

Pennsylvania Unemployment Compensation Newsletter

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Unemployment Rate Falls to 5.1% - Lowest in Years!

The November 2014 employment situation report was released by the PA Department of Labor and Industry on December 19, 2014. The report paints an optimistic picture for Pennsylvania's workforce and the Commonwealth's overall economy.

Pennsylvania's unemployment rate declined by three-tenths of a percentage point in November to 5.1 percent, the commonwealth's lowest rate in more than six years. The rate was seven-tenths of a percentage point below the U.S. rate of 5.8 percent. The commonwealth's rate was down by 1.8 percentage points from last November while the national rate declined by 1.2 points over the year.

Pennsylvania's civilian labor force—the number of people working or looking for work—expanded by 5,000 in November. Resident employment was up 27,000 while unemployment was down 22,000.

Total non-farm jobs were up by 200 to 5,798,3000 the highest level since September 2008. Private sector jobs were essentially unchanged (-100). Among industries, the largest movement in November was an increase of 2,600 in construction. Financial activities had the largest decline.

*Over the year, total non-farm jobs in Pennsylvania were up 33,200 (+0.6%). The growth was almost entirely within private industries, with the largest gains in trade, transportation & utilities, construction, and other services. Only two supersectors declined from last November—information and government.**

*The Department's complete press release may be found on the Department's website: www.portal.state.pa.us

APPELLATE CASE LAW REVIEW

BUYER BEWARE!!

Reese's Pizza and More v. Department of Labor & Industry, Office of Unemployment Compensation Tax Services, No. 1794 C.D. 2013, Filed April 11, 2014, Reported June 19, 2014.

Business purchaser petitioned for review from an order of the Department of Labor and Industry, which denied its petition for reassessment of unpaid unemployment compensation taxes and penalties. The Department found purchaser liable under §308.3(a) of the Unemployment Compensation Law for unpaid UC contributions owed by purchaser's predecessor. The

Commonwealth Court affirmed the Department's order for the following reasons.

In July 2010, purchaser acquired 51% or more of predecessor's assets. Shortly thereafter, purchaser and predecessor executed an asset purchase agreement, through which all of predecessor's assets were transferred free and clear of all claims, liabilities, taxes and liens. Because the parties closed very quickly in order for predecessor to pay back taxes and stay out of prison, purchaser did not obtain a certificate pursuant to the bulk sales provisions in §308.3(a) of the UC Law. In February 2011, the Department's Office of UC Tax Services, pursuant to §308.3 of the Law, issued purchaser an assessment notice in the amount of

\$2,750.45 for UC contributions, interest and penalties owed by predecessor. Purchaser filed a petition for reassessment, arguing that it should not be held liable for predecessor's UC tax liability because it did not have time to obtain a bulk sales clearance certificate, and the sales agreement absolved it from any of predecessor's UC tax liability.

In rejecting purchaser's arguments, the Department noted that §308.3 of the Law provided no exclusions from the 10-day notice of bulk sale requirement for fast-track sales. The Department also noted that purchaser's knowledge of the circumstances of the case should have given it greater reason to require a clearance certificate to satisfy §308.3(a). Finally, the Department also rejected purchaser's defense that the sale agreement placed liability for predecessor's unpaid UC tax obligations on predecessor.

In its petition to the Commonwealth Court, purchaser argued that, because the parties entered into the agreement of sale on the day before predecessor's scheduled sentencing date so that he could avoid prison and pay back taxes, purchaser had no time to obtain a clearance certificate. Also, purchaser argued that the sale agreement provided that it owed no state taxes at the time of transfer. Thus, purchaser concluded that it would be reasonable to conclude that it did not owe UC taxes, and it would be inherently unfair to require it to pay back UC taxes at that time. Purchaser argued that, as a result of the sale agreement, the Commonwealth received a substantial payment for back taxes and, absent the sale, would have received nothing. Thus, purchaser argued that it would be unfair and inequitable to require it to pay any further taxes on behalf of predecessor.

