

THE SUPREME COURT OF THE UNITED STATES

AWAD MUSTAFA

Petitioner

V

HTS SERVICES, INC., ET, AL

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

APPENDICES

APPENDIX a-1	TEXAS SUPREME COURT'S ORDER DENIED PETITION FOR REVIEW
APPENDIX a-2	TEXAS SUPREME ORDER DENIED MOTION FOR REHEARING
APPENDIX b-1	APPEALS COURT JUDGMENT.
APPENDIX b-2	APPEALS COURT MEMORANDUM OPINION
APPENDIX c,	TRIAL COURT'S FINAL JUDGMENT.
APPENDIX d,	TRIAL COURT'S ORDER IN HTS' FAVOR.
APPENDIX e,	TRIAL COURT'S ORDER IN TWC'S FAVOR
APPENDIX f,	THE APPEALS COURT'S ORDER DENIED JUSTICE GUERRA'S RECUSAL.
APPENDIX g,	APPEALS COURT'S ORDER DENIED ENTIRE COURT'S JUSTICES RECUSAL.
APPENDIX h,	ORDER DENIED NOTICE OF APPEAL
APPENDIX i,	ORDER DENIED TO CONSIDER TWC'S INITIAL DISCLOSURES AS PART OF THE RECORD.
APPENDIX j,	TWC'S DECISION TO QUALIFY PETITIONER FOR UNEMPLOYMENT BENEFITS.
APPENDIX k,	THE DECISION TO DISQUALIFY PETITIONER FROM RECEIVING UNEMPLOYMENT BENEFITS.
APPENDIX l,	TWC'S COMMISSION APPEALS FINAL JUDGMENT.
APPENDIX m,	TWC'S INITIAL DISCLOSURES.
APPENDIX n,	REPORTER'S RECORD.

APPENDIX o,	NOTICE OF INTENT TO USE EQUAL PAY ACT EVIDENCE.
APPENDIX p,	COMMISSION APPEALS' INTERFERING ATTEMPT'S LETTER.
APPENDIX q-1	NOTICE OF APPEALS TRIBUNALS HEARINGS.
APPENDIX q-2	NOTICE OF APPEAL TRIBUNAL HEARING
APPENDIX r,	EEOC'S EMAIL AND RECEIVED REQUEST FOR ASSISTANCE.
APPENDIX t	DECISION APPEAL FORM
APPENDIX U	
APPENDIX w	REPLY AND AMENDED REPLY BRIEF

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APPeNdix A - 1

FILE COPY

RE: Case No. 24-0630
COA #: 01-22-00878-CV
STYLE: MUSTAFA v. HTS SERV., INC.

DATE: 10/11/2024
TC#: 2022-54542

Today the Supreme Court of Texas denied the petition
for review in the above-referenced case.

MR. ROBERT GLEN MOLL
1903 BLOOMING PARK LANE
KATY, TX 77450
* DELIVERED VIA E-MAIL *

appendix A-2

FILE COPY

RE: Case No. 24-0630
COA #: 01-22-00878-CV

DATE: 12/6/2024
TC#: 2022-54542

STYLE: MUSTAFA v. HTS SERV., INC.

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.

MR. AWAD O. MUSTAFA

* DELIVERED VIA E-MAIL *



JUDGMENT

Court of Appeals **First District of Texas**

NO. 01-22-00878-CV

AWAD MUSTAFA, Appellant

V.

TEXAS WORKFORCE COMMISSION, HTS SERVICES, INC., TAREK MORSI,
MISEL REPAK, MAHMOUD HASSAN, SHAFI MOHAMED AND YEWANDE
ADELAJA, Appellees

Appeal from the 80th District Court of Harris County. (Tr. Ct. No. 2022-54542).

This case is an appeal from the final judgment signed by the trial court on December 14, 2022, incorporating its orders signed on November 15, 2022. After submitting the case on the appellate record and the arguments properly raised by the parties, the Court holds that there is no reversible error in the trial court's judgment. Accordingly, the Court **affirms** the trial court's judgment.

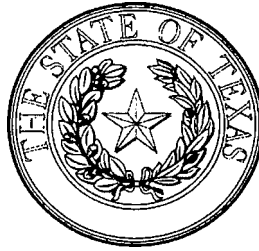
The Court **orders** that appellant, Awad Mustafa, pay all appellate costs.

The Court **orders** that this decision be certified below for observance.

Judgment rendered June 18, 2024.

Panel consists of Justices Kelly, Hightower, and Guerra. Opinion delivered by Justice Guerra.

appendix b-2
Opinion issued June 18, 2024



In The
Court of Appeals
For The
First District of Texas

NO. 01-22-00878-CV

AWAD MUSTAFA, Appellant

V.

**TEXAS WORKFORCE COMMISSION, HTS SERVICES, INC., TAREK
MORSI, MISEL REPAK, MAHMOUD HASSAN, SHAFI MOHAMED AND
YEWANDE ADELAJA, Appellees**

**On Appeal from the 80th District Court
Harris County, Texas
Trial Court Case No. 2022-54542**

MEMORANDUM OPINION

Appellant Awad Mustafa, proceeding pro se, appeals from the following two trial court orders and the final judgment entered in his suit arising from the denial of his claim for unemployment benefits: (1) the November 15, 2022 order granting the

b-2 1.

plea to the jurisdiction and motion for summary judgment of appellees HTS Services, Inc., Tarek Morsi, Misel Repak, Mahmoud Hassan, Shafi Mohamed, and Yewande “Wendy” Adelaja (HTS parties); (2) the November 15, 2022 order granting the plea to the jurisdiction of appellee, the Texas Workforce Commission, and “all named parties,” including appellees Brian Daniel, Aron S. Demerson, Julian Alvarez, “S. Sunday,” “P. Payne,” and Ofelia de Leon (TWC parties); and (3) the December 14, 2022 Final Judgment. Mustafa raises eleven issues challenging the trial court’s orders and judgment on various grounds. We affirm.

Background

Mustafa worked for HTS Services, Inc. (HTS), a shipping company, from March 2019 to July 2021. HTS terminated Mustafa’s employment in July 2021.

Following his termination, Mustafa filed a claim for unemployment benefits with the Texas Workforce Commission (TWC or Commission). After initially determining that Musafa qualified for benefits, the TWC issued a corrected determination that he was disqualified from receiving unemployment benefits because HTS had discharged him for misconduct, specifically, violation of company policy.¹ Mustafa appealed the determination to the appeals tribunal which affirmed the decision. The Commission later upheld the appeal tribunal’s decision.

¹ Section 207.044 of the Texas Unemployment Compensation Act provides that an individual who was discharged for misconduct connected with the individual’s last workplace is disqualified from benefits until the individual has returned to

On August 30, 2022, Mustafa filed suit alleging that (1) HTS discriminated against him on the basis of race, color, and national origin when it terminated his employment; and (2) the TWC deprived him of due process in violation of the Texas and U.S. Constitutions in determining that he was disqualified from receiving unemployment benefits. He sought economic damages, damages for harm to reputation and loss of employment opportunities, and mental anguish damages. Mustafa amended his petition.

HTS filed an answer asserting a general denial and several defenses, including affirmative defenses. It later filed a combined plea to the jurisdiction and motion for summary judgment arguing, among other things, that Mustafa's discrimination claims were barred because he had failed to exhaust his administrative remedies, specifically, Mustafa had not filed a complaint with the Equal Employment Opportunity Commission (EEOC) or the Texas Commission on Human Rights (TCHR) within the statutorily prescribed periods and, therefore, the trial court lacked subject matter jurisdiction over his claims. HTS further argued that to the extent Mustafa was seeking a trial de novo of his appeal to the TWC regarding the Commission's denial of his claim for unemployment benefits, he could not add new claims against HTS or add HTS's former or current employees as new parties in his

employment and worked for six weeks or earned wages equal to six times the individual's benefit amount. TEX. LAB. CODE § 207.044.

b-2, at 3

suit because the trial court exercises only appellate jurisdiction in a trial de novo and lacks subject matter jurisdiction over newly asserted claims or newly added parties.

The TWC answered Mustafa's suit asserting a general denial and sovereign immunity as an affirmative defense.

Mustafa moved for default judgment against the TWC parties arguing the TWC's answer was in response to his original petition, not his amended petition, and the TWC employees did not file an answer to either petition.

The TWC filed a combined plea to the jurisdiction, response to Mustafa's motion for default judgment, and objections to attorney's fees. It argued that Mustafa's claims against the TWC parties were jurisdictionally barred by sovereign immunity, default judgment would be improper, and attorney fees were unavailable to Mustafa.

On November 15, 2022, the trial court entered orders granting HTS's plea to the jurisdiction and motion for summary judgment and the TWC's plea to the jurisdiction for lack of subject matter jurisdiction, and it denied Mustafa's motion for summary judgment and request for attorney's fees.

After determining from Mustafa's pleadings that he had not sought a trial de novo of the TWC's decision denying his claim for unemployment benefits, the trial court signed a final judgment on December 14, 2022, incorporating its November

15 orders by reference. The judgment dismissed Mustafa's claims against all named defendants and stated that it was a final judgment disposing of all issues and parties.²

This appeal followed.

Briefing Waiver

Although we liberally construe pro se briefs, we nonetheless require pro se litigants to comply with applicable laws and rules of procedure. *See Wheeler v. Green*, 157 S.W.3d 439, 444 (Tex. 2005) (stating "pro se litigants are not exempt from the rules of procedure"); *Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 184–85 (Tex. 1978). A pro se litigant must properly present his case on appeal; if this were not the rule, pro se litigants would benefit from an unfair advantage over those parties who are represented by counsel. *See Canton-Carter v. Baylor Coll. of Med.*, 271 S.W.3d 928, 930 (Tex. App.—Houston [14th Dist.] 2008, no pet.); *Strange v. Cont'l Cas. Co.*, 126 S.W.3d 676, 678 (Tex. App.—Dallas 2004, pet. denied).

Our appellate rules have specific requirements for briefing. *See* TEX. R. APP. P. 38. These rules require an appellant, among other things, to state concisely his complaint, provide succinct and clear argument for why his complaint has merit in

² On March 2, 2023, this Court entered an order noting that the trial court's two November 15, 2022 orders, which were interlocutory in nature, were merged into the December 14, 2022 Final Judgment once it was entered by the trial court. *See Bonsmara Nat. Beef Co. v. Hart of Tex. Cattle Feeders, LLC*, 603 S.W.3d 385, 390 (Tex. 2020) ("When a trial court renders a final judgment, the court's interlocutory orders merge into the judgment . . .").

fact and in law, and cite and apply law that is applicable to the complaint being made along with appropriate record references. TEX. R. APP. P. 38.1(f), (g), (h), and (i). This requirement, however, is not satisfied “by merely uttering brief conclusory statements unsupported by legal citations.” *Valadez v. Avitia*, 238 S.W.3d 843, 845 (Tex. App.—El Paso 2007, no pet.) (citing *Sweed v. City of El Paso*, 195 S.W.3d 784, 786 (Tex. App.—El Paso 2006, no pet.)). We are not responsible for identifying possible trial court error, see *Canton–Carter*, 271 S.W.3d at 931–32, searching the record for facts that may be favorable to a party’s position, see *Fredonia State Bank v. Gen. Am. Life Ins. Co.*, 881 S.W.2d 279, 283–84 (Tex. 1994), or doing the legal research that might support a party’s contentions, see *Bolling v. Farmers Branch Independent School District*, 315 S.W.3d 893, 895 (Tex. App.—Dallas 2010, no pet.). Were we to do so, we would be abandoning our role as judges and become an advocate for that party. See *Valadez*, 238 S.W.3d at 845. “Failure to cite to legal authority or provide substantive analysis of the legal issue presented results in waiver of the complaint.” *Id.*

Although Mustafa’s twenty-page, single-spaced brief includes a lengthy recitation of the facts he believes are relevant on appeal, it is devoid of any legal argument or analysis. See *In re Estate of Taylor*, 305 S.W.3d 829, 836 (Tex. App.—Texarkana 2010, no pet.) (stating failure to cite legal authority or provide substantive analysis of issues presented results in waiver of complaint); *Valadez*, 238 S.W.3d at

845 (noting courts have no duty, or even right, to perform independent review of record and applicable law to determine whether there was error); *see also Borisov v. Keels*, No. 01-15-00522-CV, 2016 WL 3022603, at *1–2 (Tex. App.—Houston [1st Dist.] May 26, 2016, pet. denied) (mem. op.) (holding pro se appellant waived appellate issues by failing to adequately brief them where appellant’s brief included neither citations to clerk’s record nor any legal authorities); *Collins v. Walker*, 341 S.W.3d 570, 575 (Tex. App.—Houston [14th Dist.] 2011, no pet.) (“Failure to cite legal authority results in waiver of the complaint.”). Mustafa lists several cases in his index of authorities but does not cite them in any other portion of his brief or otherwise demonstrate how they support his contentions. *See Borisov*, 2016 WL 3022603, at *2. And while Mustafa refers to numerous statutory and constitutional provisions, he provides no explanation of how those authorities apply to his claims. *See Martinez v. El Paso Cnty.*, 218 S.W.3d 841, 845 (Tex. App.—El Paso 2007, pet. struck) (concluding pro se litigant waived all issues on appeal where appellate brief was devoid of legal argument and analysis and so unclear that court could not identify what error, if any, appellant wanted court to review). Having failed to comply with Texas Rule of Appellate Procedure 38.1, Mustafa has waived any error on appeal. *See Fredonia State Bank*, 881 S.W.2d at 284 (discussing “longstanding rule” that point may be waived due to inadequate briefing).

However, even absent briefing waiver, Mustafa cannot prevail in his appeal from the trial court's orders granting HTS's and the TWC's pleas to the jurisdiction and its final judgment dismissing his claims with prejudice for the reasons discussed below.

Standard of Review

Subject matter jurisdiction is essential to a court's power to decide a case. *City of Hous. v. Rhule*, 417 S.W.3d 440, 442 (Tex. 2013); *City of DeSoto v. White*, 288 S.W.3d 389, 393 (Tex. 2009). To establish subject matter jurisdiction, a plaintiff must allege facts that affirmatively demonstrate the court's jurisdiction to hear the claim. *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 550 (Tex. 2019). "We review de novo a trial court's ruling on a jurisdictional plea." *Univ. of Tex. MD Anderson Cancer Ctr. v. Simpson*, No. 01-20-00679-CV, 2021 WL 3083104, at *3 (Tex. App.—Houston [1st Dist.] July 22, 2021, no pet.) (mem. op.) (citing *Ben Bolt-Palito Blanco Consol. Indep. Sch. Dist. v. Tex. Pol. Subdivisions Prop./Cas. Joint Self-Ins. Fund*, 212 S.W.3d 320, 323 (Tex. 2006); *City of Hous. v. Vallejo*, 371 S.W.3d 499, 501 (Tex. App.—Houston [1st Dist.] 2012, pet. denied)). "A plea to the jurisdiction is a dilatory plea that seeks dismissal of a case for lack of subject-matter jurisdiction." *Id.* (citing *Harris Cty. v. Sykes*, 136 S.W.3d 635, 638 (Tex. 2004); *Villarreal v. Harris Cty.*, 226 S.W.3d 537, 541 (Tex. App.—Houston [1st Dist.] 2006, no pet.)); see *Sullivan v. Univ. of Tex. Health Sci. Ctr. at Hous. Dental Branch*,

No. 01-08-00327-CV, 2008 WL 5179023, at *1 (Tex. App.—Houston [1st Dist.] Dec. 11, 2008, pet. denied) (mem. op.).

Mustafa's Claims Against HTS Parties

In his amended petition, Mustafa asserted employment discrimination claims against HTS alleging that it terminated his employment on the basis of race, color, and national origin in violation of Title VII of the Civil Rights Act of 1964³ and the Texas Commission on Human Rights Act (TCHRA).⁴ In its plea to the jurisdiction, HTS argued that Mustafa's discrimination claims were barred because he did not file a complaint with the EEOC or the TCHRA within the statutorily prescribed periods. It asserted that because Mustafa had failed to exhaust his administrative remedies, the trial court lacked subject matter jurisdiction over his claims against HTS.

Under the TCHRA, an employer commits an unlawful employment practice if, because of an employee's race or age, the employer "fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment." TEX. LAB. CODE § 21.051(1); see *Anderson v. Hous. Comm. Coll. Sys.*, 458 S.W.3d 633, 643 (Tex. App.—Houston [1st Dist.] 2015, no pet.). One of

³ 42 U.S.C. §§ 2000e-2.

⁴ TEX. LAB. CODE § 21.051.

the purposes of the TCHRA is to “provide for the execution of the policies of Title VII of the Civil Rights Act of 1964.” TEX. LAB. CODE § 21.001(1). “[W]hen analyzing a claim brought under the TCHRA, we look not only to state cases but also to analogous federal statutes and the cases interpreting those statutes.” *Hartranft v. UT Health Sci. Ctr.-Hous.*, No. 01-16-01014-CV, 2018 WL 3117830, at *11 (Tex. App.—Houston [1st Dist.] June 26, 2018, no pet.) (mem. op.) (citing *Mission Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 634 (Tex. 2012)).

Texas law requires a plaintiff to exhaust his administrative remedies by filing a timely complaint with the TCHR or the EEOC. TEX. LAB. CODE § 21.201; *Prairie View A & M Univ. v. Chatha*, 381 S.W.3d 500, 503, 504 n.4 (Tex. 2012); *Waffle House, Inc. v. Williams*, 313 S.W.3d 796, 804 (Tex. 2010); *City of Pasadena v. Poulos*, 01-22-00676-CV, 2023 WL 7134974, at *8 (Tex. App.—Houston [1st Dist.] Oct. 31, 2023, no pet.) (mem. op.). The complaint must be filed “not later than the 180th day after the date the alleged unlawful employment practice occurred.” TEX. LAB. CODE § 21.202(a); *Chatha*, 381 S.W.3d at 513–14 (agreeing that 180-day filing deadline in section 212.202 is statutory prerequisite to suit for TCHRA suits). “This time limit is mandatory and jurisdictional.” *Davis v. Autonation USA Corp.*, 226 S.W.3d 487, 491 (Tex. App.—Houston [1st Dist.] no pet.) (citing *Schroeder v. Tex. Iron Works, Inc.*, 813 S.W.2d 483, 486 (Tex.1991)). “Failure to timely file an administrative complaint deprives Texas trial courts of subject-matter jurisdiction.”

