

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-50563

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CLAUDE RIVERS, on behalf of  
himself and all others  
similarly situated,

Plaintiffs-Appellees,

v.

EDDIE CAVAZOS, Commissioner,  
Texas Employment Commission,  
ET AL.,

Defendants,

EDDIE CAVAZOS, Commissioner,  
Texas Employment Commission,  
ET AL.,

Defendants-Appellants.

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Appeal from the United States District Court  
for the Western District of Texas  
(A 93 CA 163)

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September 8, 1995

Before REAVLEY, KING and WIENER, Circuit Judges.

PER CURIAM:\*

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\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Plaintiff-Appellee Claude Rivers ("Rivers") brought this § 1983 action against Eddie Cavazos, James J. Kaster, and Jackie W. St. Clair in their official capacities as Commissioners of the Texas Employment Commission ("TEC"), alleging federal statutory and constitutional violations arising from the processing of Rivers's unemployment benefits claims. Concluding that the TEC's procedures violated the "fair hearing" requirement of 42 U.S.C. § 503(a)(3) and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, the magistrate judge granted Rivers declaratory and injunctive relief. The Commissioners timely appealed. We reverse and render.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. TEC Procedures**

Before proceeding to the specific facts of Rivers's claim, we will first describe the TEC's general procedures for processing unemployment benefits applications. These procedures are apparently not embodied in any one document,<sup>1</sup> but have developed over time as a policy based on the mandates of the Texas Unemployment Compensation Act<sup>2</sup> and the TEC's own

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<sup>1</sup>At oral argument, counsel for the Commissioners indicated that the procedures in question may all be recorded in the TEC's Policy and Precedents Manual; however, the Manual was not introduced at trial and is not contained in the record on appeal.

<sup>2</sup>TEX. LAB. CODE ANN. §§ 201.001-217.006 (West 1995).

regulations,<sup>3</sup> as well as the TEC's practice in implementing these statutes and rules.

When an unemployed individual ("the claimant") first files a claim for benefits (the "initial claim"), the filing establishes a new "benefit year." A benefit year is a fifty-two week period that runs from the date that the initial claim is filed. During this period, the claimant is eligible to receive benefits based on his employment prior to the benefit year.<sup>4</sup> The amount of benefits that the claimant may receive in the benefit year depends on how long he worked and how much he earned in this employment. When the claimant receives benefits, they are charged to the account of his former employer, who in turn must pay a tax based on the amount of benefits so charged.

The claimant may receive these benefits at any time during the benefit year as long as he is unemployed; that is, if the claimant finds employment again within the benefit year, he will not receive benefits while he is working for this second employer. The fifty-two week benefit year, however, continues to run even though the claimant is not receiving benefits. Stated differently, a claimant's employment does not "toll" the benefit year.

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<sup>3</sup>TEX ADMIN. CODE tit. 40, §§ 301.1-.33 (1994).

<sup>4</sup>Specifically, the benefits are based on the claimant's employment in the "base period" preceding the benefit year. The base period is the first four consecutive completed calendar quarters within the last five completed calendar quarters immediately preceding the first day of the benefit year.

If the claimant leaves this second employer before the benefit year ends, he is eligible to resume receiving the benefits based on his first employment for the time remaining in the fifty-two week period; however, the resumption of benefits is not automatic. The claimant must file another claim (the "additional claim") and requalify in order to receive these benefits for the rest of the benefit year. Whether the claimant requalifies for the resumption of benefits depends on the circumstances under which he left the second employer. For example, if the claimant left this second employment voluntarily without good cause or was fired for misconduct, he will not qualify. The important point here is that, although the claimant is attempting to qualify for the remaining benefits that are based on his first employment, it is his separation from his second employment that actually determines whether he will qualify.

Upon receiving the additional claim, the TEC investigates the claimant's work separation from his second employer and issues a determination stating the reason for the work separation and whether the claimant qualifies for benefits for the rest of the benefit year. If the determination is adverse to the claimant, he may appeal. Whereas the TEC makes the determination based mostly on interviews with the relevant actors, it renders a decision on the appeal only after a "full blown" evidentiary hearing (the "additional claim hearing"), in which the parties may testify, examine witnesses, and present evidence. Although

the second employer is given notice of this hearing and is invited to participate, it does not have an interest at stake because the purpose of the hearing is only to determine the claimant's continued eligibility for benefits based on his first employment.<sup>5</sup> The second employer will not be charged for any benefits for the current benefit year regardless of the outcome of the hearing. Indeed, because the second employer's interest in the additional claim hearing is nonexistent, the TEC does not grant it the right to appeal the decision.