In affirming the Department's order, the Court stated that, in general, when the words of a statute are clear and free from all ambiguity, as in §308.3(a) of the Act, they are not to be disregarded under the pretext of pursuing its spirit. The Court also noted that the statutory duty imposed upon a purchaser of bulk assets to obtain a tax clearance certificate from the seller is not overly burdensome, and purchasers are presumed to know the law. A purchaser's failure to comply with the certificate requirement deprives it of an opportunity to later challenge the amount of taxes owed.

Here, purchaser had actual notice that predecessor had severe financial liabilities and, as such, had a reasonable duty under §308.3(a) to ascertain the extent of predecessor's liabilities prior to purchasing his assets without obtaining a bulk sales clearance certificate from the Department. Private property rights must yield to governmental need where, as here, an important government interest like collecting revenue exists.

In rejecting purchaser's argument that the sale agreement provided it with a defense to the Department's assessment against it for predecessor's unpaid UC taxes, the Court stated that, at most, it may provide purchaser with a breach of contract action against predecessor. However, the sale agreement cannot preclude the Department from assessing purchaser for predecessor's unpaid UC taxes under §308.3(a) of the Law.

SELF-EMPLOYMENT MUST BE REPORTED

Shawna McKean v. Unemployment Compensation Board of Review, No. 1927 C.D. 2013, Filed June 27, 2014.

Claimant petitioned for review of an adjudication of the Unemployment Compensation Board of Review, which imposed a fraud overpayment and penalty because it concluded that she had received unemployment compensation to which she was not entitled. The UCBR affirmed the Referee's decision that claimant had engaged in counseling while collecting UC benefits. Claimant contended that although she did minimal counseling while collecting benefits, this did not make her self-employed. The Commonwealth Court reversed the UCBR's adjudication and remanded.

Claimant opened her claim for UC benefits on May 29, 2011 when she worked in guest relations on an as needed basis. She later became a licensed professional counselor and began working on February 20, 2012 for Saint Joseph Institute as an addiction counselor. On March 22, 2012, she was discharged from Saint Joseph Institute. From September 4, 2012 to October 3, 2012, she worked for Clear Concept Counseling, but was discharged for lack of work. She then applied for emergency UC benefits, which she collected until those benefits were exhausted on May 18, 2013. On June 2, 2013, she informed the UC Service Center that she had provided five private counseling sessions to a single client in March and April of 2013, for which she had been paid \$90.00 per session. She also informed the UC Service Center that she purchased used office furniture on May 31, 2013. On June 2, 2013, claimant printed business cards and brochures in the hope of establishing a counseling practice.

The UC Service Center determined that claimant began her counseling practice on March 6, 2013, when she became self-employed and ineligible for EUC benefits pursuant to §402(h) of the Unemployment Compensation Law. The UC Service Center also determined that she received a fault overpayment of \$5,006.00 in benefits from March 9 through May 18,

2013, which she was ordered to repay. Finally, a 13-week penalty period was assessed.

Claimant appealed to a referee, who found that she opened an individual counseling practice in her home on March 6, 2013; that her purchase of office equipment and business cards and brochures demonstrated her intent to set up a professional business; that she received \$5,006.00 in EUC benefits after March 6, 2013 to which she was not entitled; and that she deliberately chose not to report her income in order to continue these benefits. Therefore, an overpayment of \$5,006.00 and a 13-week penalty were imposed. The UCBR affirmed.

On appeal to the Commonwealth Court, claimant contended that (1) the five counseling sessions in March and April 2013 were too minimal to support a finding of self-employment and (2) the law on self-employment was too complex to authorize the imposition of a fault overpayment. The UCBR argued that the evidence established that she intended to form an independent business on a permanent basis. The Court disagreed because none of the findings on which the UCBR relied contained dates, which were necessary to prove that claimant became self-employed on March 6, 2013. Likewise, the Court stated that the fact that claimant saw one client for a total of five hours over a two month period during the time that she still was receiving EUC benefits was insufficient to support a determination that she intended to establish an independent business on March 6, 2013, rather than looking for a way to make extra money. Thus, the Court concluded that claimant became self-employed on June 1, 2013, and the UCBR failed to meet its burden of proof that she became self-employed on March 6, 2013.

