255.10.

190.15 EVIDENCE: WEIGHT AND SUFFICIENCY.

CONSIDERATION OF WEIGHT AND ADEQUACY OF PARTICULAR EVIDENCE RELATING TO APPLICATION OF MISCONDUCT PROVISION.

Case No. 302389. The employer discovered that the claimant, a custodian, had a trash bag of items that were found double bagged on her cart. When the claimant was sent home so the incident could be further investigated, the claimant wanted to take the items. Her request was denied. The investigation determined that these items were not trash or lost, but were taken out of the classrooms without authorization. The claimant was discharged for possession and control of the property of others, without authorization. HELD: Although claimant denied during the hearing that she had stolen the items, the employer provided a witness with firsthand testimony who indicated that he discovered the items double bagged on claimant's cart and when sent home, claimant wanted to take these items with her. The Commission concluded that this evidence was sufficient to establish that the claimant had possession and control of the items with intent to remove them from the school's premises, regardless of whether she ultimately succeeded in removing the items from the premises. The Commission concluded that the employer had presented sufficient evidence to overcome the claimant's firsthand denial, and therefore, the claimant was discharged for intentional wrongdoing and thus misconduct connected with the work. (Also digested at MC 140.30).

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 190.15 (2)

MC EVIDENCE

Appeal No. 87-02450-10-021688. Suspecting the claimant had stolen some meat from the company freezer, the owner confronted him and threatened to call the police. At this, the claimant told the owner he would return the meat and promptly removed a box of meat from his car trunk and returned it to the freezer. The claimant was discharged for the incident. At the hearing, the employer's representative testified that he had been present and had heard the claimant's statement made to the owner. Furthermore, he witnessed the claimant's subsequent return of the box of meat. HELD: The evidence of the claimant's misconduct was sufficient because the claimant's statement to the owner was an admission and therefore excepted from the hearsay rule. The statement was evidence of the claimant's culpability in the theft and was corroborated by firsthand testimony as to the claimant's subsequent actions in removing a package of meat from his trunk and returning it to the employer's freezer. Disqualification under Section 207.044 of the Act.

Case No. 1051204. As a driver, the claimant was subject to U.S. Department of Transportation (US DOT) regulations, including drug testing regulations. The employer discharged the claimant for violating the employer's policy and US DOT regulations, both of which prohibited a positive drug test. The claimant consented to the drug test, but denied drug use. The employer presented documentation to establish that the drug test was performed in accordance with regulations prescribed by US DOT, including Medical Review Officer (MRO) certification. HELD: The submission of documentation that contains certification by a MRO of a positive result from drug testing conducted in compliance with US DOT agency regulations, currently under 49 CFR Part 40 and Part 382, is presumed to satisfy requirements number 3, 4, and 5 of Appeal No. 97-003744-10-040997 (MC 485.46) that the employer must present documentation to establish that the chain of custody of the claimant's sample was maintained, documentation from a drug testing laboratory to establish that an initial test was confirmed by the Gas Chromatography/Mass Spectrometry method, and documentation of the test expressed in terms of a positive result above a stated test threshold, as these elements must occur before a MRO can certify that the test results are in compliance with the regulations. Requirements number 1 and 2 under Appeal No. 97-003744-10-040997 (MC 485.46) remain applicable; thus, the employer must also present a policy prohibiting a positive a positive drug test result, receipt of which has been acknowledged by the claimant,

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 190.15 (3)

MC EVIDENCE

and evidence to establish that the claimant has consented to drug testing under the policy.

NOTE: See Appeal 97-003744-10-040997 in this section for drug tests not subject to US DOT regulation. (Cross referenced at MC 485.46 and PR 190.00)

Appeal No. 97-003744-10-040997. To establish that a claimant's positive drug test result constitutes misconduct, an employer must present:

1. A policy prohibiting a positive drug test result, receipt of which has been acknowledged by the claimant;
2. Evidence to establish that the claimant has consented to drug testing under the policy;
3. Documentation to establish that the chain of custody of the claimant's sample was maintained;
4. Documentation from a drug testing laboratory to establish that an initial test was confirmed by the Gas Chromatography/Mass Spectrometry method; and
5. Documentation of the test expressed in terms of a positive result above a stated test threshold.

Evidence of these five elements is sufficient to overcome a claimant's sworn denial of drug use. NOTE: See Case 1051204 in this section for drug tests subject to regulation by the US Department of Transportation (Cross referenced at MC 485.46 & PR 190.00).

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 190.15 (4)

MC EVIDENCE

Appeal No. 87-13034-10-072387. At the hearing, the employer presented only hearsay statements to support its allegation that claimant had falsified a report of an on-the-job injury of a co-worker. The claimant presented no evidence. HELD: The employer's secondhand hearsay testimony of claimant's specific act of misconduct is sufficient to establish that misconduct in the absence of any controverting evidence from the claimant. Disqualification under Section 207.044 of the Act. (Also digested under PR 190.00.)

Appeal No. 87-07136-10-042887. The claimant was discharged due to a statement he allegedly signed admitting to drug and alcohol use on company property. When he filed his initial claim, the claimant signed a statement (Form B-114, Statement of Facts) prepared by a Commission representative in which the claimant agreed he had admitted previously to the employer the use of alcohol on company property. The Appeal Tribunal ruled the evidence insufficient to establish misconduct in light of employer's failure to present the signed documentation of the prior admission. HELD: The Commission concluded that in light of the statement signed by the claimant at the time he filed his initial claim, sufficient proof existed to establish misconduct. The Commission found less than credible the claimant's contention that he had not reviewed the statement closely before signing it. (Also digested under PR 190.00 and cross-referenced under VL 190.15.)

Appeal No. 87-09130-10-051387. A claimant's sworn denial of illegal drug use did not overcome positive, confirmed drug test results, indicating the presence of cannabanoids. (For a more complete digest of the opinion of this case, see MC 485.46).

Generally, see cases under MC 485.46.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 190.15 (5)

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| MC EVIDENCE |
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Appeal No. 871-CA-78. A reinstatement agreement entered into by a claimant and an employer, finding or not finding misconduct connected with the work and awarding or not awarding back pay, or applying disciplinary measures, is not binding on the Commission for the purpose of deciding whether the claimant's work separation was based on misconduct connected with the work. Rather, under the Texas Unemployment Compensation Act, the Commission is mandated to rule on misconduct connected with the work on the basis of the facts before it and not on the basis of an agreement between the claimant and the employer.

Appeal No. 87-2602-10-021688. The claimant was discharged for violation of the employer's invoicing policies and theft. At the claimant's instruction, two of the employer's engines were loaded for delivery without proper invoices. Subsequently, criminal theft charges were filed against the claimant. He pleaded not guilty but was found guilty, receiving a four-year deferred adjudication and a fine. HELD: The claimant violated the employers' invoicing policies and was found guilty of theft of the employer's property. The deferred adjudication assessment made by the criminal court is indicative of the claimant's misconduct connected with his work. He mismanaged his position of employment with the employer by failing to follow proper invoicing procedures and by his misappropriation of the employer's property. Disqualification under Section 207.044. (Also digested under MC 490.05.)

Appeal No. 86-07378-10-050187. The claimant was discharged following his arrest on company premises on two counts of delivery of a controlled substance. The transactions giving rise to these charges occurred both on and off the employer's premises. The claimant was found guilty on both counts and was sentenced to a penitentiary term of 5 years. HELD: The finding of guilt on the claimant's part to the two charges of delivery of a controlled substance proved that the claimant was discharged for misconduct. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 190.15 (6)

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| MC EVIDENCE |
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Appeal No. 86-06313-10-041687. As a result of an audit of funds in her custody and related records, the claimant had been suspended from her position as school district tax assessor and, after an indictment was handed down by the grand jury, she was discharged by the employer. Following the employer's appeal to the Commission, the claimant was convicted of theft by trial in District Court. HELD: Discharged for misconduct connected with the work. The finding of guilty of theft justifies the finding that the claimant was guilty of misconduct connected with the work.

Appeal No. 2619-CA-77. The claimant was discharged because, in the opinion of the employer, she was unable to get along with her fellow employees. The evidence showed that the claimant was not always on friendly terms with all of her fellow workers. HELD: As there was no evidence presented of any specific act of misconduct on the claimant's part, the Commission held that the claimant was not discharged for misconduct connected with the work.

Appeal No. 2114-CA-77. The claimant was discharged because it had been reported to the employer that he drove in an erratic manner and reported to work under the influence of alcohol or some other drug. However, there was no direct evidence presented to support these allegations. HELD: Since there was no evidence to support either of the allegations of misconduct, it was held that the claimant was not discharged for misconduct connected with the work.

Appeal No. 1437-CA-77. The claimant signed an affidavit to the effect that he had taken for his own use \$200 worth of the employer's merchandise without having paid for it. In the affidavit, he gave no excuse for the taking. Later, the claimant tried to repudiate the affidavit but there was no evidence that it had been signed under duress. He was discharged, as the evidence showed that, at the minimum, he had taken \$80 worth of merchandise. HELD: Since the claimant did not show that the affidavit was signed under duress, he was held to be bound by it. The evidence established that the claimant was guilty of misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 190.15 (7)

MC EVIDENCE

Appeal No. 1273-CA-76. On the question of how much time the claimant had taken off from work on a certain day, a signed statement from the claimant's unit manager, dated four months after the date in question, to the effect that the claimant had left work with her permission during the afternoon (in contrast to the morning, as alleged by the employer), was accorded greater evidentiary weight than an undated payroll sheet purportedly for the week which included the date in question. This document was not signed by the claimant as was customary; however, it recited total weekly earnings consistent with the hours alleged by the claimant to have been worked by him. **HELD:** As a general proposition, a more nearly contemporaneous document would probably embody a clearer recollection of the circumstances surrounding a claimant's separation. However, the proposition was held to be inapplicable to this case since the purportedly more nearly contemporaneous document was undated, not signed by the employee as was customary, and recited total weekly hours consistent with the hours alleged by the claimant to have been worked by him.

Appeal No. 658-CA-77. The sworn testimony of one party, based on her firsthand knowledge, should be given greater weight than exclusively secondhand, hearsay testimony offered by another party.

Appeal No. 374-CA-77. On the question of whether or not the claimant had notified the employer on a particular date of her inability to report to work, the several employer representatives all testified that they were not contacted by the claimant or her doctor on the occasion in question and the claimant's testimony was inconsistent as to when she had contacted the employer and as to the identity of the employer representative whom she had allegedly contacted. **HELD:** In light of the contradictory nature of the claimant's testimony (and, implicitly, the noncontradictory nature of the employer representatives' testimony), the Commission held that the preponderance of the evidence established that the claimant had failed to properly notify the employer of her absence, such failure constituting misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 190.15 (8)

MC EVIDENCE

Appeal No. 418-CA-76. A written statement signed by the claimant in connection with a polygraph examination, in which statement the claimant admitted having taken and sold property of the employer and having put the money to his own use, is sufficient evidence to establish misconduct connected with the work.

Appeal No. 243-CA-76. Where the three separate grounds for the claimant's discharge are allegedly well-supported by evidence available to the employer but such evidence is not offered at the hearing, and the claimant, by sworn testimony, controverts the employer's allegations, the evidence is insufficient to support a finding of misconduct connected with the work. (The Commission also noted that the most recent act of alleged misconduct had occurred three months prior to her separation and thus concluded that, even if more reasonably established by evidence not presently in the record, the claimant's acts of alleged misconduct occurred on dates far too remote in time to have rendered them the proximate cause of her discharge. In this regard, see MC 385.00.)

Appeal No. 3719-CA-75. Failure to pass a polygraph examination is not sufficient evidence on which to base a finding of misconduct connected with the work. (Also digested under MC 485.83.)

Appeal No. 5387-AT-69 (Decision written by the Commission). Inferences drawn from physical facts amount to circumstantial evidence which, when sufficiently strong, is as competent as positive evidence to prove a fact. The circumstantial evidence in the present case strongly led to the logical inference that the claimant was using narcotics on the employer's premises and he was seen in possession of narcotics paraphernalia. Possession of such paraphernalia is a felony and the willful commission of a felony on the employer's premises amounts to a wanton disregard of the employer's interest and constitutes misconduct in connection with the work. Disqualification under Section 207.044.

Also see Appeal No. 7109-CA-60 under VL 190.15.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 235.00 - 235.05

MC HEALTH OR PHYSICAL CONDITION

MC 235.00 HEALTH OR PHYSICAL CONDITION.

235.05 HEALTH OR PHYSICAL CONDITION: GENERAL.

COVERS ALL CASES NOT APPLICABLE TO FOLLOWING SUBHEADS.

Appeal No. 423-CA-77. Following the claimant's return from hospitalization for wounds resulting from his suicide attempt, the claimant was discharged because the employer believed that he was no longer emotionally stable enough to work as a manager. HELD: Although the claimant initiated the action which resulted in his discharge, such action was against his self-interest and revealed, at most, that he was not mentally competent. Incompetence to do a job does not constitute misconduct connected with the work.

Appeal No. 4114-CSUA-76. The claimant was discharged for having failed, within her two-year probationary period, to lose the pounds of excess weight by which she exceeded the employer's insurer's norms. The loss of excess weight within such two years was a condition for the removal of the probationary status. During the two-year probationary period, the claimant had consulted a physician and had attempted to lose the excess weight but had been unable to do so. HELD: An individual's mere inability to meet some standard set by the employer does not constitute misconduct connected with the work. Since the claimant had attempted to reduce her weight and had consulted a doctor, her failure to meet the weight requirement did not constitute misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 235.10 - 235.20****MC HEALTH OR PHYSICAL CONDITION****235.10 HEALTH OR PHYSICAL CONDITION: AGE.**

INCLUDES CASES WHERE EMPLOYER ALONE BROUGHT ABOUT TERMINATION OF EMPLOYMENT SOLELY BECAUSE OF AGE.

Appeal No. 3178-CA-75. The claimant, 75 years of age, was discharged because the employer believed that her health had deteriorated to the point that she could not do her work. However, the claimant worked to the best of her ability and the evidence showed that her health was good for her age. **HELD:** A discharge based on an employer's belief that an employee is no longer able to perform the work is not one based on misconduct connected with the work.

Appeal No. 859-CA-68. A claimant's mandatory retirement under the employer's pension plan, at an age and time determined by the employer, is not a voluntary leaving. It is an action by the employer under the employer's retirement policy, constituting a discharge because of attaining a certain age and not for misconduct connected with the work. **[Note:** In this decision the Commission cited Redd V. Texas Employment Commission, 431 S.W. 2d 16 (Tex. Civ. App., 1968 wr. ref. n.r.e.)].

235.20 HEALTH OR PHYSICAL CONDITION: HEARING, SPEECH, OR VISION.

INCLUDES CASES WHERE EMPLOYER ALONE BROUGHT ABOUT TERMINATION OF EMPLOYMENT SOLELY BECAUSE OF HEARING, SPEECH, OR VISION.

Appeal No. 2431-CA-77. The claimant was retired because of a medical disability involving a hearing loss which impaired his ability to safely continue with his job and because of susceptibility to seizures. **HELD:** The claimant's separation was the result of his physical condition which prohibited continued employment and was not caused by any misconduct connected with the work on his part.

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 235.20 - 235.25****MC HEALTH OR PHYSICAL CONDITION**

Appeal No. 1136-CA-77. The claimant had performed drilling requiring good eyesight and, on two occasions prior to his discharge, had been warned of mistakes in his work. He was examined in December, 1976 and it was discovered that he needed eyeglasses. The latter did not arrive until January, 1977. During the interim, the claimant slowed his work somewhat in order to avoid further mistakes. He was discharged in February 1977 for a mistake he had made in December 1976 although he had made no further mistakes after receiving his eyeglasses. **HELD:** The claimant was not relieved of his work after his faulty vision was confirmed and before he received his eyeglasses. Furthermore, the claimant had temporarily slowed down his work performance only in order to cut down on mistakes which did not continue after he received his eyeglasses. Under such circumstances, the claimant was not guilty of misconduct connected with the work.

235.25 HEALTH OR PHYSICAL CONDITION: ILLNESS OR INJURY.

INCLUDES CASES WHERE EMPLOYER ALONE BROUGHT ABOUT TERMINATION OF EMPLOYMENT SOLELY BECAUSE OF ILLNESS OR INJURY.

Appeal No. 86-13613-10-102286. The claimant was injured on the job and sent home by the employer, who would not pay for the claimant's medical expenses. The claimant had no money to pay the doctor and was not allowed to be billed or start an account. The employer told the claimant that she still had a job but could not return without a doctor's release. The claimant could not immediately see the doctor because she had no money. The employer discharged the claimant for failing to report to him after a scheduled doctor's appointment. **HELD:** Because the claimant was told that her job was secure and that she could return when released by the doctor, her delay in obtaining the release due to her inability to pay for the doctor's appointment was not misconduct. (Cross-referenced under MC 255.10.)

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 235.25 - 235.35

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| MC HEALTH OR PHYSICAL CONDITION |
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Appeal No. 4184-CA-76. The claimant was not reinstated following her medical release after an on-the-job injury because she was unable to work full-time and the employer had no part-time work for her. HELD: The claimant was discharged because of her physical condition, not an instance of misconduct connected with the work.

Appeal No. 3131-CA-76. The claimant was discharged because she was off work due to injury for two weeks during which time she kept the employer advised of her condition. The stated reason for her discharge was excessive absenteeism. HELD: The claimant was, in fact, discharged because she was unable to perform her work due to an injury, which inability does not constitute misconduct connected with the work.