If the claimant remains unemployed at the end of the benefit year, he may file a new initial claim to establish a second benefit year based on his work for the second employer (the "second initial claim"). In order to qualify for this second benefit year, the claimant must have either worked for the second employer for at least six weeks or earned six times his weekly benefit amount. Also, if the claimant left the second employer voluntarily without good cause or was discharged for misconduct, he will not qualify. Thus, the TEC must revisit the circumstances of the claimant's work separation from the second employer; however, the TEC does not rely on the determination it previously issued or the decision it rendered in the additional claim hearing concerning the work separation. Rather, the TEC issues a new, independent determination stating the reasons for the work separation and, if the claimant appeals, "readjudicates"

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<sup>5</sup>This assumes, of course, that the claimant did not also work for the second employer in the base period prior to the benefit year.

the facts of the work separation in another "full blown" evidentiary hearing (the "second initial claim hearing"). In other words, the TEC does not give preclusive effect to the additional claim determination or decision in ruling on the second initial claim. Consequently, the TEC may make inconsistent findings regarding the reasons for the work separation. For example, with respect to the additional claim, the TEC may find that the claimant was discharged from the second employer for misconduct, disqualifying him for the rest of the first benefit year; yet later, with respect to the second initial claim, the TEC may find that the claimant was not discharged for misconduct, entitling him to a second benefit year.

In contrast to the additional claim hearing, the second employer does have an interest at stake in this second initial claim hearing. If the TEC determines that the claimant qualifies for a second benefit year, at least some of the benefits that the claimant receives during that year will be charged to the second employer. Accordingly, the second employer has the right to appeal the TEC's decision in the second initial claim hearing. With this sketch of the TEC's general procedures in place, we now turn to a discussion of the specific facts surrounding Rivers's benefit claims.

#### **B. Rivers's Claim**

On November 11, 1990, Rivers filed an initial claim for unemployment benefits based on his previous employment with Leif

Johnson Ford ("Johnson"). This filing established a benefit year running from November 1990 to November 1991. Rivers received benefits during this benefit year until he began working as a salesperson for Gillman Pontiac ("Gillman") on June 11, 1991. Rivers worked for Gillman until July 20, 1991, when he left after having a dispute with a sales manager over a commission. Thereafter, Rivers filed an additional claim so that he could resume receiving the benefits based on his employment with Johnson. The TEC did not make an immediate determination regarding Rivers's work separation from Gillman, but paid him \$800 in benefits at the end of the benefit year pending this determination. This first benefit year ended in November 1991.

On January 26, 1992, the TEC issued its determination with respect to the additional claim. The TEC determined that Rivers had been discharged from Gillman for misconduct and was therefore not entitled to any benefits after the discharge for the rest of the benefit year. Because Rivers had already received \$800 in benefits and the benefit year had ended, the only consequence of this determination was that Rivers had to repay the \$800. Rivers appealed the determination. On August 4, 1992, the TEC held a hearing on Rivers's appeal. The appeal tribunal reversed the determination, holding that Rivers was not discharged for misconduct but had merely asserted his belief that he had been wrongfully denied a commission. Because of this ruling, Rivers did not have to repay the \$800 in benefits he had received.

Rivers was still unemployed when his first benefit year ended in November 1991. On January 5, 1992, he filed a second initial claim to establish a second benefit year based on his work at Gillman. One month later, the TEC issued its determination with respect to this second initial claim. The TEC determined that Rivers had left Gillman voluntarily without good cause and was therefore not entitled to a second benefit year. Rivers did not immediately appeal this determination because he thought his appeal of the additional claim determination was sufficient. After Rivers prevailed in the additional claim hearing on August 4, however, he learned that the appeal tribunal's decision only affected his rights with respect to the first benefit year. The TEC allowed Rivers to file a late appeal of the second initial claim determination. On October 6, 1992, the TEC held a hearing on this appeal. The appeal tribunal affirmed the determination, thereby disqualifying Rivers from a second benefit year.

### **C. Procedural History**

Following the appeal tribunal's denial of benefits, Rivers instituted this § 1983 action against the Commissioners, alleging that the readjudication of his work separation from Gillman violated his federal statutory and constitutional rights.<sup>6</sup> Specifically, Rivers sought a declaration that the TEC's

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<sup>6</sup>Rivers also joined Gillman as a necessary party, but sought no relief against it.



procedures violated 42 U.S.C. § 503(a)(3)<sup>7</sup> and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. Rivers also requested a permanent injunction against the Commissioners directing them to abandon their practice of readjudication. Finally, Rivers sought an order nullifying the TEC's second decision regarding his work separation from Gillman and giving preclusive effect to the first decision, which held that he was not discharged from Gillman for misconduct.