The UCBR also argued that claimant was aware that she had to report the income. The Court agreed with the UCBR's argument based on §4005 of the EUC Act of 2008. Pursuant to this section of the EUC Act of 2008, claimant was properly assessed a fault overpayment because she chose not to disclose her counseling income to the UC Service Center.



The Court therefore reversed the UCBR's adjudication and remanded the matter for a recalculation of the amount of claimant's overpayment and penalty assessment. In so doing, the Court stated that claimant could be assessed for the five weeks where

she failed to report additional income, if such additional income was determined to have resulted in an overpayment.

UNREFUTED TESTIMONY INSUFFICIENT TO ESTABLISH TIMELINESS OF APPEAL

LeShane Kellsey McKnight v. Unemployment Compensation Board of Review, No. 1863 C.D. 2013, Filed July 10, 2014.

Claimant petitioned for review of the September 16, 2013 order of the Unemployment Compensation Board of Review that dismissed his appeal from a referee's decision as untimely under §502 of the Unemployment Compensation Law. The Commonwealth Court affirmed the UCBR's order.

After claimant's application for benefits was denied by the local service center, he appealed and a referee held a hearing on June 18, 2013. The referee affirmed the denial, finding claimant ineligible for compensation under §402(b) of the Law. The decision, which was mailed on June 21, 2013, advised claimant that he had fifteen days to appeal, such that the final date to appeal was July 8, 2013. The UCBR, which received claimant's appeal on July 10, 2013, informed claimant on July 17, 2013 that his appeal was untimely filed. The UCBR advised claimant that if he believed that his appeal had been filed with fifteen days of the referee's decision, he should submit a written request to the UCBR for a hearing on the timeliness issue. After claimant submitted a written request for said hearing, the UCBR, via order on August 6, 2013, remanded the matter to the referee to hold a hearing and serve as the UCBR's hearing officer. That hearing was held on August 23, 2013.

Claimant testified that he received the referee's decision on June 22, 2013, met with his attorney on July 3, 2013, and placed his appeal form in a mailbox on July 5, 2013 before the first scheduled pickup at 9:30 a.m. However, he acknowledged that the envelope containing his appeal to the UCBR did not have a postmark. The UCBR found that claimant had not been misinformed or misled about his right to appeal; and claimant's late appeal was not caused by fraud, a breakdown in the administrative process, or non-negligent conduct. The UCBR noted that, under the applicable regulations, absent a certificate of mailing, certified mail receipt, postmark, or postage meter mark, an appeal mailed to the unemployment compensation authorities is considered to be filed on the date on which it is received. Thus, the appeal was untimely.

On appeal to the Commonwealth Court, claimant argued that the applicable regulations are unduly inflexible. He also asserted that the UCBR's decision reflected a capricious disregard of his unrefuted, credible testimony. Claimant also contended that the alleged delay in filing his appeal resulted from the

negligence of the United States Postal Service in not providing a postmark on the envelope rather than any negligence on his part, and therefore he was entitled to *nunc pro tunc* relief.

The Commonwealth Court previously recommended that the UCBR consider modifying its proof of filing regulation in light of the number of appeals that were held to be untimely due to the absence of a postmark, despite circumstantial or direct evidence strongly suggesting that they had been filed timely. In response to this request, the UCBR amended 34 Pa. Code §101.82 in 2003. Pursuant to this amendment, if a party files a written appeal by United States mail, the filing date will be determined either on (1) the date of the official United States Postal Service postmark on the envelope containing the appeal, a United States Postal Service Certificate of Mailing Form, or a United States Postal Service certified mail receipt, or (2) in the absence of the former, the date of a postage meter mark on the envelope containing the appeal.

Claimant argued that §101.82 should be liberally construed, and provide enough flexibility to allow any evidence of the filing date that is not vulnerable to human manipulation. However, the Court noted that appeals to the UCBR are governed by its own regulations, and it does not accept testimony as adequate proof of mailing. Thus, the Court concluded that the UCBR properly dismissed claimant's appeal as untimely. The Court also noted that claimant had waived his *nunc pro tunc* argument because he did not raise it in his petition for review.