Santi v. Univ. of Tex. Health Sci. Ctr., 312 S.W.3d 800, 804 (Tex. App.—Houston [1st Dist.] 2009, no pet.) (citing *Davis*, 226 S.W.3d at 491).

Here, the record shows that Mustafa did not file a complaint with either the TCHR or the EEOC within 180 days after the alleged discrimination.⁵ Because he failed to do so, the trial court lacked jurisdiction over his claims against HTS.⁶ See *Gilles-Gonzalez v. Univ. of Tex. Sw. Med. Ctr.*, No. 05-16-00078-CV, 2016 WL 3971411, at *1, *7 (Tex. App.—Dallas July 22, 2016, no pet.) (mem. op.) (“Because her charge was not filed by ‘the 180th day after the date the alleged unlawful employment practice occurred,’ Gilles-Gonzalez failed to exhaust her administrative remedies, and the trial court had no jurisdiction of [sic] her claim.”) (citing *Specialty Retailers, Inc. v. DeMoranville*, 933 S.W.2d 490, 492 (Tex. 1996) (per curiam));

⁵ Similarly, Mustafa did not file a charge of discrimination with the EEOC within 300 days after the alleged employment practice. See 42 U.S.C.A. § 2000e-5(e) (stating Title VII requires aggrieved employee to file charge of employment discrimination with EEOC within 180 days after date alleged unlawful employment practice occurred, “except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier”).

⁶ In his appellate brief, Mustafa alleges that he also brought his claims of employment discrimination under the Equal Pay Act (EPA) and Fair Labor Standards Act (FLSA). In addition to having waived this argument by failing to adequately brief it, Mustafa did not assert claims under the EPA or FLSA in his amended petition.

Dotson v. TPC Group, Inc., No. 01-14-00233-CV, 2015 WL 1135890, at *5 (Tex. App.—Houston [1st Dist.] Mar. 12, 2015, no pet.) (mem. op.) (stating generally that “[f]ailure to timely file an administrative complaint deprives Texas trial court of subject-matter jurisdiction” over claims brought under TCHRA); *Austin Indep. Sch. Dist. v. Lofters*, No. 03-14-00071-CV, 2015 WL 1546083, at *1–2, *5 (Tex. App.—Austin Apr. 1, 2015, pet. denied) (mem. op.) (“We hold that Lofters’s charge of race discrimination was not filed within the 180-day period required by section 21.202(a). The trial court did not have jurisdiction over this claim and erred by denying AISD’s plea to the jurisdiction.”).

Mustafa’s employment discrimination claims against HTS employees Tarek Morsi, Misel Repak, Mahmoud Hassan, Shafi Mohamed, and Yewande Adelaja also fail. To recover under the TCHRA, a plaintiff must prove that the defendant falls within the statutory definition of “employer.” *Anderson*, 458 S.W.3d at 649 (citing *Miles v. Lee Anderson Co.*, 339 S.W.3d 738, 742 (Tex.App.—Houston [1st Dist.] 2011, no pet.)). “It is well established in Texas that an individual cannot be held personally liable under the TCHRA.” *Winters v. Chubb & Son, Inc.*, 132 S.W.3d 568, 580 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (citing *DeMoranville v. Specialty Retailers, Inc.*, 909 S.W.2d 90, 94 (Tex. App.—Houston [14th Dist.] 1995), *rev’d in part on other grounds*, 933 S.W.2d 490 (Tex. 1996)); *Jenkins v. Guardian Indus. Corp.*, 16 S.W.3d 431, 439 (Tex. App.—Waco 2000, pet. denied)

("[S]upervisors and managers are not liable in their individual capacities for alleged acts of discrimination under the TCHRA.") (citing *DeMoranville*, 909 S.W.2d at 94, *rev'd in part on other grounds*, 933 S.W.2d 490 (Tex. 1996); *Benavides v. Moore*, 848 S.W.2d 190 (Tex. App.—Corpus Christi—Edinburg 1993, writ denied)). "[U]nder the express terms of the [TCHRA], *employers* may be liable for an unlawful employment practice. The Act does not create a cause of action against supervisors or individual employees." *City of Austin v. Gifford*, 824 S.W.2d 735, 742 (Tex. App.—Austin 1992, no writ).

Mustafa's Claims Against TWC Parties

Mustafa's pleadings alleged that the TWC deprived him of constitutional due process when it determined that he was disqualified from receiving unemployment benefits. In his amended petition he sought economic damages, damages for harm to reputation and loss of employment opportunities, and mental anguish damages. In its plea to the jurisdiction, the TWC argued that Mustafa's claims against the TWC parties were jurisdictionally barred by sovereign immunity.

Sovereign immunity deprives a trial court of subject-matter jurisdiction over lawsuits against the State, its agencies, and their officers unless the State consents to suit. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224 (Tex. 2004). "[S]overeign immunity extends to various divisions of state government, including agencies, boards, hospitals, and universities." *Ben Bolt-Palito Blanco Consol. Indep.*

Sch. Dist., 212 S.W.3d at 323–24. As one of the State’s commissions, the TWC is a governmental unit. *See* TEX. CIV. PRAC. & REM. CODE § 101.001(3)(A); *Stoker v. TWC Comm’rs*, 402 S.W.3d 926, 928 (Tex. App.—Dallas 2013, no pet.) (recognizing that TWC is governmental entity). As such, the TWC enjoys sovereign immunity and is immune from suit unless that immunity is expressly waived by the legislature. *See Rosenberg Dev. Corp. v. Imperial Performing Arts, Inc.*, 571 S.W.3d 738, 746 (Tex. 2019); *see generally Tex. Nat. Res. Conservation Comm’n v. IT-Davy*, 74 S.W.3d 849, 853–54 (Tex. 2002).

Texas Labor Code Section 212.201 provides, in relevant part:

(a) A party aggrieved by a final decision of the commission may obtain judicial review of the decision by bringing an action in a court of competent jurisdiction for review of the decision against the commission on or after the date on which the decision is final, and not later than the 14th day after that date.

TEX. LAB. CODE § 212.201(a). By its language, Section 212.201 expressly waives the TWC’s immunity from suit and authorizes judicial review of a TWC decision. *See id.*; *Tex. Workforce Comm’n v. Campos*, No. 04-04-00650-CV, 2005 WL 1552674, at *2 (Tex. App.—San Antonio July 6, 2005, no pet.) (mem. op.).

Judicial review of a TWC decision requires a trial *de novo* at which the reviewing court determines whether substantial evidence exists to support the administrative ruling based solely on the evidence presented in the trial court, and not on the record created by the TWC. *Mercer v. Ross*, 701 S.W.2d 830, 831 (Tex.

1986); *Spicer v. Tex. Workforce Comm'n*, 430 S.W.3d 526, 532 (Tex. App.—Dallas 2014, no pet.) (noting Section 212.201 limits initial judicial review of Commission's decision to trial de novo under substantial evidence standard); *accord Kaup v. Tex. Workforce Comm'n*, 456 S.W.3d 289, 294 (Tex. App.—Houston [1st Dist.] 2014, no pet.). A party seeking to appeal the denial of an unemployment benefits claim must strictly comply with the statutory requirements to bring suit against the TWC. TEX. GOV'T CODE § 311.034; *Wren v. Tex. Emp. Comm'n*, 915 S.W.2d 506, 508 (Tex. App.—Houston [14th Dist.] 1995, no writ).

In his appellate brief, Mustafa acknowledges that “an appeal from unemployment Final Decision is subject to Trial *de novo* review [under the] Texas Unemployment Compensation Act, Chapter 212, Subchapter E.” However, Mustafa's pleadings make no reference whatsoever to Section 212.201 or otherwise demonstrate that Mustafa sought judicial review by the trial court of the Commission's final decision affirming the denial of his claim for unemployment benefits. However, even if Mustafa had done so, the record reflects that he failed to comply with the jurisdictional requirements of Section 212.201. Subsection (a) requires a suit brought under Section 212.201 to be filed in a court of competent jurisdiction no later than fourteen days after the TWC's decision becomes final. TEX. LAB. CODE § 212.201(a). A decision becomes final fourteen days after the date that the decision is mailed. *Id.* § 212.153. Here, the Commission's decision affirming the

Judicial
admission

b-2 al

appeal tribunal's decision was mailed to the parties on August 2, 2022. The Commission's letter stated that the last day to timely file an appeal was August 16, 2022. Mustafa did not file his petition until August 30, 2022. Having failed to meet the jurisdictional requirements of Section 212.201, Mustafa was precluded from seeking judicial review of the TWC decision. *See Chatha*, 381 S.W.3d at 514–15; *Heart Hosp. IV, L.P. v. King*, 116 S.W.3d 831, 837 (Tex. App.—Austin 2003, pet. denied) (holding that fourteen-day deadline is jurisdictional prerequisite and that trial court lacked jurisdiction to review TWC decision denying benefits when plaintiff filed petition after deadline). 28 days

↓
reply
to
TWC
In addition to the TWC, Mustafa named six TWC employees as defendants in his suit: TWC Commissioners Bryan Daniel, Aron S. Demerson, and Julian Alvarez; TWC Examiner Ofelia De Leon; and TWC Hearing Officers “S. Sunday” and “P. Payne.” The TWC argues that Mustafa's claims against these individuals are barred by sovereign immunity, and that the narrow exception for *ultra vires* acts by government officials does not apply.

Suits against employees of a state agency in their official capacity generally are barred by sovereign immunity absent a waiver of sovereign immunity. *See Tex. S. Univ. v. Villarreal*, 620 S.W.3d 899, 904 (Tex. 2021); *City of El Paso v. Heinrich*, 284 S.W.3d 366, 380 (Tex. 2009). In certain narrow instances, however, a suit against a government official can proceed even in the absence of a waiver of

immunity if the official's actions are *ultra vires*. *Chambers-Liberty Navigation Dist. v. State*, 575 S.W.3d 339, 344 (Tex. 2019); *Hall v. McRaven*, 508 S.W.3d 232, 238 (Tex. 2017) (citing *Heinrich*, 284 S.W.3d at 372). An *ultra vires* action requires a plaintiff to “allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act.” *Hall*, 508 S.W.3d at 238 (citation omitted). A government officer with some discretion to interpret and apply a law may nevertheless act without legal authority—and thus act *ultra vires*—if the officer exceeds the bounds of his granted authority or if his acts conflict with the law itself. *Id.*; *Hous. Belt & Terminal Ry. Co. v. City of Hous.*, 487 S.W.3d 154, 164 (Tex. 2016) (“[G]overnmental immunity only extends to those government officers who are acting consistently with the law, which includes those who act within their granted discretion.”) (citation omitted). “Ministerial acts” are those “where the law prescribes and defines the duties to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.” *Hall*, 508 S.W.3d at 238 (quoting *Sw. Bell Tel., L.P. v. Emmett*, 459 S.W.3d 578, 587 (Tex. 2015)). The basic justification for this *ultra vires* exception to sovereign immunity is that *ultra vires* acts—or those acts without authority—should not be considered acts of the state at all. *Id.* (citing *Cobb v. Harrington*, 190 S.W.2d 709, 712 (1945)). Consequently, “*ultra vires* suits do not attempt to exert control over the state—they

attempt to reassert the control of the state” over one of its agents. *Heinrich*, 284 S.W.3d at 372.

Although Mustafa’s pleadings do not explicitly allege that the TWC employees committed an *ultra vires* act, they do allege that De Leon, Payne, and Sunday failed “to stop the fraud and perjury” of HTS and its employees during the hearings conducted on Mustafa’s claim for unemployment benefits, and that the TWC employees committed unspecified violations of his due process rights under the U.S. and Texas Constitutions. However, “[m]erely asserting legal conclusions or labeling a defendant’s actions as ‘ultra vires,’ ‘illegal,’ or ‘unconstitutional’ does not suffice to plead an ultra vires claim—what matters is whether the facts alleged constitute actions beyond the governmental actor’s statutory authority, properly construed.” *Brown v. Daniels*, No. 05-20-00579-CV, 2021 WL 1997060, at *8 (Tex. App.—Dallas May 19, 2021, no pet.) (mem. op.) (quoting *Tex. Dep’t of Transp. v. Sunset Transp., Inc.*, 357 S.W.3d 691, 701–02 (Tex. App.—Austin 2011, no pet.)); see also *Brown v. Tex. Emp. Comm’n*, 801 S.W.2d 5, 8 (Tex. App.—Houston [14th Dist.] 1990, writ denied) (concluding pro se plaintiff who appealed judgment granted in favor of Texas Employment Commission and employer in her suit challenging denial of unemployment benefits under predecessor statute was not treated unfairly or arbitrarily in violation of due process; requiring plaintiff to follow statutory review procedure did not infringe on her right to appeal, nor did pro se status entitle

her to special consideration). Here, Mustafa asserts claims against the TWC employees based on actions that he summarily concludes constitute illegal or unconstitutional acts. Mustafa has not alleged an *ultra vires* claim.

Moreover, a valid *ultra vires* claim also “requires that the remedy [sought] be prospective in nature—i.e., compelling legal compliance going forward, as opposed to awarding retrospective relief to remedy past violations.” *City of Austin v. Utility Assocs., Inc.*, 517 S.W.3d 300, 309 (Tex. App.—Austin 2017, pet. denied). In his pleadings, Mustafa sought only retrospective relief—economic damages, damages for harm to reputation and loss of employment opportunities, and mental anguish damages—and made no reference to prospective relief. The trial court properly concluded that Mustafa’s claims against the TWC employees were jurisdictionally barred. *See Villarreal*, 620 S.W.3d at 904.

In summary, we conclude that the trial court lacked subject matter jurisdiction over Mustafa’s claims against the HTS and TWC parties. The trial court did not err in granting HTS and TWC’s pleas to the jurisdiction and dismissing Mustafa’s claims against them. Accordingly, we overrule Mustafa’s issues.⁷

⁷ Mustafa also contends the trial court erred in denying his motion for default judgment against the TWC parties. Although his argument is unclear, we understand him to argue that the TWC and its six employees failed to timely file an answer or response to his amended petition. Having concluded that the trial court properly determined that it lacked subject matter jurisdiction over the TWC parties, we do not address this argument. *See TEX. R. APP. P.* 47.1.

Conclusion

We affirm the trial court's December 14, 2022 final judgment, incorporating its November 15, 2022 orders granting the HTS parties' plea to the jurisdiction and motion for summary judgment and the TWC's plea to the jurisdiction, and dismissing Mustafa's claims with prejudice.

Amparo Monique Guerra
Justice

Panel consists of Justices Kelly, Hightower, and Guerra.

b-2 at

Appendix
C

CAUSE NO. 2022-54542

6C

AWAD O. MUSTAFA,
Plaintiff

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IN THE DISTRICT COURT OF

V.

HARRIS COUNTY, TEXAS

TEXAS WORKFORCE COMMISSION,
HTS SERVICES, INC., et. al.,
Defendants

80th JUDICIAL DISTRICT

FINAL JUDGMENT

On November 15, 2022, the Court granted the pleas to the jurisdiction filed by the Texas Workforce Commission ("TWC"), Defendants HTS Services, Inc. ("HTS"), and Tarek Morsi, Misel Repak, Mahmoud Hassan, Shafi Mohamed, and Yewande "Wendy" Adelaja (collectively "HTS Present / Former Employees") against Plaintiff Awad O. Mustafa, which Orders are incorporated by reference. The Court having determined from Plaintiff's pleadings that Plaintiff did not seek a trial de novo regarding TWC's decision denying Plaintiff unemployment benefits, the Court hereby signs a final judgment in this matter.

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff Awad O. Mustafa's claims against all Defendants named in this lawsuit are dismissed with prejudice. All costs of court are taxed against Plaintiff Awad O. Mustafa.

All writs and processes necessary to the enforcement of this judgment shall issue as necessary. This is a final judgment disposing of all issues and all parties and is appealable. All relief not expressly granted is denied.

SIGNED this ____ day of _____, 2022.
12/14/2022



JUDGE PRESIDING

CAUSE NO. 2022-54542

AWAD O. MUSTAFA,
Plaintiff

V.

TEXAS WORKFORCE COMMISSION,
HTS SERVICES, INC., et. al.,
Defendants

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

80th JUDICIAL DISTRICT

11C
PJURX
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ORDER

On this day came on to be considered Defendants' HTS Services, Inc. ("HTS") and Tarek Morsi, Misel Repak, Mahmoud Hassan, Shafi Mohamed, and Yewande "Wendy" Adelaja (collectively "HTS Present / Former Employees") plea to the jurisdiction and motion for summary judgment against Plaintiff Awad O. Mustafa. The Court is of the opinion that Defendants' Plea to the Jurisdiction and Motion for Summary Judgment are well-taken and should be granted.

IT IS ORDERED that Plaintiff Awad O. Mustafa's claims against Defendants Tarek Morsi, Misel Repak, Mahmoud Hassan, Shafi Mohamed, and Yewande "Wendy" Adelaja are dismissed with prejudice. All costs of court are taxed against Plaintiff Awad O. Mustafa.

IT IS FURTHER ORDERED that Plaintiff Awad O. Mustafa's claims against Defendant HTS Services, Inc., are dismissed with prejudice. However, if Plaintiff Awad O. Mustafa is seeking a trial de novo in this Court on his appeal of a Texas Workforce Commission ("TWC") decision denying him unemployment benefits, then HTS Services, Inc. shall remain a party to this proceeding solely in its capacity as a party to the underlying TWC proceeding for the sole purpose of determining whether or not substantial evidence supports the decision made in the TWC proceeding.