The parties consented to a trial before a magistrate judge pursuant to 28 U.S.C. § 636(c) and Rule 73 of the Federal Rules of Civil Procedure. The magistrate judge held that the policy of readjudication does violate the "fair hearing" requirement of 42 U.S.C. § 503(a)(3), the Due Process Clause, and the Equal Protection Clause.<sup>8</sup> The magistrate judge also ordered the Commissioners to redesign the TEC's procedures so that decisions regarding a claimant's work separation are given preclusive effect in later adjudications. With respect to Rivers, the

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<sup>7</sup>42 U.S.C. § 503(a)(3) provides that federal grants to states for unemployment compensation administration are conditioned on the state providing, inter alia, "[o]pportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied."

<sup>8</sup>With respect to the equal protection violation, the Magistrate Judge specifically held that "claimants who cross benefit years are subjected to readjudication of their claims while other claimants who do not pass from one benefit year to another are not." The Magistrate Judge also concluded that the Commissioners had not articulated a rational basis for the readjudication policy.

magistrate judge ordered the Commissioners to pay him all the benefits he did not receive due to the TEC's failure to give preclusive effect to the first decision on his work separation from Gillman; however, the magistrate judge also ordered the Commissioners not to charge Gillman for these benefits. The Commissioners timely appealed.

## II. DISCUSSION

The Commissioners challenge the magistrate judge's holding that the TEC's policy of readjudication violates the "fair hearing" requirement of 42 U.S.C. § 503(a)(3), the Due Process Clause, and the Equal Protection Clause.<sup>9</sup> Specifically, the Commissioners argue that the failure to give preclusive effect to the first adjudication of Rivers's work separation is not so fundamentally unfair or arbitrary as to infringe on Rivers's rights to a fair hearing and due process. The Commissioners also contend that the TEC's procedures are not subject to an equal protection claim because they do not create classifications of benefit applicants who are similarly situated but subject to different treatment. Finally, the Commissioners point out that, even if the TEC does classify similarly situated claimants, the system is supported by a rational basis.

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<sup>9</sup>The Commissioners had also appealed the Magistrate Judge's order that the TEC not charge Gillman's account for benefits paid to Rivers. At oral argument, however, the TEC stated that it had resolved its dispute with Gillman. Accordingly, we consider that part of the Commissioners' appeal abandoned.

Rivers counters that principles of due process require the TEC to give preclusive effect to the first adjudication of his work separation. Rivers also maintains that the TEC unfairly differentiates between claimants whose claims span two benefit years and those whose claims do not by applying readjudication only to the former. Finally, Rivers asserts that the system of readjudication has no rational basis.

#### **A. Standard of Review**

We review a judgment rendered by a magistrate court pursuant to 28 U.S.C. § 636(c) as we would a judgment rendered by a district court. Thus, we review conclusions of law de novo and findings of fact under the clearly erroneous standard. Laker v. Vallette (In re Toyota of Jefferson, Inc.), 14 F.3d 1088, 1090 (5th Cir. 1994).

#### **B. Statutory "Fair Hearing" Requirement**

The Commissioners concede that the "fair hearing" requirement of 42 U.S.C. § 503(a)(3) is co-extensive with the mandates of procedural due process under the Fourteenth Amendment. Because the validity of the TEC's system as a matter of due process is also before this court, we need not analyze separately the statutory requirement. Accord Ross v. Horn, 598 F.2d 1312, 1318 n.4 (3d Cir. 1979), cert. denied, 448 U.S. 906 (1980).

### **C. Due Process**

The magistrate judge concluded that the TEC's procedures violated the Due Process Clause of the Fourteenth Amendment to the Constitution; however, the Final Judgment does not indicate whether this violation was a procedural or substantive one. Rivers's brief relies on procedural and substantive due process cases as authority for upholding the magistrate judge's decision. Because of this ambiguity in the record and the briefs, we will address the issue as a matter of both procedural and substantive due process.

#### **1. Procedural Due Process**

Our analysis of a procedural due process challenge involves a two-step inquiry: "First, we determine whether the state has deprived a person of a liberty or property interest; if there has been such a deprivation, we must determine whether the procedures relative to that deprivation were constitutionally sufficient." Welch v. Thompson, 20 F.3d 636, 639 (5th Cir. 1994).