**STATUS AS INDEPENDENT CONTRACTOR
MAY NOT NECESSARILY RENDER
CLAIMANT INELIGIBLE FOR BENEFITS**

The Training Associates Corporation v. Unemployment Compensation Board of Review, No. 902 C.D. 2013, Filed October 16, 2014.

The Training Associates Corporation petitioned for review of the order of the Unemployment Compensation Board of Review, which found that claimant, Tameka Johnson, was not ineligible for UC benefits pursuant to §402(h) of the UC Law. The Commonwealth Court affirmed the UCBR's order.

Claimant had been receiving UC benefits based on her separation from employment with Accolade, Inc. when she sent resumes to various entities, including TTA, to obtain employment. She eventually signed an independent contractor agreement with TTA; however, after performing services for four days, TTA informed claimant that her services were no longer required.

Thereafter, claimant reported wages of \$795.00

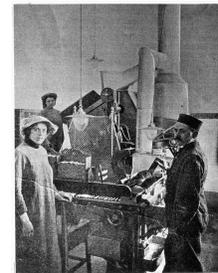
and informed the UC Service Center that she had worked four days for TTA. In response, TTA informed the UC Service Center that claimant was never employed by TTA, but instead had performed services pursuant to a consulting agreement as an independent contractor for four days .

The UC Service Center deemed claimant ineligible for ongoing UC benefits from her previous separation from Accolade because she was now self-employed. An Overpayment Notice was issued, finding that claimant had a fault overpayment because she was an independent contractor and ineligible for benefits. Claimant appealed the UC Service Center's Determination, arguing that she was not self-employed, took a temporary job that lasted only four days, and was continuing to look for full-time work. She also separately appealed the Overpayment Notice.

After a hearing, the referee concluded that claimant was not an independent contractor, and thus had to be considered as an employee of TTA and not denied benefits. The referee also determined that no fault overpayment existed. TTA appealed this decision to the UCBR, which agreed that claimant was not self-employed and, therefore, was eligible for benefits. Thus, the UCBR also determined that no overpayment existed. TTA then petitioned the Commonwealth Court for review of the UCBR's order.

TTA did not challenge claimant's entitlement to continue receiving benefits based upon her separation from Accolade, but asserted that the proper issue for disposition was whether claimant had lost her eligibility for continued benefits by becoming self-employed rather than whether she was TTA's employee. TTA contended that the UCBR erred by addressing the issue of whether claimant had become a permanent employee of TTA and, therefore, the UCBR's determination that claimant was TTA's employee because she was not self-employed had to be reversed or vacated. TTA stated that this solution would leave intact the UCBR's findings and conclusions that claimant was not self-employed and, thus, eligible for benefits.

The Court stated that it was incorrect for the referee to apply an either/or analysis and to determine that, because claimant was not an independent contractor, she must be considered an employee of TTA. In contrast, the UCBR did not find or conclude specifically that, because claimant was not self-employed, she necessarily was an employee of TTA. Rather, the Court said that the UCBR's finding of fact that claim-



ant pursued full-time work as a permanent employee before, during, and after performing services for TTA, and not as an independent contractor, related to the issue of whether claimant customarily was engaged in a trade or profession. Moreover, the Court stated that because claimant remained eligible to receive benefits as a former employee of Accolade, without regard to her status with TTA, there should be no effect on TTA as a result of the limited findings in this case.

The Court said that there is a presumption that an individual receiving wages is an employee and not engaged in self-employment. The Court further stated that this presumption can be overcome by establishing that the claimant was: (a) free from control or direction over the performance of such services both under her contract of service and in fact; and (b) as to such services such individual customarily is engaged in an independently established trade, occupation, profession or business. Normally, the separating employer has the burden of establishing these two prongs. However, the Department carries the burden when it has initiated the proceedings that resulted in a suspension of benefits because of self-employment. Regardless, the Court said that it is critical that all of the facts and evidence regarding the relationship between the claimant and the purported “separating employer” be presented.