235.35 HEALTH OR PHYSICAL CONDITION: PHYSICAL EXAMINATION REQUIREMENTS.

INCLUDES CASES WHERE EMPLOYER ALONE BROUGHT ABOUT TERMINATION OF EMPLOYMENT SOLELY BECAUSE OF PHYSICAL EXAMINATION REQUIREMENTS.

Appeal No. 2296-CA-77. The claimant was discharged because of excessive absences, most of which were apparently due to health problems, because she refused to undergo a complete physical examination by a physician of her choice at the employer's expense, in order to determine the nature of her health problem. HELD: The claimant's refusal to cooperate in the employer's reasonable efforts, at its expense, to determine the cause of her illnesses and her repeated absences, some of which were due to personal problems other than illness, constituted misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 235.40

MC HEALTH OR PHYSICAL CONDITION**MC 235.40 HEALTH OR PHYSICAL CONDITION: PREGNANCY.**

INCLUDES CASES WHERE EMPLOYER ALONE BROUGHT ABOUT TERMINATION OF EMPLOYMENT SOLELY BECAUSE OF PREGNANCY.

Appeal No. 87-2634-10-022588. 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 claimant was discharged. HELD: The claimant was separated from her last work due to a medically verified personal illness, a separation which does not constitute a discharge for misconduct connected with the work. (Digested for its chargeback ruling under CH 15.00.)

Texas Employment Commission vs. Gulf States Utilities, 410 S.W. 2d 322 (Texas Civ. Appeals 1967, writ denied, n.r.e.). Claimant ceased working, in accordance with company policy, when she reached the fifth month of pregnancy. The Commission held no disqualification in order under Section 207.044. The lower court reversed and held that the claimant had voluntarily quit. However, the Court of Civil Appeals held that her separation was not voluntary and was not disqualifying. Had her separation been held to be voluntary because she had agreed long before her separation to resign upon reaching the fifth month of pregnancy, the provisions of Section 207.071 of the Act would void such an agreement since it provides that an individual cannot waive his right to unemployment insurance.

Appeal No. 2336-CA-77. The claimant was pregnant and, for that reason, was placed on indefinite leave of absence without pay by the employer. HELD: Discharged for reasons other than misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 235.40 - 235.45

MC HEALTH OR PHYSICAL CONDITION

Appeal No. 1349-CA-76. The claimant, upon becoming able to work and having arranged child care, made application for reinstatement prior to the expiration of her pregnancy leave. She was not reinstated upon such reapplication because no work was available.

HELD: The claimant's separation was involuntary and not caused by any misconduct connected with the work on her part.

Appeal No. 1342-CUCX-76. The claimant was discharged because the employer's insurer had advised him that it was not in his interest to let the claimant continue working while she was pregnant, as she might sue the employer for any on-the-job injuries she might sustain while pregnant. HELD: The claimant was involuntarily separated at the employer's convenience and not for any misconduct connected with the work on her part.

235.45 HEALTH OR PHYSICAL CONDITION: RISK OF HEALTH OR INJURY TO CLAIMANT OR OTHERS.

INCLUDES CASES WHERE EMPLOYER ALONE BROUGHT ABOUT TERMINATION OF EMPLOYMENT SOLELY BECAUSE OF RISK OF HEALTH OR INJURY TO CLAIMANT OR OTHERS.

Appeal No. 1732-CA-76. The claimant was discharged because of excessive absenteeism due to illness (diabetes and high blood pressure), the employer's belief that his illness might cause him to injure himself at work and the claimant's involvement in several altercations with co-workers. In none of these was the claimant the aggressor or otherwise at fault. HELD: None of the reasons alleged for the claimant's discharge constituted misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 255.00 - 255.10

MC INSUBORDINATION**MC 255.00 INSUBORDINATION.****255.10 INSUBORDINATION: DISOBEDIENCE.**

WHERE CLAIMANT REFUSED TO PERFORM A PARTICULAR TASK, TO PERFORM HIS WORK AS DIRECTED, OR TO ACT IN THE MANNER REQUIRED.

Appeal No. 87-21062-10-120887. The claimant, a truck- driver, refused an assignment and was told by the terminal manager that that was all right. When he called for his next assignment, he was told he had been terminated. HELD: No misconduct and no disqualification under Section 207.044. The claimant had been informed by the terminal manager that it was all right for him not to accept the assignment and had no reason to know that he was putting his job in jeopardy. (Also digested under MC 255.303.)

Appeal No. 87-12956-10-072387. The claimant was discharged for refusing to sign an agreement which provided he was an independent contractor rather than an employee. Nothing had been said about his status at the time of hire. The claimant was injured on the job, and subsequently filed for workers compensation. After he returned to work from his injury, he was asked to sign the agreement, which would have released the workers compensation carrier from liability for the claimant's injury. For this reason, the claimant refused to sign and was discharged. HELD: The employer's request that the claimant sign the subcontractor agreement constituted a change in the hiring agreement. The claimant's refusal to sign was reasonable in light of the fact that his rights as an injured worker would have been directly affected. Thus, the claimant's refusal did not constitute misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 255.10 (2)

MC INSUBORDINATION

Appeal No. 86-04275-10-031387. The claimant was discharged for refusing to sign a written reprimand for an accident in which he felt he was not at fault. The evidence in the record did not clearly establish that the claimant was given notice, prior to being discharged, that he would be discharged if he refused to sign. Also, the claimant was never told he had a right to state on the reprimand form his version of the incident. HELD: In the absence of clear evidence that the claimant understood the consequences of his refusal to sign the reprimand and was offered an opportunity to rebut the accusation with which he disagreed, his mere refusal to sign a reprimand which he felt was unjustified does not rise to the level of misconduct. (Cross-referenced under MC 190.10.)

Appeal No. 86-07166-10-042987. The claimant, a branch store manager, was discharged for violation of company policy requiring daily deposit of receipts. The claimant had been extraordinarily busy because he had been managing the closing of an old store while attempting to open a new store on the employer's behalf. He delegated to his head cashier the responsibility to make daily deposits for the old store. The claimant failed to inquire whether the cashier had made the daily deposits as required. The store was robbed of \$26,000, a figure which was, in part, attributable to the fact that the required deposit had not been made on the previous day. HELD: The claimant violated company policy by failing to make store deposits on a daily basis. Although he was extraordinarily busy, he knew or should have known as a store manager that making daily deposits was of paramount importance. He failed to protect his job by delegating the responsibility for making deposits to a subordinate without inquiring whether the deposits were, in fact, made by the subordinate. The amount of the employer's loss would not have been as great had the claimant followed company policy. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 255.10 (3)

MC INSUBORDINATION

Appeal No. 87-06533-10-041687. The claimant had suffered an off-duty back injury. He was treated by a doctor who released him for unrestricted duty. As requested by the employer's doctor, the claimant secured a second opinion from another doctor who also released him for unrestricted duty. The employer's doctor then referred the claimant to yet another doctor who requested the claimant to submit to a particular exam at a local hospital. This exam would have cost \$845 to \$1000 and, in light of that hospital's inferior equipment, would not have been accepted as definitive by the claimant's surgeon, thus requiring another exam at the claimant's expense. Accordingly, the claimant arranged for an exam, at an alternate site possessing higher quality equipment acceptable to the claimant's surgeon. The claimant notified the employer of this but was discharged for failure to comply with the request of the doctor to which the claimant was referred to by the employer's doctor. HELD: The claimant had been released without restriction by two doctors, one of whom was recommended by the employer's doctor. As the requested exam would have been conducted at the claimant's expense, the claimant's failure to appear for the exam did not constitute misconduct connected with the work.

Appeal No. 735-CF-77. The claimant was discharged for failing to produce a medical certificate to substantiate that a two-week absence from work without permission had been, in fact, for medical reasons. HELD: The claimant's failure to comply with a reasonable request of his employer, that he furnish medical evidence of the reason for his absence, constituted misconduct connected with the work. Disqualification under Section 207.044.

Also see Appeal No. 86-13613-10-102286 under MC 235.25.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 255.10 (4)

MC INSUBORDINATION

Appeal No. 515-CA-77. The claimant was discharged because, contrary to the employer's specific instructions, he had failed to do some repair work on a certain building. The evidence showed that the claimant had omitted doing the work in question because he had had a number of buildings to repair and had been pressured to complete the building in question. HELD: The claimant had not intentionally failed to perform duties assigned to him and any mistakes he made on his last job assignment had been due to the pressure placed on him by the employer to complete the job as fast as possible. No misconduct connected with the work.

Appeal No. 267-CA-77. The claimant was discharged for refusing to sign a written reprimand which was issued because she had taken a 15-minute break rather than a 5-minute break, as instructed. Under the employer's policy, the signing of the reprimand was simply an acknowledgment of its receipt and not an admission of guilt. The claimant was advised of this and the fact that refusal to sign the reprimand would subject her to discharge. HELD: Since the signing of the reprimand was not an admission of guilt but simply an acknowledgment of its receipt, the claimant's refusal to sign the reprimand constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 18-CA-77. The claimant was discharged because he failed, after having been advised by a memo which he had initialed, to turn in sales reports on a daily basis or to see to it that his staff did so. The claimant had also continued to permit his wife to work on the employer's books despite instructions to cease this practice. HELD: The claimant's failure to follow instructions constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 4622-CA-76. The claimant was discharged for having requested clarification of several conflicting instructions which she had been given by her supervisor within a short period of time. HELD: The claimant's action did not constitute a refusal to obey her supervisor's instructions. No misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 255.10 (5)

MC INSUBORDINATION

Appeal No. 3137-CA-76. The claimant, a laborer who also occasionally drove a truck but who was not a mechanic, was discharged because, after repeated admonitions, he continued from time to time to put oil in the truck which he drove. The clutch and transmission of the truck were ultimately ruined as a result of the truck having been overfilled with oil. HELD: Regardless of the claimant's opinion as to whether the truck needed oil, the claimant's failure to obey the instructions of his superiors in that regard constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 2455-CA-76. The claimant was discharged for insubordination because he disregarded his immediate supervisor's instructions as to the length of time of his lunch hour and took a longer time for lunch than his immediate supervisor had authorized. The claimant did this in order to meet with the employer's clients at lunch, as he had been instructed to do by the employer's higher management. HELD: Although the claimant disregarded the instructions of his immediate supervisor, he did so in order to carry out the assignment he had been given by higher management. No misconduct connected with the work.

Appeal No. 780-CA-76. The claimant was discharged for refusing to go from McAllen, Texas, into Mexico to collect an account due the company. The company was not legally authorized to do business in Mexico. HELD: Since the act which the claimant was instructed to perform was one which neither the company nor the claimant, as its agent, was legally authorized to perform, the claimant's refusal did not constitute misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 255.10 - 255.15

MC INSUBORDINATION

Appeal No. 67-CA-76. The claimant was discharged because of her refusal to sign a work schedule allegedly drawn up to indicate the break and lunch times of all three employees in the claimant's unit but which, so far as was made known to the claimant prior to her discharge, applied only to her. Company policy did not require that employees sign work schedule changes and the claimant did not refuse to abide by the new work schedule. HELD: Since there was no prior company policy requiring employees to sign new work schedules and since the claimant had not refused to abide by the new schedule, the claimant's refusal to sign the schedule if it was to apply only to her did not constitute misconduct connected with the work.

Appeal No. 3242-CA-75. The claimant was discharged for having refused to follow the orders of her acting supervisor to perform a function on a particular machine. Although the claimant's actual reason for her refusal was that she did not know how to operate the machine, she merely told the acting supervisor that she did not have time to do what he wanted because of other tasks assigned to her by her regular supervisor. HELD: The claimant's refusal to follow the supervisor's instructions and her simply telling him that she did not have time because of previously assigned work, rather than telling him that she could not perform the task, constituted misconduct connected with the work. Disqualification under Section 207.044.

255.15 INSUBORDINATION: DISPUTE WITH SUPERIOR.

INVOLVES ARGUMENT OR ALTERCATION WITH ONE IN A SUPERVISORY POSITION.

Appeal No. 87-20103-10-111287. The claimant, a marine engineer, was discharged seven days after he confronted the chief engineer and the employer's consultant about rumors that the consultant was telling the claimant's supervisor that he was not performing his work. An argument ensued, and profanity was used by both the claimant and the consultant. The argument remained verbal, no physical violence was threatened and the claimant remained seated. After approximately one half hour, the chief engineer and the consultant left. The claimant reported to work as

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 255.15 (2)

MC INSUBORDINATION

Appeal No. 87-20103-10-111287 (Cont'd)

usual but was replaced upon the conclusion of his tour of duty seven days later. HELD: Not discharged for misconduct connected with the work. The claimant's actions in confronting the consultant regarding the rumors that he had reported the claimant as not performing his job, were justified and the argument that ensued was not of such magnitude as to constitute misconduct connected with the work.

Appeal No. 87-16061-10-091187. The claimant, an auto mechanic, was approached by his supervisor and verbally reprimanded for talking to other mechanics instead of working. When the claimant questioned the supervisor as to why the claimant was reprimanded and the others were not, the supervisor told the claimant that he had previously spoken to the other mechanics about "standing around" or talking in the shop. The claimant then called his supervisor a liar and was discharged. HELD: The Commission found the claimant's behavior to have been blatantly insubordinate and a mismanagement of a position of employment. In so ruling, the Commission expressly overruled the holding in Appeal No. 1611-CA-78 (MC 255.15) which had held that arguing with a supervisor by itself did not constitute misconduct.

Appeal No. 2935-CSUA-76. A claimant who was discharged for striking her supervisor during a counseling session was found to have been guilty of misconduct connected with the work and was disqualified under Section 207.044.

Appeal No. 1356-CA-76. The claimant was discharged for having protested a public reprimand given him in the presence of customers and other employees and for not having followed an order which order he had, in fact, followed. HELD: The claimant's simply mentioning to his supervisor that he should not be reprimanded in public did not constitute misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 255. 20

MC INSUBORDINATION**MC 255.20 INSUBORDINATION: EXCEEDING AUTHORITY.**

WHERE CLAIMANT DECIDES TO TELL OTHER EMPLOYEES HOW TO PERFORM THEIR JOBS, TO ASSUME RESPONSIBILITIES NOT AUTHORIZED, OR OTHERWISE TO OVERSTEP HIS AUTHORITY.

Appeal No. 1552-CA-77. The claimant, a salesperson/cashier/manager, was discharged for having exceeded her authority by attempting to close the store by shutting off the main lights while there were still customers in the store (strictly contrary to store policy), by leaving the store early while there was still work to be done, by trying on clothes for her personal use during working hours, by ironing her own coat during working hours, and for making a disparaging remark about the owner when the owner observed the claimant carrying on a lengthy conversation with a friend during working hours. HELD: The claimant's knowing violation of store policy and overstepping her authority on numerous occasions constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 4801-CA-76. The claimant, a lab technician in a veterinary hospital, was discharged, after warnings, for constantly interrupting both the doctor and other employees in their consultations with clients and for persistently offering advice when none was requested of her. HELD: The claimant's continuing, after warnings, to interrupt the employer and her fellow employees in their consultations with clients and offering advice when none was requested of her, constituted misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 255.20 - 255.301

MC INSUBORDINATION

Appeal No. 2903-CA-75. The claimant, a fabrication inspector, was discharged for allegedly having usurped the duties of the employer's superintendent. On the claimant's last day of work, he had, in his capacity as inspector, rejected a piece of equipment which was to be loaded for shipment. The superintendent directed that the equipment be loaded and the claimant indicated that he had not approved the equipment as was required. The equipment was loaded nonetheless. HELD: The claimant was performing his duties on his last day of work during the incident which led to his discharge. No misconduct connected with the work.

255.25 INSUBORDINATION: NEGATION OF AUTHORITY.

WHERE THE CLAIMANT IGNORES OR REFUSES TO DISCUSS A SITUATION WITH HIS SUPERVISOR, AND GOES DIRECTLY TO HIGHER AUTHORITY.

Appeal No. 8-CA-77. During a conversation with the employer's regional manager, in which the latter had intended to notify the claimant of her re-assignment, the claimant, thinking that she was going to be fired, told the regional manager that she could not be fired because her attorney had so advised her. The claimant was then discharged for speaking to the regional manager in an insubordinate manner. HELD: The claimant's statement, though unwise, was not serious enough to constitute misconduct connected with the work.

255.30 INSUBORDINATION: REFUSAL TO.

255.301 INSUBORDINATION: REFUSAL TO INCREASE PRODUCTION.

CLAIMANT DECLINED TO RAISE HIS PRODUCTION OVER THE MINIMUM REQUIREMENTS OF HIS JOB, OR TO THE AGREED REQUIRED PRODUCTION.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 255.301 - 255.302

MC INSUBORDINATION

Appeal No. 3107-CA-76. On the morning of her last day of work, the claimant, an hourly production worker, had been asked by her supervisor to process a given number of articles. Later that day, the supervisor asked her to increase her hourly production with no indication that there was to be a like increase in the day's total quota. Thinking that this request meant that she would not be allowed to work an eight-hour day but rather would be required to work harder for less money, the claimant questioned the wisdom of the order. She was discharged for assertedly refusing to perform the work. **HELD:** The claimant did not refuse to obey her supervisor's orders; she merely questioned their wisdom because she reasonably believed that she would have had to work harder for less money. Under such circumstances, the claimant's questions did not constitute misconduct connected with the work.