Rivers asserts that he has a property interest in the unemployment benefits that he would have received in the second benefit year had the TEC not readjudicated the issue of his work separation from Gillman. Whether an individual has a constitutionally-protected property interest is a matter of state law. Williams v. Texas Tech Univ. Health Sciences Ctr., 6 F.3d 290, 293 (5th Cir. 1993), cert. denied sub nom. Williams v. Saltzstein, 114 S. Ct. 1301 (1994). Texas courts have recognized

that unemployment benefit claimants do have a property interest that implicates the protections of procedural due process. See, e.g., Haas v. Texas Employment Comm'n, 683 S.W.2d 462, 465 (Tex. App.--Dallas 1984, no writ). Therefore, we conclude that Rivers was deprived of a property interest.

We evaluate the constitutionality of the procedures relative to this deprivation using the balancing test enunciated by the Supreme Court in Mathews v. Eldridge, 424 U.S. 319 (1976). This test requires us to weigh three factors in determining what process is due: (1) the private interest affected by the government action; (2) the risk of an erroneous deprivation of a protected interest under the current procedures and the value of additional or substitute procedural safeguards; and (3) the government interest, including the fiscal and administrative burdens of implementing additional or substitute procedures. Id. at 335.

It is undeniable that the private interest in unemployment compensation is important, and indeed, both the Commissioners and Rivers agree with this assessment. The parties dispute, however, the risk of erroneous deprivation created by the readjudication of a claimant's work separation. In this regard, Rivers argues that readjudication creates the risk of inconsistent decisions, one of which must be wrong; if the wrong decision results in a denial of benefits, it is an erroneous deprivation. While this may be true, it is not a risk created by inadequate procedural safeguards. The appeal tribunal adjudicates both the additional

claim and the second initial claim in "full blown" evidentiary hearings, in which the claimant has the right to testify, proffer witnesses, cross-examine the employer's witnesses, and present evidence.<sup>10</sup> Rivers's contention that applying issue preclusion will reduce the risk of erroneous deprivation is similarly unpersuasive. It seems that erroneous deprivations are just as likely to result from the TEC giving preclusive effect to incorrect decisions as from the TEC readjudicating correct decisions and reaching different conclusions. Given these considerations, we find that the risk of erroneous deprivation created by the TEC's current procedures is slight, and the value of applying preclusion principles to TEC hearings is minimal.

The final factor we examine is the government's interest, including administrative and fiscal concerns. The TEC maintains that it does not give preclusive effect to the decision in the additional claim hearing because the second employer has no interest at stake in that hearing. Although the claimant's work separation from the second employer is at issue, it is only to determine the claimant's continued eligibility for benefits that are charged to the first employer. Also, while the TEC does notify the second employer of this hearing, the notice states that the employer is a "non-party in interest." Finally, the second employer has no right to appeal the tribunal's decision.

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<sup>10</sup>Indeed, because of the extensive procedures employed by the TEC in readjudicating the issue of a claimant's work separation, the parties' attempt to characterize their dispute as a procedural due process issue seems rather forced.

Therefore, the second employer has no incentive to offer a rigorous defense on the issue of the claimant's work separation. Indeed, as in Rivers's case, the employer often fails to make an appearance.<sup>11</sup> Consequently, if the claimant later files a second initial claim based on his work with the second employer, the TEC will readjudicate the issue of the work separation because the second employer then has an interest and an incentive to defend.

Rivers contends that the second employer does have an interest in the additional claim hearing because it can anticipate that the claimant will remain unemployed and will later file a second benefit claim based on his work with the second employer; however, the TEC's policies of denying the employer appeal rights and readjudicating the work separation eviscerate this interest. Rivers proposes that the TEC can encourage the second employer to offer a rigorous defense in the additional claim hearing by giving the decision in that hearing preclusive effect and allowing the employer to appeal. Rivers argues that fully litigating the work separation issue in this hearing would allow the TEC to avoid the expense of readjudicating the same issue in a later proceeding. Therefore, Rivers concludes that applying issue preclusion to the first decision on a claimant's work separation is not a burden at all,

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<sup>11</sup>The Commissioners point out that they have historically regarded the additional claim hearing as a "continuation" matter between the claimant and the TEC, rather than a conflict between the claimant and his former employer.

but in fact better serves the government's fiscal and administrative interest.