The Court stated that because claimant received wages from TTA for services performed pursuant to an independent contract agreement, TTA had to be included in the proceedings, albeit not necessarily as a party, in order for all of the evidence to be before the decision maker. Thus, the Court concluded that TTA’s due process rights had not been violated.

For the foregoing reasons, the Court concluded that there had been no finding by the UCBR that claimant was or is TTA’s employee, and therefore affirmed the UCBR’s order.

FINANCIAL ELIGIBILITY REQUIREMENTS HELD CONSTITUTIONAL

Devine v. Unemployment Compensation Board of Review, No. 1934 C.D. 2013, Filed October 17, 2014.

Claimant petitioned for review of the decision and order of the Unemployment Compensation Board of Review that held that she was ineligible for unemployment compensation benefits because her base year earnings did not satisfy the financial eligibility requirements of §§401(a) and 404 of the Unemployment Compensation Law. The Commonwealth Court affirmed the UCBR’s order.

Claimant’s employer provided food services to the Barnstormers Ballpark. Claimant filed her appli-

cation for benefits effective April 21, 2013, which established a base year of the four quarters in 2012. She had no earnings during the first quarter of 2012, \$5,506.00 for the second quarter, \$15,134.00 for the third quarter, and \$1,260.00 for the fourth quarter, which totaled \$21,900.00. The UC Service Center denied claimant’s application because she did not satisfy the financial eligibility requirements that at least 49.5% of her qualifying wages had not been paid to her outside the calendar quarter in which she had had the highest wages. Claimant appealed, and a referee held a hearing on July 17, 2013. Claimant testified that the ballpark’s owner leased its suites for entertainment purposes outside of the regular baseball season, and her employer provided hospitality services for said suites throughout the year.

On July 19, 2013, the referee issued a decision affirming the UC Service Center’s determination, and finding claimant ineligible for benefits because she did not meet financial eligibility requirements set forth in the 2012 amendments to the Law. Claimant appealed to the UCBR, arguing that the 2012 amendments had been enacted to limit claims by seasonal workers, and arbitrarily and unfairly precluded her, who was employed on a year-round basis, from benefits to which she otherwise was entitled. The UCBR affirmed the referee’s decision, adopted and incorporated the referee’s findings, and noted that it had no discretion to alter a financial requirement set by the legislature. Claimant then filed a petition for review with the Commonwealth Court.

The Court stated that it was claimant’s burden to prove that she was financially eligible for benefits and, in order to be financially eligible, she had to satisfy the earnings requirements of §§401 and 404 of the Law for her base year. Under §404, the base year includes the first four of the last five completed calendar quarters immediately preceding the first day of an individual’s benefit year. Under §401(a)(2), which was amended by §10 of the Act of June 12, 2012, not less than 49.5% of an employee’s total base year wages must be paid in one or more quarters, other than the highest quarter in the base year.

Claimant did not dispute that her base year wages failed to qualify her for benefits under §§401 (a) and 404 of the Law. However, she asked the Court to look to the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, and determine that the application of the Law in her case was arbitrary and failed to meet the goals of the 2012 amendments. She argued that she was entitled to an alternative financial eligibility determination, based on either the requirements of the Law prior to the 2012 amendments, or a determination wherein her

total annual earnings for the base year at issue were divided by 52 weeks. Claimant likened the latter method to how workers' compensation benefits are calculated.

The Court concluded that the record did not support claimant's assertion that she was not a seasonal employee, and did not accept her argument that the action of the legislature, in enacting the statute, was unconstitutional. Moreover, the Court found no reason why the UCBR should have followed the measure for calculating workers' compensation benefits, which is markedly different.

Because the Court said that §§401 and 404 of the Law are explicit and leave no room for a more flexible, compassionate interpretation, it found no error in the Board's determination that claimant failed to meet the financial eligibility requirements for benefits, and concluded that the 2012 amendments did not violate the Equal Protection Clause. Therefore, the UCBR's denial of benefits was affirmed.

