

CHAPTER 833

H.B. No. 1038

AN ACT

relating to certain time requirements regarding claims for unemployment compensation benefits.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subsections (b), (c), (h), and (i), Section 6, Texas Unemployment Compensation Act (Article 5221b-4, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) An unemployed individual who has no current benefit year may file an initial claim in accordance with rules or regulations prescribed by the Commission. The Commission shall mail a notice of the filing of such initial claim to the individual or organization for which the claimant last worked prior to the effective date of the initial claim. If the individual or organization has more than one branch or division operating at different locations, notice of the filing of such initial claim shall be mailed to the branch or division where claimant last worked. Mailing of notice of the initial claim to the correct address of the individual or organization or the branch or division where claimant last worked shall constitute due notice to such individual or organization. A governmental employer may designate in writing to the Commission an address for mail service. When a governmental employer has so designated a mailing address, mailing of notice of claims, determinations, or other decisions to such address shall constitute due notice to the governmental employer. If the individual or organization to which such notice is mailed has knowledge of any facts that may adversely affect such claimant's right to benefits, or that may affect a charge to its account, it shall notify the Commission of such facts promptly. If such individual or organization does not mail or deliver such notification to the Commission within twelve (12) days from the date notice of a claim was mailed to it by the Commission, such individual or organization shall be deemed to have waived all rights in connection with such claim, including any rights it may have under subsection 7(c)(2) of this Act, except with respect to a clerical or machine error as to the amount of its chargeback or maximum potential chargeback in connection with such claim.

The Commission shall determine whether such initial claim is valid. If such initial claim is valid, the Commission shall determine the benefit year, the benefit amount for total unemployment and the duration of benefits. A notice of the determination of the initial claim shall be mailed to the claimant at his last known address as reflected by Commission records. The claimant may within *fourteen (14)* [~~twelve (12)~~] calendar days from the date such notice was mailed request a redetermination or appeal in the manner provided in this Section.

If such individual or organization for which claimant last worked has filed a notification with the Commission in accordance with this Section, an examiner shall make a determination as to whether the claimant is disqualified from receipt of benefits under Section 5 (Article 5221b-3) of this Act, as to any other issue affecting the claimant's right to receive benefits which may have arisen under any other provision of this Act, and as to whether a chargeback shall be made to the account of the individual or organization if benefits are paid, and shall mail a copy of the determination to the claimant and to such individual or organization, or the branch or division for which the claimant last worked, or to the address for mail service designated by a governmental employer. In the absence of such notification from such individual or organization, if, from information on the claim or other information secured, an issue is raised affecting the claimant's rights to benefits under any provision of this Act, an examiner shall prepare a determination reflecting his decision and mail a copy of it to the claimant at his last known address.

Unless the claimant or the individual or organization or branch thereof to which the copy of the determination is mailed files an appeal from such determination within *fourteen (14)* [~~twelve (12)~~] calendar days after such copy of the determination is mailed to his or its last known address as reflected by Commission records, such determination shall be final for all purposes and benefits shall be paid or denied in accordance therewith; provided, that within the same period of time, an examiner may file an appeal from such determination, or may, if he discovers error in connection therewith or additional information not previously available, reconsider and redetermine any such determination, and such redetermination shall replace such determination and shall become final unless an appeal therefrom is filed by such claimant or such individual or organization within *fourteen (14)* [~~twelve (12)~~] calendar days after a copy of such redetermination was mailed to his or its last known address as reflected by Commission records.

Notwithstanding any provision in this Act under which benefits may be paid or denied, benefits shall be paid promptly in accordance with a determination or redetermination of an examiner, a decision of an appeal tribunal, the Commission, or a reviewing court, on the issuance of that determination, redetermination or decision (regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review, or the pendency of that application, filing, or petition), unless and until that determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied in accordance with the modifying or reversing redetermination or decision. If a determination or decision is finally modified or reversed to deny benefits, no chargeback shall be made to the employer's account by reason of payments made to the claimant for any benefit period with respect to which he is finally denied benefits. Any benefits paid to the claimant which were not in accordance with the final decision shall be refunded by the claimant to the Commission or in the discretion of the Commission shall be deducted from future benefits payable to him under this Act, and the amount of benefits paid which were not in accordance with the final decision shall also be collectible in the manner provided in Section 14(b) of this Act for the collection of past due contributions.

