TR&C

Pennsylvania Unemployment Compensation Newsletter

Thomson, Rhodes & Cowie, P.C. Two Chatham Center, 10th Floor, Pittsburgh, PA 15219 (412) 232-3400

EXTRA! EXTRA! READ ALL ABOUT IT!! How to report UC Fraud in Pennsylvania

Unemployment compensation fraud hurts everyone. Individuals who collect benefits while working and do not report their wages commit fraud. Individuals who are not able and available to work while collecting benefits commit fraud. Employers who evade unemployment compensation taxes by paying wages under the table, failing to register as an employer, and/or failing to report all employees or wages paid, commit fraud.

Suspected fraudulent activity should be reported to the Pennsylvania Department of Labor & Industry, either by mail, fax or through the Department's website. The addresses are:

Pennsylvania Department of Labor and Industry
Bureau of Financial Management
Internal Audits Division
Room 1104 Labor and Industry Building
Harrisburg, PA 17121

Fax: 717-772-0983
www.dli.state.pa.us

Reports may be made anonymously, but it would be preferable to provide your name and contact information in the event that additional information is needed. The online site includes a variety of questionnaires that may be completed and submitted through the site or printed and mailed or faxed directly to the Department. In addition, the Department maintains a UC Fraud Hotline: 1-800-692-7469.

Once you have made your report, allow the Department to conduct its investigation. Do not contact the Department for status reports or to find out the results of the investigation. The Pennsylvania Unemployment Compensation Law prevents the Department from disclosing an investigation or its results.

DECISIONS OF NOTE…

♦*Borough of Grove City v. Unemployment Compensation Board of Review, No. 1719 C.D. 2006, Filed June 6, 2007.* Claimant, the elected tax collector, was appointed by the Borough as the Borough Receiver of Taxes, whose duty it is to collect the local earned income tax. When he was not re-elected as tax collector, he applied for unemployment compensation benefits in connection with his position as Borough Receiver. His application was granted, and the Borough appealed. After a hearing, the Referee reversed, finding claimant ineligible for benefits. Claimant then appealed to the UCBR, which reversed the Referee. The Borough appealed to the Commonwealth Court arguing that it met its burden of proving claimant was "self-employed" and thus ineligible for benefits. The Court agreed. Section 402(h) of the Unemployment Compensation Law states that a claimant is ineligible for benefits for any week in which he was engaged in self-employment. An individual is self-employed if: 1) the individual is free from control or direction over the performance

of services, and 2) the individual is customarily engaged in an independently established trade, occupation, profession or business.

~

♦*Crystal Williams v. Unemployment Compensation Board of Review, No. 1961 C.D. 2006, Filed June 8, 2007.* Employer had a harassment policy that prohibited the use of racial nicknames, slurs or labels. Claimant was aware of the policy but repeatedly made comments in front of her co-workers calling bi-racial children "zebras." Claimant argued that she was not guilty of willful misconduct or violating the employer's rule because the term "zebra" is not offensive and, even if it is offensive, she did not intend it to be so. The Court was not persuaded and found claimant used the term "zebra" as either a racial nickname, slur or label, and it is irrelevant whether she also intended it to be offensive. Benefits were denied.

~

♦*City of Pittsburgh, Department of Public Safety v. Unemployment Compensation Board of Review, No. 2103 C.D. 2006, Filed June 13, 2007.* Claimant, a school crossing guard, was initially denied benefits in June because the Collective Bargaining Agreement provided her with a reasonable assurance of returning to work at the end of the school summer vacation recess. Claimant appealed and was granted benefits by the UCBR, which found claimant was employed by the City, not by an educational service agency. Therefore, the UCBR concluded claimant was eligible for benefits. The City appealed arguing that it met the definition of an "educational service agency" because it established the Office of School Guards solely to provide a safety service to schools. The Court noted that §402.1(4) of the Law defines an educational service agency as "a governmental entity which is established and operated exclusively for the purposes of providing such services to one or more educational institutions." The uncontroverted evidence is that the Office of School Guards operates solely to provide safety services to schools. As such, benefits were denied.

~

♦*Eilene Shaffer v. Unemployment Compensation Board of Review, No. 119 C.D. 2007, Filed June 25, 2007.* Claimant resigned her position when employer moved its place of business, adding 15-30 minutes each way to claimant's daily commute. Before employer moved, claimant's in-laws provided daycare services for claimant's 5-year old child. They were unable to do so after employer's move because of the additional commute time involved. Before resigning, claimant investigated a daycare facility for her child, but determined it would not be cost effective. Claimant did not look into any other child care arrangement. Because she did not make a concerted effort to find alternative child care arrangements, the Court found that claimant did not have cause of a necessitous and compelling reason to voluntarily terminate her employment. Benefits were thus denied.

~

♦*Margarita I. Davila v. Unemployment Compensation Board of Review, NO. 255 C.D. 2007, Filed June 26, 2007.* Claimant, a social worker, applied for and was accepted into employer's DROP program, in which employees who are of retirement age may choose to participate. Under the program, the employee must retire within 4 years of the date he or she applied to participate in the DROP program. After retiring, claimant sought unemployment compensation benefits, alleging that she had a necessitous and compelling reason for terminating her employment, i.e., she was legally obligated under the DROP program to resign within 4 years of entering the program. The Court held that claimant failed to meet her burden of proof. Her sole reason for retiring was because of her participation in the program. Claimant did not establish that she was in danger of losing her job had she not entered the DROP program. As such, benefits were denied.