Rivers's argument, however, ignores the potential fiscal and administrative costs of applying issue preclusion. At the time of the additional claim hearing, the second employer will generally not know whether the claimant will remain unemployed after the current benefit year and later choose to file a second initial claim based on his work with the second employer.<sup>12</sup> Nevertheless, if the tribunal's finding on the work separation issue will have preclusive effect in a second initial claim hearing, the second employer will avail itself of the right to fully litigate the issue. The second employer's participation will likely cause these hearings to be costly compared to the TEC's current additional claim hearings, in which employers often do not make appearances. Furthermore, whenever the claimant does not file a second initial claim, the second employer will have litigated the work separation issue for nothing.<sup>13</sup> Conceivably, the TEC could have concluded that the costs of readjudicating the work separations of those claimants who do file second initial

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<sup>12</sup>In the case sub judice, the additional claim hearing did not occur until several months after Rivers had filed his second initial claim, so that Gillman was aware of its potential liability at the time of this first hearing. Nothing in the record or briefs, however, addresses why the additional claim hearing was so delayed. In fact, the parties' briefs seem to assume that the additional claim hearing will usually occur before a second initial claim is filed. Without further guidance on the issue, we treat the parties' assumption as fact.

<sup>13</sup>Also, if the claimant files his second initial claim so late that the second employer is no longer in his base period, the second employer will have engaged in unnecessary litigation.



claims are less than the costs of adjudicating work separations with the unnecessary full participation of second employers who turn out not to be liable for benefits. Therefore, the government's fiscal and administrative interest in applying issue preclusion is, at best, indeterminate.

Balancing these factors, we conclude that the TEC's policy of readjudicating work separations fully comports with procedural due process. Accordingly, we also hold that the policy satisfies the "fair hearing" requirement of 42 U.S.C. § 503(a)(3).

## **2. Substantive Due Process**

As with procedural due process, we begin our analysis of a substantive due process question by determining whether the state has deprived an individual of a liberty or property interest; if we find such a deprivation, and a fundamental right is not at issue, we then determine whether the government action that gave rise to the deprivation is supported by a rational basis.

Brennan v. Stewart, 834 F.2d 1248, 1257-58 (5th Cir. 1988).

While Rivers's substantive due process argument is not clearly articulated, he apparently asserts that the TEC's readjudication of his work separation from Gillman deprives him of a liberty interest. Specifically, Rivers contends that it is fundamentally unfair for the TEC to force benefits claimants to undergo the burdens of readjudication, that such a policy amounts to "government harassment," and that due process requires the TEC to give preclusive effect to the first decision. Therefore, to

fit into the substantive due process framework, Rivers's argument can best be characterized as a complaint that the TEC's readjudication policy and failure to apply issue preclusion deprive him of his liberty interest to be free from government harassment.

The substantive due process case that Rivers primarily relies upon as support for this argument is Continental Can Co. v. Marshall, 603 F.2d 590 (7th Cir. 1979). In that case, the federal government had issued multiple citations against Continental Can Co., all relating to the noise level in some of its plants. These cases were consolidated in an administrative hearing. In a decision that was upheld on appeal, the administrative law judge vacated the citations based on the invalidity of the relevant regulations. Thereafter, the government continued to pursue the issue with respect to other Continental plants. Continental sought and was granted an order enjoining the government from prosecuting the pending and future citations.

In upholding the injunction on appeal, the Seventh Circuit held that "it appears rather fundamental that the government cannot, without violating due process, needlessly require a party to undergo the burdens of litigation." Id. at 597. The court found the following language from a district court opinion to be applicable to the case at bar:

[The government's actions are] precisely the sort of harassment which fundamental fairness and the due process clause prohibit. The Government is not a ringmaster for whom

individuals and corporations must jump through a hoop at their own expense each time it commands.

Id. (quoting United States v. American Honda Motor Co., 273 F. Supp. 810, 820 (N.D. Ill. 1967)). Although the court did not expressly state that Continental had a liberty interest in being free from multiple prosecutions, references to the "burdens" and "harassment" of relitigation manifestly implicate the concept of liberty.

