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TRANSCRIPT OF PROCEEDINGS
BEFORE THE
TEXAS WORKFORCE COMMISSION
AUSTIN, TEXAS

PUBLIC MEETING)
FOR THE TEXAS)
WORKFORCE COMMISSION)

COMMISSION MEETING
TUESDAY, FEBRUARY 5, 2019

BE IT REMEMBERED THAT at 8:30 a.m. on
Tuesday, the 5th day of February, 2019, the above-entitled
matter came on for hearing at the Texas Workforce
Commission, TWC Building, 101 East 15th Street, Room 244,
Austin, Texas, before RUTH R. HUGHS, Chair; JULIAN ALVAREZ
and ROBERT D. THOMAS, Commissioners.

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P R O C E E D I N G S

TUESDAY, FEBRUARY 5, 2019

(8:30 a.m.)

AGENDA ITEM NO. 1

CHAIR HUGHS: Good morning. This meeting is called to order.

AGENDA ITEM NO. 2

CHAIR HUGHS: Mr. Trobman, has anyone signed up for public comment?

MS. PATRICIO: No public comment.

CHAIR HUGHS: Thank you, Jewel Patricio, appreciate that. All right, I now turn the meeting over to Commissioner Thomas to preside over agenda items 3 through 7.

AGENDA ITEM NO. 3

Discussion, Consideration and Possible Action Regarding Whether to Assume Continuing Jurisdiction on Unemployment Compensation Cases, Wage Claim Cases, and/or Tax Liability Cases and Reconsideration of Unemployment Compensation Cases, Wage Claim Cases, and/or Tax Liability Cases, if Any.

No Discussion.

AGENDA ITEM NO. 4

Discussion, Consideration and Possible Action Regarding Tax Liability Cases Listed on the Texas Workforce

1 Commission Docket 6.

2 The Commission considered and took action on
3 all tax liability cases listed on Docket 6.

4 AGENDA ITEM NO. 5

5 Discussion, Consideration and Possible Action
6 Regarding Fair Housing Cases listed on the Texas Workforce
7 Commission Docket 6.

8 No Discussion.

9 AGENDA ITEM NO. 6

10 Discussion, Consideration and Possible Action
11 Regarding Higher Level Appeals in Wage Claim Cases Listed on
12 the Texas Workforce Commission Docket 6.

13 The Commission considered and took action on
14 all wage claim cases listed on Docket 6.

15 AGENDA ITEM NO. 7

16 Discussion, Consideration and Possible Action
17 Regarding Higher Level Appeals in Unemployment Compensation
18 Cases Listed on the Texas Workforce Commission Docket 6.

19 The Commission considered and took action on
20 all unemployment compensation cases listed on Docket 6.

21 AGENDA ITEM NO. 8

22 CHAIR HUGHS: All right. We are back in
23 session, there is nothing for Items 8, 9 and 10.

24 AGENDA ITEM NO. 11

25 CHAIR HUGHS: Item 11, Discussion,

1 Consideration and Possible Action Regarding Adoption Rules
2 Relating to the Savings Incentive Program of State Agencies
3 Previously Published for Public Comment in the Texas
4 Register on December 14, 2018 TAC Chapter 800, Subchapter A.
5 Joel Mullins, good morning.

6 MR. MULLINS: Good morning Chair Hughs,
7 Commissioners, Mr. Serna. For the record, my name's Joel
8 Mullins with Workforce Development.

9 For the record, I'm Joel Mullins with
10 Workforce Development. Senate bill 132 was passed into law
11 during the 85th legislative session, making changes to
12 Section 1108.103 of the Texas Government Code regarding the
13 state agency Savings and Senate Program, and this bill also
14 required state agencies to adopt rules to implement the
15 program. Proposed rules adding new Subchapter C to the
16 Commission's Chapter 800 General Administration Rules, which
17 defines key terms and outlines the procedure for
18 implementing the program, were approve on November 26, 2018,
19 and were published in the Texas Register for a 30-day public
20 comment period. No comments were received.

21 This morning staff seeks direction on final
22 adoption of Subchapter C of the Chapter 800 General
23 Administration Rules as set forth in your materials. And
24 I'm happy to answer any questions.