~

♦*Shirley Glenn v. Unemployment Compensation Board of Review, No. 2343 C.D. 2006, Filed July 17, 2007.* Employer had a written policy against theft of any kind, a violation of which could result in immediate discharge. Claimant worked full-time as employer's director of environmental services. On April 30, 2006, she removed a scrubber from the workplace to use on her floors at home. Employer subsequently discovered the missing scrubber and confronted claimant. Claimant lied and told employer that she loaned the scrubber to a sister facility. Later, she contacted employer, told the truth and returned the scrubber. Employer discharged claimant for violation of its rule and dishonesty. Claimant was denied benefits. On appeal, claimant argued that her conduct did not constitute willful misconduct because employer did not enforce its rule prohibiting theft of property. Claimant maintained that she initially lied about taking the scrubber because she was the only African-American employee and was treated differently than her white co-workers. The Court noted, however, that claimant failed to show that she was disparately treated. No evidence was presented to show that claimant's co-workers lied to employer regarding the whereabouts of equipment they may

have taken from employer's premises in violation of the rule. The denial of benefits was affirmed.

~

♦*Carlynton School District v. Unemployment Compensation Board of Review, No. 260 C.D. 2007, Filed July 19, 2007.* Claimant, a substitute school teacher, worked various assignments at different rates of pay during the 2005-2006 academic year. In June of 2006, employer sent claimant a letter assuring her that it anticipated continuing claimant's employment in the 2006-2007 school year on a day-to-day basis. Claimant subsequently filed for and was awarded unemployment compensation benefits. Employer appealed arguing that its reasonable assurance of continued employment precluded claimant from receiving benefits. The Court agreed. There was no evidence that the letter changed the terms of claimant's employment as a per diem substitute teacher from the 2005-2006 school year to the 2006-2007 school year. Accordingly, the awarded of benefits was reversed.

~

♦*Mark A. Jackson v. Unemployment Compensation Board of Review, No. 2286 C.D. 2006, Filed September 27, 2007.* In August of 2000, claimant stopped working due to health-related problems and received benefits through employer's long-term disability plan. On April 16, 2006, claimant filed an application for unemployment compensation benefits. The Service Center determined that claimant was not financially eligible, and claimant appealed. After a hearing, the Referee affirmed the Service Center's determination. The "base year" relative to claimant's application was January 1, 2005 to December 31, 2005, during which time claimant had no wages. Claimant appealed to the UCBR, arguing that his disability payments should be considered "wages" for purposes of determining his eligibility for benefits under §204(b) of the Workers' Compensation Act. That section provides that an injured worker may elect to have his base year for unemployment compensation purposes consist of the four quarters preceding the work injury. The UCBR disagreed because claimant's disability was not compensable under the Workers' Compensation Act and affirmed the denial of benefits. Claimant then sought review by the Commonwealth Court. Claimant argued that, although he was not receiving benefits under the Workers' Compensation Act, his disability was work-related. The Court noted that claimant's injuries are not compensable under the Workers' Compensation Act. The UCBR did not err in determining that claimant is ineligible for benefits under the Unemployment Compensation Law.

~

♦*Thomas C. Chishko v. Unemployment Compensation Board of Review, NO. 677 C.D. 2007, Filed October 15, 2007.* In June 2005, Claimant applied to the Indiana UC Service Center for benefits, and received $4,302 for the 15 claim weeks from October 8, 2005 through January 14, 2006. During that time frame, claimant entered into an oral agreement with Woodward to renovate a house for resale. Woodward purchased all materials and supplies. Claimant performed the actual renovations, for which he received $700 per month. Claimant did not report his construction work to the UC Service Center. After receiving an anonymous tip and conducting an investigation, the UC Service Center determined that claimant had been overpaid benefits in the amount of $4,302. The UC Service Center also issued a Notice of Penalty Weeks Determination, finding that claimant knowingly failed to disclose his employment and subjecting him to an additional 17-week period of disqualification. Claimant appealed. Claimant argued that he did not report his work because Woodward never paid him. The Court noted, however, that claimant failed to disclose that he worked 55 hours per week on the project, received $700 per month and expected to receive 50% of the profits generated by the sale of the house. Claimant deliberately misled the Department. As such, the imposition of penalty weeks was appropriate.

~

♦*Montgomery County Head Start v. Unemployment Compensation Board of Review, No. 154 C.D. 2007, Filed December 3, 2007.* Employer appealed a decision of the UCBR which found that employer's Head Start program was not an educational institution and that, therefore, benefits were granted to 3 employees during the summer break between academic years. Section 402.1(1) of the Unemployment Compensation Law prohibits employees of an "educational institution" from collecting benefits if they are unemployed during their summer vacations so long as they receive "reasonable assurance" that they will continue to have a job in the next academic year. The Court held that an "educational institution" is not necessarily a "school." Employer's Head Start program provides health, nutritional, psychological, social, speech and language services in addition to teaching children basic concepts such as colors, weather, body parts, common household items, foods and animals. As such, the Head Start program is an educational institution and its employees who are expected to continue working in the fall are not entitled to benefits during the summer break.

Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219

TR&C

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.

Copies are available on our web site at http://www.trc-law.com or upon request. Please direct inquiries to Margaret M. Hock, Esquire, Thomson, Rhodes & Cowie, P.C., 1010 Two Chatham Center, Pittsburgh, Pennsylvania 15219, (412) 232-3400.

Volume I, Number 8 **Winter 2008**