Notwithstanding the strong language of Continental Can, we are unpersuaded that, on the facts of this case, Rivers has been deprived of any liberty interest. First, we note that the Seventh Circuit has since questioned the continued vitality of Continental Can. In R.R. Donnelley & Sons Co. v. F.T.C., 931 F.2d 430 (7th Cir. 1991), that court stated:

The law of preclusion (res judicata and collateral estoppel) does not create a "right not to be tried" in anything like the sense that the double jeopardy clause does. . . . Preclusion in civil cases is not so powerful. An inadequate opportunity (sometimes even an inadequate incentive) to present one's case the first time may permit another shot in civil litigation. Legal errors by the judge may be overturned and the case re-done. Preclusion in a civil case creates a "right not to be tried" only in the sense that it creates a right to win . . . . At all events, Continental Can preceded Socal and the recent cases putting a damper on assertions of "rights not to be tried". Whether there is any life to Continental Can after Socal remains to be seen. Perhaps a pattern of vexatious prosecution supporting an inference that the process is the punishment calls for different treatment--although Hollywood Motor Car suggests not.

Id. at 433. In addition, at least one court has rejected the applicability of Continental Can to substantive due process claims in § 1983 cases. See Aqi-Bluff Manor, Inc. v. Reagen, 713 F. Supp. 1535, 1545 (W.D. Mo. 1989).

Furthermore, Rivers can hardly maintain that this is a case in which "the process is the punishment." While we agree that the readjudication process may be confusing and inconvenient, it does not rise to the level of a "harassment" that infringes on a claimant's liberty. The purpose of readjudication is not to discourage benefit applicants, but rather to insure that all parties with a concrete interest at stake have a full and fair opportunity to be heard. Because we find that the readjudication of Rivers's work separation did not deprive him of a liberty interest, we hold that the TEC's procedures do not violate substantive due process.

Even if we determined that the TEC's refusal to apply issue preclusion deprived Rivers of a liberty interest, it is apparent that the TEC's procedures withstand rationality review. The TEC does not give preclusive effect to work separation determinations made at additional claim hearings because the second employer does not have an interest in litigating the separation at that point. Although the application of issue preclusion would create an incentive for the second employer to participate in the first hearing, that participation would be unnecessary where the claimant does not later file a second initial claim. As we noted in our procedural due process analysis, the TEC could have

rationaly determined that the costs of readjudicating the work separations of claimants who file second initial claims are less than the costs of adjudicating work separations with the needless full participation of second employers who turn out not to be liable for benefits. In sum, we hold that the TEC's policy of readjudication is supported by a rational basis.

#### **D. Equal Protection**

The first step in our analysis of an equal protection claim is to determine whether the challenged government action affords different treatment to similarly situated individuals. "If the action does not appear to classify or distinguish between two or more relevant persons or groups, then the action--even if irrational--does not deny them equal protection of the laws." Brennan, 834 F.2d at 1257. If we do find such treatment, we apply the standard of review appropriate to the type of classification involved. Where the government action does not implicate a fundamental right or discriminate against a suspect or quasi-suspect class, as is the case here, we employ the rational basis test. Id.

The magistrate judge held that the TEC's readjudication policy violated the Equal Protection Clause because "claimants who cross benefit years are subjected to readjudication of their claims while other claimants who do not pass from one benefit year to another are not." This holding, however, mislabels several elements of the TEC's benefits claims process. First,

claimants do not "cross" benefit years; rather, if a claimant with an established benefit year is hired by another employer during that fifty-two week period, he may earn enough or work long enough to establish a second benefit year once his first benefit year ends. On the other hand, if a claimant does not find work during his established benefit year, it is more precise to say that he is unable to establish a second benefit year than to say that he does not "pass from one benefit year to another."

Also, claimants who find work within an established benefit year, but leave that employment before the benefit year ends, are not subjected to having their claims readjudicated. In fact, they have two separate and distinct claims. The first claim, the additional claim, is brought to resume receiving benefits for the rest of the first benefit year. The other claim, the second initial claim, is brought to establish a second benefit year. The issue of the claimant's work separation from the second employer is relevant to both of these distinct claims, and that is why the separation is adjudicated twice. Claimants who do not work during the first benefit year have no second employer, and therefore no separation to adjudicate at all. Therefore, it cannot be said that these two "classes" of claimants are similarly situated; accordingly, their disparate treatment does not give rise to an equal protection claim.

Even if we assume that the TEC's procedures do create two classes of similarly situated claimants and subject them to disparate treatment, we have already held in our substantive due

process analysis, supra, that the procedures are supported by a rational basis. Because the rational basis review under equal protection is essentially the same as that under substantive due process, Brennan, 834 F.2d at 1258, we need not engage in a separate rationality review here. In sum, we hold that the TEC's policy of readjudication does not violate the Equal Protection Clause.

### **III. CONCLUSION**

For the foregoing reasons, we REVERSE the judgment of the district court and RENDER judgment for the Commissioners of the TEC.