255.302 INSUBORDINATION: REFUSAL TO TRANSFER.

CLAIMANT REFUSED TO TRANSFER TO ANOTHER SHIFT, ANOTHER TYPE OF WORK, TO CLOSED-SHOP WORK, OR TO LOWER-PAYING WORK.

Appeal No. 86-13666-10-102286. The claimant worked as a detention/correctional officer for the employer. By terms of the employer's contract with the Federal Government, the claimant's minimum pay would be \$6.08 per hour. The claimant had done this work at only one location during his employment. There was no evidence that the claimant had agreed at the time of hire to work at different locations or to work at a substantially lower wage. The claimant was informed that he was to report at a different location to work as a security guard at \$4.84 per hour. The claimant informed the employer he would not report

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 255.302 (2)

MC INSUBORDINATION

Appeal No. 86-13666-10-102286

(Cont'd)

to the job because of the reduced wage. When the claimant did not appear as ordered, he was discharged. HELD: Not discharged for misconduct connected with the work. The employer's assignment of the claimant to a different job function at a different facility at a substantially reduced wage rate was an unreasonable action on the part of the employer. The proposed wage reduction in this instance exceeded 20%, a figure which the Commission has previously held to be substantial (See Appeal No. 84-05367-10-051485 under VL 500.35.) Had the claimant worked for the reduced wage, even for a short period of time, he would have risked waiving his right to object to future reassignments at a reduced wage. The claimant's refusal to perform work at a substantially reduced wage was justified under the circumstances and the employer has failed to otherwise show misconduct connected with the work by the claimant.

Appeal No. 672-CA-76. The claimant was discharged because she refused to accept a temporary job transfer requested of her in accordance with the terms of a collective bargaining agreement. Although she had medical reasons for objecting to the work to which she was to be transferred, she did not expressly state the grounds of her objection, saying only that she was afraid of the job and that it was too hard. HELD: The claimant's failure to make explicit the grounds of her objection to the transfer reasonably led the employer to assume that her refusal to transfer was merely arbitrary. It was not sufficient for the claimant to assume that her supervisors would realize from her prior medical history, that the grounds of her objection to the transfer were medical. Consequently, the claimant's actions constituted misconduct connected with the work for which she was disqualified under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 255.302 - 255.303

MC INSUBORDINATION

Appeal No. 3076-CA-75. The claimant was offered a transfer to another state because he was reported to have been giving unauthorized discounts to certain customers and to have been making passes at female employees and customers, of which charges he was innocent. He was discharged when he indicated that he could not pay the moving expenses incident to such transfer. Although payment of moving expenses was not usually required of employees, it was to be required of the claimant. HELD: The employer's intention in offering the transfer, but requiring the claimant to pay his own moving expenses, was to force the claimant's separation. Since the claimant was not guilty of the alleged actions, reports of which caused his discharge, his discharge was found to have been for reasons other than misconduct connected with the work.

255.303 INSUBORDINATION: REFUSAL TO WORK.

CLAIMANT REFUSED TO WORK AT ALL, UNDER CERTAIN CONDITIONS, OR MORE THAN A CERTAIN NUMBER OF HOURS (NOT OVERTIME).

Appeal No. 87-21062-10-120887. The claimant, a truck driver, refused an assignment and was told by the terminal manager that that was all right. When he called for his next assignment, he was told he had been terminated. HELD: No misconduct and no disqualification under Section 207.044. The claimant had been informed by the terminal manager that it was all right for him not to accept the assignment and had no reason to know that he was putting his job in jeopardy. (Also digested under MC 255.10.)

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 255.303 (2)

MC INSUBORDINATION

Appeal No. 87-474-10-010688. The claimant, a hospital maintenance worker, was discharged after he notified the employer that he would not work in rooms where patients with AIDS were cared for and did not repair a television set because the patient in that room had AIDS. Gloves, masks and educational programs were provided for all employees to meet concerns of exposure to AIDS. HELD: Discharged for misconduct connected with the work. Making repairs in patient rooms was the claimant's job. The claimant's concern that he might contract AIDS while repairing a television set was unreasonable and the employer had taken reasonable steps to protect the claimant's health and address his fears. (Cross-referenced under VL 235.45.)

Also see Appeal No. 87-16605-10-091687 under VL 235.45.

Appeal No. 2544-CA-77. The claimant's hours were changed so that he had to be on call every second night rather than every fourth night. The claimant objected to this and, in the alternative, requested a pay increase which the employer refused. He was discharged because he would not answer a service call on a night on which, under the old schedule, he would have been off. HELD: The claimant's refusal to acquiesce in a change in the hiring agreement, which he would have had to do if he had answered a service call on the new schedule, and of which he had previously complained to the employer, does not constitute misconduct connected with the work.

Appeal No. 2470-CA-77. The claimant was discharged because he refused to work on the one remaining day of the work week, a regularly scheduled work day, after having missed two days of work that week. HELD: Discharged for misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 255.303 (3)

MC INSUBORDINATION

Appeal No. 1694-CA-77. Due to reduced work load, the employer reduced its work force and realigned the duties of its remaining employees. The claimant was transferred from the checking department to the receiving department but retained some checking duties. He was to check large shipments but only when there was no receiving work to do. The claimant performed such checking work for two weeks but refused to do so thereafter. He was discharged when he refused to continue performing the additional checking duties which he had agreed to assume and had, in fact, assumed. HELD: The claimant's refusal to comply with a reasonable request of his employer that he perform a combination of duties which would have resulted in his having had a full day's work (which he otherwise would have not had because of a decline in the employer's business) constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 3198-CA-76. The claimant, a truck driver whose duties occasionally included heavy lifting, had been released by his doctor as able to resume his normal duties following an extended absence caused by an on-the-job injury. Two months after his doctor's release, the claimant refused to perform a particular job requiring some heavy lifting, for which he was discharged. HELD: Since the claimant had been released by his doctor as able to resume his normal duties, which customarily included some heavy lifting, the claimant's refusal was unreasonable and constituted misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 255.303 - 255.304

MC INSUBORDINATION

Appeal No. 1131-CA-76. The claimant was discharged for refusing to work in a work area which he alleged was unsafe. The area in question had been inspected and deemed safe by the claimant's foreman, by the employer's inspector and by the inspector of the company for which the work was being done. None of the other persons working in the area had complained that it was unsafe.

HELD: Since the work area to which the claimant was assigned was as safe as could be reasonably expected, the claimant's refusal to do assigned work constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 820-CA-76. The claimant, a roofer who was paid at a variable rate per square of roofing installed, according to the type of structure and the slant of the roof, was discharged when he failed to reach agreement with the employer on the rate for a particular job, although the claimant offered to work on other jobs for the employer at lower rates. HELD: Since the claimant worked at a variable rate per square as agreed upon by him and the employer for each job, his unsuccessful attempt to negotiate an appropriate rate for a particular job could not be considered misconduct connected with the work, particularly in view of his offer to work at a lower rate on other types of structures.

255.304 INSUBORDINATION: REFUSAL TO WORK OVERTIME.

CLAIMANT REFUSED TO WORK OVERTIME, TO WORK OVERTIME WITHOUT A HIGHER RATE OF PAY, OR TO WORK WITHOUT PAY FOR THE OVERTIME.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 255.304 (2)

MC INSUBORDINATION

Appeal No. 87-18302-10-101987. The claimant was discharged for refusing to work overtime. He had worked ten hours in the August heat when he was told it was necessary to work another six to eight hours to complete a project. The claimant, who had never refused overtime during his three and a half years' work for the employer, indicated he was too tired to work overtime on this occasion. HELD: Not discharged for misconduct connected with the work. The claimant's refusal to work overtime was not unreasonable under the circumstances. He had not refused overtime in the past but simply felt physically unable to work overtime on this occasion.

Appeal No. 853-CSUA-77. When hired, the claimant, a department store stock clerk, was advised that he normally would not have to work more than 45 minutes past closing time. However, on many occasions, the claimant and other employees were required to, and did, work much longer past closing time in order to complete their daily assigned tasks. On his last day of work, the claimant worked 45 minutes past closing time and left work without completing his daily assigned duties, advising his supervisor that he had worked enough that day. The claimant was discharged the following day. HELD: The claimant's leaving work before completing his duties, under all of the circumstances, constituted misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 255.304 - 255.305

MC INSUBORDINATION

Appeal No. 264-CA-77. The claimant was discharged because she had a history of personality conflicts with her co-workers and because, on her last day of work, she failed to work compensated overtime until the relief shift arrived, as was customary. **HELD:** The claimant's repeatedly demonstrated inability to get along with fellow workers and her refusal to cooperate with the employer when it needed her most constituted misconduct connected with the work.

Disqualification under Section 207.044.

255.305 INSUBORDINATION: REFUSAL TO CHANGE HOURS.

CLAIMANT REFUSED TO WORK LONGER OR SHORTER WORK WEEK, LONGER OR SHORTER DAY, OR SPLIT SHIFT, OR ON IRREGULAR SCHEDULE.

Appeal No. 184-CA-78. The claimant was discharged for refusing to change his hours of work. Shortly before the claimant's separation, the employer instituted a new order-filling system which required the data processing department to change its hours of operation from 8:00 a.m. until 5:00 p.m. to 10:30 a.m. until 7:30 p.m. The claimant, who was the data processing manager, refused to accept the change because he had young children who would have been in bed each evening before he returned from work under the new schedule and he felt that the new hours would thereby substantially reduce his contact with his children. **HELD:** The claimant's refusal to change his hours, because the requested change would have had a substantially adverse affect on his family life, did not constitute misconduct connected with the work. The Commission majority referred to other cases in which a claimant was determined to have had good cause for a voluntary quit when a

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 255.305 - 255.40

MC INSUBORDINATIONAppeal No. 184-CA-78 (Cont'd)

requested change in his hours would have adversely affected his family life and noted that the present decision was intended to bring the treatment of persons discharged for refusing to change their hours for the reason here discussed into conformity with the treatment accorded those who quit their jobs for the same reason. (Cross-referenced under VL 450.154.)

Appeal No. 1577-CA-76. When hired, the claimant signed a statement agreeing to work any shift. Several months thereafter, she was discharged for refusing to transfer from the day to the night shift. HELD: The claimant's refusal to work the shift required by the employer, in spite of her written agreement at the time of her hiring to work any shift, constituted misconduct connected with the work. Disqualification under Section 207.044.

Also see cases under VL 450.154

255.40 INSUBORDINATION: VULGAR OR PROFANE LANGUAGE.

WHERE VULGAR OR PROFANE LANGUAGE IS USED BY EMPLOYEE TO SUPERVISOR.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 255.40 - 255.45

MC INSUBORDINATION

Appeal No. 196-CA-76. The claimant was discharged because he had used extreme vulgarity in talking to the employer's superintendent in an argument which the claimant had initiated in response to the superintendent's criticism of the claimant's work crew for loafing. HELD: The claimant's initiation of the argument with his superior and his use of extremely vulgar language constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 3366-CA-75. The claimant's supervisor complained about his work methods and called the claimant a vulgar name. The claimant was discharged for responding to his supervisor by using the same type of vulgar language. HELD: Since the claimant's supervisor, by first using vulgar language toward the claimant, invited a similar response from the claimant, the latter's action did not constitute misconduct connected with the work.

255.45 INSUBORDINATION: WAGE DISPUTE.

WHERE THE CLAIMANT WAS DISCHARGED FOR REFUSING TO WORK UNLESS GIVEN A HIGHER RATE OF PAY, OR FOR ASKING FOR A RAISE IN WAGE.

Appeal No. 87-20338-10-112787. The claimant complained to the employer about an unresolved dispute over alleged failure to pay for a total of three days in prior paycheck periods. The claimant gave no ultimatum nor did he say he was going to quit if not paid. Later that day, the employer discharged the claimant with no explanation. HELD: The claimant's complaint about the unresolved wage dispute did not constitute misconduct connected with the work.

Appeal No. 86-6003-10-040187. The claimant was discharged when he stated he was not going to return to work following his vacation unless he received a raise. No raise had ever been promised. The claimant offered to negotiate after the employer handed him his final check but the employer refused, stating that he had been discharged. HELD: The claimant's statement that he would not return to work without first receiving a raise constituted misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 255.45 (2)

MC INSUBORDINATION

Appeal No. 4405-CA-76. The claimant was discharged after having a discussion with the employer concerning the claimant's failure to receive a 25 cent per hour raise. The employees had been told that all of them would receive the raise and, in fact, all employees except the claimant did receive the raise. There was no evidence that the claimant had been belligerent or abusive with the employer. HELD: A simple request for information concerning why he was not receiving the same raise as promised and as received by all other employees did not constitute misconduct connected with the work.

Also see MC 600.00.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 270.00

MC INTOXICATION AND USE OF INTOXICANTS**MC 270.00 INTOXICATION AND USE OF INTOXICANTS.**

INCLUDES CASES WHERE CLAIMANT WAS DISCHARGED FOR INTOXICATION OR USE OF INTOXICANTS.

Appeal No. 88-04433-10-033188. The claimant was discharged for being at work under the influence of an alcoholic beverage. The claimant's supervisor found him to be slurred in his speech and unsteady on his feet. The claimant told his supervisor that he had gotten drunk. He had been drinking heavily the night before and had consumed an alcoholic beverage at lunch on the day of his discharge. The claimant had had an ongoing problem with alcoholism and depression for many years and had sought medical treatment at various times for these conditions. HELD: The claimant's action of consuming an alcoholic beverage on his lunch break and appearing later that afternoon at the workplace in an intoxicated condition constituted misconduct connected with the work.

Appeal No. 87-12927-10-072387. The claimant told her supervisor over the phone that she could not come into work because she was drunk. The employer discharged the claimant for the incident. HELD: Discharged for work-connected misconduct because the claimant failed to conduct her private life in a manner that would reasonably protect her job and the employer's interest. Disqualified under Section 207.044.

Appeal No. 3471-CA-76. The claimant was discharged for having reported to work intoxicated on three consecutive mornings. HELD: The claimant's reporting to work in an intoxicated condition constituted misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 300.00 - 300.05

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| MC MANNER OF PERFORMING WORK |
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MC 300.00 MANNER OF PERFORMING WORK.

300.05 MANNER OF PERFORMING WORK: GENERAL.

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF MANNER OF PERFORMING WORK, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 300, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Case No. 776652-2. The claimant began working for the employer in October 1988 as a Park Ranger. State law changed and mandated each State Park treat their water and wastewater. These job duties were merged into the Park Ranger duties, and Park Rangers were required to obtain Class D Water and Class D Wastewater treatment licenses from the Texas Commission on Environmental Quality. In January 2005, the claimant was advised she had six months to obtain her licenses. The claimant continued working for the employer and took her exams. In July 2005, the claimant was discharged after she failed to obtain her licenses. **HELD:** In further refining policy set forth in Precedent Case No. 395031 (MC 300.05), the Commission concluded that the claimant's conduct in continuing to work for the employer after being apprised of the change in her hiring agreement constitutes an acceptance of those newly imposed terms and conditions. Consequently, the claimant's failure to obtain the required water and wastewater licenses constitutes mismanagement of her position of employment and misconduct under Section 207.044 of the Texas Unemployment Compensation Act.

Case No. 413444. The claimant, a sales assistant for an investment firm, was hired with the agreement that she would pass a "series 7" examination required by the Texas Securities Act. The claimant was initially given 90 days to pass the examination, and after failing it, was given an additional year to pass the test. The claimant was discharged after failing to pass the examination on four occasions. **HELD:** The Commission held that if an individual accepts a job with the understanding that continued employment depends upon the taking and passing of a subsequent test, the failure to pass that test constitutes misconduct connected with the work.

Case No. 395031. The claimant, an insurance agent working under a temporary license, was informed at the time of her hire that, in order to continue in her employment with the named employer, an insurance company, she would have to pass a licensing exam and thusly become a licensed insurance agent under the auspices of Texas State Law. After taking the test on multiple occasions and in each instance failing to pass the exam, the claimant's temporary license expired and, as the employer could not employ the claimant as an insurance agent without a license, the claimant was discharged. **HELD:** In Case No. 177177 the Commission expressly overruled the holding in Appeal No. 86-13685-10-092586 that a failure to secure certification in a timely manner was to be analyzed as an inability to perform and thusly not disqualifying. In the case at hand

MISCONDUCT

MC 300.05 (2)

MC MANNER OF PERFORMING WORK

Case No. 395031

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the claimant's employment with the named employer was entered into as the result of an agreed-upon understanding between the parties that the claimant's continued employment would be contingent upon her passing a licensing exam and thereby becoming a licensed insurance agent. The claimant's failure to do so in a timely fashion (prior to the expiration of her temporary license) constituted a mismanagement of her position of employment equivalent to misconduct connected with the work.

Disqualification under Section 207.044.

Case No. 177177. The claimant, a teacher, had taught for three years in the State of Texas under a temporary permit. For the claimant to continue teaching, a passing score on the Examination for Certification of Educators in Texas (ExCET) and the certification that this would have provided were necessary. The claimant took only one part of the exam during the summer. The claimant was separated from employment after she failed to receive a passing ExCET test score. HELD: Under these circumstances, the claimant's failure to become certified by the time school started for another year was a mismanagement of her position and constituted misconduct connected with the work. Disqualified under Section 207.044. In so ruling, the Commission expressly overruled the holding in Appeal No. 86-13685-10-092586 that failure to secure certification in a timely manner was analyzed as inability and thus not disqualifying.