25 CHAIR HUGHS: And question, commissioners?

1 COMM. ALVAREZ: No questions.

2 CHAIR HUGHS: Okay. All right, do I have a
3 motion?

4 COMM. THOMAS: I move to adopt the rules as
5 submitted by staff today in our materials.

6 COMM. ALVAREZ: I'll second that.

7 CHAIR HUGHS: We are unanimous. Thank you.

8 MR. MULLINS: Thank you.

9 AGENDA ITEM NO. 12

10 CHAIR HUGHS: Item 12, Discussion,
11 Consideration and Possible Action Regarding Adoption of
12 Rules Relating to Historically Underutilized Businesses
13 Purchasing Previously Published for Public Comment in the
14 Texas Register on December 14, 2018 (40 TAC Chapter 800,
15 Subchapter C).

16 MR. MULLINS: Once again, for the record, I'm
17 Joel Mullins with Workforce Development.

18 Pursuant to Government Code Section 2161.003,
19 all state agencies are required to adopt these state
20 comptrollers rules described in government code Section
21 2161.002 relating to increasing agency contract awards to
22 historically underutilized businesses. When administration
23 of vocational rehabilitation services was transferred from
24 the Texas Department of Assistive and Rehabilitative
25 Services to TWC, the administrative rules shared by DARS

1 programs were duplicated into Chapter 850.

2 Chapter 850 is currently being amended in a
3 separate rulemaking, which includes moving rules related to
4 historically underutilized businesses to Chapter 800.

5 The proposed rules for Chapter 800 were
6 approved on November 26, 2018, and were published in the
7 Texas Register for a 30-day public comment period, no
8 comments were received.

9 This morning staff seeks direction on final
10 adoption of the commission’s Chapter 800 General
11 Administration rules related to historically under-utilized
12 businesses as set forth in your materials. Happy to answer
13 any questions.

14 CHAIR HUGHS: Any questions, Commissioners?

15 COMM. ALVAREZ: No questions.

16 CHAIR HUGHS: Okay. Do I have a motion?

17 COMM. ALVAREZ: I move that we adopt the
18 amendments to Chapter 800 rules regarding this work with
19 underutilized businesses as previously published in the
20 Texas Register.

21 COMM. THOMAS: Seconded.

22 CHAIR HUGHS: We are unanimous. Thank you.

23 MR. MULLINS: Thank you.

24 AGENDA ITEM NO. 14

25 CHAIR HUGHS: Understand Item 12 has been

1 postponed by staff. That brings us to Item 14. Discussion,
2 Consideration and Possible Action Regarding Policy Concepts
3 on Amendments to Texas Payday Rules, Withdrawal of Wage
4 Claims.

5 MR. ROSS: Good morning Chair Hughs,
6 Commissioner Alvarez, Commissioner Thomas, Mr. Serna. For
7 the record, I'm Chuck Ross, Deputy Director Regulatory
8 Integrity Division.

9 Today you have before you a policy concept to
10 amend the Chapter 821 Texas Payday Rules. As currently
11 written Commission Rule 821.43 allows a wage claimant to
12 withdraw a wage claim whether or not it has become final.
13 When a withdrawal request is submitted and approved TWC no
14 longer enforces any order issued, including administrative
15 penalties, and releases all liens and freezes.

16 In consultation with and advice from the
17 Office of the General Counsel, staff have determined that
18 Section 821.43(a)(2) of the rule creates legal challenges by
19 implying that a final order may be altered or set aside by
20 the wage claimant, him or herself.

21 On January 14th of this year the Regulatory
22 Integrity Division issued a letter addressing this issue by
23 creating a new process whereby a wage claimant may file a
24 Satisfaction Payment Declaration to halt collection action
25 on a final wage claim decision in lieu of a withdrawal.

1 This morning staff seeks approval to move
2 forward with proposed rules as outlined in this policy
3 content, specifically amending Chapter 821 to conform with
4 the statute by clarifying that a wage claim may be withdrawn
5 only when the order has not yet become final.

6 The preamble exception amendment would
7 clarify that the satisfaction of payment declaration differs
8 from a withdrawal in that TWC must still pursue
9 administrative penalties on the claim as a debt to the
10 state, as required by law, and that the employer will still
11 be credited with violation.

12 A withdrawn wage claim would continue to be
13 treated as if the wage claim were never filed, meaning there
14 would be no penalties or violations as permitted under the
15 statute. I'm here this morning as a resource, and can
16 answer any technical questions you may have.

17 CHAIR HUGHES: The last part of your comment,
18 a withdrawal before a final determination would have no
19 penalties. Right?

20 MR. ROSS: Yes ma'am. That's correct.

21 CHAIR HUGHES: Commissioners, do you all have
22 any comments or questions? I do, but I wanted to give you
23 both an opportunity if you have some as well.