SIGNED this 10 day of November, 2022.

Signed: J. J. Marano
11/15/2022
JUDGE PRESIDING

Appendix d - 2

Appendix

CAUSE NO. 202254542

Pgs-2

AWAD O MUSTAFA,
Plaintiff,

v.

**TEXAS WORKFORCE
COMMISSION, HTS SERVICES
INC., et. al.**
Defendants.

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IN THE DISTRICT COURT

80th JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

PJURX
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**Order Granting Defendant Texas Workforce Commission's
Plea to the Jurisdiction**

On _____, the Court heard Defendant's Plea to the Jurisdiction, Response to Plaintiff's Motion for Default Judgment, and Objection to Attorney's Fees. Having considering the pleadings, the moving and response papers, the argument of counsel, and all other matters presented to the Court, the Court GRANTS the plea to the jurisdiction and dismisses any and all of Plaintiff's requests and claims against TWC, requests for attorney's fees, and any ultra vires claims against all named parties, for lack of subject-matter jurisdiction. Plaintiff's Motion for Default Judgment is DENIED. All further relief not granted is DENIED..

Signed this _____ day of _____, 2022.

Signed: 
11/15/2022
PRESIDING JUDGE

Approved as to form:

/s/ William Cohen
WILLIAM COHEN
Assistant Attorney General

e - 1

Automated Certificate of eService

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Saquanda Johnson on behalf of William Cohen

Bar No. 24082839

saquanda.johnson@oag.texas.gov

Envelope ID: 70139072

Status as of 11/14/2022 12:16 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Will Cohen		will.cohen@oag.texas.gov	11/14/2022 12:00:37 PM	SENT
Awad OMustafa		oawad5881@gmail.com	11/14/2022 12:00:37 PM	SENT
Robert GlenMoll		texlaw1992@aol.com	11/14/2022 12:00:37 PM	SENT



**COURT OF APPEALS FOR THE
FIRST DISTRICT OF TEXAS AT HOUSTON**

ORDER ON MOTION TO RECUSE

Appellate case name: Awad O. Mustafa v. Texas Workforce Commission, Brian Daniel, Aron S. Demerson, Julian Alvarez, "S. Sunday," "P. Payne," Ofelia de Leon, HTS Services, Inc., Tarek Morsi, Misel Repak, Mahmoud Hassan, Shafi Mohamed, and Yewande "Wendy" Adelaja

Appellate case number: 01-22-00878-CV

Date motion filed: June 20, 2023

Party filing motion: Appellant, Awad O. Mustafa

On June 20, 2023, appellant, Awad O. Mustafa, proceeding pro se, filed a "Motion to Disqualify or Recuse a Justice." In his motion, appellant requested that the Court "enter an [o]rder disqualifying or recusing the Honorable Judge Amparo Guerra from further involvement in this case." On June 22, 2023, appellant filed a "Supplement to Motion to Disqualify or Recuse a Justice."

With respect to motion to recuse, and the supplement filed by appellant, Justice Guerra certified the matter to the en banc Court for consideration and ruling. See TEX. R. APP. P. 16.3(b). The en banc Court **denies** appellant's "Motion to Disqualify or Recuse a Justice," and any supplement to that motion.

It is so ORDERED.

Judge's signature: /s/ Chief Justice Terry Adams
Acting for the En Banc Court*

* En banc court consists of Chief Justice Adams and Justices Kelly, Goodman, Landau, Hightower, Countiss, Rivas-Molloy, and Farris.

Date: July 25, 2023

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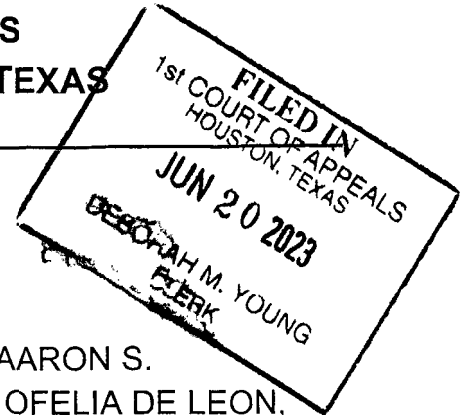
NO. 01-22-00878-CV

**IN THE COURT OF APPEALS
FOR THE FIRST DISTRICT OF TEXAS**

AWAD O. MUSTAFA
Appellant,
V.

TEXAS WORKFORCE COMMISSION, BRYAN DANIEL, AARON S.
DEMERSON, JULIAN ALVAREZ, S. SUNDAY, P. PAYNE, OFELIA DE LEON,
HTS SERVICES, INC., TAREK MORSI, MISEL REPAK, MAHMOUD HASSAN,
SHAFI MOHAMED, YEWANDE ""WENDY"" ADELAJA,

Appellees,



**On Appeal from the 80th District Court
Harris County, Texas.
Trial Court Cause No. 2022-54542**

MOTION TO DISQUALIFY OR RECUSE A JUSTICE

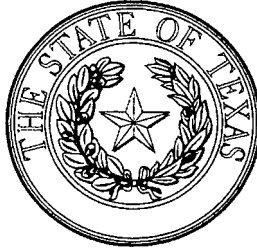
TO THE HONORABLE FIRST DISTRICT COURT OF APPEALS:

Comes Now, Awad O. Mustafa, pro se, and respectfully moves this Court pursuant to Rule 16.3 of the Tex. R. App. P. (a) & (b), the Fifth, Sixth, and Fourteenth amendments to the United States Constitution, Article 1, Section 10 and 19, and Article 5, Section 11 of the Texas Constitution, Tex. R. Civ. P. 18; and other relevant law, for an Order disqualifying or recusing¹ Honorable Justice Amparo Guerra from further proceedings in this Appeal, and in support Appellant shows the following:

¹ The grounds for disqualification of an appellate court justice or judge are constitutional matters affecting the jurisdiction of the justice or the judge/ court, and cannot be waived. The recusal of a justice or judge, on the other hand, is statutory and can be waived if not properly brought before the court see Tex. R. Civ. Proc. 18.

Appendix g

Order issued December 19, 2023



In The
Court of Appeals
For The
First District of Texas

NO. 01-22-00878-CV

AWAD O. MUSTAFA, Appellant

V.

**TEXAS WORKFORCE COMMISSION, BRIAN DANIEL, ARON S.
DEMERSON, JULIAN ALVAREZ, "S. SUNDAY," "P. PAYNE," OFELIA
DE LEON, HTS SERVICES, INC., TAREK MORSI, MISEL REPAK,
MAHMOUD HASSAN, SHAFI MOHAMED, AND YEWANDE "WENDY"
ADELAJA, Appellees**

**On Appeal from the 80th District Court
Harris County, Texas
Trial Court Case No. 2022-54542**

MEMORANDUM ORDER

Currently pending before this Court is the "Emergency Motion to Disqualify
or Recuse the Entire Court Justices, and Transfer the Appeal to the 14th Court of

Appeals,” filed by appellant, Awad O. Mustafa, proceeding pro se. In his motion, appellant seeks to recuse each of the justices of this Court, and for the appeal to be transferred to the Court of Appeals for the Fourteenth District of Texas.

Texas Rule of Appellate Procedure 16.3 prescribes the procedure to be followed for recusal of an appellate justice:

Before any further proceeding in the case, the challenged justice or judge must either remove himself or herself from all participation in the case or certify the matter to the entire court, which will decide the motion by a majority of the remaining judges sitting en banc. The challenged justice or judge must not sit with the remainder of the court to consider the motion as to him or her.

TEX. R. APP. P. 16.3(b).

When, as in this case, a party challenges all the members of the court, the motion is decided by the court under the procedures set forth in Rule 16.3. *See id.*; *see, e.g., Cameron v. Greenhill*, 582 S.W.2d 775, 776–77 (Tex. 1979) (denying motion to disqualify entire Texas Supreme Court); *Cogsdil v. Jimmy Fincher Body Shop, LLC*, No. 07-16-00303-CV, 2016 WL 7321788, at *1 (Tex. App.—Amarillo Dec. 12, 2016, order) (treating recusal motion as addressed to entire Court).

Accordingly, upon the filing of appellant’s recusal motion and prior to any further proceedings in this appeal, each of the challenged justices of this Court considered the motion in chambers. *See* TEX. R. APP. P. 16.3(b); *see also Cogsdil*, 2016 WL 7321788, at *1; *Cannon v. City of Hurst*, 180 S.W.3d 600, 601 (Tex. App.—Fort Worth 2005, order). Chief Justice Adams and Justices Kelly,

Goodman, Landau, Hightower, Countiss, Rivas-Molloy, Guerra, and Farris each found no reason to recuse themselves and certified the matter to the remaining members of the en banc court. *See* TEX. R. APP. P. 16.3(b); *Cogsdil*, 2016 WL 7321788, at *1; *Cannon*, 180 S.W.3d at 601.

This Court then followed the procedure set out in Rule 16.3. *See* TEX. R. APP. P. 16.3(b); *Cannon*, 180 S.W.3d at 601. The justices deliberated and decided the motion to recuse with respect to each challenged justice by a vote of the remaining participating justices en banc. *See* TEX. R. APP. P. 16.3(b); *Cogsdil*, 2016 WL 7321788, at *1; *Cannon*, 180 S.W.3d at 601. No challenged justice sat with the other members of the Court when the challenge to him or her was considered. *See* TEX. R. APP. P. 16.3(b); *Manges v. Guerra*, 673 S.W.2d 180, 185 (Tex. 1984); *Cogsdil*, 2016 WL 7321788, at *1; *McCullough v. Kitzman*, 50 S.W.3d 87, 88 (Tex. App.—Waco 2001, order).

Having considered the motion as to each challenged justice, and finding no basis for recusal, the motion to recuse is **denied** with respect to each challenged justice. *See Manges*, 673 S.W.2d at 185; *McCullough*, 50 S.W.3d at 89. The Court enters the following orders:

Appendix g-3

ORDER DENYING MOTION AS TO CHIEF JUSTICE ADAMS

To the extent that appellant's pro se "Emergency Motion to Disqualify or Recuse the Entire Court Justices" requests recusal of Chief Justice Adams, it is ordered that the motion to recuse is **denied**.

The Court consists of: Justices Kelly, Goodman, Landau, Hightower, Countiss, Rivas-Molloy, Guerra, and Farris.

ORDER DENYING MOTION AS TO JUSTICE KELLY

To the extent that appellant's pro se "Emergency Motion to Disqualify or Recuse the Entire Court Justices" requests recusal of Justice Kelly, it is ordered that the motion to recuse is **denied**.

The Court consists of: Chief Justice Adams and Justices Goodman, Landau, Hightower, Countiss, Rivas-Molloy, Guerra, and Farris.

ORDER DENYING MOTION AS TO JUSTICE GOODMAN

To the extent that appellant's pro se "Emergency Motion to Disqualify or Recuse the Entire Court Justices" requests recusal of Justice Goodman, it is ordered that the motion to recuse is **denied**.

The Court consists of: Chief Justice Adams and Justices Kelly, Landau, Hightower, Countiss, Rivas-Molloy, Guerra, and Farris.

Appendix g - 4

ORDER DENYING MOTION AS TO JUSTICE LANDAU

To the extent that appellant's pro se "Emergency Motion to Disqualify or Recuse the Entire Court Justices" requests recusal of Justice Landau, it is ordered that the motion to recuse is **denied**.

The Court consists of: Chief Justice Adams and Justices Kelly, Goodman, Hightower, Countiss, Rivas-Molloy, Guerra, and Farris.

ORDER DENYING MOTION AS TO JUSTICE HIGHTOWER

To the extent that appellant's pro se "Emergency Motion to Disqualify or Recuse the Entire Court Justices" requests recusal of Justice Hightower, it is ordered that the motion to recuse is **denied**.

The Court consists of: Chief Justice Adams and Justices Kelly, Goodman, Landau, Countiss, Rivas-Molloy, Guerra, and Farris.

ORDER DENYING MOTION AS TO JUSTICE COUNTISS

To the extent that appellant's pro se "Emergency Motion to Disqualify or Recuse the Entire Court Justices" requests recusal of Justice Countiss, it is ordered that the motion to recuse is **denied**.

The Court consists of: Chief Justice Adams and Justices Kelly, Goodman, Landau, Hightower, Rivas-Molloy, Guerra, and Farris.

Appendix 9 - 5

ORDER DENYING MOTION AS TO JUSTICE RIVAS-MOLLOY

To the extent that appellant's pro se "Emergency Motion to Disqualify or Recuse the Entire Court Justices" requests recusal of Justice Rivas-Molloy, it is ordered that the motion to recuse is **denied**.

The Court consists of: Chief Justice Adams and Justices Kelly, Goodman, Landau, Hightower, Countiss, Guerra, and Farris.

ORDER DENYING MOTION AS TO JUSTICE GUERRA

To the extent that appellant's pro se "Emergency Motion to Disqualify or Recuse the Entire Court Justices" requests recusal of Justice Guerra, it is ordered that the motion to recuse is **denied**.

The Court consists of: Chief Justice Adams and Justices Kelly, Goodman, Landau, Hightower, Countiss, Rivas-Molloy, and Farris.

ORDER DENYING MOTION AS TO JUSTICE FARRIS

To the extent that appellant's pro se "Emergency Motion to Disqualify or Recuse the Entire Court Justices" requests recusal of Justice Farris, it is ordered that the motion to recuse is **denied**.

The Court consists of: Chief Justice Adams and Justices Kelly, Goodman, Landau, Hightower, Countiss, Rivas-Molloy, and Guerra.

Appendix g-6

ORDER DENYING MOTION TO TRANSFER

Appellant's pro se motion further requests that the Court "[t]ransfer this [a]ppeal to the 14th District Court of Appeals." The authority to transfer appeals among the courts of appeals lies exclusively with the Texas Supreme Court, and this Court therefore has no authority to grant the relief requested by appellant. *See* TEX. GOV'T CODE ANN. § 73.001 (authorizing Texas Supreme Court to order transfer of cases "from one court of appeals to another").

Accordingly, appellant's request to transfer the appeal to the Court of Appeals for the Fourteenth District of Texas included in his "Emergency Motion to Disqualify or Recuse the Entire Court Justices" is **denied** by the Court.

The Court consists of: Chief Justice Adams and Justices Kelly, Goodman, Landau, Hightower, Countiss, Rivas-Molloy, Guerra, and Farris.

PER CURIAM

Appending - 7



**COURT OF APPEALS FOR THE
FIRST DISTRICT OF TEXAS AT HOUSTON**

ORDER

Appellate case name: Awad O. Mustafa v. Texas Workforce Commission, Brian Daniel, Aron S. Demerson, Julian Alvarez, "S. Sunday," "P. Payne," Ofelia de Leon, HTS Services, Inc., Tarek Morsi, Misel Repak, Mahmoud Hassan, Shafi Mohamed, and Yewande "Wendy" Adelaja

Appellate case number: 01-22-00878-CV

Trial court case number: 2022-54542

Trial court: 80th District Court of Harris County

On June 20, 2023, appellant, Awad O. Mustafa, proceeding pro se, filed a "Motion to Disqualify or Recuse a Justice." In his motion, appellant requested that the Court "enter an [o]rder disqualifying or recusing the Honorable Judge Amparo Guerra from further involvement in this case." On June 22, 2023, appellant filed a "Supplement to Motion to Disqualify or Recuse a Justice."

With respect to motion to recuse, and the supplement filed by appellant, Justice Guerra declined to voluntarily recuse herself from participating in this appeal and certified the matter to the en banc Court for consideration and ruling. See TEX. R. APP. P. 16.3(b). On July 25, 2023, the en banc Court unanimously denied appellant's "Motion to Disqualify or Recuse a Justice," and any supplement to that motion.

Also on July 25, 2023, appellant filed a document entitled "Notice of Appeal" with the Clerk of this Court. In his notice of appeal, appellant stated that "pursuant to Rule 16.3(c)" of the Texas Rules of Appellate Procedure, appellant filed his "notice of appeal" from the Court's July 25, 2023 order denying his motion to recuse Justice Guerra.

In his notice, appellant stated that he "[r]eserves his [r]ight to [m]ove for a review and [a]ppeal the July 25, 2023" order, "which constitutes a clear violation of the [a]ppellant's [r]ight of [d]ue [p]rocess." He further stated that he "[r]eserves his [r]ight under Rule 16.3(c) and all other relevant laws to the 21 days period of time to file, amend and perfect his [a]ppeal from this Court's [July 25, 2023] [o]rder."

APPENDIX

Appellant's "Notice of Appeal" does not appear to request any relief from this Court. Pursuant to Rule 16.3(c), appellant is entitled to seek review of the Court's en banc order denying his motion to recuse Justice Guerra. See TEX. R. APP. P. 16.3(c) (entitled "Appeal," and stating that "the denial of a recusal is reviewable"). However, because it is an order of this Court which is the subject of appellant's July 25, 2023 "Notice of Appeal," any such appeal would not lie in this Court. Accordingly, to the extent appellant's July 25, 2023 "Notice of Appeal" seeks any relief from this Court, such request is **denied**.

It is so ORDERED.

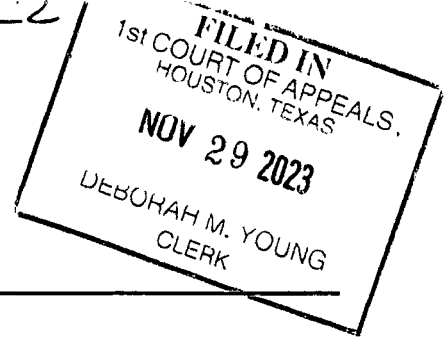
Judge's signature: /s/ Amparo Guerra

☒ Acting individually ☐ Acting for the Court

Date: August 15, 2023

APPENDIX h-2

Appendix 9-2



NO.01-22-00878-CV

**IN THE COURT OF APPEALS
FOR THE FIRST DISTRICT OF TEXAS**

AWAD MUSTAFA

Appellant.

V.