Appeal No. 87-16289-10-091787. In determining whether a claimant's total performance or non-performance constitutes misconduct connected with the work, the last incident of alleged misconduct is not the only incident, which should be considered.

Also see Appeal No. 86-13688-10-091586 under VL 515.15.

Appeal No. 1456-CA-77. Where a claimant has performed her work to the best of her ability, her inability to meet the employer's standards or inability to perform the work to the employer's satisfaction does not constitute misconduct connected with the work.

Appeal No. 1123-CA-76. An employee's failure to meet the employer's production standards cannot be deemed misconduct connected with the work unless the evidence clearly shows that the individual, in the past, demonstrated an ability to consistently meet the required production standards.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 300.10 – 300.15

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| MC MANNER OF PERFORMING WORK |
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300.10 MANNER OF PERFORMING WORK: ACCIDENT.

WHERE CLAIMANT WAS INVOLVED IN AN ACCIDENT. IN SUCH A CASE, DAMAGE OR LACK OF IT IS NOT THE CONTROLLING ELEMENT.

Appeal No. 1775-CA-77. The claimant, a truck driver, was discharged because he had been involved in two traffic accidents during his term of employment and the employer's rule, of which he had been aware, specified that drivers involved in two traffic accidents were subject to discharge. **HELD:** Since there was no evidence in the record tending to show that the claimant had been at fault in either of the accidents, even though in violation of the employer's rule, these accidents did not constitute misconduct connected with the work.

Appeal No. 3836-CA-76. The claimant was discharged because he was involved in two accidents with the employer's vehicles, resulting in damage to both of them. The evidence showed that both of the accidents had been caused by the claimant's negligence. **HELD:** The claimant's negligent performance of his work, which resulted in damage to the employer's property, constituted misconduct connected with the work. Disqualification under Section 207.044.

300.15 MANNER OF PERFORMING WORK: DAMAGE TO EQUIPMENT OR MATERIALS.

WHERE DAMAGE TO EQUIPMENT OR MATERIAL WAS THE RESULT OF CLAIMANT'S MANNER OF PERFORMING WORK.

Appeal No. 2082-CA-77. The claimant was discharged because, after putting a machine in operation, he went away from the machine for an extended time while on a coffee break. During this time, the untended machine malfunctioned and suffered \$1,000 worth of damage, which would have been mitigated had the claimant been present when the machine malfunctioned. **HELD:** The claimant's leaving the employer's machine untended for an extended period of time, during which it malfunctioned and was damaged, constituted negligence and, thus, misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 2689-CA-76. The claimant was discharged because, during the three months that he worked as a punch press operator, he had damaged several pieces of expensive equipment. Notwithstanding his eight years' experience as a punch press operator, the claimant had been unfamiliar with the employer's equipment. Further, he had performed his work to the best of his ability and had never been warned that his actions could result in his termination. **HELD:** There was no specific act of misconduct connected with the work for which the claimant was discharged. No disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 300.15 (2) - 300.25

MC MANNER OF PERFORMING WORK

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Appeal No. 3189-CA-75. The claimant, a machine operator, was operating a machine when it jammed and broke, causing extensive damage to the machine. The claimant had not been doing anything out of the ordinary nor had she been inattentive in her operation of the machine. She was discharged because of this incident although during the six months that she had worked for the employer, she had received several raises in pay and there had been no prior complaints about her work. HELD: Although the machine broke while the claimant was operating it, there was no evidence of any specific act or omission on the claimant's part which could be characterized as negligence of such degree or recurrence as to constitute misconduct connected with the work.

MC 300.20 MANNER OF PERFORMING WORK: JUDGMENT.

CONSIDERS THE QUESTION OF WHETHER A POOR EXERCISE OF JUDGMENT CONSTITUTES MISCONDUCT.

Appeal No. 87-07750-10-050887. To get the attention of the operator of a forklift he needed on a job site, the claimant threw a rock at the fender but hit and shattered the rear window without injuring the operator. The claimant was reprimanded and given another assignment but was discharged the next day for the incident. He had seen other drivers in the past throw rocks at the forklift and knew that they had been reprimanded for it. HELD: The claimant's act constituted misconduct connected with the work because it damaged the employer's property and placed in jeopardy the well-being of the forklift operator, exactly the type of conduct contemplated as misconduct by Section 201.012 of the Act. Also, the claimant was aware that this type of conduct was not condoned by the employer. Further, the following day's discharge was in fact proximate in time to the incident.

Appeal No. 2175-CA-76. The claimant, an air-knife operator in a packing plant, was discharged because he broke an air-knife by using it to beat a pipe to attract attention to the fact that he needed someone to assist him in his work. The person assigned to assist him had walked off the job. HELD: Although the claimant may not have used good judgment, the evidence failed to establish that he had intended to damage the employer's property. Accordingly, the claimant's use of poor judgment did not constitute misconduct connected with the work.

300.25 MANNER OF PERFORMING WORK: QUALITY OF WORK.

WHERE CLAIMANT WAS DISCHARGED BECAUSE OF THE POOR QUALITY OF HIS WORK.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 300.25 (2)

MC MANNER OF PERFORMING WORK

Appeal No. 87-06368-10-041787. The claimant, a convenience store manager, was discharged by his new supervisor because of problems with the daily cash report, especially money order serial number discrepancies. The money order machine would often jam and issue money orders in an improper sequence. Also, because of staffing problems, the claimant did not have time to complete the daily cash report. The claimant's previous supervisor had counseled him on only one occasion and the claimant never received a written warning as per company policy nor had he been advised his job was in jeopardy. The new supervisor apparently had higher expectations of the claimant's performance than had the previous supervisor. HELD: Discharged for reasons other than misconduct connected with the work because the employer's perception of what constituted adequate job performance changed and the claimant's formerly satisfactory performance, although unchanged, became unsatisfactory to the employer.

Appeal No. 1893-CA-77. The claimant, manager of a convenience store location, was discharged because she was unable to control and prevent inventory shortages. The claimant had no authority to hire or discharge other store employees, some of whom were unable to control the store when large numbers of people were in the store at the same time. She was not counseled about the shortages until shortly before her discharge. HELD: Without the authority to hire and fire, the claimant had little opportunity to control the shortages. The claimant's simple inability to manage the store properly did not constitute misconduct connected with the work.

Appeal No. 1781-CA-77. The claimant was discharged because, after doing above average work for about one and one-half years, the quality of her work deteriorated dramatically in spite of warnings. HELD: The unexplained deterioration in the quality of the claimant's work demonstrated such recurring negligence as to show an intentional and substantial disregard of the employer's interests thereby constituting misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 300.25 - 300.30

MC MANNER OF PERFORMING WORK

Appeal No. 270-CA-76. A claimant who produced substandard work was thereby deemed guilty of misconduct connected with the work where she had previously demonstrated a capacity to produce satisfactory work, had more recently been counseled regarding her failure to continue to do so, and, after a disciplinary layoff for this reason, had temporarily produced satisfactory quality work.

Appeal No. 482-CA-77. The claimant, a deliveryman for a candy company, was discharged because he failed to properly stack certain merchandise in the truck in the way he knew it should have been done. This risked damage to the merchandise and required its resorting and restacking. The claimant did not stack the merchandise properly because he felt it would take too much time. However, he was an hourly-paid employee and would have been paid for all the time required to stack the merchandise properly. HELD: The claimant's knowing failure to properly perform his job duties, merely because he did not wish to take the extra time, constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 3616-CF-75. An individual's inability to learn a job or to increase productivity during a probationary period, in the absence of evidence showing that the individual had previously been able to meet the employer's standards, does not constitute misconduct connected with the work.

300.30 MANNER OF PERFORMING WORK: QUANTITY OF WORK.

WHERE CLAIMANT WAS DISCHARGED BECAUSE HIS PRODUCTION WAS INSUFFICIENT.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 300.30 - 300.40

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| MC MANNER OF PERFORMING WORK |
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Appeal No. 640-CA-77. The claimant was discharged because, during the latter portion of his term of employment, his production level had decreased by about half. However, during the period in question, the claimant's hours of work had been reduced by more than 20% and the material he was then working with was more

difficult to process than the material with which he had previously worked.

HELD: The employer failed to prove that the claimant's decreased production was not attributable to his decreased hours and the more difficult materials he was processing; the employer thus failed to prove that the claimant had been guilty of misconduct connected with the work.

Appeal No. 363-CA-77. The claimant was discharged because, during the last three months of her six-month term of employment, her production level declined considerably. She had previously demonstrated a capacity to produce satisfactorily, her job had not been changed and she had been warned that her decreased productivity would endanger her job.

HELD: The claimant's failure to meet the employer's required production standards, after she had previously demonstrated a capacity for satisfactory production and had been counseled regarding her decreased productivity, constituted misconduct connected with the work. Disqualification under Section 207.044.

300.40 MANNER OF PERFORMING WORK: CARELESS OR NEGLIGENT WORK.

WHERE CARELESS OR NEGLIGENT ACTS BY CLAIMANT IN
CARRYING OUT THE WORK CAUSED DISCHARGE.

Case No. 785689-2. The claimant, who worked at a residence for handicapped persons, had received warnings about her performance, and was aware that her job was in jeopardy. The claimant's duties including handling documents that were used to make purchases for the residents. Just prior to the claimant's separation, she lost four of these documents and could offer no explanation for the loss.

Held: Discharged for misconduct connected with the work. The task that the claimant was expected to perform was simple. The claimant's unexplained loss of the documents constitutes negligence and therefore misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 300.40 (2)

MC MANNER OF PERFORMING WORK

Appeal No. 96-003785-10-031997. The claimant, a cafeteria dishwasher, was discharged after warnings for poor job performance. The claimant's primary job duty was cleaning pots and pans and putting them away. Although claimant contended he performed the job to the best of his ability, food particles and mildew were often found on pots and pans after claimant washed them and returned them to the storage rack. HELD: Where the work is not complex, an employee's failure to pay reasonable attention to simple job tasks is misconduct.

Appeal No. 87-07313-10-050487. The claimant, a custodian for the employer-medical center, was instructed that it was of the utmost importance to dispose of hazardous waste carefully. The claimant received detailed instructions on how to proceed including unlocking a special receptacle with one of four keys kept at various locations in the employer's hospital. The claimant knew or should have known the four key locations. The claimant was discharged because he left hazardous waste (contaminated needles) lying next to the receptacle after unsuccessful attempts to locate a key. This was done without notifying security, as would have been proper. The claimant became preoccupied with other duties and forgot the needles which were discovered later by security. The employer discharged the claimant even though it was his first offense and he had had a good work record. HELD: Even one isolated incident that places in jeopardy the lives and property of others is so severe as to constitute misconduct connected with the work. Disqualification under Section 207.044 of the Act.

Appeal No. 86-03494-10-022387. The claimant, a tank truck driver, caused minor damage to the employer's truck by driving away from a fuel tank with the hose engaged after refueling. Previously the employer had warned all drivers that the next driver involved in such an incident would be discharged. The claimant had done the same thing two months earlier but did not know why he had failed to disengage the hose on the two occasions. He was discharged after the second occurrence. HELD: The claimant's failure to exercise the care he normally did in the performance of his job duties constituted negligence within the meaning of the Act. Disqualification under Section 207.044.

Appeal No. 87-19620-10-111287. The claimant refused to substitute a special blended meal for a regular meal given in error to a patient likely to choke on regular meals. The claimant promised to watch the patient eat but, after a few minutes, left the patient with another nurse's aide. Soon thereafter the patient choked on a dumpling and died. No one was watching the patient when she choked. The claimant was discharged after an investigation of the incident. HELD: The claimant's failure to switch the regular meal with the blended meal and her failure to make sure the patient was observed throughout the meal were neglect that placed in jeopardy

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 300.40 (3)

MC MANNER OF PERFORMING WORK

Appeal No. 87-19620-10-1112867. (con't)

the life of the patient and the employer's property and thus constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 906-CA-78. The claimant, a convenience store manager, was discharged when an audit of her store revealed a shortage of \$2,673 for the month of February, 1978. During the last 5 months of her employment, the claimant's store had monthly shortages ranging from \$253 to \$2,673. The claimant was absent from work for personal illness or vacation leave on 15 days between February 1 and February 21, 1978, the date of her discharge. HELD: Since there was no evidence presented to show that the February, 1978 shortage was the result of any specific act or omission on the claimant's part, the claimant's discharge was for reasons other than misconduct connected with the work.

Appeal No. 1923-CA-77. Where a claimant exercised due care in the preparation of retail sales tickets and has never been warned of her performance in that regard, the claimant's occasional mathematical errors in preparing such tickets, do not constitute misconduct connected with the work as such errors do not reflect a lack of ordinary prudence.

Appeal No. 1115-CA-77. The claimant, a coffee shop cashier, was discharged because, over a three-day period, she had cash discrepancies of \$95 to \$140 per day whereas the average discrepancy of the other cashiers was \$4 per day. Also, the claimant's register tapes were torn and, during the claimant's two-week vacation, her cash register was operated without discrepancies and with substantial increase in the daily gross revenues of the shop without any increase in patrons or any change in menus or prices. HELD: The claimant was guilty of either carelessness or negligence in the performance of her work. Considering the degree of loss involved, this carelessness was of sufficient magnitude to constitute misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 300.40 (4)

MC MANNER OF PERFORMING WORK

Appeal No. 361-CA-77. The claimant was discharged after warnings because of shortages and overages in his cash register. He had to deal with two different types of currency, as well as with food stamps, and his last discrepancy had been an overage of \$13.61 and not a shortage. HELD: Since none of the claimant's overages or shortages were substantial and it was an overage that caused the claimant's discharge and since it was the claimant's testimony that he had always performed to the best of his ability, the evidence was deemed insufficient to establish misconduct connected with the work on the claimant's part.

Appeal No. 3392-CA-76. The claimant, an inhalation therapy technician, was discharged because she had permitted a student nurse, who had been assigned to observe the claimant's performance of her duties, to partially assemble a life support machine for a patient. The machine was not properly assembled by the student nurse and the claimant did not observe her assembly of the machine nor did she check it after it was set up. As a result of the machine's improper assembly, the patient suffered cardiac arrest. HELD: The claimant's permitting the student nurse to assemble the life support machine, without closely supervising her or checking the machine after it was set up, was negligence of such a degree as to constitute misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 3259-CA-75. The claimant, a cashier, was discharged, after warnings, because she had miscounted money on the last two days that she worked, by about \$100 each day. Her inattentiveness to her duties on her last two days of work was due to her having a pinched nerve in her back and being preoccupied by the condition of her critically ill father. Further, the claimant's errors had been quickly discovered and corrected and resulted in no monetary loss to the employer. HELD: In light of the fact that her health and personal problems may have affected the claimant's ability to concentrate on her last two days of work and since her errors were readily remedied with no monetary loss to the employer, the claimant's errors did not constitute misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 310.00 - 310.10

MC NEGLECT OF DUTY**MC 310.00 NEGLECT OF DUTY.****310.05 NEGLECT OF DUTY: GENERAL.**

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF NEGLECT OF DUTY, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 310, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Appeal No. 25771-AT-65 (Affirmed by 957-CA-65). The claimant had been warned about neglecting customers and loafing on the job. She was discharged when she continued to neglect the customers. Her neglect of her duties constituted misconduct connected with the work. Disqualification under Section 207.044.

310.10 NEGLECT OF DUTY: DUTIES NOT DISCHARGED.

WHERE THE CLAIMANT NEGLECTED TO PERFORM ALL THE DUTIES OF HIS JOB, FAILED TO WORK OVERTIME OR SOME PARTICULAR TIME, OR FAILED TO COMPLETE OR DO A PARTICULAR TASK.

Appeal No. 911-CA-77. The claimant was discharged because, on a day when the employer's president was absent from work, she had closed the employer's shop and sent the other employees home. On that same day, she had received a telephone call from the president's wife, accusing the claimant of having an affair with the president. The call had greatly upset the claimant, who could not continue working and did not feel that she could leave the shop in the hands of the other employees. The president had witnessed his wife's telephone call and had known that it would upset the claimant. HELD: Under the circumstances, the claimant's actions did not constitute misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 310.10 - 310.15

MC NEGLECT OF DUTY

Appeal No. 844-CA-77. The claimant, manager of a short-order restaurant, was discharged, after warnings, for not opening the restaurant on time, for charging produce rather than paying cash, for failing to make bank deposits on time, for failing to post a work schedule, for being out of the prescribed uniform, and for not keeping the place as clean as he should have. All of these actions were contrary to company policy and most of them had occurred on several occasions. HELD: The claimant's repeated violation of company policy, after warnings, constituted misconduct connected with the work. Disqualification under section 207.044.

Appeal No. 605-CA-77. The claimant, a security guard, was discharged for having parked his car on the grounds of the school where he was assigned as a guard and for sitting in his car while he was supposed to be on duty, both of which actions were in violation of the employer's known rules. HELD: Discharged for misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 1309-CA-76. The claimant was discharged, after several warnings, for her repeated failure to perform promptly her assigned duty of verifying that bank deposits had actually been received by the banks to which they had been sent. Immediately prior to her separation, the claimant was absent for several days due to personal illness, during which absence the employer discovered a number of unverified deposit slips which were several weeks old. HELD: The claimant's continued failure, after several warnings, to perform properly a rather simple task constituted misconduct connected with the work. Disqualification under Section 207.044.