(c) Appeals: Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the determination of the examiner. The parties to the appeal shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the Commission, unless within *fourteen (14)* [~~ten (10)~~] days after the date of mailing of such decision, further appeal is initiated pursuant to subsection (e) of this Section.

(h) Appeal to Courts: Any decision of the Commission shall become final *fourteen (14)* [~~ten (10)~~] days after the date of mailing thereof, unless, within such *fourteen (14)* [~~ten (10)~~] days, the appeal is reopened by Commission order or a party to the appeal files a written motion for rehearing, and judicial review of any final decision of the Commission shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies (not including a motion for rehearing) before the Commission as provided by this Act. The Commission shall be deemed to be a party to any judicial action involving any such decision and may be represented in any such judicial action by any qualified attorney who is a regular salaried employee of the Commission and has been designated and appointed for that purpose by the Attorney General of Texas.

(i) Court Review: Within *fourteen (14)* [~~ten (10)~~] days after the decision of the Commission has become final, and not before, any party aggrieved thereby may secure judicial review thereof by commencing an action in any court of competent jurisdiction in the county of claimant's residence against the Commission for the review of its decision, in which action any other party to the proceeding before the Commission shall be made a defendant, provided that if a claimant is a non-resident of the State of Texas such action may be filed in a court of competent jurisdiction in Travis County, Texas, or in the county in Texas in which the last employer has his principal place of business, or in the county of claimant's last residence in Texas. Such trial shall be de novo. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon a member of the Commission or upon such person as the Commission may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the Commission shall forthwith mail one such copy to each such defendant. Such action shall be given precedence over all other civil cases except cases arising under the *workers' compensation laws* [~~Workmen's Compensation Law~~] of this State. An appeal may be taken from the decision of the trial court, in the same manner, as is provided in other civil cases. It shall not be necessary, in any judicial proceedings under this Section, to enter exceptions to the rulings of the Commission and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the Commission shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas.

SECTION 2. Section 7(c)(2)(B), Texas Unemployment Compensation Act (Article 5221b-5, Vernon's Texas Civil Statutes), is amended to read as follows:

(2)(B) To each employer to whom notice of an initial claim has not already been mailed under subsection 6(b) of this Act, and whose account is potentially chargeable with benefits as the result of such initial claim and payment of benefits, a notice of his maximum potential chargebacks shall be mailed when benefits are first paid and an opportunity afforded for protest of his potential chargebacks. If any such employer desires to protest his potential chargebacks, he shall, within twelve (12) days after such notice was mailed to him, mail his protest, including a statement of the facts upon which his protest is based, to the Commission at Austin, Texas. Any employer who does not protest his potential chargebacks within twelve (12) days after notice was mailed to him shall be deemed to have waived his right to protest such chargebacks. If a timely protest is filed, the examiner shall promptly decide the issues involved in such protest and shall mail a notice of his decision thereon to the protesting employer. Such decision shall become final *fourteen (14)* [~~twelve (12)~~] days from the date of mailing thereof, unless such employer mails to the Commission at Austin, Texas, a written appeal therefrom within such *fourteen (14)* [~~twelve (12)~~] days. Administrative review hereunder shall be in accordance with Commission rules or regulations, and appeals to the Courts shall be permitted only after such employer has exhausted his administrative remedies (not including a motion for rehearing) before the Commission, and within the time prescribed by subsection 6(h) and subsection 6(i) of this Act with respect to Commission decisions on benefits. Venue and jurisdiction of appeals to the Courts with respect to chargebacks shall be the same as venue and jurisdiction of suits to collect contributions and penalties under this Act.

If notice of the claim has been sent previously to the employer under the provisions of Section 6 of this Act, the employer shall be mailed a notice of the amount of his potential chargeback resulting from the claim, and may, within *fourteen (14)* [~~twelve (12)~~] days from the date such notice was mailed, protest any clerical or machine error as to amounts. Such employer shall be mailed a decision on such protest and may appeal within *fourteen (14)* [~~twelve (12)~~] days from the date notice of such decision was mailed to him.

SECTION 3. This Act takes effect September 1, 1987, and applies only to a claim for unemployment benefits that is filed with the Texas Employment Commission on or after that date. A claim filed before that date is covered by the law in effect on the date of filing, and the former law is continued in effect for that purpose.

Ch. 833, § 4

70th LEGISLATURE—REGULAR SESSION

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 15, 1987, by a non-record vote. Passed by the Senate on May 23, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 18, 1987.

Effective Sept. 1, 1987.