**TEXAS WORKFORCE COMMISSION, BRYAN DANIEL, AARON S.
DEMERSON, JULIAN ALVAREZ, S. SUNDAY, P. PAYNE, OFELIA DE LEON,
HTS SERVICES, INC., TAREK MORSI, MISEL REPAK, MAHMOUD HASSAN,
SHAFI MOHAMED AND YEWANDE "WENDY" ADELAJA**

Appellees.

**ON APPEAL FROM THE 80TH DISTRICT COURT
OF HARRIS COUNTY, TEXAS
TRIAL COURT CASE NO. 2022-54542**

**EMERGENCY MOTION TO DISQUALIFY OR RECUSE THE ENTIRE
COURT JUSTICES, AND TRANSFER THE APPEAL TO THE 14th
COURT OF APPEALS**

TO THE HONORABLE 1ST COURT OF APPEALS:

COMES NOW, Awad Mustafa, pro se Appellant in this Appeal, pursuant to Rule 16.3(a), read with the provision of Rule 16.3(b), and under the authority of the Tex. R. Civ. P. 18(a)(b), the Fifth, Sixth, and Fourteenth amendments to the United States Constitution, Art. 1, section 10, 19, and Art. 5, section 11 of the Texas Constitution, and all and other applicable and relevant relevant laws, respectfully moves the entire nine Honorable Justices in this Honorable Court to Disqualify or recuse themselves from any further



**COURT OF APPEALS FOR THE
FIRST DISTRICT OF TEXAS AT HOUSTON**

ORDER

Appellate case name: Awad O. Mustafa v. Texas Workforce Commission, Brian Daniel, Aron S. Demerson, Julian Alvarez, "S. Sunday," "P. Payne," Ofelia de Leon, HTS Services, Inc., Tarek Morsi, Misel Repak, Mahmoud Hassan, Shafi Mohamed, and Yewande "Wendy" Adelaja

Appellate case number: 01-22-00878-CV

Trial court case number: 2022-54542

Trial court: 80th District Court of Harris County

Appellant, Awad O. Mustafa, proceeding pro se, has appealed from three trial court orders, including: (1) a November 15, 2022 order granting the plea to the jurisdiction and motion for summary judgment of appellees HTS Services, Inc., Tarek Morsi, Misel Repak, Mahmoud Hassan, Shafi Mohamed, and Yewande "Wendy" Adelaja (the "HTS parties"), (2) a November 15, 2022 order granting the plea to the jurisdiction of appellee, the Texas Workforce Commission, and "all named parties," which includes appellees Brian Daniel, Aron S. Demerson, Julian Alvarez, "S. Sunday," "P. Payne," and Ofelia de Leon (collectively, the "TWC parties"), and (3) the December 14, 2022 Final Judgment.

The clerk's record was filed on January 18, 2023 and the reporter's record was filed on January 29, 2023. Supplemental clerk's records were filed on February 22, 2023 and April 17, 2023. Appellant filed his appellant's brief with the Clerk of this Court on April 21, 2023. Along with his brief, appellant submitted two compact discs (CDs) which he stated contained exhibits which had not been submitted by the trial court clerk as a part of the clerk's record.

On April 20, 2023, appellant filed a document titled "Court Clerk[']s Failure to supplement Correct Record Notice of Intent to Use Alternative Correct Record." Appellant requested that this Court consider, as a part of the appellate record, approximately 300 pages of documents included with the filing, as well as the items included on the CDs submitted by appellant to the Court. In this filing, appellant stated that he made several requests with the trial court clerk to supplement the clerk's record with the items included on the CDs, but the trial court clerk failed to do so.

Appellant's filing was construed as a motion to consider the items included on the CDs as a part of the appellate record and denied by the Court on April 27, 2023. See *McCann v. Spencer Plantation Invs., Ltd.*, No. 01-16-00098-CV, 2017 WL 769895, at *4 n.5 (Tex. App.—Houston [1st Dist.] Feb. 28, 2017, pet. denied) (mem. op.) (concluding that attachment of documents as exhibits or appendices to appellate brief does not constitute formal inclusion of such documents in record for appeal, and Court may not consider matters outside of the record in its review).

On April 27, 2023, appellant filed a "Motion to Reconsider the Court's Order of April 27, 2023." In this motion, appellant requested that the Court reconsider its order because it is appellant's "intent to use the [a]lternative [c]orrect [r]ecord he requested under the authority of Rule 34.5(C) and Rule 34.6(c) of [the] Texas Rules of Appellate Procedure on March 16, 2023, which the [t]rial [c]ourt [c]lerk failed to supplement and erred by filing a wrong record [on April] 17, 2023." Appellant further noted that "the intent of using the filed record is to clarify the facts and provide significant aid" to the Court "in their decision making." Appellant requests that the Court reconsider its April 27, 2023 order and "allow and have the [alternative correct record] filed by . . . [a]ppellant on April 20, 2023, to be included in the record of this appeal."

On May 8, 2023, appellant filed an "Emergency Motion for Temporary Relief/Emergency Request for Ruling on Motion to Reconsider." In this motion, appellant states that "there will be irreparable damages to" the briefing in this appeal if the Court denies appellant the "use of the [a]lternative [c]orrect [r]ecord which contains the entire [f]acts of the case."

As noted in our April 27, 2023 order, documents that are attached to a brief do not become a part of the appellate record. See *McCann*, 2017 WL 769895, at *4 n.5. We further note that this Court is not responsible for the filing of the clerk's record. See TEX. R. APP. P. 35.3(a). However, where a party believes an item has been omitted from the clerk's record, that party may request that the trial court clerk "prepare, certify, and file in the appellate court a supplement containing the missing item." See TEX. R. APP. P. 34.5(c)(1).

Appellant's specific request to this Court, that we consider items included on the CDs as a part of the appellate record, is outside the scope of this Court's authority under the Texas Rules of Appellate Procedure. However, nothing in this order prevents appellant, or any party, from requesting that the clerk's record be supplemented. And, to the extent a supplemental clerk's record is properly filed with this Court, any documents included in any supplemental clerk's record will become a part of the appellate record and will be considered by the Court. See TEX. R. APP. P. 34.5(c)(3).

Accordingly, appellant's motion for reconsideration of the Court's April 27, 2023 order and emergency motion for temporary relief and emergency request for ruling on motion to reconsider are **denied**.

Appendix i - 2

It is so ORDERED.

Judge's signature: /s/ Amparo Guerra

☒ Acting individually ☐ Acting for the Court

Date: May 16, 2023

Appendix i-3

Appendix J

1497
Received 8/16/2021
1404-1 C1780
UI Support & Customer Service
TEXAS WORKFORCE COMMISSION
PO BOX 370040
EL PASO TX 79937-0040

10 AM [Central Daylight Time] in 00-55 on line [6] for Appeals Tribunal - Pg 3 / 3

14003/003

320420810014970101

DETERMINATION ON PAYMENT OF UNEMPLOYMENT BENEFITS
Date Mailed: July 28, 2021

AWAD O MUSTAFA
5600 CHIMNEY ROCK RD APT 632
HOUSTON TX 77081-1993
|||||

Social Security Number: XXX-XX-3
Employer: HTS SERVICES INC
As: HONESTY TRAVEL AGENCY
Employer Account No: 06-720826-9
All dates are shown in
month-day-year order.

Decision

Issue: Separation from Work
Decision: We can pay you benefits, if you meet all other weekly requirements, such as being able and available to work, and be actively searching for work.
Reason for Decision: Our investigation found that your employer fired you for a reason that was not misconduct connected with the work.
Law Reference: Section 207.044 of the Texas Unemployment Compensation Act.

Understanding your Decision

If you receive a decision that says, "we cannot pay you benefits," it means there is a problem with your claim EVEN IF you have received other decisions for the same period that say, "we can pay you benefits." If even one decision for the same period says we cannot pay, you will not receive an unemployment payment for that period.
To resolve issues on decisions you receive:
1. Follow instructions on the notice(s); call the Tele-Center at 800-839-6631 if you have questions;
2. If the instructions tell you to "Report," call the Tele-Center at once;
3. If you disagree with a decision, file an appeal. Appeal each decision separately by the appeal deadline. If you fax your appeal, keep a confirmation sheet.
Your employer can appeal TWC's decision to pay benefits. TWC will notify you of any appeal hearing. If you do not participate, you may lose your benefits and have to repay benefits you received.

Determination of Potential Chargeback for the Employer

We will charge your former employer's account if we pay you benefits.

If You Disagree with this Decision

If you disagree with this decision, you may appeal. Submit your appeal by mail, fax, online, or in person at any Texas Workforce Solutions office, on or before 08-11-21.
TWC will use the postmark date, or the date we receive the fax or online form, to determine whether you submitted your appeal on time. If you appeal by fax, you should keep your fax confirmation as proof you sent it. Please include a copy of this determination notice with your appeals correspondence.
If you receive multiple determination notices, you must appeal each determination separately.
Mail the appeal to:

You may appeal by submitting
TWC's online appeal form. Go to
www.texasworkforce.org/uiappeal

Appeal Tribunal
Texas Workforce Commission
101 E. 15th Street
Austin, TX 78778-0002
Or fax to (512) 475-1135

Case No.: 4
Claim ID.: 07-04-21
Claim Date: 07-04-21
HEARING IMPAIRED CLIENTS
CALL 711 for RELAY TEXAS

Please See Reverse For How To File An Appeal.
80300E 02/28/2018

320421710012830203

Date Mailed: August 5, 2021

Appendix K

Social Security Number: XXX-XX-379
Employer: HTS SERVICES INC
As: HONESTY TRAVEL AGENCY
Employer Account No: 06-720826-9
All dates are shown in
month-day-year order.

Decision

Issue: Separation from Work
Decision: We cannot pay you benefits.
Reason for Decision: Our investigation found your employer fired you for violation of company rules and policies. This is considered misconduct connected with the work.
Beginning Date of No Payment Period (Disqualification): 07-04-21
What you can do: You can request that we end this disqualification if you return to employment as defined in the Texas Unemployment Compensation Act after the beginning date above and:
(a) Work at least 30 hours a week for six weeks, or earn wages equal to six times your weekly benefit amount; and
(b) provide TWC with proof of your work or earnings and request that we end the disqualification.
You can fulfill the work or earnings requirements while you continue to work part time. However, if you are no longer working, you must have a qualifying separation from your last job.
Law Reference: Section 207.044 and Subchapter D, Section 201 of the Texas Unemployment Compensation Act.

There will be no charge to your former employer's account.

If you disagree with this decision, you may appeal. Submit your appeal by mail, fax, online, or in person at any Texas Workforce Solutions office, on or before 08-18-21 . TWC will use the postmark date, or the date we receive the fax or online form, to determine whether you submitted your appeal on time. If you appeal by fax, you should keep your fax confirmation as proof you sent it. Please include a copy of this determination notice with your appeals correspondence.

If you receive multiple determination notices, you must appeal each determination separately.

Mail the appeal to:

You may appeal by submitting TWC's online appeal form. Go to www.texasworkforce.org/ui/appeal

Appeal Tribunal
Texas Workforce Commission
101 E. 15th Street
Austin, TX 78778-0002
Or fax to (512) 475-1135

Case No.: 4
Claim ID.: 07-04-21
Claim Date: 07-04-21
HEARING IMPAIRED CLIENTS
CALL 711 for RELAY TEXAS

Please See Reverse For How To File An Appeal.

Appendix L-1

p2

See reverse side for instructions

TEXAS WORKFORCE COMMISSION
Austin, Texas

FINDINGS AND DECISIONS OF COMMISSION
UPON REVIEW OF CLAIM FOR BENEFITS

AUG 02 2022

Date Mailed

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AWAD O MUSTAFA
5600 CHIMNEY ROCK RD APT 632
HOUSTON, TX 77081-1993

Case Number:
3066449-2

Social Security Number:
XXX-XX-3795

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HTS SERVICES INC
HONESTY TRAVEL AGENCY
12903 OLD RICHMOND RD
HOUSTON TX 77099-2246

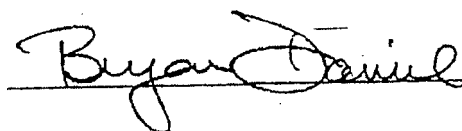
Prior Decision Date:
March 2, 2022

Appeal Filed by: Claimant

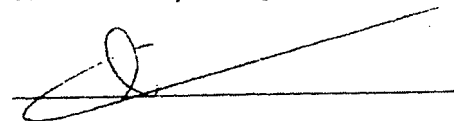
The Commission has considered the appeal filed from the Appeal Tribunal decision identified above and, after due consideration of the decision and the complete record herein, is of the opinion that the case was properly decided by the Appeal Tribunal. The Commission hereby adopts the findings of fact and conclusions of law of the Appeal Tribunal, as if the same were copied herein in full.

The decision of the Appeal Tribunal is in all respects affirmed.

The last day a timely appeal may be filed is AUG 16 2022. This date includes holidays and weekends as authorized by Commission Rule.



Bryan Daniel
Commissioner Representing the Public



Aaron S. Demerson
Commissioner Representing Employers

I dissent



Julian Alvarez
Commissioner Representing Labor

Appendix L-1

Appendix
L-2

TEXAS WORKFORCE COMMISSION
COMMISSION APPEALS
101 EAST 15TH ST
AUSTIN TX 78778-0001

Appeal Rights from Commission Appeals

A copy of the decision of the Texas Workforce Commission is either printed on the reverse side of this form or attached. The date of mailing of the decision is set out at the top of the decision. All mailing dates are shown as month, day and year.

You have two methods of appeal available: (1) filing a motion for rehearing with the Commission, or (2) filing a petition for judicial review in a court of competent jurisdiction.

Section 212.153 of the Texas Unemployment Compensation Act provides that this decision will become final fourteen (14) days after the date of mailing thereof, unless within such fourteen (14) days, the appeal is reopened by Commission order or a party to the appeal files a written motion for rehearing.

YOU MAY FILE A MOTION FOR REHEARING BY MAILING IT DIRECTLY TO THIS OFFICE AT THE ADDRESS SHOWN ABOVE, OR BY FAX AT FAX NUMBER (512) 475-2044. IF YOU MAIL YOUR MOTION FOR REHEARING TWC WILL USE THE POSTMARK DATE TO DETERMINE THE DATE OF THE MOTION FOR REHEARING. YOUR MOTION FOR REHEARING CAN ALSO BE FILED ON-LINE AT:

www.texasworkforce.org/uiappeal (claimants) and www.texasworkforce.org/uiappealemployer (employers.)

TWC MUST RECEIVE YOUR MOTION FOR REHEARING NO LATER THAN 14 DAYS FROM THE DATE THE DECISION WAS MAILED.

TWC WILL USE THE DATE OF RECEIPT TO DETERMINE WHETHER YOUR APPEAL IS TIMELY. YOU SHOULD RETAIN YOUR FAX CONFIRMATION /E-MAIL CONFIRMATION NUMBER AS PROOF OF TRANSMISSION.

THE COMMISSION WILL GRANT YOUR MOTION ONLY IF IT:

- (1) DESCRIBES SPECIFIC NEW EVIDENCE THAT IS NOT IN THE RECORD,
- (2) STATES A TRUE, COMPELLING REASON WHY THE EVIDENCE WAS NOT PRESENTED AT THE EARLIER HEARING, AND
- (3) EXPLAINS SPECIFICALLY HOW THE NEW EVIDENCE WILL CHANGE THE OUTCOME OF THE CASE.

The Commission will grant your motion only if you have shown substantial reasons for granting it. Please include the claimant's social security number and appeal number in your motion.

Chapter 212 of the Texas Unemployment Compensation Act provides in Subchapter E that a party aggrieved by a final decision of the Commission may obtain judicial review of the decision by bringing an action against the Commission in a court of competent jurisdiction in the county of claimant's residence for a trial de novo review of the decision. Such action must be brought between the 15th and the 28th day after the date of the Commission decision, and each other party to the proceeding before the Commission must be made a defendant in such action. If the claimant is not a Texas resident, such action must be filed in Travis County, or the Texas county where claimant's last employer has its principal place of business, or in the Texas county of claimant's last residence. The petition in such action must state the grounds on which review is sought, and must be served on a member of the Commission or on General Counsel, Suite 608, 101 E 15th St., Austin TX 78778, the person designated by the Commission to receive service on its behalf and there must be left with such person as many copies of the petition as there are defendants. This constitutes completed service on all parties, and the Commission immediately shall mail one copy of the petition to each defendant.

NOTICE TO CLAIMANT:

You must continue to file claims, conduct an active work search, and keep records.

A-8(1218)

Appendix L-2

CAUSE NO. 202254542



AWAD O MUSTAFA,
Plaintiff,

v.

TEXAS WORKFORCE COMMISSION
Defendants.

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§

IN THE DISTRICT COURT

80th JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

DEFENDANT TEXAS WORKFORCE COMMISSION'S INITIAL DISCLOSURES

To: Plaintiff Awad O. Mustafa, 5600 Chimney Rock #632, Houston, TX 77081

Pursuant to Texas Rule of Civil Procedure 194.2, Defendant Texas Workforce Commission provides the following initial disclosures:

INITIAL DISCLOSURES

INITIAL DISCLOSURE (b)(1): The correct names of the parties to the lawsuit.

ANSWER: Texas Labor Code § 212.206 provides in part that the Texas Workforce Commission (TWC), a state agency, is considered a party to any judicial action involving a final decision of the Commission. Texas Labor Code § 212.201 provides in part that a party aggrieved by a final decision of the Commission may obtain judicial review. The section also provides that each party to the proceeding before the Commission, the claimant and the employer, if applicable, must be made a defendant in an action under this subchapter. Defendant TWC believes the parties to this proceeding are properly named.

INITIAL DISCLOSURE (b)(2): The name, address, and telephone number of any potential parties.

ANSWER: Defendant TWC refers Plaintiff to the copy of the certified record provided to Plaintiff.