310.15 NEGLECT OF DUTY: PERSONAL COMFORT AND CONVENIENCE.

INVOLVES CLAIMANT'S WASTING EMPLOYER'S TIME BY, FOR EXAMPLE, TALKING AND LAUGHING OR ANNOYING OTHER EMPLOYEES BY SINGING OR WHISTLING, OR SLEEPING AT POST OF DUTY.

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 310.15 - 310.20****MC NEGLECT OF DUTY**

Appeal No. 4698-CA-76. The claimant, an instructor, was discharged because, after warnings, he continued to come in late and to take long breaks. For a long time before a recent change in policy, instructors had been permitted to work at their own pace. The warnings to the claimant came after the change in policy. HELD: The claimant's failure to adhere to the employer's change in policy, imposing a more restrictive work schedule, constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 3159-CA-75. The normal and permitted practice of the work crew of which the claimant was a member was to take breaks at irregular intervals to get coffee or cold drinks. The claimant was discharged because his foreman had seen him getting coffee which he had intended to drink while riding to the location where he was to unload a truck of chairs. HELD: In view of the fact that the claimant had been essentially following the normal practice of his crew and had never been told that their manner of taking breaks was against the employer's policy, the claimant's action did not constitute misconduct connected with the work.

310.20 NEGLECT OF DUTY: TEMPORARY CESSATION OF WORK.

WHERE THE CLAIMANT LEFT BEFORE CLOSING TIME OR FOR SOME REASON CEASED WORKING WITHOUT AUTHORIZATION.

Appeal No. 86-00648-10-122286. The employer hired the claimant to clear debris from a roof without instructing the claimant how or at what pace to perform the work. The claimant enlisted his son as a helper and would periodically wait for about five minutes for his son to fill containers with the debris the claimant had gathered. The employer saw the claimant "standing around" and, without warning, discharged him for "loafing" on the job. HELD: As no warnings or instructions had ever been given to the claimant regarding his work performance, the claimant's short period of inactivity was not so much in disregard of the employer's interest that it rose to the level of misconduct. No disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 310.20 (2)

MC NEGLECT OF DUTY

Appeal No. 1116-CA-77. The claimant, a truck driver, was discharged because he drove the employer's truck the twenty miles from the work site to the main office in order to ask permission for a day off, thereby taking his truck out of service. He could have requested such permission by means of his truck's two-way radio which had been installed to facilitate communication between the work site and the office. HELD: The claimant's leaving his assigned job and traveling to the employer's office for his own convenience, rather than using his truck radio, constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 1053-CA-77. The claimant, a hotel night desk clerk, was discharged because he left his work station without authorization and was arrested two and one-half blocks away with some of the employer's property in his possession. The charge of petty theft originally lodged against the claimant was ultimately dismissed. HELD: The claimant's leaving his work station without receiving prior permission constituted misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 360.00

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| MC PERSONAL AFFAIRS |
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MC 360.00 PERSONAL AFFAIRS.

INCLUDES CASES WHERE A CLAIMANT'S PERSONAL AFFAIRS BROUGHT ABOUT DISCHARGE.

Appeal No. 147-CA-69. When there is no evidence the claimant's failure to pay a personal debt adversely affected his employer's interest, the claimant's resentment of the employer's intrusion into his affairs does not constitute misconduct connected with the work.

Appeal No. 750-CA-67. The claimant, a married woman, and a married male co-worker spent a considerable amount of time together off the job. Claimant was discharged because the employer felt she was disregarding the interest of the company. Claimant's relationship with the co-worker caused gossip inside the company and in the community and she was well aware of this fact. This situation, if permitted to continue, could have had a very detrimental effect on the reputation of the company. Disqualification under Section 207.044.

Appeal No. 1561-AT-69 (Affirmed by 201-CA-69). The claimant was discharged because her brother-in-law created a disturbance in the store. The claimant was not responsible for the actions of her brother-in-law and was not guilty of misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 385.00

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| MC RELATION OF OFFENSE TO DISCHARGE |
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MC 385.00 RELATION OF OFFENSE TO DISCHARGE.

INCLUDES CASES IN WHICH THERE IS A DISCUSSION OF WHETHER THE ALLEGED ACT OF MISCONDUCT WAS TOO REMOTE FROM THE TIME OF DISCHARGE TO CONSTITUTE A CAUSE THEREOF: ALSO WHETHER THE ALLEGED ACT OF MISCONDUCT WAS THE PRIMARY CAUSE OF THE DISCHARGE.

Appeal No. 97-008947-10-082097. As a general rule, misconduct will not be found where the precipitating incident is too remote in time from the date of the work separation. This general rule does not apply, however, if the delay is caused by established procedures designed to protect the worker from possibly erroneous separation decisions. Here, the claimant was discharged four months after the precipitating incident. During that time, however, the employer conducted an internal investigation, reviewed the recommendation to terminate through the chain of command, and allowed the claimant to complete a pre-termination hearing procedure. HELD: Here, the delay caused by the employer's reasonable pre-termination procedures did not render the discharge too remote in time from the final incident. Discharged for misconduct connected with the last work.

Appeal No. 88-04705-10-041288. During the week beginning Monday, February 8, 1988, the claimant got into an argument with his foreman and used abusive language toward the foreman. The claimant was not discharged until Friday, February 12, 1988 because the employer needed a full crew to fulfill the terms of the employer's contract and because transportation from the claimant's offshore job site was not available until that date. HELD: The claimant's discharge occurred within a reasonable time and was delayed only by lack of transportation to take the claimant from the job site. This was not an issue of employer convenience but one of unavoidable practicality. As the claimant's use of abusive language toward his supervisor constituted misconduct as mismanagement of his position of employment, disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 385.00 (2)

MC RELATION OF OFFENSE TO DISCHARGE

Appeal No. 85-10309-10-092785. The claimant was originally separated from work when he was suspended for one week without pay after his employer discovered that the claimant had misappropriated equipment from the employer several years earlier. After the claimant served his week of suspension without pay and was returned to work for three weeks, the employer's higher management reversed the claimant's original disciplinary suspension and discharged the claimant. HELD: The claimant's original suspension from work without pay constituted a work separation. When the employer allowed the claimant to return to work for three weeks after one week of suspension without pay, the employer effectively forgave the claimant's previous act of misconduct. No disqualification under Section 207.044 of the Act. (Cross-referenced under TPU 80.05.)

Appeal No. 3968-CA-76. The claimant, a legal secretary, was allegedly discharged because, several months earlier, she had failed to post an examining trial on the employer's calendar. A petition which she had typed had been incorrectly filed by the individual responsible for such duty. HELD: Since both incidents, one of which was not attributable to the claimant, were too remote in time to have been the reason for the claimant's discharge, it was held that the claimant had not been discharged for misconduct connected with the work.

Appeal No. 243-CA-76. Where the most recent act of misconduct on a claimant's part alleged by the employer was shown to have occurred three months prior to the claimant's discharge, such act or omission, even if proved by a preponderance of the evidence, will not support a finding of misconduct with the work for which the claimant was discharged, because it was too remote in time from the discharge.

Also see Appeal No. 88-4246-10-033088 under MC 135.25.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 390.00 - 390.05

MC RELATIONS WITH FELLOW EMPLOYEES**MC 390.00 RELATIONS WITH FELLOW EMPLOYEES.****390.05 RELATIONS WITH FELLOW EMPLOYEES: GENERAL.**

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF DISCHARGE BECAUSE OF RELATIONS WITH FELLOW EMPLOYEES, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 390, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Appeal No. 847-CA-77. A claimant who was discharged, apparently because her two co-workers did not wish to work with her, but who had performed her job to the best of her ability and had given her co-workers no reason to object to working with her, was held not to have been discharged for misconduct connected with the work.

Appeal No. 277-CA-77. The claimant, an inexperienced new employee, was discharged because she had complained to her more experienced co-workers that they were working too fast for her to keep up with them. HELD: Although the claimant may have been inefficient and frustrated in her work, there was no evidence to show that she had failed to perform to the best of her ability. In light of the difference between the claimant's skill and experience and that of her co-workers, her request of them, that they work at a pace which she could keep up with, did not constitute misconduct connected with the work.

Appeal No. 2492-CA-76. The claimant, a fry cook, was discharged because of her failure to disclose to the employer's chef the whereabouts of the chef's daughter, a friend of the claimant's. The claimant had not wanted to become further involved in a family problem. HELD: Disclosing the whereabouts of the chef's daughter was not the claimant's responsibility and it was reasonable for her to wish to avoid further involvement in a family problem. Furthermore, the claimant's omission in this regard could not reasonably be described as connected with the work within the meaning of Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 390.10 - 390.20

MC RELATIONS WITH FELLOW EMPLOYEES

MC 390.10 RELATIONS WITH FELLOW EMPLOYEES: ABUSIVE OR PROFANE LANGUAGE.

INVOLVES THE USE OF ABUSIVE OR PROFANE LANGUAGE IN TALKING WITH FELLOW EMPLOYEES.

Appeal No. 3697-AT-69 (Affirmed by 405-CA-69). Although the claimant had been provoked by a co-worker's intimate questions about her personal life, she did not complain of the matter to management. Instead, she responded with a swear word. When management learned of the incident, the claimant was discharged. HELD: The claimant's use of objectionable language to the co-worker, instead of giving the employer an opportunity to take corrective measures, was misconduct connected with the work. Disqualification under Section 207.044.

390.15 RELATIONS WITH FELLOW EMPLOYEES: AGITATION.

WHERE A CLAIMANT CREATES A DISTURBANCE WHICH IS CONTRARY TO HIS EMPLOYER'S INTEREST.

Appeal No. 1717-CA-76. A claimant who had been warned previously about making allegations of improper conduct on the part of her co-workers, which had been investigated by the employer and found to have been unfounded, but who persisted in such allegations, thereby disrupting the employer's operations, was held to have been guilty of misconduct connected with the work. Disqualification under Section 207.044.

390.20 RELATIONS WITH FELLOW EMPLOYEES: ALTERCATION OR ASSAULT.

WHERE CLAIMANT HAS AN ARGUMENT OR FIGHT WITH ANOTHER EMPLOYEE.

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 390.20 (2)****MC RELATIONS WITH FELLOW EMPLOYEES**

Appeal No. 87-18554-10-102687. The employer discharged the claimant for striking and throwing glue on a group leader in response to the group leader having called the claimant "nigger." **HELD:** As the claimant should have reported the incident to management in order to give the employer a chance to take corrective action, the claimant committed misconduct connected with the work. (Cross-referenced under VL 515.80.)

Also see Appeal No. 87-17200-10-092987 under VL 515.80).

Appeal No. 87-10609-10-061987. The claimant, but not the co-worker, was fired after the two yelled and cursed each other in front of customers. The co-worker had initiated the yelling. **HELD:** Because the employer did not discharge the co-worker who started the argument, the claimant must have been discharged for reasons other than misconduct connected with the work. No disqualification under Section 207.044.

Appeal No. 2802-CA-77. The claimant was discharged because, during a long verbal dispute with a co-worker, he pulled a knife on the co-worker. **HELD:** The claimant's actions in escalating the conflict from the verbal to the physical plane could have resulted in a very serious incident even though the claimant did not, in fact, slash at his co-worker with the knife. The claimant's actions were clearly against the employer's interests and constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 1984-CA-77. The claimant, toward whom another employee made a rude gesture which was returned in kind by the claimant, was then physically assaulted by the other employee, in spite of the claimant's attempt to avoid a fight. The claimant thereupon fought back in self-defense until rescued by fellow employees. He was discharged for having engaged in a fist fight on company property. **HELD:** Since the claimant was assaulted by the other employee and did not voluntarily engage in a violation of the employer's rule against fighting on company property, the claimant was not guilty of misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 390.20 - 390.25

MC RELATIONS WITH FELLOW EMPLOYEES

Appeal No. 1011-CA-77. The claimant was discharged for having shoved his supervisor and having wrestled him to the ground. The claimant objected to a certain common expression used by the supervisor in urging the crew to get back to work. HELD: The expression would not have been unusual in a heavy equipment shop atmosphere and was not sufficiently objectionable to justify the claimant's actions. The claimant's assaulting his supervisor with no more serious provocation than this constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 731-CA-77. The claimant was discharged for having loudly threatened another employee on the premises of the hospital where she worked. HELD: Since the claimant's threats could have been overheard by patients and a hospital is a place where a quiet atmosphere should be maintained, the claimant's actions constituted misconduct connected with the work. Disqualification under Section 207.044.

Also see Appeal No. 87-20326-10-112587 under MC 85.00.

390.25 RELATIONS WITH FELLOW EMPLOYEES: ANNOYANCE OF FELLOW EMPLOYEES.

WHERE CLAIMANT MOLESTS OR IRRITATES OR OTHERWISE ANNOYS FELLOW EMPLOYEES.

Appeal No. 1194-CA-76. The claimant was discharged, after several warnings, for continuing to make forward comments to and requesting dates of female employees. The remarks and requests were unsolicited and unwelcome and had been made on company time and on company premises. HELD: The claimant's actions constituted misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 390.30 - 390.40

MC RELATIONS WITH FELLOW EMPLOYEES

MC 390.30 RELATIONS WITH FELLOW EMPLOYEES: DEBT.

INVOLVES A DISCHARGE BECAUSE OF THE DEBT, OR SOME INCIDENT OF SUCH DEBT, OF CLAIMANT TO A FELLOW EMPLOYEE.

Appeal No. 89-07579-10-071389. For a nine month period, the claimant, a supervisor, periodically used his position to borrow or solicit money from his subordinates. Although he had never been warned not to do this, the claimant was discharged for violation of the employer's policies prohibiting (1) solicitation of company employees without prior approval and (2) intimidation of fellow employees. HELD: The claimant's actions violated the spirit of the employer's policies and constituted mismanagement of his supervisory position. Therefore, the claimant was guilty of misconduct connected with the work. Disqualification under Section 207.044.

390.35 RELATIONS WITH FELLOW EMPLOYEES: DISHONESTY.

APPLIES TO ACTS OF DISHONESTY IN RELATION TO FELLOW EMPLOYEES.

Appeal No. 46934-AT-67 (Affirmed by 1028-CA-67). Claimant was discharged because he removed an article from the employer's hotel, which article belonged to a co-worker. Claimant's removal of the article without inquiring whether it belonged to any of his fellow employees constituted misconduct connected with the work. Disqualification under Section 207.044.

390.40 RELATIONS WITH FELLOW EMPLOYEES: UNCOOPERATIVE ATTITUDE.

CONSIDERS THE EFFECT OF CLAIMANT'S UNCOOPERATIVE ATTITUDE UPON HIS FELLOW EMPLOYEES.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 390. 40 (2)

MC RELATIONS WITH FELLOW EMPLOYEES

Appeal No. 2955-CA-76. The claimant was discharged because he refused to apologize to another employee whom the claimant had ordered to get to work as the claimant needed the other employee's assistance in waiting on customers. The other employee had been given permission to leave work early and had already clocked out but this was not known to the claimant. HELD: The claimant's intent in ordering the other employee to get to work was to further the employer's interests in seeing that the customers got waited on. Accordingly, his actions did not constitute misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 435.00

MC TARDINESS**MC 435.00 TARDINESS.**

INCLUDES CASES WHERE CLAIMANT WAS DISCHARGED FOR BEING LATE FOR WORK.

Appeal No. 85-1414-10-011387. The claimant was discharged after warning for excessive tardiness and absenteeism. The claimant submitted medical documentation stating she had a chronic health problem but no specific dates on which the claimant could not work. HELD: Discharged for misconduct connected with the work. The claimant's medical documentation was insufficient because it did not specify dates on which the claimant was unable to work and this documentation also did not excuse the claimant's tardiness.

Appeal No. 2323-CA-77. The claimant had been either late to work or absent from work about twice a week during the three months that he worked. He was discharged when he called in about noon and stated that he would be late. He knew that the peak hours of work in the employer's business were from 5:00 a.m. to 10:00 a.m. HELD: The claimant's repeated tardiness and absenteeism constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 1566-CA-77. The claimant was discharged because, on one isolated occasion, she was fifteen minutes late to work due to the unreadiness of a co-worker, who had requested that the claimant give her a ride to work. HELD: Since the claimant's tardiness was an isolated instance and was not entirely her fault, it did not constitute misconduct connected with the work.

Appeal No. 2027-CA-EB-76. The claimant was discharged for tardiness caused by a flat tire on his way to work. Earlier in his employment, the claimant, who commuted to work from a nearby town, had advised his supervisor that he might be late from time to time due to transportation problems and this state of affairs had been expressly condoned by the supervisor. The claimant had never been warned about his tardiness.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 435.00 (2)

MC TARDINESS

Appeal No. 2027-CA-EB-76

(Cont'd)

HELD: Since the claimant's occasional tardiness had been expressly condoned by his supervisor and he had never been warned, his tardiness on his last day of work did not constitute misconduct connected with the work. (Cross-referenced under MC 5.00.)

Appeal No. 1605-CA-76. A claimant's consistent failure to report to work on time, despite repeated warnings, constitutes misconduct connected with the work.

Also see cases digested under MC 15.00.

Appeal No. 97-004948-10-050997. The claimant, a sales representative, was discharged for excessive tardiness after numerous verbal warnings. None of these warnings, however, specifically advised claimant his job was in jeopardy due to his tardiness. On his last day the claimant missed a previously scheduled mandatory sales meeting when he arrived late to work.