24 COMM. THOMAS: No. Thank you.

25 CHAIR HUGHES: My concern about those, Chuck,

1 as you know, is the portion where the employer's flagged in
2 violation even after the claimant has certified that a
3 settlement of the wage claim is acceptable to them with the
4 satisfaction and payment operation. So while I think that
5 first step makes sense in terms of clarity after it's done a
6 final wage claim, currently when a withdrawal, as you
7 mentioned, if a wage claim after a final decision happens it
8 nullifies all related wage claim determinations against the
9 employer.

10 It seems to me that if the employer has shown
11 sufficient good faith in paying the claimant to the point
12 where the claimant voluntarily decides to certify the wage
13 payment then our agency could recognize that as sufficient
14 good faith on the employer's part to reverse the violation
15 determination as well. So I think we just need a further
16 analysis on the second part of what happens, you know, in
17 addition the Statement of Payment Declaration, whether we
18 could also, at that point, as the practice is today, not
19 have that administrative penalty and violation, because it
20 may take away incentives for the good faith that employers
21 are showing, and actually penalize them, so I would ask for
22 OTC to further evaluate that second part and my colleagues
23 would be amenable to maybe moving this to have that
24 evaluation brought back to us.

25 COMM. THOMAS: I'm certainly amenable, but in

1 light of -- in light of the Chair's concern, can you give me
2 some context here about how this -- how her concern might
3 actually manifest itself in practice here at the agency?

4 MR. ROSS: These types of--when a claimant is
5 requesting withdrawal of the wage claim after finality,
6 generally will occur when the wage claim is in judicial
7 review and the parties are trying to come up with a
8 resolution, rather than going through the judicial process.

9 And so it may be that a claimant would like
10 to withdraw the claim, and as part of that solution the
11 penalties might go away as well. I would have to defer to
12 general counsel per the Chair's request with regard to the
13 fact that this -- this would be a -- a situation where the
14 order is final, and attached to finality is also a penalty -
15 - a penalty decision, and so I would, again, I would have to
16 defer to the general counsel with regard to the agency's
17 latitude to wave those types of things, but --

18 CHAIR HUGHS: Sure, and I think we just don't
19 have that part of the analysis and this might give us an
20 opportunity to have that before we make a ruling that
21 actually is not necessarily -- doesn't put employers in a
22 better place than they were before we have this.

23 COMM. THOMAS: I guess what I'm saying is,
24 I'm not sure I understand that, based on the briefings and
25 reviewing the materials, that this really is a mechanism to

1 facilitate resolution between the parties, which we should
2 encourage. I'm still having a disconnect on the Chair's
3 concerns. I'm not seeing that I understand that,
4 necessarily. So I guess what I'm saying is I support the
5 Chair's request, but my focus is less on procedurally what
6 happens once it becomes final and more to the understanding
7 of the rule and the context of this.

8 From my litigation background I'm always
9 going to support anything that facilitates resolution ahead
10 of time.

11 I'm concerned and -- I'm concerned that we
12 recognize an issue that needs to be resolved, to facilitate
13 the parties resolving a dispute, but I also want to
14 understand it in the context of what our Chair is saying. I
15 don't want the tail to wag the dog. I want to make sure we
16 can move this forward, but I want to make sure we
17 understand, give -- in other words once it becomes
18 procedurally final it's done. I mean, there -- there is a
19 mechanism to take that forward, so I'm -- that's the
20 disconnect, and I think I'd like clarity in my office on it,
21 please.

22 CHAIR HUGHS: Okay, so with that I think we
23 have some agreement to maybe bring this back. How much time
24 would OTC need to review this, or do you want to just set it
25 back on an agenda item in the near future and let us know?

1 MR. TROBMAN: In a future meeting.

2 CHAIR HUGHS: Okay, all right, so we'll bring
3 this item back, and thank you for that briefing, Chuck, I
4 appreciate it.

5 MR. TROBMAN: Yeah. Uh-huh.

6 AGENDA ITEM NO. 15

7 CHAIR HUGHS: All right. That brings us to
8 Item 15, Discussion, Consideration and Possible Action
9 Regarding the Acknowledgement of Gifts and Donations of \$500
10 or more in value given to the Texas Workforce Commission in
11 accordance with Section 302.021 of the Texas Labor Code, and
12 Chapter 575 of the Texas Government Code.

13 MS. ORIA: Good morning Chair, commissioners,
14 Mr. Serna. For the record, Nicole Oria, with the Office of
15 General Counsel.

16 Before you here are the gifts and donations
17 of \$500 or more in value given to the Texas Workforce
18 Commission for the fourth quarter of calendar year 2018, for
19 your acknowledgement and acceptance.