KEN PAXTON
Attorney General

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

SHAWN E. COWLES
Deputy Attorney General for Civil Litigation

BRITTNEY JOHNSTON
Division Chief, Tax Litigation

/s/ William Cohen
WILLIAM COHEN
Assistant Attorney General
State Bar No. 24082839
Will.Cohen@oag.texas.gov
Tax Division
P.O. Box 12548
Austin, Texas 78711-2548
512-475-1743
512-478-4013 (fax)
Attorneys for Defendant
Texas Workforce Commission

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2022, a copy of the foregoing document was served on all parties as follows:

Awad O. Mustafa
5600 Chimney Rock # 632
Houston, Texas 77081
oawad5881@gmail.com
(832) 886-8129
(346) 282-9947
Pro-se Plaintiff

/s/ William Cohen
WILLIAM COHEN
Assistant Attorney General

Appendix M - 2

CAUSE NO. 202254542

AWAD O. MUSTAFA
Plaintiff,

v.

TEXAS WORKFORCE COMMISSION
BRYAN DANIEL, AARON S. DEMERSON,
JULIAN ALVAREZ, S. SUNDAY, P. PAYNE,
OFELIA DE LEON, HTS SERVICES, INC.,
TAREK MORSI, MISEL MORSI,
MAHMOUD HASSAN, SHAFI MOHAMED,
AND WINDY
Defendants.

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IN THE DISTRICT COURT

80TH DISTRICT COURT

HARRIS COUTY, TEXAS

UNSWORN DECLARATION

(Texas Civil Practice and Remedies Code, Section 132.001)

STATE OF TEXAS

§
§
§

COUNTY OF TRAVIS

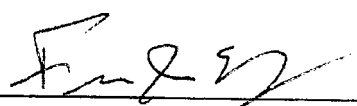
"My name is Francisco Hernandez, and I am an employee of the following governmental agency: the Texas Workforce Commission. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct."

"I am the Custodian of Records for the Office of General Counsel of the Texas Workforce Commission."

"I hereby declare that annexed hereto is a true and correct copy of the documents as kept as a public record by the Records Management Center from the record maintained by the Commission in connection with an initial claim for unemployment insurance benefits dated July 4, 2021, and an appeal of the initial determination, by Awad O. Mustafa."

"Further affiant sayeth not."

Signed in Travis County, Texas this 22nd day of September, 2022.


FRANCISCO HERNANDEZ
CUSTODIAN OF RECORDS
TEXAS WORKFORCE COMMISSION

Pursuant to Texas Civil Practice and Remedies Code Section 132.001, an unsworn declaration may be used in lieu of a written sworn declaration, verification, certification, oath, or affidavit required by statute or required by a rule, order, or requirement adopted as provided by law. This provision does not apply to a lien required to be filed with a county clerk, an instrument concerning real or personal property required to be filed with a county clerk, or an oath of office or an oath required to be taken before a specified official other than a notary public.

Appendix m-3

Appendix
m-4



12903 OLD RICHMOND RD HOUSTON TX 77099 TEL 281 530 9300

APPEAL

Date 08/04/2021
Reference ACCOUNT # [REDACTED]
Employee name AWAD O MUSTAFA
SSN [REDACTED]

TO WHOM IT MAY CONCERN

THIS LETTER IS TO APPEAL THE CASE MENTIONED ABOVE

ATTACHED A LETTER FROM A WITNESSING EMPLOYEE TO THE MISCONDUCT OF MR. AWAD O MUSTAFA.

PLEASE IF YOU HAVE ANY QUESTION CALL ME AT [REDACTED]

Thanks

Tarek morsl

President

Hts services Inc.

Appendix m-4

HTS
TELICES, 12903 OLD RICHMOND RD, HOUST
30-9300, FAX 281-530-9394

X 77099



Letter for reasons of Termination.

To Whom it may concern,

This letter is to confirm "Awad O, Mustafa" was terminated on 7-9-21 due to Discovery & later Admission confirming the same by previous employee. Mentioned employee was running a separate business on our facilities by collecting money directly from customers for Services rendered by the employee to customers using Company access/ tools without company permission or authorization.

Sincerely,

HTS Services Inc.

Misel Repak

Manager

[Signature]
AUTHORIZED AGENT
ON BEHALF OF
HTS SERVICES INC

Appendix m-5

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Saquanda Johnson on behalf of William Cohen

Bar No. 24082839

saquanda.johnson@oag.texas.gov

Envelope ID: 69872884

Status as of 11/4/2022 8:25 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Will Cohen		will.cohen@oag.texas.gov	11/4/2022 8:24:25 AM	SENT
Awad OMustafa		oawad5881@gmail.com	11/4/2022 8:24:25 AM	SENT
Robert GlenMoll		texlaw1992@aol.com	11/4/2022 8:24:25 AM	SENT

Appendix m-6

appendix

Appendix n 1

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REPORTER'S RECORD
TRIAL COURT CAUSE NUMBER 2022-54542
COURT OF APPEALS CASE NUMBER 01-22-00878-CV
VOLUME 1 OF 1

AWAD O. MUSTAFA,
Plaintiff,
v.
TEXAS WORKFORCE
COMMISSION,
Defendants.
: IN THE DISTRICT COURT
:
:
: HARRIS COUNTY, TEXAS
:
:
: 80th JUDICIAL DISTRICT

NOVEMBER 14, 2022

On the 14th day of November, 2022, the
following proceedings came on to be heard in the
above-entitled and -numbered cause before the
Honorable Jeralynn Manor, Judge Presiding, held in
Houston, Harris County, Texas.

Proceedings reported by Certified Shorthand
Reporter and Machine Shorthand/Computer-Aided
Transcription.

DONNA KING, CSR, RPR
80TH OFFICIAL REPORTER
(832) 927-2677

A P P E A R A N C E S

FOR THE PLAINTIFF:

Mr. Awad O. Mustafa, Pro se
5600 Chimney Rock, Apt. 632
Houston, Texas 77081
Telephone: 832-886-8129
E-mail: oawad5881@gmail.com

FOR THE DEFENDANTS, HTS SERVICES, INC., and
HTS PRESENT/FORMER EMPLOYEES:

Mr. Robert G. Moll, SBN 00784622
Attorney at Law
1903 Blooming Park Lane
Katy, Texas 77450
Telephone: 713-540-2780
E-mail: texlaw1992@aol.com

FOR THE DEFENDANT, TEXAS WORKFORCE COMMISSION:

Mr. William Cohen, SBN 24082839
Assistant Attorney General
Tax Litigation Division
P.O. Box 12548
Austin, Texas 78711-2548
Telephone: 512-463-2078
E-mail: Will.Cohen@oag.texas.gov

I N D E X

	PAGE	LINE	VOL
Proceedings -----	4	1	1
Court's Ruling -----	20	14	1
Court Reporter's Certificate -----	27	1	1

P R O C E E D I N G S

THE COURT: All right. 2022-54542;
Mustafa versus Texas Workforce Commission.

All right. Make your announcement for
the record.

MR. MOLL: Robert Moll for HTS and the
HTS present/former employees.

MR. COHEN: Your Honor, I'm William
Cohen for the Texas Workforce Commission as well as
several of the named other parties, which are TWC
employees or commissioners.

MR. MUSTAFA: My name is Awad O.
Mustafa.

THE COURT: All right. This is your
motion?

MR. MOLL: Yes, Your Honor.

THE COURT: You can proceed.

MR. MOLL: Thank you, Your Honor.

Briefly, Mr. Mustafa used to work for
HTS. He was terminated. He's filed a proceeding
before the Texas Workforce Commission for
unemployment compensation. His claim was denied
throughout every stage of the proceeding, and now the
question is what we're doing here. From the
timing -- and I'll address my motion in reverse

1 order -- way I placed it, but the timing -- I think
2 Mr. Mustafa may have been intending to appeal the
3 TWC -- final TWC finding to this Court for a de novo
4 review, but in that case, the only issue before the
5 Court is whether the TWC decision is supported by
6 substantial evidence. All these other parties'
7 claims are inappropriate because the Court's
8 jurisdiction is appellate in this case, it's not
9 trial-court jurisdiction. However, if Mr. Mustafa is
10 just intending to sue everybody under the sun and not
11 appeal the TWC decision, then it's barred.

12 Mr. Mustafa never filed a -- under
13 Texas law, you have to file either a complaint with
14 the Texas Commission on Human Rights or with the EEOC
15 within 300 days or it's barred -- or 180 days,
16 sorry -- within 180 days or it's barred. He never
17 filed a complaint with TCHR. He also never filed a
18 complaint with the EEOC. His own evidence shows that
19 it was a preliminary -- he sort of had a preliminary
20 consultation. That's not considered a complaint by
21 the EEOC, and they told him that in writing.

22 And then, according to Mr. Mustafa --
23 it wasn't summary judgment evidence, but according to
24 his pleadings, they told him they didn't have
25 jurisdiction because HTS was too small an employer,

1 and so, therefore, they never got around to filing a
2 charge of discrimination. They had no jurisdiction
3 over it, and typically in that case -- they usually
4 issue a 90-day right-to-sue letter at that point, and
5 that 90 days has long passed. Mr. Mustafa didn't
6 provide it. So either this is a TWC appeal, in which
7 case the proper parties are just TWC and HTS in its
8 capacity simply as the employer in the previous
9 appeal, or there's a -- or his claims are all time-
10 barred. They're either time-barred or the Court has
11 no jurisdiction over them, depending -- federal law,
12 they say it's time-barred. State law, they say no
13 jurisdiction. I don't know why the discrepancy
14 between the two, but that's just the way the process
15 works.

16 THE COURT: All right.

17 MR. COHEN: Your Honor, we also have a
18 plea to the jurisdiction on file as well. I can
19 either take that up or let Mr. Mustafa respond to my
20 co-counsel's plea.

21 THE COURT: Okay. I don't have that
22 set for today, do I?

23 MR. COHEN: We did set it for today,
24 the same time as this, Your Honor, but if there's a
25 glitch somewhere, we can't hear it, then I --

1 THE COURT: All right. We'll look into
2 it.

3 MR. COHEN: Sure.

4 THE COURT: All right. Plaintiff.

5 MR. MUSTAFA: Your Honor, it started on
6 July the 6th, when there was a harsh argument between
7 me and one of the employees at HTS Services, the
8 defendant here. That's my employer. And because of
9 a family relationship between the employee and the
10 owner of the company -- he's a defendant here, too,
11 Mr. Tarek Morsi. He -- it arise to -- to the level
12 of discrimination in the employment, so I went
13 through the process with the Texas Workforce
14 Commission for the unemployment benefits. It was
15 7/06. On July the 28th I received the benefits and I
16 received the card, Your Honor -- was here, and the
17 benefits was -- was deposited inside the card. That
18 was on July 28th, and benefits was deposited
19 August 2nd. On August the 2nd, when the employer,
20 owner of the company, Defendant Tarek Morsi in this
21 cause number, 2022-54542, knew that his account was
22 charged, he, instead of following the instruction
23 that was sent to him by Texas Workforce -- Defendant
24 Texas Workforce Commission to appear in different
25 four ways, either to fax it, either -- another way is

1 to write an appeal, or fax it or go in person to any
2 one of Texas Workforce Solution, or to go to Austin.
3 That was four ways. Instead of going through the
4 instruction and following it, the one that was sent
5 to him on July 28th, 2001 -- 2 -- 21, Mr. Tarek Morsi
6 pick up the phone and contacted one of the employees
7 in Texas Workforce Commission -- Commission. She's a
8 defendant here. Her name is Defendant Ofelia
9 de Leon. So appeal was not filed until this present
10 second by Mr. Tarek Morsi in accordance with what --
11 the instruction of the policy and the rules of the
12 Texas Workforce Commission derive from the Texas --
13 Texas Unemployment Compensation Act.

14 *THE COURT:* Can I stop you for a
15 second? Are you telling me that your employer
16 appealed --

17 *MR. MUSTAFA:* He did not appeal.

18 *THE COURT:* Let me -- when I'm
19 speaking, just let me finish --

20 *MR. MUSTAFA:* Yes, Your Honor.

21 *THE COURT:* -- because you don't know
22 what I'm going to say.

23 *MR. MUSTAFA:* Correct.

24 *THE COURT:* My question is: Did your
25 employer file an appeal to the Texas Workforce

1 Commission decision?

2 MR. MUSTAFA: He did not file.

3 THE COURT: He did not. And are you
4 filing an appeal with this Court?

5 MR. MUSTAFA: I did not file an appeal
6 because I had the benefits. Then, because of his
7 phone call -- I don't know what was going on between
8 him. -- the decision to give me the benefits was
9 reversed, and at that point I filed an appeal to the
10 Texas Workforce Commission for what -- deprivation
11 from due process.

12 THE COURT: Let me stop you there for a
13 minute.

14 MR. MUSTAFA: Uh-huh.

15 THE COURT: The purpose of the petition
16 you have in this Court is for what?

17 MR. MUSTAFA: Oh, deprivation from due
18 process -- due process, for Fifth Amendment and
19 discrimination and some -- some other acts included
20 here that -- the use of indissmissible [sic] evidence.

21 There was a -- evidence that --
22 submitted by the defendant -- I mean, Defendant Tarek
23 Morsi and HTS Services, Inc., the employer, to -- to
24 the Court -- I mean, to the -- to the Texas Workforce
25 Commission appeal. They conducted a hearing that's

1 supposed to be fair, and inside of the packet for
2 that appeal -- tribunal -- the hearing, he was
3 instructed correct -- I mean, clearly to provide the
4 other party with a copy of any evidence, any document
5 he would like to use during that hearing. That did
6 not happen, again, and the Texas Workforce Commission
7 sent that document, the one they use later on as
8 evidence to make a decision -- another decision --
9 sent that document on behalf of the other party, sent
10 it to me by first-class mail.

11 *THE COURT:* All right. So let me just
12 ask you a question.

13 *MR. MUSTAFA:* Uh-huh.

14 *THE COURT:* The petition that you filed
15 in this Court is not an appeal for a decision from
16 the Texas Workforce Commission? Yes or no?

17 *MR. MUSTAFA:* Part of it is -- a part
18 of it is -- in part, I am appealing that decision
19 because that decision was made in -- based on
20 evidence that -- in violations with the Texas Rules
21 of Evidence.

22 *THE COURT:* All right. Let me stop you
23 there. And just so I'm clear, you've already filed
24 one appeal with the Texas Workforce Commission?

25 *MR. MUSTAFA:* No. I -- I --

1 THE COURT: You did not.

2 MR. MUSTAFA: I exhausted all the --

3 THE COURT: All right. Let me stop you
4 there.

5 MR. MOLL: I can help and -- I can try
6 to fill in the gaps, Your Honor. He is -- as far
7 as -- we're not here on a substantial evidence
8 motion, this right now, but counsel's -- I'm sorry.
9 "Counsel." Mr. Mustafa is correct that there was an
10 initial determination rendered in his favor. My
11 client did in fact file an appeal of that
12 determination on time, and it's -- it's in the
13 record. And that same day -- it's a little
14 confusing, the initial determination, Your Honor,
15 because it didn't look like there was anything in the
16 record to support it. It almost looks like it was
17 issued by accident, but the very next day, the
18 Commission concluded that -- that -- you know,
19 they -- they accepted my client's position and they
20 issued what they called a corrected determination,
21 saying he doesn't get any benefits. Okay?

22 Mr. Mustafa did appeal that. The
23 appellate division of the -- appellate division
24 affirmed it. He then appealed to the Commission
25 itself. The Commission itself affirmed it.

1 not a trial court. And again, if he's -- whatever
2 else he's trying to do -- like I said, if it's a TWC
3 appeal, no jurisdiction. If he's trying -- not --
4 it's not a TWC appeal and he's simply appealing, just
5 filing a bunch of different claims, you know, the
6 Court's -- as far as federal claims go, they're time-
7 barred, and as far as state court claims go, there's
8 no jurisdiction, the reason being is he didn't file a
9 timely complaint with TCHR and didn't file a timely
10 complaint with EEOC, both of which are prerequisites
11 to bring his claims.

12 *THE COURT:* All right. So I think --
13 so I want to deal with the jurisdiction issue first.

14 *MR. MOLL:* Sure.

15 *THE COURT:* If there's one appeal
16 already with TWC and there's already been a ruling,
17 is the proper venue this Court for a second appeal?

18 *MR. MOLL:* Let me explain. When he's
19 talking about appeal, he's a little bit confused.

20 You know, we have the TWC's initial
21 determination, then a corrected one saying -- saying
22 no benefits. He appealed that within the TWC system
23 to the appellate division. They affirmed. He
24 appealed that further to the Commission itself, and
25 they affirmed. Okay? So what happens at this point

1 is you can seek a trial de novo --

2 THE COURT: Okay.

3 MR. MOLL: -- in the district court to
4 review that decision, but again, the Court's only
5 role in that is to see if there's substantial
6 evidence to support the TWC's decision.

7 THE COURT: Okay. So then that, we
8 would handle in the summary judgment portion of this
9 hearing, I guess. I mean -- because he just said
10 that, yes, part of this is an appeal.

11 MR. MOLL: And that's fine, Your Honor,
12 but the issue is all these other parties and claims
13 he's added. The Court has no jurisdiction over
14 those, just -- just the two parties.

15 THE COURT: Yeah. I agree. One
16 second. So my other parties are -- so who are the
17 parties that's relevant just to the appeal?

18 MR. MOLL: HTS Services, Inc.,
19 because they're the employer. The -- what I call the
20 HTS present, slash, former employees, all of them --
21 they have no relevance in the appeal.

22 THE COURT: You say they do not?

23 MR. MOLL: They do not. Correct.

24 MR. COHEN: And, Your Honor,
25 Mr. Mustafa also added a number of individuals

1 associated with the TWC, such as the commissioners,
2 such as the case workers, in their individual
3 capacity. I think some of them aren't -- aren't
4 fully named either. They have initials. And our
5 contention is those parties shouldn't have been named
6 because the proper parties, as he says, are TWC and
7 HTS Services, not any of the individuals associated
8 with TWC or the process.