HELD: Discharged for misconduct. Where the employer's repeated warnings are sufficient to put claimant on notice that certain behavior is unacceptable, it is unnecessary for the employer to further warn claimant his job is in jeopardy. (Also digested at MC 5.00).

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 450.00 - 450.55

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| MC TIME |
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MC 450.00 TIME.

450.55 TIME: TEMPORARY JOB.

WHERE ONLY REASON FOR TERMINATION OF EMPLOYMENT WAS THE COMPLETION OF THE WORK FOR WHICH CLAIMANT WAS SPECIFICALLY HIRED.

Appeal No. 212-CA-77. A claimant who is employed irregularly on an on-call, as-needed basis and who does not know at the conclusion of one day's work whether further work will be available, is to be regarded as having been involuntarily separated for reasons other than misconduct upon the conclusion of each period of employment.

Appeal No. 2005-CA-76. A claimant who was hired for one day as a temporary replacement and was not offered further work was discharged for reasons other than misconduct connected with the work.

Also see Appeal No. 1252-CA-77 and Appeal No. 263-CA-68 under VL 135.05 and Appeal No. 983-CAC-72 and Appeal No. 86-2055-10-012187 under VL 495.00.

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 475.00 - 475.10****MC UNION RELATIONS****MC 475.00 UNION RELATIONS.****475.05 UNION RELATIONS: GENERAL.**

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF DISCHARGE BECAUSE OF UNION RELATIONS, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 475, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Appeal No. 2388-CA-77. The claimant was discharged for having refused, unless a union representative was present, to sign a document which could have been later used as evidence in a disciplinary action or proceeding. HELD: Since the claimant, in insisting that a union representative be present, was exercising a right given her by the National Labor Relations Act, her action did not constitute misconduct connected with the work. The Commission cited NLRB vs. Weingarten, Inc., 95 S. Ct. 959, a U.S. Supreme Court case, in which the Court ruled that an individual who was discharged for refusing to answer questions at an investigatory interview unless a union representative was present, was denied rights secured to him under Section 7 of the National Labor Relations Act (29 U.S. Code, Section 157) which, in part, provides that "employees have the right...to engage in other concerted activities for the purpose of collective bargaining or mutual aid or protection". The Supreme Court noted that this right applied whenever the employee reasonably believed he was about to be subject to disciplinary action.

475.10 UNION RELATIONS: AGREEMENT WITH EMPLOYER.

WHERE THE CLAIMANT WAS DISCHARGED AFTER A DISPUTE AS TO WHETHER THE EMPLOYER HAD ALLEGEDLY VIOLATED AN EMPLOYER-UNION AGREEMENT.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 475.10 - 475.35

MC UNION RELATIONS

Appeal No. MR 86-18940-10-103087. The employer unilaterally implemented a drug testing policy without first having bargained with the claimant's union as required by their collective bargaining agreement. The claimant was discharged for refusing to submit to the employer's drug test but later was reinstated by an arbitrator's decision that found the employer had violated the collective bargaining agreement by its unilateral action. HELD: Because the union, as the claimant's agent, grieved of the employer's unilateral action in a timely manner and never acquiesced in the drug testing policy, there is no evidence that the claimant ever agreed to be tested. Therefore, her refusal to submit to the test when requested by the employer cannot be deemed a violation of any existing policy and thus not misconduct connected with the work. (Also digested under MC 485.46.)

475.35 UNION RELATIONS: LABOR DISPUTE, PARTICIPATION IN.

DISCUSSION OF THE LEGAL EFFECT OF A DISCHARGE FOR AN ACT WHICH OCCURRED DURING THE COURSE OF A STRIKE OR A LABOR DISPUTE.

Appeal No. 1984-CA-76. The claimant was discharged by not being reinstated at the conclusion of a labor dispute because, during the labor dispute, he had violated an injunction by engaging in violence in connection with the labor dispute, for which he had been convicted of a misdemeanor. HELD: Not only did the claimant engage in violence amounting to a crime, such violence was also in violation of an injunction issued against him and others. The claimant's actions constituted misconduct connected with the work for which a disqualification under Section 207.044 was assessed.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 475. 50

MC UNION RELATIONS**MC 475.50 UNION RELATIONS: MEMBERSHIP OR ACTIVITY IN UNION.**

WHERE CLAIMANT IS DISCHARGED FOR JOINING A UNION OR FOR TAKING AN ACTIVE PART IN A UNION.

Appeal No. 87-09510-10-060887. The claimant, a local union member, solicited addresses and telephone numbers from his fellow employees during breaks and at lunch on the employer's premises. The employer's policy prohibited solicitation on company property during working time. The employer discharged the claimant because of his break time solicitations. HELD: The employer's rule was unreasonable in that it violated a rule of the National Labor Relations Board, approved by the U.S. Supreme Court in Republic Aviation Corps v. N.L.R.B. 324 U.S. 973 (1945), that an employer may not enforce a rule prohibiting solicitation by an employee during breaks or at lunch. No disqualification under Section 207.044 of the Act. (Also digested under MC. 485.05.)

Appeal No. 504-CA-76. The claimant, a "group leader", was discharged because, after warnings that, as a group leader, he was considered a supervisor and was therefore not eligible to participate in any type of union activity, he signed a union pledge card signifying that he was willing to have a particular union represent him in negotiations with management. The NLRB had subsequently determined the claimant's position to be a supervisory one. HELD: In light of the NLRB's determination and the fact that the claimant's signing a union pledge card would be more likely to result in adverse consequences to the employer than the claimant's merely voting in a union election, the claimant's action constituted misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 475. 60****MC UNION RELATIONS****MC 475.60 UNION RELATIONS: REFUSAL TO JOIN OR RETAIN MEMBERSHIP IN UNION.**

INVOLVES A DISCHARGE BECAUSE OF THE CLAIMANT'S REFUSAL TO JOIN OR RETAIN MEMBERSHIP IN ANY UNION OR SOME PARTICULAR UNION.

Appeal No. 18638-AT-65 (Affirmed by 212-CA-65). Claimant was discharged, after warnings, because he failed to keep current on payment of his union dues. He was an airline pilot on an interstate airline, covered by the provisions of the Railway Labor Act. The collective bargaining agreement between the airline and claimant's union provides that an employee may be terminated if, after notice, he fails to pay his union dues or the service charge assessed in lieu thereof, if he does not wish to be a member of the union. This "Agency Shop Agreement" was made pursuant to the provision of the Railway Labor Act, which Act, and the agreements made pursuant thereto, by statute, govern the conditions of employment with interstate airlines, anything in the laws of any state to the contrary notwithstanding. Claimant's failure to comply with the provisions of the union contract under these circumstances constituted misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 485.00 - 485.05

MC VIOLATION OF COMPANY RULE**MC 485.00 VIOLATION OF COMPANY RULE.****485.05 VIOLATION OF COMPANY RULE: GENERAL.**

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF VIOLATION OF COMPANY RULE, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 485, AND (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Appeal No. 87-2861-10-022988. The claimant, a convenience store assistant manager, was discharged for allowing loitering. She had been reprimanded in writing for this offense. Company policy prohibited relatives of employees loitering at the store. On her day off, the claimant was called in to the store for 30 minutes while the manager went to the bank. She brought her child with her since she had no baby-sitter on her day off. The claimant's supervisor entered the store, saw the child, and discharged the claimant because of the previous warning. HELD: The employer's action in discharging the claimant for bringing her child to work for 30 minutes, when she had been called in on her day off, was unreasonable. It cannot be said the claimant intentionally violated the employer's policy prohibiting loitering. The claimant's action in reporting to work for 30 minutes on her day off was in support of the employer's best interest and, thus, misconduct has not been shown. No disqualification under Section 207.044.

Appeal No. 87-20145-10-112487. The claimant was absent due to personal illness and had her husband notify her supervisor of her absence. This was contrary to the employer's attendance policy which required an employee to personally notify supervision of an absence. However, the claimant was not aware of this policy and her husband had previously provided such notice on the claimant's behalf, without complaint by the employer. HELD: As the employer produced no evidence to establish that the claimant knew of the policy requiring her to call in personally and as the employer

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 485.05 (2)

MC VIOLATION OF COMPANY RULE

Appeal No. 87-20145-10-112487 (Cont'd)

previously condoned the practice of the claimant's husband calling in for her, the claimant's failure to personally notify supervision of her absence did not violate a well-known company rule. Thus, it did not constitute misconduct connected with the work.

Appeal No. 87-11380-10-062987. After complaining to the company officer who gave her the orders and expressing her concerns to her immediate supervisor, the claimant carried out orders that she felt violated the employer's policies. The employer discharged the officer and the claimant for violating the employer's policies. **HELD:** Discharged for reasons other than misconduct connected with the work because the claimant tried in good faith to avoid violating the employer's policies by expressing her concerns to her supervisors. No disqualification under Section 207.044.

Appeal No. 87-09510-10-060887. The claimant, a local union member, solicited addresses and telephone numbers from his fellow employees during breaks and at lunch on the employer's premises. The employer's policy prohibited solicitation on company property during working time. The employer discharged the claimant because of his break time solicitations. **HELD:** The employer's rule was unreasonable in that it violated a rule of the National Labor Relations Board, approved by the U.S. Supreme Court in Republic Aviation Corps. v. N.L.R.B. 324 U.S. 793 (1945), that an employer may not enforce a rule prohibiting solicitation by an employee during breaks or at lunch. No disqualification under Section 207.044 of the Act. (Also digested under MC 475.50).

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 485.05 (3)

MC VIOLATION OF COMPANY RULE

Appeal No. 86-03697-10-022587. The claimant was helping a patient from his bed to a chair when the patient slipped and grabbed the claimant's blouse. The claimant slapped the patient's hand away to keep from being pulled on top of him. Because of the incident, the employer discharged the claimant for violating its policy against patient mistreatment. HELD: Discharged for reasons other than misconduct because the claimant's actions were not intended to mistreat the patient but to prevent herself from falling on and injuring the patient. Also, there was no evidence the claimant's actions harmed the patient.

Appeal No. 944-CA-77. The claimant, a grocery checker, was discharged in accordance with the employer's policy requiring discharge if a checker made four errors during a six-month period. There was no evidence of negligence or dishonesty on the claimant's part. HELD: Since the claimant was engaged in an occupation in which errors are common, the mere fact that the employer's policy required discharge upon the occurrence of four errors in a six-month period did not alone establish misconduct connected with the work.

Appeal No. 2900-CSUA-76. The claimant was discharged for regularly smoking at the nurses' station in the nursing home where she worked, a matter about which she had never been warned, and for having parked her car in an unauthorized location on one occasion several weeks before her discharge. HELD: The employer condoned the claimant's smoking at the nurses' station by permitting the practice to continue for several months without objection or warnings. Thus, the claimant's action did not constitute misconduct connected with the work. Furthermore, the claimant's unauthorized parking, on one much earlier occasion, did not constitute misconduct.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 485.05 - 485.10

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| MC VIOLATION OF COMPANY RULE |
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Appeal No. 1457-CA-71. If a claimant is discharged for violating a company rule, no disqualification is in order unless the employer's rule is a reasonable one. Any rule which prohibits employees from associating together after working hours is an unreasonable rule and against public policy.

Also see Appeal No. 660-CA-76 under MC 15.10.

485.10 VIOLATION OF COMPANY RULE: ABSENCE, TARDINESS, OR TEMPORARY CESSATION OF WORK.

WHERE A POINT IS MADE OF THE FACT THAT THE ABSENCE, TARDINESS, OR LEAVING EARLY WAS IN VIOLATION OF A COMPANY RULE.

Appeal No. 87-03012-10-030488. The claimant worked under a union contract which provided that a certain number of unexcused absences would subject an employee to discharge. The contract further provided that an absence due to illness would be excused if substantiated by a doctor's statement. The claimant incurred enough absences to warrant discharge; however, he alleged that his last absences were due to personal illness. The claimant did not substantiate this illness with a doctor's statement which he could have secured at no cost to himself under the employer's insurance program. HELD: The claimant was not discharged because he had last been absent due to personal illness. Rather, he was discharged for his failure to substantiate that his last absence was due to illness by producing a doctor's statement as required by employer policy and the union contract. The claimant's failure to do this when he could have done so at no cost to himself constituted mismanagement of his position of employment through inaction which allowed his absences to violate the employer's rules. Disqualification under Section 207.044. (Cross-referenced under MC 15.20.)

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 485.10 - 485.12****MC VIOLATION OF COMPANY RULE**

Appeal No. 832-CA-77. The claimant was discharged because, during a year's time, she had been absent due to illness on a number of days in excess of that permitted by the employer's sick leave policy. HELD: The claimant's absenteeism, even in excess of that permitted by the employer's policy, did not constitute misconduct connected with the work when those absences were caused by personal illness. (Cross-referenced under MC 15.20.)

As to absences for personal illness, also see Appeal No. 2480-CA-76 under MC 15.20.

Appeal No. 481-CA-77. The claimant was discharged for his violation of the employer's policy in that he failed, without notice, to appear for overtime work for which he had volunteered. HELD: The claimant's action constituted misconduct connected with the work. Disqualification under Section 207.044.

Also see cases digested under MC 15.00.

485.12 VIOLATION OF COMPANY RULE: SLEEPING ON THE JOB.

INVOLVES CASES WHERE DISCHARGE WAS CAUSED SOLELY BY SLEEPING DURING WORKING TIME; ALSO, REASONS, IF ANY, FOR FALLING SLEEP AND CONSEQUENCES OF CLAIMANT FALLING ASLEEP ON THE JOB.

Appeal No. 2814-CA-76. A claimant's sleeping at the job site, when he was expected to be working, constituted misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 485.15 - 485.20

MC VIOLATION OF COMPANY RULE

MC 485.15 VIOLATION OF COMPANY RULE: ASSAULTING FELLOW EMPLOYEE.

WHERE CLAIMANT FIGHTS OR VERBALLY ASSAULTS A FELLOW EMPLOYEE IN VIOLATION OF COMPANY RULE.

Appeal No. 556-CA-74. If a claimant does not provoke a fight and hits a man only in self-defense after being stabbed, his actions do not constitute misconduct connected with the work.

Appeal No. 4686-AT-68 (Affirmed by 595-CA-68). Fighting with a co-worker on company premises generally constitutes misconduct connected with the work. When an individual provokes a difficulty, he cannot then claim he was acting in self-defense in the fight that ensues. Disqualification under Section 207.044.

Also see cases digested under MC 390.20.

485.20 VIOLATION OF COMPANY RULE: CLOTHES.

WHERE CLAIMANT REFUSED TO WEAR CLOTHING IN ACCORDANCE WITH EMPLOYER'S REQUIREMENT.

Appeal No. 1570-CA-76. The claimant reported to work without a tie and was advised by his supervisor that, even though the employer's dress code did not specifically require the wearing of a tie during duty hours, such attire was customary. The claimant later went home and secured a tie but, upon his return, was discharged by the employer's vice-president for reporting to work without a tie. **HELD:** Since the employer's dress code had not specifically required the wearing of a tie, the claimant's action did not constitute misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 485.20 - 485.30

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| MC VIOLATION OF COMPANY RULE |
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Appeal No. 517-CA-76. The claimant, a nurses' aide, was discharged for failing and refusing to wear a prescribed uniform top (adopted for ready identification of the various personnel in the hospital), a requirement of which the claimant had due notice. The employer had offered to lend her the money to purchase the top. **HELD:** Since the employer's request regarding the uniform top was reasonable, the claimant's refusal to comply therewith constituted misconduct connected with the work. Disqualification under Section 207.044.

485.25 VIOLATION OF COMPANY RULE: COMPETITION, OTHER WORK, OR RECOMMENDING COMPETITOR TO PATRON.

WHERE CLAIMANT, CONTRARY TO A COMPANY RULE, ESTABLISHED A BUSINESS OF THE SAME KIND AS HIS EMPLOYER, THUS TAKING AWAY HIS FORMER CUSTOMERS, OR ADVISED A CUSTOMER THAT HE COULD OBTAIN A BETTER PRODUCT ELSEWHERE.

See cases under MC 45.15.

485.30 VIOLATION OF COMPANY RULE: DISHONESTY.

WHERE CLAIMANT COMMITS A DISHONEST ACT IN VIOLATION OF COMPANY RULE.

Appeal No. 2598-CA-77. The claimant was discharged for violations of the employer's rule prohibiting unauthorized purchases and the acceptance of gratuities from participants of the community action program by which she was employed. The claimant first became aware of the rule in January, 1977. Prior to that time, the claimant had received small gifts from participants on certain occasions such as cookies and flowers but, after that time, the only occasion when she was given a small gift, the purchase of the gift was without her knowledge but with the prior knowledge of her supervisor. She had also accepted money from participants to assist in the opening of a half-way house for ex-offenders; she had not utilized the funds for her personal benefit but had retained them for the funding of her house. Lastly, the claimant had wanted to

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 485.30 - 485.36****MC VIOLATION OF COMPANY RULE**Appeal No. 2598-CA-77

(Cont'd)

purchase some film to take pictures of the participants at a Mother's Day program. The employer refused authorization to charge such film purchase to the employer's account so the claimant utilized \$3.00 from the participant's petty cash fund which she duly reported. HELD: Since the claimant attempted to comply with the employer's policies after she became aware of them and, further, had never been warned that her actions could jeopardize her job, misconduct connected with the work was not established.

Also see cases digested under MC 140.00.