20 The last page of Tab 15 is a spreadsheet
21 showing gifts and donations. Staff is recommending approval
22 of Items 1 through 3. Thank you for your consideration.
23 I'm available if you have any questions.

24 CHAIR HUGHS: Thank you. Any questions or
25 comments? Do I have a motion?

1 COMM THOMAS: I move to accept staff's
2 recommendations.

3 COMM ALVAREZ: I'll second that.

4 Chair Hughs: We are unanimous. Thank you.

5 AGENDA ITEM NO. 17

6 CHAIR HUGHS: There's nothing for Item 16.
7 Item 17, Discussion, Consideration and possible Action
8 regarding approval of local Workforce Development Board
9 nominees.

10 MR. BELL: Morning Madam Chair,
11 commissioners, Mr. Serna. Cameron Bell, Workforce
12 Development Division.

13 Before you for consideration and approval are
14 Workforce Development Board nominations for Workforce
15 Solutions Alamo, Capital Area, Poncho Valley, Deep East
16 Texas, Golden Crescent, and Permian Basin.

17 CHAIR HUGHS: Comments or questions? Do I
18 have a motion?

19 COMM. ALVAREZ: I move that we approve board
20 noms for Alamo, Capital Area, Poncho Valley, Deep East
21 Texas, Golden Crescent, and Permian Basin.

22 COMM. THOMAS: Second.

23 CHAIR HUGHS: We are unanimous. Thank you.

24 MR. BELL: Thank you.

25 AGENDA ITEM NO. 19

1 CHAIR HUGHS: There's nothing for Item 18.
2 Are there any updates regrading enacted, proposed, or
3 considered federal or state legislation?

4 MR. BRITT: Good morning Chair Hughs,
5 commissioners. For the record, Michael Britt, Governmental
6 Relations.

7 As you're aware House Joint Resolution 28,
8 which funded portions of the federal government that were
9 previously shut down will expire next Friday, on February
10 15th.

11 This evening President Trump -- Trump will
12 deliver the State of the Union Address at 8:00 p.m. Central
13 Time. Also this morning Governor Abbott will deliver his
14 State of the State Address before a joint session of the
15 Texas Legislature at 11:00.

16 Also yesterday House Appropriations Chairman,
17 Representative John Zerwas, announced subcommittees for the
18 86th Texas Legislature. The subcommittee on Article 6, 7 and
19 8, which covers TWC, is representative Toni Rose as the
20 chair. Representative Cecil Bell as the Vice Chair, and
21 includes members Representative Ina Minjarez, Representative
22 Steve Toth, Representative Terry Wilson. Representative
23 Sergio Munoz, and Representative Reggie Smith. We are
24 hearing that the subcommittee will take up TWC on Monday,
25 February 11th, and that the hearing will start at 7:30 a.m.

1 This concludes my remarks, and I'm happy to
2 answer any questions.

3 CHAIR HUGHS: Any questions?

4 MR. BRITT: Thank you.

5 CHAIR HUGHS: Thank you, Michael.

6 AGENDA ITEM NO. 20

7 CHAIR HUGHS: Item 20, do we have an updates,
8 Mr. Serna?

9 MR. SERNA: Just very quickly, staff's
10 working on detailed responses to the both Chair Nelson and
11 Senator West's questions that they raised at our Senate
12 Finance Hearing last week. We'll run those responses by the
13 three offices, and we're also trying to schedule meetings
14 first with Senator Nelson, and then we have a scheduled
15 meeting with Senator West on the 15th of February.

16 CHAIR HUGHS: Okay. All right. Thank you
17 for that update.

18 AGENDA ITEM NO. 21

19 CHAIR HUGHS: Is there a motion to adjourn?

20 COMM. THOMAS: So moved.

21 COMM ALVAREZ: Second.

22 CHAIR HUGHS: Thank you. We are adjourned.
23 Have a great day.

24 (Proceedings concluded at 9:10 a.m.)

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C E R T I F I C A T E

STATE OF TEXAS)
COUNTY OF HARRIS)

I, Kimberly C. McCright, Certified Vendor and Notary in and for the State of Texas, do hereby certify that the above-mentioned matter occurred as hereinbefore set out.

I FURTHER CERTIFY THAT the proceedings of such were reported by me or under my supervision, later reduced to typewritten form under my supervision and control and that the foregoing pages are a full, true and correct transcription of the original notes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 15th day of February, 2019.

/s/ Kimberly C. McCright
Kimberly C. McCright
Certified Vendor and Notary Public

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