INTERPLAY BETWEEN WC ACT AND UC LAW EXAMINED

Logan v. Unemployment Compensation Board of Review, No. 586 C.D. 2014, Filed November 10, 2014.

Claimant petitioned for review of the March 11, 2014 order of the Unemployment Compensation Board of Review that concluded that she was financially ineligible for unemployment compensation benefits. The Commonwealth Court affirmed the UCBR's order.

Claimant suffered a work-related injury in June 2009, and applied for UC benefits after her employer's store permanently closed in December 2009. After determining that claimant was financially eligible for UC benefits, the Department of Labor and Industry determined that her base year wages included those from the third and fourth quarters of 2008 and the first two quarters of 2009. Claimant then collected UC benefits for 21 days, underwent surgery for her work-related injury, and began to receive workers' compensation benefits.

After recovering from her WC injury, claimant filed an application for UC benefits on December 16, 2012. On December 24, 2012, the Department concluded that claimant was financially ineligible for UC benefits because she had earned insufficient base year wages. Thereafter, the Department vacated its latter determination. However, on February 12, 2013, the Department again concluded that claimant was financially ineligible for UC benefits under §204(b) of the Workers' Compensation Act. Using base year quarters from April 1, 2008 through March 31, 2009, the

Department determined that, except for \$7,155.00 in wages from the second quarter of 2008, the wages in the other three quarters already had been used in a previous UC eligibility determination and could not be used a second time.

Claimant appealed, and a referee reversed the Department's determination, concluding that claimant was financially eligible for UC benefits. The Department then appealed to the UCBR, which reversed and concluded that claimant was financially ineligible for UC benefits under §§401 and 404 of the UC Law due to insufficient base year wages. The UCBR also concluded that claimant was ineligible for UC benefits under section 204(b) of the WC Act. Claimant then petitioned the Commonwealth Court for review, arguing that the UCBR erred in concluding that she was financially ineligible for UC benefits. For the following reasons, the Court disagreed.

Because claimant applied for UC benefits on December 16, 2012, her base year was July 1, 2011 until June 30, 2012. However, during that time, she did not receive "wages" as defined in §4(x) of the UC Law. Rather, claimant was receiving workers' compensation benefits, which are not wages. Therefore, the Court stated that because claimant did not have sufficient "wages," the UCBR did not err in determining that she was financially ineligible for UC benefits under §401(a) of the UC Law.

The Court noted that §204(b) of the WC Act permits an alternative base-year analysis, in which an employee may elect to have his or her base year consist of the four complete calendar quarters immediately preceding the date of the work-related injury. Because her work-related injury occurred in June 2009, the four complete quarters immediately preceding same included April 1, 2008 through March 31, 2009; however, the Department used the wages in three of those four quarters when it determined claimant's eligibility for UC benefits pursuant to her December 27, 2009 application. The Court said that those wages could not be used again to calculate claimant's eligibility in her subsequent application for UC benefits.

Claimant argued that she had wages in the third and fourth quarters of 2009 that could have been used to determine her UC eligibility. However, the Court stated that, although claimant had wages during the third and fourth quarters of 2009, those calendar quarters were not completed immediately preceding her work-related injury. Thus, the Court said that the third and fourth quarters of 2009 could not be used in the calculation under section 204(b) of the WC Act. Hence, concluding that the UCBR cor-

rectly determined that claimant was financially ineligible for UC benefits, the Court affirmed.

VOLUNTARY LAYOFF OPTION

Naval Surface Warfare Center Carderock Division v. Unemployment Compensation Board of Review, No. 2095 C.D. 2013, Filed December 12, 2014.

In this case, the Commonwealth Court considered the issue of whether §402(b) of the Unemployment Compensation Law renders a claimant ineligible because he did not have a necessitous and compelling reason for voluntarily leaving his employment, or whether he remained eligible for benefits under the “Voluntary Layoff Option” because his separation from employment was due to acceptance of a layoff pursuant to an established employer plan. For the following reasons, the Court held that claimant’s voluntary retirement did not render him ineligible to receive UC benefits.