9 THE COURT: All right. And when it
10 comes to HTS, Tarek Morsi is --

11 MR. MUSTAFA: He's the owner.

12 MR. MOLL: Mr. Morsi is the owner and
13 president. Mr. Repak is a manager. Mr. Mahmoud --
14 Mr. Mahmoud is -- I believe he's a yard manager, off
15 the top of my head. And the fourth lady is -- is a
16 former employee. She was a temporary accountant at
17 the time. If I'm missing somebody --

18 THE COURT: All right. So for purposes
19 of the appeal, I have Texas Workforce Commission,
20 HTS, and wouldn't I have Tarek Morsi?

21 MR. MOLL: No, no. Mr. Morsi is not a
22 party. The party in the TWC is HTS. Obviously
23 Mr. Morsi -- as president, he's a representative of
24 HTS, but he's not individually a defendant.

25 THE COURT: Okay.

1 MR. MOLL: And my proposed order, Your
2 Honor, takes all that into account. If you'd like
3 another copy, I can give it to you.

4 THE COURT: I have it.

5 MR. MOLL: Okay.

6 THE COURT: All right.

7 MR. MUSTAFA: Your Honor, for the
8 individuals, during the process of the unemployment
9 benefits claim, the one I claim -- it was in the
10 beginning that deprive of -- the federal question of
11 deprivation from due process from the 14th Amendment
12 to the United States of America that no state shall
13 make or enforce any law that would deprive any person
14 of property, life, et cetera, et cetera.

15 THE COURT: All right. Let me stop you
16 there. So the -- and I understand that you feel that
17 you would have a claim, but this Court cannot hear
18 that.

19 MR. MUSTAFA: Your Honor --

20 THE COURT: I'm not finished talking.

21 MR. MUSTAFA: Okay.

22 THE COURT: Just let me finish.

23 MR. MUSTAFA: All right.

24 THE COURT: And one of the main reasons
25 is because you're time-barred. There's a time frame

1 in which you're --

2 MR. MUSTAFA: That's what I want --

3 THE COURT: Help him to understand.

4 THE BAILIFF: Sir, when the Judge
5 starts talking, you stop talking.

6 MR. MUSTAFA: Okay.

7 THE COURT: Now I forgot my train of
8 thought, but anyway -- so my point is we're not going
9 to talk today about your position and claims about
10 these other people because I'm certain I don't have
11 jurisdiction, and even if you did have a claim, it
12 looks like you're time-barred. I mean, you should
13 get an attorney and get some advice because I can't
14 give you any legal advice.

15 So what I want to handle right now is
16 the plea to the jurisdiction only. And do I have a
17 summary judgment on file?

18 (Discussion between the Court and court
19 clerk.)

20 MR. MOLL: The reason I presented it
21 that way, Your Honor, is the strange way that --
22 Texas says if you don't file the timely complaint, it
23 deprives the Court of jurisdiction. Federal courts
24 say if you don't file a timely complaint, it's time-
25 barred, so that's the only reason I've separated the

1 two, but essentially, ruling on one is effectively
2 ruling on the other.

3 *THE COURT:* All right. And what about
4 this other summary judgment? There's one more on
5 file. You have a summary judgment on --

6 *MR. COHEN:* We have a plea, Your Honor,
7 plea to the jurisdiction.

8 *(Discussion between the Court and court*
9 *clerk.)*

10 *THE COURT:* I'll find it.
11 What was the date of your filing?

12 *MR. COHEN:* We filed that, I believe,
13 on Wednesday, Your Honor.

14 *MR. MUSTAFA:* Wednesday, the 9th.

15 *(Discussion between the Court and court*
16 *clerk.)*

17 *THE COURT:* All right. So I'm going to
18 take this under advisement, so what I'm going to
19 do is I'm going to recess this for 15 minutes, but
20 before I do, is there anything further that the
21 plaintiff would like to say?

22 *MR. MUSTAFA:* Yes, Your Honor.
23 Contacted the Equal Employment Opportunity
24 Commission, the federal one, and I was instructed
25 that the -- that EEOC does not have jurisdiction over

1 any employer with lesser than 15 employees. The
2 Texas Commission for Human rights doesn't have any
3 jurisdiction over any employer with lesser than 30
4 employees. I am adding more claims that -- under the
5 authority of the Equal Pay Act. Equal Pay Act -- in
6 that act, you have up to two years and in some
7 circumstances three years to file straight with the
8 local government, to the courtroom, without going to
9 the EO -- EC or the Texas Commission for Human
10 Rights. That's -- and I have a motion here -- motion
11 of -- Notice of Intent to Use -- it's -- it's filed
12 with the -- with this Court, Notice of Intent to Use
13 Equal Paycheck and Equal Pay Act as Evidence, and
14 under the authority of those acts, I have up to two
15 years to come to this Court without going to the EEOC
16 or TCHR, either.

17 *THE COURT:* Do you address the Equal
18 Pay Act?

19 *MR. MOLL:* Well, the Equal Pay Act is
20 not part of his pleadings. It's not part of his
21 motion either. The Equal -- Equal Pay -- he
22 doesn't -- yeah. He -- he never explains -- he says,
23 "I want to the use the Equal Pay Act as evidence."
24 The Equal Pay Act doesn't have a -- and he doesn't
25 explain how the Equal Pay Act applies here.

1 And, furthermore, as I said, if he's
2 appealing the TWC decision -- that's -- again, that's
3 the only basis for the Court's jurisdiction,
4 substantial evidence rule. All this other stuff is
5 not relevant to this proceeding. Court doesn't have
6 jurisdiction over those claims.

7 *THE COURT:* All right. Okay. So I'm
8 just going to ask you guys to step back. I need a
9 few minutes to review what's on file, and I'll call
10 you back up in a minute.

11 *(Brief recess.)*

12 *THE COURT:* Back on the record in Case
13 Number 2022-54542.

14 *COURT'S RULING*

15 *THE COURT:* All right. So I took a
16 look at Plaintiff's pleadings as well as the amended
17 pleadings again, and I don't find that this is an
18 appeal from a decision. It looks like it's solely a
19 lawsuit against TWC and -- among others, so in that
20 regard, I grant Defendants' plea to the jurisdiction.

21 Is there anything further?

22 *MR. COHEN:* Just for clarification,
23 Your Honor, are -- are we talking both pleas to the
24 jurisdiction here or just HTS's?

25 *THE COURT:* (Indicating.)

1 MR. COHEN: Both. Okay. Thank you,
2 Your Honor.

3 MR. MUSTAFA: Because Defendants' --
4 Mr. Robert's plea to the jurisdiction, motion for
5 summary judgment -- the other defendant attorney is
6 filing a plea to the jurisdiction, but, slash, it's a
7 response to a motion that is not complete yet, a
8 motion for default judgment, and this is -- this is
9 the notice for -- of submission and a proposed order
10 that I did not file, and he filed on -- this month,
11 on the 9th of this month, Wednesday. However, on
12 November the 9th -- on the -- November 10th, I barely
13 complied with the -- with the federal law, the
14 Servicemembers -- Servicemembers Civil Relief Act.
15 Then I provide the Court with the military active
16 duty status, and still, this motion he is responding
17 to is not complete. This is -- may I approach, Your
18 Honor, show --

19 THE COURT: Yes.

20 MR. MUSTAFA: This is the notice for --
21 of submission, and this is the proposed order for the
22 default judgment. Plus, Your Honor, this is a letter
23 that I received from his -- his client, Texas
24 Workforce Commission, after the -- the motion for
25 default judgment was filed on the 21st --

1 October 21st. His clients are going to open the
2 appeal, which is -- there is a civil action going on
3 in this Court. They attempted to open that appeal,
4 and they did all that. They sent me that letter.
5 It's Exhibit 15, and there is e-mails between me and
6 them. They are -- open that appeal in case just to
7 block me from access to -- to -- to the Court because
8 their plea right now will be different if I did not
9 give them -- by communicating with them to cancel
10 that appeal.

11 *THE COURT:* All right.

12 *MR. MUSTAFA:* That means --

13 *THE COURT:* So let me stop you there.
14 So I'm not ruling on the summary judgment.

15 *MR. MUSTAFA:* That is --

16 *THE COURT:* I'm not ruling on that.

17 *MR. MUSTAFA:* (Indicating.)

18 *THE COURT:* But I am ruling on the plea
19 to the jurisdiction, and I'm granting that. Okay?
20 All right.

21 *MR. MUSTAFA:* In all?

22 *THE COURT:* For both defendants --
23 well, for the two defendants, Texas Workforce
24 Commission and HTS.

25 *MR. MUSTAFA:* They have -- they have a

1 different piece.

2 THE COURT: I'm sorry?

3 MR. MUSTAFA: They have a different
4 piece. That one is a response to a summary judgment.

5 THE COURT: All right. Okay. Well, I
6 gave my ruling, so if you don't understand it, then
7 you can, you know, get an attorney and maybe they can
8 explain it to you.

9 MR. MUSTAFA: I understand.

10 MR. COHEN: Your Honor, if I may, just
11 real quick, I know there were a number of other
12 parties that were named individually as TWC-
13 affiliated parties. Would the plea be applying to
14 all the defendants or just TWC and HTS? And --
15 and -- I'm sorry, Your Honor. Our contention was
16 that -- Mr. Mustafa named a bunch of individual TWC
17 parties as well. It's our contention that they
18 should not have been named. That was in our -- our
19 plea as well. I just want to make sure for the
20 record that it -- the plea applies to -- is granted
21 for all the defendants.

22 THE COURT: I think a plea, period, to
23 the jurisdiction, once it's granted, dissolves the
24 case.

25 MR. COHEN: Correct.

1 THE COURT: So I --

2 MR. COHEN: Correct.

3 THE COURT: -- don't know that it
4 matters.

5 MR. COHEN: Okay. Correct. I was just
6 trying to make my client happy. They get worried
7 about that, but absolutely, Your Honor. You are
8 correct.

9 THE COURT: Thank you.
10 Okay. All right. Is there anything
11 further?

12 MR. MOLL: No, Your Honor.

13 THE COURT: All right. Thank you.

14 MR. COHEN: Thank you.

15 THE COURT: Y'all are excused. Have a
16 good day.

17 MR. MUSTAFA: Can I get a copy from
18 the --

19 THE BAILIFF: You've been excused, sir.

20 MR. COHEN: Oh, Your Honor -- I'm
21 sorry. One more thing, if we could go back on -- I
22 apologize. I just want to make sure --

23 THE COURT: Back on the record.

24 MR. COHEN: Yeah. Mr. Mustafa --

25 THE COURT: You can come stand here

1 once again, please.

2 MR. COHEN: Just because -- I
3 just heard -- I think I heard Mr. Mustafa say that he
4 was trying to set something for submission. I'm not
5 sure what that was, but -- the first time I heard of
6 it. I think it was a default judgment. I'd just
7 like to get it --

8 MR. MUSTAFA: She -- she says --

9 MR. COHEN: -- disposed of now.

10 MR. MUSTAFA: -- "I could not rule on
11 it."

12 THE BAILIFF: Only one person talks at
13 a time.

14 MR. MUSTAFA: Okay.

15 THE COURT: Well, it doesn't matter.
16 There's a motion for default judgment -- I really
17 don't understand exactly what it says, but I think
18 it's for October 28th. Actually, that's why I called
19 this hearing, because there was some stuff on my
20 submission docket, but I needed y'all to come in, and
21 that's what we just did.

22 MR. COHEN: Okay. Okay.

23 THE COURT: That's for a --

24 MR. COHEN: Absolutely, Your Honor.

25 THE COURT: -- for a previous date.

1 MR. COHEN: Absolutely, Your Honor.

2 THE COURT: Okay.

3 MR. COHEN: Thank you.

4 THE COURT: Thank you.

5 (End of proceedings.)

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1 THE STATE OF TEXAS)
)
2 COUNTY OF HARRIS)

3

4 I, Donna King, Official Court Reporter in
5 and for the 80th Judicial District Court of Harris
6 County, Texas, do hereby certify that the above and
7 foregoing contains a true and correct transcription
8 of all portions of evidence and other proceedings
9 requested in writing by counsel for the parties to be
10 included in this volume of the Reporter's Record in
11 the above-styled and -numbered cause, all of which
12 occurred in open court or in chambers and were
13 reported by me.

14 I further certify that this Reporter's
15 Record of the proceedings truly and correctly
16 reflects the exhibits, if any, admitted by the
17 respective parties.

18 I further certify that the total cost for
19 the preparation of this Reporter's Record is \$229.50,
20 that appellant is appealing as indigent and it has
21 not been paid.

22 WITNESS MY OFFICIAL HAND this, the 29th day
23 of January, 2023.

24 /s/ Donna King

25 DONNA KING, CSR 6273
Expiration Date: 10/31/23
Official Court Reporter
80th Judicial District Court
Harris County, Texas
201 Caroline, 9th Floor
Houston, Texas 77002
832-927-2677

DONNA KING, CSR, RPR
80TH OFFICIAL REPORTER
(832) 927-2677

n-27

Appendix 0

P3

CAUSE NO 2022-54542

FILED
Marilyn Burgess
District Clerk
OCT 07 2022
Harris County, Texas
Deputy

AWAD O. MUSTAFA
Plaintiff

V.

TEXAS WORKFORCE COMMISSION, BRYAN
DANIEL, AARON, S. EMERSON, JULIAN ALVAREZ,
S. SUNDAY, P. PAYNE, OFELIA DE LEON, HTS
SERVICES, INC., TAREK MORSI, MISEL REPAK,
MAHMOUD HASSAN, SHAFI MOHAMED, AND
YEWANDE ("WENDY") ADELAJA.

Defendants.

IN THE DISTRICT
OF HARRIS COUNTY, TEXAS.

80th JUDICIAL DISTRICT

**PLAINTIFF'S NOTICE OF INTENT
TO USE THE EQUAL PAYCHECK
ACT AND THE EQUAL PAY ACT
LAWS AS EVIDENCE AND SUPPORT
TO ALLEGED DISCRIMINATION
CLAIMS.**

TO THE HONORABLE JUDGE OF SAID COURT:

.COMES NOW, AWAD O. MUSTAFA, referred to as plaintiff in the above styled and numbered cause, and under the authority of Rule 69 of the Texas Rules of Civil Procedure, also in respect to paragraph (30) in the PLAINTIFF'S AMENDED ORIGINAL PETITION where in plaintiff reserved his rights under Texas law to assert additional claims and remedies, and in response, in part, to defendants' HTS Services, Inc. also referred to as ("HTS"), Tarek Morsi, Misel Repak, Mahmoud Hassan, Shafi Mohamed, Yewande ("WENDY") Adelaja, PLEA TO THE JURISDICTION /MOTION FOR SUMMARY JUDGMENT, plaintiff will make this his NOTICE OF INTENT TO USE THE EQUAL PAYCHECK ACT AND THE EQUAL PAY ACT LAWS AS EVIDENCE AND SUPPORT TO ALLEGED DISCRIMINATION CLAIMS, and in support plaintiff shows:

Appendix 0 - 1

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging.

1- Plaintiff worked for defendant employer HTS Services, Inc. from March 2019 until April 2020 as an independent contractor. Plaintiff was made a full time employee with W-2 wages on or about April 2020 after the defendant employer ("HTS") received and then needed to comply with the Paycheck Protection Program (PPP) loan conditions during the covid-19 crisis in 2020.. The employer had to have evidence(s) of the loan money being spent on keeping the workforce (employees) working during the covid-19 crisis. Plaintiff was placed under the W-2 wages payment methods.

2- Plaintiff after April 2020 brought to ("HTS") and defendant Tarek Morsi his demand for his overtime wages being an employee with taxes deducted from his weekly wages . ("HTS") operates from Monday- Saturday in the total of (45) forty five hours every week,excluding holidays. Plaintiff's checks of (45) hours were made as of (40) hours (REGULAR)Please see EXHIBIT 12.

2- Plaintiff was not asked whether he was willing to accept the W-2 wages form of employment or not. Plaintiff did not fill in an application or sign an employment contract with ("HTS") until this day . Plaintiff was paid less than the employee defendant Mahmoud Hassan who was working at the receiving gate in 2020 and 2021,please see EXHIBIT 12, the said employee defendant did less and was paid more than the plaintiff who worked more and was paid less .Defendant Owner Tarek Morsi and defendant Mahmoud Hassan are brothers in law.

3- The defendant employer ("HTS") favored the employee defendant Mahmoud Hassan by reporting less than (40) forty hours of his actual working hours to the internal revenue services , and the employee defendant Mahmoud Hasssan received the rest of his wages in cash payments, the employee defendant wages record can be obtained with a permission from this court for the proceedings in this case purpose and verifications.

3- The employee defendant Mahmoud Hassan had the intention to apply for the unemployment benefits to take advantage of the government aid of extra \$300 that comes with every unemployment benefit before and until July 2021. Defendants Tarek Morsi and Mahmoud Hassan are brothers in law. The defendant employee Hassan submitted on August 4, 2021 a statement to ("TWC") that he was the yard manager who reported the incident of dishonesty that led to the firing of the plaintiff on July 6, 2021 please see EXHIBIT 2. In case that defendant Hassan was receiving unemployment benefits and working as a manager at the same company he reported he was separated from work from ,the plaintiff herein is asking the court respectfully to order the said defendants to produce or authorize the disclosure of the mentioned unemployment record.The record might constitute criminal actions and violations.

4- Defendant employer ("HTS") at all times during the plaintiff's employment from 2010 to 2011 and from March 2019 until July 6, 2021 employed individuals with (unclear to the plaintiff immigration status) . The plaintiff was asked by the owner defendant Morsi and the manager defendant Repak to bring workers to work at the company frequently .The Plaintiff is not authorized to question someone's immigration status . The employer defendant ("HTS") has that right to ask about the immigration status for employment purposes. Please see EXHIBIT 12.. The workers were paid more or equal to the plaintiff in cash payments. Plaintiff demands were met with either promises to look at it or (you have to quit) with hints to the criminal record of the plaintiff. The plaintiff was fired in 2011 from ("HTS") after the discovery of the criminal convictions on his record . Plaintiff was the shipping and receiving department manager before the unjust termination.