485.35 VIOLATION OF COMPANY RULE: EMPLOYMENT OF MARRIED WOMEN.

WHERE CLAIMANT IS DISCHARGED BECAUSE OF A COMPANY RULE FORBIDDING EMPLOYMENT OF MARRIED WOMEN.

Appeal No. 38656-AT-66 (Affirmed by 1413-CA-66). The employer had a rule that required an airline stewardess to resign prior to marriage. The claimant submitted her resignation as required but requested work in another capacity, which was not available. HELD: Claimant's resignation was tantamount to a discharge (for reasons other than misconduct on her part) as the employer would not permit her to continue working after her marriage.

485.36 VIOLATION OF COMPANY RULE: MARRIAGE TO A CO-WORKER.

WHERE CLAIMANT IS DISCHARGED BECAUSE OF A COMPANY RULE FORBIDDING SIMULTANEOUS EMPLOYMENT OF MARRIED PERSONS, INCLUDING CASES WHERE SPOUSES AGREE WHICH OF THEM SHALL CONTINUE IN THE EMPLOYMENT.

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 485.36 - 485.45****MC VIOLATION OF COMPANY RULE**

Appeal No. 2354-CA-77. The claimant, who married a co-worker, was discharged when she declined to resign in accordance with the employer's rule that, when two employees married, one of them had to resign or be discharged. HELD: The employer's policy cannot be made the basis for a disqualification from the receipt of unemployment insurance, under either Section 207.045 or 207.044 of the Act, as the employer's policy is one which attempts to prevent the employee from exercising his or her constitutional right to marry. It is well-settled public policy that the government encourages marriage and will not be a party to the enforcement of rules which place impediments in the way of persons desiring to marry. No disqualification under either Section 207.045 or Section 207.044.

485.45 VIOLATION OF COMPANY RULE: INTOXICANTS, USE OF.

INVOLVES INTOXICATION IN VIOLATION OF A COMPANY RULE.

Appeal No. 1566-CA-77. The claimant was discharged because it had been reported that she had been intoxicated at work. Some time prior to reporting to work at 3:00 p.m. on the date of her discharge, the claimant had had one-half of a mixed drink and one and one-half beers with her lunch. The claimant was not intoxicated at work and performed her duties without incident. She was discharged after completing her shift. HELD: Since the claimant was not intoxicated when she reported to work, she was not guilty of misconduct connected with the work.

Appeal No. 357-CA-77. Drinking on the job in violation of company policy constitutes misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 485.46

MC VIOLATION OF COMPANY RULE**MC 485.46 VIOLATION OF COMPANY RULE: USE OR POSSESSION OF NARCOTICS OR DRUGS.**

Case No. 1051204. As a driver, the claimant was subject to U.S. Department of Transportation (US DOT) regulations, including drug testing regulations. The employer discharged the claimant for violating the employer's policy and US DOT regulations, both of which prohibited a positive drug test. The claimant consented to the drug test, but denied drug use. The employer presented documentation to establish that the drug test was performed in accordance with regulations prescribed by US DOT, including Medical Review Officer (MRO) certification. HELD: The submission of documentation that contains certification by a MRO of a positive result from drug testing conducted in compliance with US DOT agency regulations, currently under 49 CFR Part 40 and Part 382, is presumed to satisfy requirements number 3, 4, and 5 of Appeal No. 97-003744-10-040997 (MC 485.46) that the employer must present documentation to establish that the chain of custody of the claimant's sample was maintained, documentation from a drug testing laboratory to establish that an initial test was confirmed by the Gas Chromatography/Mass Spectrometry method, and documentation of the test expressed in terms of a positive result above a stated test threshold, as these elements must occur before a MRO can certify that the test results are in compliance with the regulations. Requirements number 1 and 2 under Appeal No. 97-003744-10-040997 (MC 485.46) remain applicable; thus, the employer must also present a policy prohibiting a positive a positive drug test result, receipt of which has been acknowledged by the claimant, and evidence to establish that the claimant has consented to drug testing under the policy.

NOTE: See Appeal 97-003744-10-040997 in this section for drug tests not subject to US DOT regulation. (Cross referenced at MC 190.15 and PR 190.00)

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 485. 46(2)

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| MC VIOLATION OF COMPANY RULE |
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MC 485.46 VIOLATION OF COMPANY RULE: USE OR POSSESSION OF NARCOTICS OR DRUGS.

WHERE DISCHARGE IS SOLELY OR PARTLY CAUSED BY USE OR POSSESSION OF NARCOTICS OR DRUGS, LEGALLY OR ILLEGALLY.

Appeal No. 97-003744-10-040997. To establish that a claimant's positive drug test result constitutes misconduct, an employer must present:

1. A policy prohibiting a positive drug test result, receipt of which has been acknowledged by the claimant;
2. Evidence to establish that the claimant has consented to drug testing under the policy;
3. Documentation to establish that the chain of custody of the claimant's sample was maintained;
4. Documentation from a drug testing laboratory to establish that an initial test was confirmed by the Gas Chromatography/Mass Spectrometry method; and
5. Documentation of the test expressed in terms of a positive result above a stated test threshold.

Evidence of these five elements is sufficient to overcome a claimant's sworn denial of drug use.

NOTE: See Case 1051204 in this section for drug tests subject to regulation by the US Department of Transportation (Cross referenced at MC 190.15 & PR 190.00).

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 485. 46 (3)

MC VIOLATION OF COMPANY RULE

TEC v. Hughes Drilling Fluids, 746 SW 2d 796 (CA Tyler, 1988). Sometime after the claimant's hiring, the employer instituted a "contraband interdiction" policy prohibiting the use or possession by its employees of controlled substances, alcoholic beverages and firearms on any of its facilities. The policy, of which the claimant was aware, provided that no employee would be subjected to a search, urine drug screen or inspection without the written consent of the person to be searched. The policy further provided that any employee who refused to submit to a search, urine drug screen, blood and plasma sampling or inspection or who was found in possession, use or transportation of controlled substances would be subject to disciplinary action, including possible discharge. The claimant refused to sign a form consenting to the employer's policy provisions. Approximately three months later, the claimant was requested to sign a written consent form and to give a urine sample for drug screening. The claimant refused and was consequently discharged. The Appeal Tribunal and the Commission both ruled that the claimant's refusal did not constitute misconduct. Ultimately, the Texas Court of Appeals for the Twelfth District ruled against the Commission. HELD: As an "at-will" employee, the claimant's conduct in continuing to work with full notice of the employer's policy provisions amounted to his acceptance of the terms and provisions of the policy as conditions of his continued employment. The claimant's refusal to sign the consent form and to give a urine sample violated the employer's policy. The employer's policy was reasonable and was reasonably calculated to "ensure the safety of employees" within the meaning of Section 201.012 of the Act. Lastly, the employer's policy did not impermissibly require the claimant to give up his Fourth Amendment protection against unreasonable searches and seizures and invasion of his right to privacy, as well as his common-law right to privacy.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 485.46 (4)

MC VIOLATION OF COMPANY RULE

Appeal No. 87-21507-10-122287. As a result of allegations of the claimant's drug use on company property, the employer told the claimant he would be fired if he refused to take, or tested positive on, a drug screen. The employer's policy prohibited possession, use, and being under the influence of drugs or alcohol but did not provide for testing of existing employees. The claimant tested positive for marijuana and was discharged solely for the positive test result. HELD: As the claimant had no notice that he would be required to submit to a drug test as a condition of employment, his failure of the drug screen cannot be considered misconduct within the meaning of the Act. Although the claimant submitted to testing, such consent cannot be considered voluntary in light of the fact that his job was threatened for refusal. No disqualification under Section 207.044.

Appeal No. MR 86-18940-10-103087. The employer unilaterally implemented a drug testing policy without first having bargained with the claimant's union pursuant to their collective bargaining agreement. The claimant was fired for refusing to submit to the employer's drug test but later was reinstated by an arbitrator's decision that found the employer had violated the collective bargaining agreement by its unilateral action. HELD: Because the union, as the claimant's agent, grieved of the employer's unilateral action in a timely manner and never acquiesced in the drug testing policy, there is no evidence that the claimant ever agreed to be tested. Therefore, her refusal to submit to the test when requested by the employer cannot be deemed a violation of any existing policy and thus not misconduct connected with the work. (Also digested under MC 475.10.)

Appeal No. 87-14496-10-081487. After testing positive for marijuana on one urine sample, the claimant submitted another sample for testing three days later. The employer's representative observed the claimant produce the specimen. The claimant handed the specimen to a clerical employee who affixed an adhesive band around the container lid while the claimant watched. The claimant initialed both the container label and the envelope in which the container was placed. The specimen was kept in a refrigerator in a

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 485.46 (5)

MC VIOLATION OF COMPANY RULEAppeal No. 87-14496-10-081487 (Cont'd)

locked building with a security alarm on the employer's premises over the weekend, then picked up by a representative of the testing lab. The tape used to seal the specimen bottle could not be removed without destroying the tape, and the envelope could not be opened and resealed without some showing of tampering. HELD: The claimant's allegations of possible tampering did not overcome the evidence that the employer maintained a proper chain of custody in connection with the second urine specimen. Disqualification under Section 207.044 of the Act.

Appeal No. 86-05045-10-033087. The claimant was discharged pursuant to company policy for a second positive result on a drug test. The employer submitted no evidence as to the laboratory that conducted the test, the nature and accuracy of the test, or the type of drug that was discovered. HELD: In light of the deficiencies in the evidence presented by the employer, there was insufficient evidence to prove work-connected misconduct. Considering the seriousness of the charge, the Commission cannot rely solely upon the testimony of an employer representative to verify that an independent test for drugs has taken place. No disqualification under Section 207.044 of the Act.

Appeal No. 86-04227-10-031187. The employer's policy required a physical examination, including a drug screen, for all employees returning to work from on-the-job injuries. Upon returning to work after a two-month absence, the claimant tested positive (74 ng/ml) for marijuana on a gas chromatography/mass spectrometry test and was discharged. The claimant's urine specimen was not sealed in the claimant's presence and he was not allowed a second test. At the time of the test, the claimant had been taking medication. HELD: As the claimant's specimen was not sealed in his presence, as his medication could have affected the testing and as he denied smoking marijuana, doubts were reasonably raised about the results of the test. Given these doubts, the Commission concluded that the employer had not shown misconduct connected with the work on the claimant's part.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 485.46 (6)

MC VIOLATION OF COMPANY RULE

Appeal No. 87-09130-10-051387. The employer's policy prohibited the possession, use or sale of illegal drugs and alcohol and, further, provided that a positive drug test result would cause discharge. The claimant had been made aware of this policy. He was discharged for his failure to pass a drug test, to which he had consented as part of a physical examination for a new job classification for which he had applied. The chain of custody of the claimant's urine sample was properly maintained from the time of its collection to its delivery to the testing laboratory. The claimant's initially positive test result (thin layer chromatography), indicating the presence of cannabinoids, was confirmed by a second test (gas chromatography/mass spectrometry). Lastly, the employer had not observed any impairment of the claimant's job performance. HELD: The employer's policy, adopted for safety reasons, required an initial positive result and confirmation by a more reliable screen. Further, the claimant acknowledged notice of the policy and consented to the test. Accordingly, the claimant's test results established misconduct connected with the work; that is, violation of a policy or rule adopted to ensure orderly work and the safety of employees within the meaning of Section 201.012 of the Texas Unemployment Compensation Act. The claimant's denial of illegal drug use did not overcome the positive, confirmed test results. (Also digested under MC 85.00, MC 190.15 and PR 190.00.)

Appeal No. 1177-CA-77. The employer, a discount department store which contained a pharmacy, instituted a policy, agreed to in writing by all employees, prohibiting the use, possession, sale or purchase of drugs by employees. This policy applied even to off-duty activity since the employer feared that pharmacy employees or store cashiers might be extorted into giving unauthorized discounts by customers aware of any drug-related activities on their parts. The claimant, a cashier, was discharged because she had admitted to the occasional use of drugs during off-duty hours away from the employer's premises. HELD: The employer's policy was not unreasonable since it required that employees abide by the law and there was a reasonable connection between the policy

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 485.46 (7) - 485.55

MC VIOLATION OF COMPANY RULE

Appeal No. 1177-CA-77

(Cont'd)

requiring abstinence from connection with drug-related activities and possible harm to the employer's business. Consequently, the claimant's failure to comply with the policy, as she had agreed, constituted misconduct connected with the work. Disqualification under Section 207.044.

Also see Appeal No. 88277-AT-62 (Affirmed by 8676-CA- 62 and TEC v. Macias, Cause No. 5632, El Paso Civ. App. 6-3-64) under MC 85.00.

485.50 VIOLATION OF COMPANY RULE: MAINTENANCE OF EQUIPMENT.

WHERE CLAIMANT HAS MISUSED OR HAS FAILED TO GIVE PROPER CARE TO EQUIPMENT IN ACCORDANCE WITH COMPANY RULE.

See Appeal No. 84021-AT-61 (Affirmed by 8195-CA-61) under MC 45.25.

485.55 VIOLATION OF COMPANY RULE: MANNER OF PERFORMING WORK.

DISCUSSES VIOLATIONS OF A COMPANY RULE REGULATING THE MANNER IN WHICH EMPLOYEES PERFORM THEIR WORK.

Appeal No. 1830-CA-77. A claimant cannot be deemed guilty of misconduct connected with the work for his violation of a company policy of which he was unaware at the time of the violation.

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 485.55 (2) - 485.60****MC VIOLATION OF COMPANY RULE**

Appeal No. 1778-CA-76. The claimant, a photographic studio branch manager, was discharged because she violated the employer's specific instructions not to furnish color proofs of photographs and because she acted as agent for a group of students who wished to obtain a yearbook of better quality than the claimant's employer could furnish. **HELD:** Since the claimant violated specific instructions regarding the furnishing of color proofs and engaged in activities which were against her employer's best interests, she was guilty of misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 710-CA-76. The claimant, a grocery store clerk, was discharged because she violated a company rule requiring that each transaction be completed before the next transaction is begun. On the occasion of her discharge, the claimant had already checked out a particular customer when the customer requested a carton of cigarettes. The claimant took the customer's money but did not immediately hand him the cigarettes or ring up the transaction because the customer next in line, who had only a few items, became ill and requested immediate handling. The claimant complied with this request and was discharged by the store manager who had been present during the entire incident. **HELD:** Although the claimant technically violated the employer's rule, she had done so only to serve a sick customer. She had never been counseled regarding any violations of the rule and the fact that she technically violated it in the presence of the store manager indicated that she did not realize how serious the employer regarded a violation of the rule. Under such circumstances, the claimant's actions did not constitute misconduct connected with the work.

485.60 VIOLATION OF COMPANY RULE: MONEY MATTERS, REGULATION GOVERNING.

WHERE CLAIMANT IS DISCHARGED FOR VIOLATION OF A COMPANY RULE IN REGARD TO REGULATION OF MONEY MATTERS.

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 485.60 (2) - 485.65****MC VIOLATION OF COMPANY RULE**

Appeal No. 86-03281-10-021987. The claimant, a convenience store cashier, was discharged for having \$1.86 over the maximum of \$50.00 allowed in his cash drawer by company policy. The claimant was aware of the policy but, during his 10-day employment, had never been found to be in violation of it before. The policy's purpose was to discourage robberies thus preventing loss of funds and risk to employees. HELD: Discharged for reasons other than misconduct connected with the work because the claimant's isolated violation did not defeat the purpose of the employer's policy and thus did not rise to the level of misconduct. No disqualification under Section 207.044 of the Act.

Appeal No. 2972-CA-76. The claimant, a bank employee, was discharged for violating the employer's new policy prohibiting bookkeeping employees from overdrawing their checking accounts without processing overdraft charges against the accounts. This practice had previously been permitted. The claimant violated this policy several times after its inception by depositing enough money in her account to cover the overdraft and then destroying the memorandum of the overdraft charge. HELD: The claimant clearly violated the employer's new policy and was thus guilty of misconduct connected with the work. Disqualification under Section 207.044.

485.65 VIOLATION OF COMPANY RULE: MOTOR VEHICLE.

WHERE CLAIMANT IS DISCHARGED FOR VIOLATION OF A COMPANY RULE IN REGARD TO USE OF MOTOR VEHICLE.

Appeal No. 1294-CA-72. A claimant who operates the company vehicle in a dangerous manner so as to jeopardize the good will and the best interests of his employer and to probably endanger the lives of other persons on the highway is guilty of misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 485.65 (2) - 485.75****MC VIOLATION OF COMPANY RULE**

Appeal No. 535-CA-67. Claimant was discharged because she failed to report it to the employer when she had an accident in the employer's truck and the driver of the other car complained of a whiplash injury, after which the claimant advised the employer of the accident. Although claimant contended she did not know of a company rule that she must report an accident immediately, it is only logical to assume she was supposed to report it immediately so the employer could take steps necessary to protect himself against future liability. As it was, there was no way for the company's insurance adjuster or a policeman to judge possible extent of injury to the occupant of the other car. Disqualification under Section 207.044.

485.70 VIOLATION OF COMPANY RULE: PERSONAL COMFORT AND CONVENIENCE.

WHERE CLAIMANT VIOLATED COMPANY RULE IN REGARD TO TALKING OR SMOKING OR IDLING AWAY TIME IN ANY OTHER MANNER.

Appeal No. 2202-CA-77. The claimant was discharged because she continued talking with a visitor on non-work related matters and failed to attend to a duty when directly ordered to do so, saying that she would attend to the duty when she finished her conversation. **HELD:** The claimant's failure to comply with a reasonable request of her employer constituted misconduct connected with the work. Disqualification under Section 207.044.

