



POLICY FIELD NOTES

Policy Analysis

September 20, 2026

Texas Workforce Commission

Office of General Counsel

101 East 15th Street

Austin, Texas 78778

Submitted via TWCPolicyComments@twc.texas.gov

Re: Comments on the Proposed Rule Review of 40 TAC Chapter 815, Unemployment Insurance (Impartial Tribunal When the Agency Is the Employer)

Dear Commissioners:

My name is Blake Dodd and I am a former employee of the Texas Workforce Commission. This comment concerns the agency's review of Chapter 815. It addresses a question that is separate from the substance of any eligibility standard: how the agency preserves an impartial tribunal when it is itself the employer in an unemployment claim. I raise it as a matter of rule design, not as a challenge to any individual decision, and I am not relitigating my own case.

Federal law conditions the state's administration of the program on one further requirement. Section 303(a)(3) of the Social Security Act provides for an "opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied" (42 U.S.C. § 503(a)(3)). Impartiality, unlike the substance of good cause, is not meant to be left to the states. Chapter 815 is where that requirement is put into practice, and there is a gap in it worth the Commission's attention during this review.

When the claimant is a former employee of the agency itself, TWC occupies three positions at once. It is the employer named as a party of interest under 40 TAC § 815.15. It is the tribunal at every level, from the examiner to the appeal tribunal to the Commission. And under Texas Labor Code § 205.041, together with the Comptroller's reimbursement rules (FPP A.035), it is the entity whose appropriation is charged 50 percent of any benefits paid if the claim is allowed. The employer-party and the tribunal are, in that case, the same agency.

Chapter 815 addresses impartiality in one place. Section 815.16(2) provides that an appeal tribunal "should be free not only of any personal interest or bias in the appeal before it, but also of any reasonable suspicion of personal interest," and that challenges to its impartiality may be decided by the supervisor of appeals. That provision reaches the personal interest of the individual hearing officer. It does not reach the situation in which the agency itself is the employer-party. Section 815.17, which governs review by the

Commission, contains no counterpart provision, and nothing else published by the agency requires the employer-party function to be separated from the adjudicative function when TWC is the last employer.

The concern is not that the structure is unlawful. A claimant receives a hearing before a tribunal that is personally recusable, review by a three-party Commission, and judicial review in district court, and the combination of functions within a single agency is, by itself, ordinarily permissible. The concern is narrower, and it is a matter of written procedure: the safeguard that exists for the individual hearing officer has no published counterpart for the case in which the agency is the party. A prudent way forward is for the Commission, in this review, to adopt a rule stating how impartiality is preserved when TWC is the employer-party. Such a rule could assign the examiner and appeal tribunal from staff outside the employer-party function, have materials prepared for the Commission by a unit walled off from that function, and require an on-record recusal or disclosure when TWC is the last employer.

A published procedure would cost the agency little and would keep the question from being raised in the first place. Texans expect the institutions that administer state programs to hold themselves to the same standard of impartiality they apply to others, and the place to record that standard is the rule itself. This review is the occasion to do so.

Respectfully Submitted,

Blake Dodd

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