Appendix 0-2

PRAYER

WHEREFORE, PREMISES CONSIDERED, plaintiff prays that this honorable court will note this PLAINTIFF'S NOTICE OF INTENT TO USE THE EQUAL PAYCHECK ACT AND THE EQUAL PAY ACT LAWS AS EVIDENCE AND SUPPORT TO ALLEGED DISCRIMINATION CLAIMS . The plaintiff prays that this honorable court will order the disclosure of the requested information whenever the need for verification, discovery and interrogations of this cause.

RESPECTFULLY SUBMITTED

AWAD O. MUSTAFA, Pro Se

5600 CHIMNEY ROCK

Apt. # 632

Houston, Texas. 77081.

Phone (832) 886-8129

oawad5881@gmail.com



Appendix 0-3



TEXAS WORKFORCE COMMISSION

COMMISSION APPEALS RM. 678
101 E. 15TH ST.
AUSTIN, TX 78778

FAX (512) 475-2044
TEL. 1-800-432-4218
claimants www.texasworkforce.org/ubs
employers www.texasworkforce.org/ebs

10/24/2022

AWAD O MUSTAFA
5600 CHIMNEY ROCK RD APT 632
HOUSTON, TX 77081-1993

Claimant: AWAD O. MUSTAFA
SSN: XXX-XX-3795
Claim ID: 07/04/2021
Case#: 3066449-3

The claimant's communication of October 15, 2022 has been received and is being referred to the Commission for consideration as a motion for rehearing, or reconsideration, of the decision rendered by the Commission.

The Commission will review the case as soon as it is reached on the Commission docket. The decision of the Commission is normally rendered on the basis of the evidence submitted during the previous hearing. However, if the Commission requires additional evidence, a hearing will be scheduled and all parties will be notified of the date and place of the hearing.

You will be notified in writing of the Commission's decision as soon as they have completed their review of the entire record in the case.

You may check the status of your appeal at any time by visiting us on the web at (claimants) www.texasworkforce.org/ubs or (employers) www.texasworkforce.org/ebs.

PLEASE REFER TO THE ABOVE CASE NUMBER IF YOU CALL OR WRITE TWC REGARDING THIS APPEAL.

KKR

HTS SERVICES INC
HONESTY TRAVEL AGENCY
12903 OLD RICHMOND RD
HOUSTON, TX 77099-2246

Appendix P-1

Cc: Commission Appeals <commission
Subject: RE: IDENTITY THEFT/ FR

als@twc.texas.gov

Appendix P-2

Good morning

It appears you have an MR appeal with Commission Appeals level. I have included Commission Appeals in this email and someone will reach out to you.

If you would like to speak with Commission appeals you can contact them at 800 432-4218.

WVA

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION, WHICH IS SENSITIVE, CONFIDENTIAL, PRIVILEGED, OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE STATE OR FEDERAL LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OF THIS TRANSMISSION, OR THE AGENT OR EMPLOYEE RESPONSIBLE FOR DELIVERING THE MESSAGE OR THE AGENT OR EMPLOYEE RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY COPYING, DISCLOSURE OR OTHER PUBLICATION OF THE INFORMATION CONTAINED IN THE MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE CONTACT APPEALS.STATUS@TWC.STATE.TX.US AND SAFELY DISCARD THE COMMUNICATION.

From: awad omar <awad5881@gmail.com>
Sent: Saturday, October 29, 2022 10:02 PM
To: Appeals Status <appeals.status@twc.texas.gov>
Subject: IDENTITY THEFT/ FRAUD

CAUTION: Email not from TWC System. Use care when clicking links and opening attachments.

My name is AWAD O. MUSTAFA. I (was) the claimant in the case NO. 3066449_2. I received the attached last decision from the Commission Appeals on August 2, 2022. I filed a lawsuit on August 30, 2022 with the Harris County District Court after the 14 days period to appeal or request a rehearing passed, please see attached court documents. I received a letter from TWC mailed on October 24, 2022 stating I the (CLAIMANT) in case NO. 3066449-2 Filed AN APPEAL OR A MOTION TO RECONSIDER, It is referred to as case NO. 3066449_3. SIMPLY, FRANKLY AND WARNINGLY please put this appeal ON HOLD and CONDUCT an IMMEDIATE INVESTIGATION to determine who filed this motion, request or appeal using my Identify without my consent. Looking forward to hearing from you as soon as immediately as you find this email. Thank you. I will take this matter to the court and the police department/ fraud division.

Appendix P-2

Appendix A-1

Appendix A-1

Texas Workforce Commission
Notice of Telephone Hearing

Case/Appeal No: 3066449 Proceeding: 1 Hearing: 1 Date Mailed: DECEMBER 23, 2021

Claimant: SSN: XXX-XX-3795 AWAD O MUSTAFA 5600 CHIMNEY ROCK RD APT 632 HOUSTON TX 77081-1993	Employer: PI Account: 06-720826-9 HTS SERVICES INC HONESTY TRAVEL AGENCY 12903 OLD RICHMOND RD HOUSTON TX 77099-2246
--	---

Hearing Date:
WEDNESDAY, JANUARY 12, 2022

Hearing Start Time:
8:30 AM
Central Standard Time

Register at texasworkforce.org/hearing
or by calling **1-800-252-3749** between
8:00 AM and 8:30 AM for your hearing.

Hearing Officer:
P. PAYNE

Note: If you live in or near El Paso, the
hearing time will be one hour earlier than
shown above.

What You Must Do:

- **Send documents before the hearing.** If any documents you feel are important to your case are not included in this hearing packet, immediately fax or mail copies of the documents to the **hearing officer and the other party**. Documents should be received at least two working days prior to the scheduled hearing. Provide the Appeal number, the claimant's name, and the last four numbers of the claimant's Social Security number.
- **Register for your hearing.** This hearing will be held by telephone conference call. On the hearing date, **register online at texasworkforce.org/hearing or call (800) 252-3749 within the 30 minutes before the hearing start time.** Give the operator the phone number where you can be reached for the hearing. If you call from a pay phone, be sure it can receive incoming calls.

Please review the hearing packet and have it available at the hearing.

The hearing may be your only chance to tell what happened, present your documents, and ask questions of the witnesses. If you do not register online at texasworkforce.org/hearing or call (800) 252-3749 within the 30 minutes before the hearing start time, you may not be allowed to participate in the hearing. You will **not** have another opportunity to offer testimony unless you can establish good cause for why you did not call in as instructed. Employers who are not parties of interest (indicated above as NPI) do not have the right to request a new hearing, nor to appeal.

Visit texasworkforce.org/appeals or texasworkforce.org/appealsemployers for more information on the appeal and hearing process.

Appeal filed by: Claimant
Appeal Date: 08/16/2021
Initial Claim Date: 07/04/2021
Determination Date(s): 08/05/2021

P. PAYNE, Hearing Officer
Texas Workforce Commission
101 E. 15th St. Rm. 410
Austin, TX 78778
Hearing Officer (281) 983-2677
Fax No. (972) 522-7698

Notice of Telephone Hearing

Case/Appeal No: 3066449 Proceeding: 1 Hearing: 2 Date Mailed: JANUARY 24, 2022

Claimant: SSN: XXX-XX-3795
AWAD O MUSTAFA
5600 CHIMNEY ROCK RD APT 632
HOUSTON TX 77081-1993

Employer: PI Account: 06-720826-9
HTS SERVICES INC
HONESTY TRAVEL AGENCY
12903 OLD RICHMOND RD
HOUSTON TX 77099-2246

Hearing Date:
FRIDAY, FEBRUARY 11, 2022

Hearing Start Time:
1:30 PM

Register at texasworkforce.org/hearing
or by calling 1-800-252-3749 between
1:00 PM and 1:30 PM for your hearing.

Central Standard Time

Hearing Officer:
P. PAYNE

Note: If you live in or near El Paso, the
hearing time will be one hour earlier than
shown above.

What You Must Do:

- **Send documents before the hearing.** If any documents you feel are important to your case are not included in this hearing packet, immediately fax or mail copies of the documents to the **hearing officer and the other party**. Documents should be received at least two working days prior to the scheduled hearing. Provide the Appeal number, the claimant's name, and the last four numbers of the claimant's Social Security number.
- **Register for your hearing.** This hearing will be held by telephone conference call. On the hearing date, **register online at texasworkforce.org/hearing or call (800) 252-3749 within the 30 minutes before the hearing start time.** Give the operator the phone number where you can be reached for the hearing. If you call from a pay phone, be sure it can receive incoming calls.

Please review the hearing packet and have it available at the hearing.

The hearing may be your only chance to tell what happened, present your documents, and ask questions of the witnesses. If you do not register online at texasworkforce.org/hearing or call (800) 252-3749 within the 30 minutes before the hearing start time, you may not be allowed to participate in the hearing. You will **not** have another opportunity to offer testimony unless you can establish good cause for why you did not call in as instructed. Employers who are not parties of interest (indicated above as NPI) do not have the right to request a new hearing, nor to appeal.

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Appeal filed by: Claimant
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P. PAYNE, Hearing Officer
Texas Workforce Commission
101 E.15th St.Rm.410
Austin,Tx 78778
Hearing Officer (281) 983-2677
Fax No. (972) 522-7698



APPENDIX V

EEOC Pre-Charge Inquiry Form - Houston [Incident: 210806-000245]

2 messages

EEOC - I I G <info@eeoc.gov>

Fri, Aug 6, 2021 at 1:36 PM

Reply-to: EEOC - I I G <info@eeoc.gov>

To: oawad5881@gmail.com



Recently you requested personal assistance from our on-line support center. Below is a summary of your request and our response. We hope we have answered your questions or referred you to the appropriate place to have your questions answered.

Subject

EEOC Pre-Charge Inquiry Form - Houston

Response By Email (Inquiry) (08/06/2021 01:36 PM)

Thank you for contacting the Equal Employment Opportunity Commission ("EEOC").

Our agency enforces the federal laws that prohibit job discrimination based on race; color; religion; sex; national origin; age; disability; genetic information; or based on retaliation for filing a charge of job discrimination, participating in an investigation of a job discrimination complaint, or opposing job discrimination.

We are sending the attached EEOC Pre-Charge Inquiry because you have told us you would like to find out more about the EEOC and job discrimination. Your answers on the Pre-Charge Inquiry will help us see if your concerns are covered by the laws we enforce. Answer all questions completely and briefly. **Please write clearly.**

Houston District Office

<https://www.eeoc.gov/field-office/houston/location>

Appendix 1
After completing the Pre-Charge Inquiry, return it as soon as possible via email to the following email address **houstonintake@eeoc.gov**. Once we receive your Pre-Charge Inquiry, we will contact you by phone or e-mail to talk about the issues you raise. **If you have not heard from this office after 30 days from the date you emailed us your Pre-Charge Inquiry, please call us at 1800-669-4000.** We will provide more information about the charge process and what it means to file a charge of job discrimination. Please note that **the attached EEOC Pre-Charge Inquiry is not a charge** of discrimination. There are strict time limits for filing a charge of employment discrimination. A charge must be filed with the EEOC within 180 days from the date of harm to protect your rights. This 180-day filing deadline may be extended to 300 days if the charge is also covered by a state or local employment discrimination law. If you do not file a charge of discrimination within the time limits, you will lose your rights and the EEOC will not take further action.

Additional information about the laws we enforce and our charge-filing procedures is available on our web site at <https://www.eeoc.gov>. For more information about the time limits for filing an EEOC Charge of Discrimination, please see <https://www.eeoc.gov/employees-job-applicants/time-limits-filing-charge>.

Sincerely,

U.S. Equal Employment Opportunity Commission

Attached: EEOC Pre-Charge Inquiry (Form 290A)

**Please keep a copy of this email and
a copy of your completed Pre-Charge Inquiry for your
records.**

Question Reference # 210806-000245

Date Created: 08/06/2021 01:36 PM

Date Last Updated: 08/06/2021 01:36 PM

appe

27 - A



Received 8/10/20

12:20 AM [Central Daylight Time] in 00:55 on line [6]


Appeals Tribunal - Pg 1 / 3

001 / 0

Unemployment Benefits Fax Appeal Form

Indicate which type of document you are appealing. Include this form and a copy of the document you are appealing when faxing. Keep the fax confirmation as proof of transmission. For information on the appeal process, go to www.texasworkforce.org/uiappeal.

P3

Select the type of document you are appealing	Where to send appeal	Appeal Fax Number
<input type="checkbox"/> Determination on Payment of Unemployment Benefits Example: DETERMINATION ON PAYMENT OF UNEMPLOYMENT BENEFITS Date Mailed: August 8, 2016	Appeal Tribunal	512-475-1135
<input type="checkbox"/> Appeal Tribunal Decision Example:  Texas Workforce Commission Appeal Tribunal TWC Building Austin, Texas 78778 06-15-2016 Date Mailed	Commission Appeals	512-475-2044
<input type="checkbox"/> Commission Appeals Decision Example: TEXAS WORKFORCE COMMISSION Austin, Texas FINDINGS AND DECISIONS OF COMMISSION UPON REVIEW OF CLAIM FOR BENEFITS Jun 23 2016 Date Mailed	Commission Appeals	512-475-2044
<input type="checkbox"/> Other—Your document does not match any of the examples.	Appeal Tribunal	512-475-1135

Print form and complete all information before faxing. Attach a copy of the decision you are appealing, if available.

Number of pages: _____ (Including this cover sheet)

I am appealing on behalf of the ☒ CLAIMANT ☐ EMPLOYER (mark one)

My name is AWAD OMAR MUSTAFA

Last four digits of the Claimant's Social Security Number 3795

Claimant's First Name AWAD MI D Last Name MUSTAFA

Mail Date of the letter I am appealing (MM/DD/YYYY) 08/05/2021

If appealing an Appeal Tribunal or Commission Appeal decision, what is the Appeal Number? _____

Reason for Appeal I Disagree with the decision
I was deprived From due Process, My emp-
loyer did not Appeal the First decision.

Date(s)/Time(s) I am not available to participate in a hearing: N/A

I will need an interpreter. (mark one) ☐ Yes ☒ No Language: _____

TWC will use the date we receive the fax to determine whether your appeal is timely. If unable to fax, mail your appeal on or before the deadline or appeal online by going to www.texasworkforce.org/uiappeal and selecting the Unemployment Benefits Appeal Form. You must appeal each determination separately. Keep your confirmation as proof of transmission. Caution: If you submit an appeal before the mail date of the determination or decision, it will not be accepted. Continue to request payment every two weeks while waiting on your appeal, unless you return to full-time work. To change or verify your address, log on to ui.texasworkforce.org and select Contact Information.

ORAL ARGUMENT NOT YET SCHEDULED

No. 17-5004

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

THE LOAN SYNDICATIONS AND TRADING ASSOCIATION,*Appellant,***v.****UNITED STATES SECURITIES AND EXCHANGE COMMISSION;
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,***Appellees.*

**On Appeal from the United States District Court for the District of Columbia in
Case No. 16 Civ. 652 (Hon. Reggie B. Walton)**

REPLY BRIEF OF APPELLANT*Of Counsel:***Elliot Ganz****The Loan Syndications and
Trading Association****366 Madison Ave., 15th Floor
New York, NY 10017****Richard Klingler****Peter D. Keisler****Jennifer J. Clark****Daniel J. Feith****Sidley Austin LLP****1501 K St., NW****Washington, DC 20005****202.736.8000****rklingler@sidley.com***Counsel for Appellant The Loan Syndications and Trading Association***July 12, 2017**

NO. 01-22-00878-CV

1st COURT OF APPEALS
HOUSTON, TEXAS

JUN 29 2023

DEBORAH M. YOUNG
CLERK

**IN THE COURT OF APPEALS
FOR THE FIRST DISTRICT OF TEXAS**

AWAD O. MUSTAFA

Appellant

v.

TEXAS WORKFORCE COMMISSION, BRYAN DANIEL, AARON S.
DEMERTSON, JULIAN ALVAREZ, S. SUNDAY, P. PAYNE, OFELIA DE LEON,
HTS SERVICES, INC., TAREK MORSI, MISEL REPAK, MAHMOUD HASSAN,
SHAFI MOHAMED, YEWANDE ""WENDY"" ADELAJA,

Appellees,

ON APPEAL FROM THE 80th DISTRICT COURT
HARRIS COUNTY, TEXAS.
TRIAL COURT CAUSE NO. 2022-54542

FIRST AMENDMENTS TO APPELLANT'S REPLY BRIEF

AWAD O. MUSTAFA
PRO SE APPELLANT
5600 CHIMNEY ROCK APT. # 632.
HOUSTON, TEXAS. 77081.
TEL. (832) 886-8129
E-MAIL: oawad5881@gmail.com

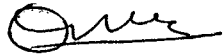
ORAL ARGUMENT REQUESTED

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To The Honorable Court:

Appellant Awad MUSTAFA and in his restless endeavor to provide accurate informations and significant aid to the Honorable Court and Justices in their decision making process respectfully here asks the Court to accept this humble effort to amend the Index of Authority, Table of Contents and the Irrelevant Cases and Authorities parts of the submitted APPELLANT'S REPLY BRIEF, on June 28, 2023. The Appellant also asks the Honorable Court to see the shortcoming in the original submitted document as a result of harmless and an unintended error.

RESPECTFULLY SUBMITTED
AWAD O. MUSTAFA, PRO SE
5600 CHIMNEY ROCK, APT. # 632.
HOUSTON, TEXAS. 77081
TEL. (832) 886-8129
E-mail: oawad5881@gmail.com


/S/ AWAD O. MUSTAFA
AWAD O. MUSTAFA
06/29/2023.

CERTIFICATE

I, AWAD Mustafa, hereby, certify that a true and correct copy of this first amendment to the appellant reply brief was served on all parties VIA email on 6/29/2023.