485.75 VIOLATION OF COMPANY RULE: REMOVAL OF PROPERTY.

WHERE THE DECISION WAS BASED UPON THE FACT THAT PROPERTY WAS REMOVED IN VIOLATION OF A COMPANY RULE.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 485.75 (2) - 485.80

MC VIOLATION OF COMPANY RULE

Appeal No. 2101-CA-77. The claimant was discharged for having removed from the employer's premises merchandise valued at \$50 which had not been checked out nor paid for in accordance with the employer's policy. She could not produce receipts for the merchandise. HELD: The claimant's violation of the employer's policy constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 1117-CA-77. The claimant was discharged because he did not immediately return to the employer merchandise he had found in some supposedly empty boxes in his car and did not even disclose to the employer the whereabouts of such merchandise until he was specifically asked about it. HELD: Discharged for misconduct connected with the work; disqualification under Section 207.044.

485.80 VIOLATION OF COMPANY RULE: SAFETY REGULATION.

WHERE CLAIMANT WAS DISCHARGED FOR VIOLATION OF A SAFETY RULE OR REGULATION.

Appeal No. 86-02136-10-012387. As directed by the employer's vice president, the claimant, a general manager, instructed his workers not to wear their pants inside their boots as this would minimize the risk of injury. The claimant enforced the policy to the best of his ability by walking throughout the plant and reprimanding violators. The claimant was discharged when the Vice President saw two of the claimant's workers wearing their pants inside their boots. HELD: Discharged for reasons other than misconduct because the claimant did everything he reasonably could to enforce the employer's safety policy.

Appeal No. 2286-CA-77. The claimant was discharged for refusing, despite repeated orders, to wear a hard hat as required on the job site. His refusal was based on his belief that the hard hat gave him head-aches but he presented no medical evidence of any reasons not to wear the hat. HELD: The claimant's refusal, despite repeated warnings and in the absence of any medical evidence in justification thereof, constituted misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 485.82 - 485.83

MC VIOLATION OF COMPANY RULE

MC 485.82 VIOLATION OF COMPANY RULE: PERSONAL HYGIENE AND SANITATION.

INCLUDES CASES WHERE DISCHARGE WAS CAUSED BY CLAIMANT'S PERSONAL HYGIENE AND SANITATION HABIT OR LACK OF, OR INEFFICIENT, OBSERVANCE OF PRACTICES CALCULATED TO BRING ABOUT GOOD HYGIENE AND SANITATION.

Appeal No. 58151-AT-57 (Affirmed by 5988-CA-57). Claimant was discharged for urinating on the floor in the smoked-meat department where he worked. He committed an inexcusable act that would be grounds for a Federal inspector to close that part of the plant. He violated all the laws of sanitation and jeopardized the health of company employees and consumers of the employer's products. Disqualification under Section 207.044.

Appeal No. 57230-AT-57 (Affirmed by 5902-CA-57). Claimant was discharged for using the wash basin as a urinal. His actions constituted a gross violation of health rules. Disqualification under Section 207.044.

485.83 VIOLATION OF COMPANY RULE: POLYGRAPH OR OTHER EXAMINATION.

INCLUDES CASES WHERE DISCHARGE WAS CAUSED BY CLAIMANT'S FAILURE OR REFUSAL TO TAKE A POLYGRAPH (LIE DETECTOR) TEST, PHYSICAL EXAMINATION, OR OTHER EXAMINATION REQUIRED BY THE EMPLOYER'S RULE.

Effective December 27, 1988, the Employee Polygraph Protection Act of 1988 (Public Law 100-347) makes it a violation of Federal law for employers engaged in or affecting interstate commerce to discipline or discharge any employee based on the results of a polygraph examination or for their refusal to take such an examination.

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 485.83 (2)****MC VIOLATION OF COMPANY RULE**

The Act exempts employees of Federal, State or local governments, or any political subdivision of a State or local government. Also exempted are employees of contractors of Federal defense, security and law enforcement agencies, security services and employers authorized to manufacture, distribute or disburse controlled substances.

The most notable exemption is for "on going investigations". This exemption would allow employers to request an employee to take a polygraph examination in conjunction with an investigation involving economic loss to the employer's business. The employer must provide the employee before the test with a statement signed by someone (other than the polygraph examiner) legally authorized to bind the employer specifying the purpose of the examination. The statement must identify the loss, indicate the employee's access to the property and describe the basis for the employer's reasonable suspicion that the employee was involved. The statement is to be retained for three years. If discipline or discharge occurs as a result of the examination, the employer will need additional supporting evidence to support its action.

Appeal No. 86-01130-10-010687. The claimant's original hiring agreement in August 1983 did not require submission to a polygraph examination. However, a few months after the claimant started work, all employees were notified in writing that they may be required to take a polygraph examination. Shortly before the claimant's separation in June 1986, the claimant and other workers were requested to take polygraph examinations. The claimant refused and was discharged for this reason. HELD: Although the original hiring agreement may not have required a polygraph examination, the agreement was subsequently amended to include such requirement. As the claimant was aware of such change and acquiesced in it, the claimant's refusal to take the polygraph examination constituted misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 485.83 (3)

MC VIOLATION OF COMPANY RULE

Appeal No. 1476-CA-77. The claimant, a cashier, was discharged for refusing to take a polygraph (lie detector) test. When hired, the claimant agreed in writing that she would periodically take such tests and had, in fact, periodically taken such tests while working for the employer. HELD: Since the claimant had been aware of the employer's policy requiring periodic polygraph examinations, her refusal to submit thereto constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 4149-CA-76. The claimant was discharged for his failure to report to another agency on a designated day, his day off, to take a polygraph (lie detector) test. HELD: Since the claimant's omission was not related to his work as a service station attendant and the evidence failed to establish how the employer's interest was adversely affected by the claimant's not having taken the test on the day specified, the claimant's omission did not constitute misconduct connected with the work.

Appeal No. 3719-CA-75. Failure to pass a polygraph examination is not sufficient evidence on which to base a finding of misconduct connected with the work. (Also digested under MC 190.15.)

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 485.90

MC VIOLATION OF COMPANY RULE

MC 485.90 VIOLATION OF COMPANY RULE: TIME CLOCK.

WHERE CLAIMANT VIOLATES COMPANY RULE IN REGARD TO USE OF ATTENDANCE RECORDS.

Appeal No. 1793-CA-77. The claimant was discharged for violation of the employer's rule against one employee punching in another employee's time card. All employees were informed of the policy on several occasions and warned that any violation thereof could result in termination.

HELD: Since the employer's policy was reasonable and was properly promulgated, the claimant's willful violation of it constituted misconduct connected with the work. Disqualification under Section 207.044.

Appeal No. 3439-CA-76. A claimant who, because of an altered time card, receives more pay than that to which he was entitled and who does not report to his employer his receipt of excessive wages is guilty of misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 490.00 - 490.05

MC VIOLATION OF LAW**MC 490.00 VIOLATION OF LAW.****490.05 VIOLATION OF LAW: GENERAL.**

INCLUDES (1) A GENERAL DISCUSSION OF DISCHARGE FOR VIOLATION OF LAW, (2) POINTS NOT COVERED BY ANY OTHER SUBLINES UNDER LINE 490, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Appeal No. 86-9822-10-061187. The claimant was absent only one day because he had been jailed on a murder charge.

However, as the murder received a great deal of publicity and retaining the claimant would have had an adverse affect on business, the claimant was discharged. He was later convicted of voluntary manslaughter.

HELD: Discharged for misconduct connected with the work. The claimant was guilty of intentional violation of the law and, as the murder received a great deal of publicity, had the employer retained the claimant the business would have been adversely affected. (Also digested under MC 85.00.)

Appeal No. 88-8751-10-063088. The claimant was suspended without pay after the employer learned that the claimant and her husband had been indicted for mail and tax fraud. All of the activities alleged in the indictments had occurred prior to the time the claimant began working for the employer. Local newspapers reported the indictments, specifically identifying the claimant by name. After such publicity, at least one of the employer's business associates called the employer to investigate the allegations made against the claimant. The claimant entered a negotiated plea of guilty to several of the indictments and was, thereupon, discharged by the employer. HELD: The publication of the claimant's name in the local newspaper caused the employer to be faced with potential

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 490.05 (2)

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| MC VIOLATION OF LAW |
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Appeal No. 88-8751-10-063088 (Cont'd)

injury to its reputation in the financial and real estate communities. Actual injury occurred to the employer's reputation when the employer was contacted by a business associate who was attempting to investigate the allegations made against the claimant in the local newspaper. Thus, the claimant's indictment and subsequent plea of guilty inflicted both actual and potential damage to her employer's interest and reputation in the community. Disqualification under Section 207.044. (Cross-referenced under MC 85.00 and MC 490.40.)

Appeal No. 87-2602-10-021688. The claimant was discharged for violation of the employer's invoicing policies and theft. At the claimant's instruction, two of the employer's engines were loaded for delivery without proper invoices. Subsequently, criminal theft charges were filed against the claimant. He pleaded not guilty but was found guilty, receiving a four-year deferred adjudication and a fine. HELD: The claimant violated the employers' invoicing policies and was found guilty of theft of the employer's property. The deferred adjudication assessment made by the criminal court is indicative of the claimant's misconduct connected with his work. He mismanaged his position of employment with the employer by failing to follow proper invoicing procedures and by his misappropriation of the employer's property. Disqualification under Section 207.044. (Also digested under MC 190.15.)

Appeal No. 310-CA-77. The claimant was discharged, after warnings, for failing and refusing to obtain a valid health card required for her as a food-handler. The claimant's failure to secure such a card could have subjected the employer, as well as the claimant, to penalties. HELD: The claimant's failure to obtain a valid health card, after repeated warnings, amounted to misconduct connected with the work. Disqualification under Section 207.044.

Also see Appeal No. 3629-CA-77 under CH 10.30.

APPEALS POLICY AND PRECEDENT MANUAL**MISCONDUCT****MC 490.05 - 490.10****MC VIOLATION OF LAW**

Appeal No. 5387-AT-69 (Decision written by the Commission).

Article 725b of the Texas Penal Code makes it unlawful for anyone to have or use a hypodermic syringe or a needle or any instrument adapted for the use of narcotic drugs by subcutaneous injections in a human being, and which is possessed for that purpose unless such possession is for the purpose of subcutaneous injections of a drug or drugs or medicine, the use of which is authorized by the direction of a licensed physician. Possession of narcotics paraphernalia is a felony and the willful commission of a felony on the employer's premises amounts to a wanton disregard of the employer's interest and constitutes misconduct in connection with the work. Disqualification under Section 207.044.

490.10 VIOLATION OF LAW: CONVERSION OF PROPERTY LAW.

INCLUDES CASES IN WHICH CLAIMANT HAS UNLAWFULLY TAKEN PROPERTY OF ANOTHER AND PUT IT TO HIS OWN USE.

Appeal No. 985-CA-76. The claimant was discharged because he had been arrested on charges of conspiracy to steal, forge and pass government checks and to appropriate the proceeds thereof to his own use. The employer, a financial institution, could not have an employee charged with misappropriation or theft of funds in its employ. The claimant was subsequently convicted of the charges. HELD: Since the claimant was found guilty of conspiracy to steal, forge and pass U.S. Government checks and appropriate money to his own use, he was guilty of misconduct connected with the work. Disqualification under Section 207.044.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 490.15 - 490.20

MC VIOLATION OF LAW**MC 490.15 VIOLATION OF LAW: LIQUOR LAW.**

WHERE CLAIMANT HAS VIOLATED A LIQUOR LAW.

Appeal No. 87-05888-10-040987. The claimant, a convenience store clerk for the present employer for more than 6 years, sold beer to a customer after verifying his age from his Texas driver's license. Later, a Texas Alcoholic Beverage Commission agent pointed out to the claimant that the year of birth had been altered on the license and issued a citation to the claimant. The employer discharged the claimant for the incident. The employer did not present evidence that the claimant had been trained in altered identification card detection or warned about this matter. **HELD:** discharged for reasons other than misconduct because the claimant was not negligent or careless and did not knowingly sell an alcoholic beverage to a minor, in violation of Section 106.03 of the Texas Alcoholic Beverage Code which provided that "(a) person commits an offense if he knowingly sells an alcoholic beverage to a minor." [NOTE: This Section of the Code, as amended effective January 1, 1988, provides in part that "A person commits an offense if with criminal negligence he sells an alcoholic beverage to a minor" (emphasis added).]

490.20 VIOLATION OF LAW: MOTOR VEHICLE LAW.

WHERE CLAIMANT HAS VIOLATED A MOTOR VEHICLE LAW.

Appeal No. 2280-CA-77. A claimant who was discharged because of his driving record, but whose traffic violations had all occurred prior to his employment by the present employer, is not guilty of misconduct connected with the work, absent evidence that he had falsified his driving record when he applied for work with that employer.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 490.20 (2)

MC VIOLATION OF LAW

Appeal No. 972-CA-77. The claimant, a delivery truck driver, was discharged when he became uninsurable as a result of traffic accidents he had had while at work. HELD: The claimant was guilty of negligence to such a degree as to show an intentional and substantial disregard of the employer's interest. Thus, he was discharged for misconduct connected with his last work. Disqualification under Section 207.044.

Appeal No. 723-CA-77. The claimant, a mechanic for an automobile dealership, was discharged because, due to his record of traffic violations, the employer's insurance carrier would no longer cover the claimant. However, in the two years that he worked, the claimant had received only one traffic ticket and that for an off-duty violation. He had not been told that off-duty traffic citations might adversely affect his employment nor had he been advised of the terms of the employer's auto liability insurance coverage. He had had no citations for any traffic offense nor any traffic accidents, while at work. HELD: The only conduct of the employee causally connected with his discharge was his having received a traffic citation for an off-duty violation. This did not show such a disregard of the employer's interests by the employee as to constitute misconduct connected with the work, absent any warning that such incidents might adversely affect the claimant's retention as an employee.

Appeal No. 3269-CA-76. The claimant was discharged because of his driving record. He had more than three moving traffic violations in a two-year period, the last of which was 18 months prior to his discharge. The claimant had duly reported such violations (to which he had pleaded guilty) to his employer. He had never been told, either by the employer or by the employer's insurance carrier, that failing to contest traffic tickets, and having them go on his traffic record, might jeopardize his job. The claimant's driving record would not have resulted in the loss of insurance coverage by the employer but, rather, merely an increase in the rate for coverage of the claimant. HELD: The claimant's discharge was not for any recent acts which evidenced an intentional or willful disregard of the employer's best interest; thus, the claimant was not discharged for misconduct connected with the work.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 490.30

MC VIOLATION OF LAW**MC 490.30 VIOLATION OF LAW: IN JAIL.**

WHERE DISCHARGE WAS RESULT OF CLAIMANT'S ARREST AND CONFINEMENT IN JAIL, WHETHER GUILT IS ESTABLISHED OR NOT.

Appeal No. 87-08030-10-050587. A claimant's absence from scheduled work due to his incarceration for criminal charges arising from off-duty conduct, which charges the claimant has not denied (in this instance, entering a plea of no contest) and for which the claimant was assessed a fine and a jail sentence, constituted misconduct connected with the work. (Also digested under MC 15.20.)

Appeal No. 869-CA-77. Where a claimant is unable to report to work because he had been unlawfully arrested and incarcerated, the claimant's failure to report to work is involuntary and does not constitute misconduct connected with the work.

Appeal No. 2622-CA-76. The claimant was arrested and detained in jail for three weeks, during which absence he was replaced. He was subsequently "no billed" on the charge for which he had been detained. HELD: An arrest on charges of which a claimant is found not guilty cannot be considered misconduct connected with the work.

Appeal No. 3673-CA-75. The claimant was arrested while at work and was replaced because, during the two scheduled work days following his arrest and detention, he did not notify the employer of his incarceration. HELD: The claimant's failure to keep the employer advised of his whereabouts on the two days that he missed from work because of his incarceration constituted misconduct connected with the work. (Also digested under MC 15.10.)

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 490.40

MC VIOLATION OF LAW

MC 490.40 VIOLATION OF LAW: OFFENSES INVOLVING MORALS.

WHERE CLAIMANT WAS DISCHARGED BECAUSE OF IMMORAL PRACTICES, WHETHER MADE A CRIME BY LAW OR NOT AND WHETHER CONVICTED OR NOT.

Appeal No. 7436-AT-68 (Affirmed by 767-CA-69). The claimant was discharged because he had been arrested and charged with assault with intent to rape. He was later convicted of the felony charge. HELD: The claimant's actions were such as to inflict damage and injury to his employer's interest and reputation in the community and, thus, constituted misconduct connected with the work. Disqualification under Section 207.044.

Also see Appeal No. 88-8751-10-063088 under MC 490.05.

APPEALS POLICY AND PRECEDENT MANUAL

MISCONDUCT

MC 600.00

MC WAGE DEMAND

MC 600.00 WAGE DEMAND.

INVOLVES CASES WHERE CLAIMANT WAS DISCHARGED AS A RESULT OF DEMANDING CERTAIN WAGES INCLUDING WAGE RAISE, FRINGE BENEFITS OR OTHER ADDITIONAL REWARDS.

Appeal No. 1038-CA-76. The claimant was discharged for having requested a conference with the employer regarding a raise in pay. HELD: It is not misconduct connected with the work to request a raise in pay.

Also see cases under MC 255.45.