Claimant filed for unemployment compensation on December 1, 2012. On January 2, 2013, the Department of Labor and Industry found him ineligible under §402(b) of the Law. Claimant appealed and a referee held a hearing on February 7, 2013. The referee concluded that claimant was eligible to receive benefits and reversed the earlier determination. Employer appealed, and on March 28, 2013, the UCBR affirmed the referee’s decision. Employer then filed a request for reconsideration, which the UCBR granted on April 29, 2013, vacating its earlier decision, and scheduling a hearing with a referee acting as a hearing officer for the UCBR.

On May 17, 2013, the remand hearing was held. The UCBR then issued a new decision and order, adopting the findings and conclusions in the referee’s initial decision. Specifically, the UCBR found that claimant began employment in 1998; he last worked on September 30, 2012; he was offered a voluntary early retirement program sometime in May 2012 which he accepted, thereby voluntarily leaving his employment; he received a financial incentive upon accepting voluntary early retirement; after his last day of work, he continued to attempt to secure other employment and went on job interviews; he voluntarily left employment with employer to accept employer’s offer of a voluntary early retirement; had he not accepted employer’s offer, continued work was available to him; and employer’s plan had the practical effect of being a workforce reduction.

The UCBR concluded that the VLO language included in §402(b) of the Law applied to claimant and, therefore, he did not have the burden of demonstrating a necessitous

and compelling reason for voluntarily leaving his employment. It also concluded that because the retirement offer made to claimant was offered as a part of an established plan by employer that had the practical effect of a workforce reduction, claimant was eligible for unemployment compensation. Employer then appealed the UCBR’s decision and order to the Commonwealth Court.

The Court stated that a cardinal principle of the Law is that the eligibility sections must be construed liberally, and the disqualification sections must be construed narrowly, so that an unemployed worker shall be denied benefits only where the plain language of the Law unequivocally excludes the worker from receiving benefits. The Court further said that the VLO Provision is an “eligibility carve-out” from the disqualification provisions for claimants who have left employment without a necessitous and compelling reason, and must be construed broadly in favor of the claimant seeking unemployment compensation. The Court further stated that the VLO Provision applies to employees accepting employer offered early retirement packages as part of a labor force reduction, because such programs are merely a different way to accomplish the workforce reduction of a layoff.

In applying the aforementioned principles, the Court had to address the issue of whether there was substantial evidence in the record that claimant was exercising the option of accepting a layoff pursuant to an employer-initiated plan. Employer argued that claimant was ineligible to receive unemployment compensation benefits because the early retirement offer to him was not part of a force reduction, but part of an effort to reshape the workforce and correct skills imbalances. Employer further argued that unemployment compensation benefits only are available when employment is terminated due to a reduction in force, and claimant’s position should be likened to that of an employee who has an option to retire based on age and service years.

The Court stated that when an employee retires on his own initiative, he must demonstrate a necessitous and compelling reason for the separation in order to qualify for benefits. However, where the employer comes to an employee and offers the option of early retirement from an available position pursuant to an established employer plan, program or policy, the employer must demonstrate by substantial evidence that the early retirement offer was not a “layoff.” Here, employer failed to satisfy this burden, as the record evidence clearly supported that the practical effect of employer’s plan was a layoff of claimant. Thus, the Court affirmed the UCBR’s order.



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ATTENTION READERS, the editors of Thomson, Rhodes & Cowie Pennsylvania Unemployment Compensation Newsletter invite you to submit questions you may have dealing with unemployment compensation issues. The editors will compile questions received and periodically provide answers to recurrent issues. Submission of a question is no guarantee that an answer will be provided, but we will make every effort to answer as many questions as possible. Of course, for specific legal advice the reader should seek counsel from a qualified unemployment compensation attorney.

Send questions to: Margaret M. Hock, Esquire, Thomson, Rhodes & Cowie, P.C., 1010 Two Chatham Center, Pittsburgh, PA 15219.

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