WZ

TABLE OF CONTENTS

TABLE OF CONTENTS	2
INDEX OF AUTHORITY	3,4
RECORD REFERENCES	5
LIST OF IRRELEVANT CASES AND AUTHORITIES	5,6
LIST OF RELEVANT FACTS, PLEADINGS AND PROCEEDINGS	6,7
INTRODUCTION	7,8,
IN ACCORDANCE WITH THE HONORABLE JUSTICE'S ORDER	8
THE SUPREME COURT OF TEXAS RULINGS	8,9
LIVE HEARING OF NOVEMBER 14, 2022 AT TRIAL COURT	9
THE TRIAL COURT'S JUDGE JUDICIAL SUBVERSION AND LIE	9,10
MORE FALSE FACTS AND LIES ON THE FACE OF NOVEMBER 15, 2022 DECISION	10, 11, 12
BREAKING THE TRIAL COURT JUDGE'S ORDER	12
JURISDICTION	12
SOVEREIGN IMMUNITY	12, 13
TWC OFFICIALS CONSTITUTIONAL AND STATE LAW VIOLATIONS	13
TEXAS ATTORNEY GENERAL IS NOT REQUIRED TO DEFEND CONSTITUTIONAL VIOLATIONS	13
CONCLUSION	14
PRAYER	14
CERTIFICATE OF SERVICE	15

W 3

INDEX OF AUTHORITY

CASES :

PAGE NO.

(cases are listed in the order they are cited and appear in this reply)

Bonsmara Nat. Beef Co., LLC v. Hart of Tex. Cattle Feeders, LLC 603 S.W. 3d 385, 390 (Tex. 2020). _____ 7

Hammer v. Univ. Fed. Credit Union, Nos. 03-16-00262-CV and 03-16-00264-CV, 2017 WL 1228871, at *2 (Tex. pp.----Austin Mar. 30, 2017, no pet.) (mem. op.) _____ 7, 8

Lyons v. Lindsey Morden Claims Mgmt 985 S.W. 2d 86 (Tex.App.1999) _____ 8,, 9

Houston First American Savings v. Musick, 650 S.W. 2d 764, 767 (Tex.1983) _____ 8

Rhoades v. Meyer, 418, S.W. 2d 300, 302 (Tex. App—Tyler 1990, writ denied); _____ 9

2 McDONALDS TEXAS CIVIL PRACTICE § 8.56 (b) (1992). _____ 9

Rusk State Hos. v Black, 392 S.W.3d 88, 95 (Tex. 2012) _____ 12

City of Elsa v. M.A.L, 226 S.W.3d 390, 392 (Tex 2007) _____

City of Beaumont v. Bouillon, 896 S.W.2d 143, 149 (Tex. 1995) _____ 12

City of El Paso v. Heinrich, 284 S.W.3d at 372 _____ 13

W 4

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Tex. Const. Art. _____ pages
§ 19 _____ 11

§ 29 _____ 11

Tex. R. Civ. P _____
Rule 64 _____

Rule 65 _____

Texas Labor Code/Texas Unemployment Compensation Act

Chapter 212, Subchapter E _____

§ 212. 205 _____ 9

§ 212.206 _____ 12

§ 212. 207 _____

United States Constitution

1st Amendment _____

5th Amendment _____

6th Amendment _____

14th Amendment _____ 13

OTHER AUTHORITIES AND PROVISIONS

Equal pay act _____ 12

W5 

RECORD REFERENCES

pages

C.R. refers to the Clerk's record of January 18, 2023, ___9, 10,11,12,13

R.R. refers to the reporter's record of February 22, 2023. __8,9,11,12,13

HTS refers to Appellee HTS Services, Inc. _____9,12

TWC refers to Appellee Texas Workforce Commission _____11,12,13

LIST OF IRRELEVANT CASES AND AUTHORITIES

Here are irrelevant cases and authorities to this Appeal, its Issues Presented, the Facts, the Standards of Review, or the Argument(s). This list contains most cited cases and authorities that are not related to this Appeal, and they do not support the Baseless and Hollow Appelle(s) Brief. This is a list of irrelevant cases and authorities that can not explain or justify the Trial Court honorable judge's erroneous decisions and the abuse of discretion. The listed below are unnecessary stuffing in the Appellees brief, they were stocked in bad faith to distract and deviate the Honorable Justices from the simply clear errors of the Trial Court's honorable judge. Here are irrelevant cases and misleading statutes that can only lead to a long academic reading exercise;

1- Statutes; (a)- Texas Labor Code § 212.201, and (b)- Texas Labor Code § 301.304,

W 6

List of Irrelevant Cases

Cases

- State v. Isbell*, 94 S.W.2d 423 (1936)
- State v. Lueck*, 290 S.W.3d 880 (Tex. 2009)
- Wichita Falls State Hosp. v. Taylor*,
106 S.W.3d 692 (Tex. 2003)
- Paris Milling Co. v. Bullock*,
583 S.W.2d 487 (Tex. App.—Austin 1979, no writ)
- Bullock v. Mel Powers Inv. Builder*,
682 S.W.2d 400 (Tex. App.—Austin 1984, no writ)
- Wren v. Texas Employment Comm'n*, 915 S.W.2d 506 (Tex. App.—
Houston [14th Dist.] 1995, no writ)
- Texas S. Univ. v. Villarreal*, 620 S.W.3d 899 (Tex. 2021)
- City of El Paso v. Heinrich*, 284 S.W.3d 366 (Tex. 2009)
- Hall v. McRaven*, 508 S.W.3d 232 (Tex. 2017)
- Southwestern Bell Telephone, L.P. v. Emmett*,
459 S.W.3d 578 (Tex. 2015)
- Tex. Dep't of Transp. v. Sunset Transp., Inc.*,
357 S.W.3d 691 (Tex. App.—Austin 2011, no pet.)
- City of Austin v. Utility Assocs., Inc.*,
517 S.W.3d 300 (Tex. App.—Austin 2017, pet. denied)
- Davis v. Jeffries*, 764 S.W.2d 559 (Tex. 1989)
- Dowell Schlumberger, Inc. v. Jackson*,
730 S.W.2d 818 (Tex. App.—El Paso 1987, writ ref'd n.r.e.)

W7

appendix w

NO-01-22-00878-CV

AWAD MUSTAFA

Appellant

V.

TEXAS WORKFORCE COMMISSION, BRYAN DAMIEL, AARON S. DEMERSON, JULIAN ALVAREZ, S. SUNDAY, P. PAYNE, OFELIA DE LEON, HTS SERVICES, INC., TAREK MORSI, MISEL REPAK, MAHMOUD HASSAN, SHAFI MOHAMED, YEWANDE "WENDY" ADELAJA,

Appellees,

ON APPEAL FROM THE 80th DISTRICT COURT
HARRIS COUNTY, TEXAS
TRIAL COURT CAUSE NO. 2022-54542

REPLY BRIEF OF APPELLANT

AWAD O. MUSTAFA
PRO SE APPELLANT
5600 CHIMNEY ROCK APT. # 632.
HOUSTON, TEXAS. 77081.
TEL. (832) 886-8129
Email: oawad5881@gmail.com

ORAL ARGUMENT REQUESTED

w8

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITY	ii
I. INTRODUCTION	1
II. ARGUMENT	

w9

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TABLE OF AUTHORITY

I. INTRODUCTION

The HTS Appellee's brief filed on May 19, 2023, was prepared a long time before its filing date, because it is relying on facts and documents that were not allowed to be part of this appeal record at the time HTS' brief was filed. In His BRIEF OF HTS APPELLEES, and in his Waiver of Oral Argument statement, HTS appellees attorney relied completely on Appellant's Notice of Intent to Use Alternative Record (Appellee Texas Workforce Commission's Initial Disclosures) to mislead the Honorable Justices and drag the Honorable Court to a swamp of irrelevant pages full of frivolous arguments and sentences can not be made by a recently graduated student from a paralegal course. In his attempt to mislead the Higher Court, the HTS' Appellees attorney stated that the Appellant relied almost entirely on over 300 pages of documents in support of his brief, the documents mentioned were filed on April 20, 2023, and HTS Appellees attorney objected to it as being not a part of this appeal record on April 21, 2023. The Appeals Court granted his request and refused to include the Initial Disclosures in this appeal record on April 27, 2023, the Appellant filed a Motion To Reconsider the decision of April 27, 2023, on the same day of April 27, 2023, and followed that with APPELLANT'S EMERGENCY MOTION FOR TEMPORARY RELIEF/ EMERGENCY REQUEST FOR RULING ON MOTION TO RECONSIDER on May 8, 2023. The Honorable Court denied both requests and a Notice of the Order was served by the 1st Court's Clerk on May 12, 2023. The HTS' Appellees attorney has no legal ground or reason to bring his false excuses to justify his unlawful request that the Honorable Court decide on the Issues Presented without Oral Argument The document's use was intended to aid the Honorable Justices in their decision making process and to clarify facts that might be uneasy to see clear. Appellant's brief is based on issues presented in simple and clear words, and are supported with live statements from the parties and the Trial Court's honorable judge in the live Hearing held in the 80th District Court of Harris County, Texas, on November 14, 2022.. As it will be shown clearly and simply, the BRIEF OF HTS APPELLEES is frivolous, empty and a complete embarrassment to a professional attorney who uses false and expired information to escape facing the Trial Court honorable judge's errors, his own clients perjury and employment discrimination unjustified acts and the violations

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to the rights of Due Process and right to be Heard being shown unto the Honorable Justices, in a Higher Court wherein there is no prejudice or favoritism, by a blue collar Pro Se Appellant, in the requested by the Appellant and waived by the professional attorney, ORAL ARGUMENT.

Appellant believes that HTS Appellees attorney has the right to waive Oral Argument, but the Appellant assures the Honorable Justices that there are no reasons and/ or legal grounds to support the request that the Court should decide on this appeal without Oral Argument.

HTS Appellees attorney failed to reply to the Issues Presented in Appellant's Brief, in his **REPLY TO ISSUES PRESENTED** in his brief. The only statement he made in part (I) was he confirmed that the Trial Court honorable judge made erroneous decisions rejecting claims under the authority of the Fair Labor Standards Act/ Equal Pay Act, and applying in errors misinterpreted and irrelevant laws. The HTS Appellees brief did not reply to Issues Presented number 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and the Issue Represented number 11, respectively in Appellant's Brief Failure to reply or challenge 7the Issues Represented is a clear waiver.

The **STATEMENT OF FACTS** in HTS' brief is repeated false statements made in the Waiver of Oral Argument part, that Appellant's Brief relied (exclusively) on over 300 pages of documents. Appellant Brief is of 26 pages with Amendments to the Table of Contents, Table of Authority, and a copy of the Final Judgment issued by the Trial Court. Appellant states that the said attorney's lack of giving regard and Honor to the Honorable Court and the Honorable Justices made him transgress in his attempts to mislead and misinform the Honorable Court by making intentional false statements. Appellant's Statement of Facts in his brief related to the Honorable Court the most needed facts and relevant issues from the first day of the Appellant's employment with Appellee HTS Services, Inc., until the day the Appellant's Brief was completed and then filed. The HTS Appellees brief was made in a clear violation to Tex. R. App. P 38.2(B) where HTS Appellees attorney continued to repeat and relate arguments and informations filed with the Trial Court C.R. 58-64, and are included in the Clerk's Record and the Supplement to Clerk's Record, HTS Appellee's brief confused the statement of facts with the course of proceeding and avoided bringing the facts that the Appellant's claim of unemployment was granted on August 28, 2021, and the decision was reversed without Due Process and without the Appellee HTS Services, Inc., file an appeal. Revealed and disclosed documents showed that an appeal was faxed by HTS Services, Inc., and the faxed

W 12

document was not processed, had the appeal been processed, the Appellant would have the right to Due Process and the right to present evidence of qualification. The HTS Appellees brief did not relate these facts, Appellant's Brief did relate these true facts and has more true facts in detail to be seen by the Honorable Justices of this Honorable Court. All referrals to the Clerk's Records and the Reporter's Records were made simple and clear in the Statement of Fact in Appellant's Brief to provide a significant aid to the Honorable Justices in their decision making process, In page 12 of HTS Appellees brief, the brief writer asserted that "Appellant never requested that the trial court allow him to amend his pleadings, and the trial court properly dismissed appellant's claims with prejudice as appellant could not remedy his jurisdictional defects", had the brief writer looked at issue number (6) in the the Issues Represented in Appellant's Brief, the writer as well as the respected Honorable Justices can clearly see that the Trial Court's judge denied the Appellant his Right to be Heard, these facts are documented and supported by the following evidences in the Reporter's Records 8, 14-15, Reporter's Record 9, 12-13, Reporter's Records 10, 22-23, Reporter's Records 11, 2-4, and Reporter's Records 16, 15-16, of the live Hearing held in the Courtroom of the 80th District Court of Harris County, Texas, on November 14, 2023. In the same page of HTS Appellees brief, the filing party raised multiple questions in the last paragraph the answers for the Honorable Justices to see are that, for the false statement that "Appellant never plead claims under the Equal Pay Act"" the answer is, see *Reporter's Records 19, 4-18*..the filing party also falsely argued and stated that "" Appellant never filed a motion to recuse to the trial Court, and never filed a return of citation with the trial Court to obtain proper default judgment against TWC employees", these frivolous and empty arguments shows the Honorable Justices that HTS' Appellee attorney is looking for a feather to make him float in his drowning false arguments in the Ocean of facts, evidence and records that shows, first a Motion to Transfer Case was filed on November 16, 2022, because of the committed acts of prejudice against Appellant on November 14, 2022 in the trial court., as to the default judgment, the Appellant believes the question and the argument are irrelevant to HTS' Appellees and their parties involvement or interest in this Appeal, but as a courtesy Appellant shows that the Motion for Default Judgment and the supplement to it were Incomplete until this present day, the Appellant had to show proof of Active duty status of the Appellees the default judgment sought against them, and that was in compliance with the Servicemembers Civil Relief Act, and that a notice for a hearing has to be served on all parties at least 10 days before the hearing date

w13

for the Motion for Default. The Trial Court Honorable judge dismissed the Incomplete Motion for Default Judgment and granted the Incomplete Appellee TWC Incomplete response to the Incomplete Motion is erroneous. This decision can be taught to the students to show how Courts systems operate in the COMMUNIST COUNTRIES, but not in Texas, and not in the United States of America. The Honorable Court should reverse the District Court judgment and remand the case for further proceedings.

ARGUMENTS

The almost entirely argument and authorities of HTS Appellees brief is revolving around , derived from or borrowed portions from the pleadings in this appeal's Clerk' Records 58-64 , the Appellant and in a statement made as a direct answer to a direct question from the trial court honorable judge, that the discrimination claims were brought to the trial court under the authority of the federal law, the Equal Pay Act, which is a small part of the Fair Labor Standards Act. and under the provision of this Act a victim of employment discrimination does not have to file a complaint with Texas Commission on Human Rights or the Equal Employment Opportunity Commission. It was supported by evidence that the well known and publicly known fact that the two commissions have jurisdictions over employers with the minimum or no less than 30 and 15 full time employees, respectively, *see Reporter's Record 19, 4-18*. All Texas Courts have the authority and the jurisdiction to verify and investigate any and all statements made or filed in Texas Courts. HTS Appellees Brief, started on page 13 and ended on page 18,, and in (I) paragraphs from 1,&3-13 , made baseless arguments that the Appellant did not comply with unapplicable laws and file complaints of employment discriminations with authorities do not have the jurisdiction to process such complaint.

In part II. of HTS Appellees brief the argument reached a high level of contradiction and blunder started on page 20 , paragraph 13 where the brief showed a clear inability and weak arguments failed to reply to a single one of the ISSUES PRESENTED, not even issue number (1), which is asking "" does the trial court has jurisdiction to resolve claims brought from a Final Decision on employment appeal/ Trial de Novo under the authority of Chapter 212 Subchapter E of the Texas Unemployment Compensation Act ? "" , Appellant shows that the answer is YES., and in support the Appellant refer to the Clerk's' Records, 16,, and to the Reporter's Records 10, 17-21. Having this shown, the erroneous decision made by the Trial Court honorable judge on December 14, 2022, which granted the request for Final Judgment and dismissed the plead employment appeal from the Final Decision was made in a clear error. The HTS

Appellees failed to produce any reply or evidence to show that the Trial court honorable judge made unprecedented, confused and erroneous 3 decisions. The Court should reverse the judgment and remand the cause for further proceedings.

HTS Appellees brief continued to have the same frivolous and repeated arguments, but clothed it with different covers. Going directly to the last paragraph 19, in page 20, HTS Appellees brief stated that ""Finally, as to the trial court's denial of appellant motion for default judgment against various TWC employees, HTS Appellees note that the Appellant never filed a return of service for any of those TWC employees with the trial court (and none appear in the record), the trial court could not grant any default judgment on file with the trial court at least ten days before the trial court can grant a default judgment"" Eventhough this was answered, but having the judgment by default listed last in the issues presented, and the brief made it its last point in the empty merits and frivolous brief, the Appellant shows that the Motion for Default Judgment and the Supplement for it in the Clerk's Records 73 & 110 are still Incomplete,. The trial court judge said she was not ruling on default judgment, but the trial court honorable judge dismissed the INCOMPLETE motion for default judgment, and strangely , Granted the INCOMPLETE response to the INCOMPLETE Motion. HTS Appellees can ask TWC why did they response to a Motion that they were not served properly ???.

Conclusion

HTS Appellees Brief is frivolous and basseless,. It was prepared before and submitted carelessly after the Honorable Appeals Court denied the request to add the over 300 Initial Disclosures. The Court should reverse the Trial court's judgment and remand the cause for further PROCEEDINGS

RESPECTFULLY SUBMITTED
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CERTIFICATE OF SERVICE

I, Aqwad Mustafa, hereby certify that a true and correct copy of this Reply Brief Appellant was served on all attorneys of record VIA E mail on this May 22, 2023.

W 15