



# Pennsylvania Unemployment Compensation Newsletter

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*Has your business offered a job to an individual who is receiving UC benefits and the individual refused the offer?*

Section 402(a) of the Pennsylvania Unemployment Compensation Law provides in part:

An employee shall be ineligible for compensation for any week in which his unemployment is due to his failure, without good cause, either to apply for suitable work...or to accept suitable work...Provided, that such employer notifies the employment office of such offer within seven (7) days after the making thereof.”

“Suitable work” is defined in Section 4(t) of the Law as:

“... all work which the employe is capable of performing. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to his health, safety and morals, his physical fitness, prior training and experience, and the distance of the available work from his residence. The department shall also consider among other factors the length of time he has been unemployed and the reasons therefor, the prospect of obtaining local work in his customary occupation, his previous earnings, the prevailing condition of the labor market generally and particularly in his usual trade or occupation, prevailing wage rates in his usual trade or occupation, and the permanency of his residence. However, notwithstanding any other provisions of this subsection no work shall be deemed suitable in which (1) the position offered is vacant, due directly to a strike, lockout, or other labor dispute, or (2) the remuneration, hours or other conditions of the work offered are substantially less favorable to the employe than those prevailing for similar work in the locality, or (3) as a

## EMPLOYER QUESTIONNAIRE REFUSAL SUITABLE WORK

Submit the completed form, along with any additional documentation, within seven (7) days of the refusal of a job offer or referral. (All fields marked in red must be completed prior to submission.)

Claimant Name: \_\_\_\_\_ M.I.: \_\_\_\_\_ Social Security No.: XXX-XX-\_\_\_\_\_  
Employer Name: \_\_\_\_\_ UC Act No.: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_  
Employer Address: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_  
Temporary Staffing Agency? Yes  No

Answer the following questions to assist the department in determining eligibility:

1. Did the claimant refuse to accept a referral to employment? Yes  No   
If yes:  
(a) In what manner was the referral made? \_\_\_\_\_  
(b) Who made the referral? \_\_\_\_\_  
(c) Please explain the type of employment to which the claimant was referred. \_\_\_\_\_
2. Did you offer the claimant a specific job that the claimant refused? Yes  No   
If yes:  
(a) Has the claimant ever worked for you? \_\_\_\_\_  
(b) On what date was the job offer made? \_\_\_\_\_  
(c) How was the job offer made? \_\_\_\_\_  
(d) Who made the job offer? \_\_\_\_\_
3. What reason did the claimant give for refusing the job offer or referral to employment?  
\_\_\_\_\_
4. What were the duties of the job that was offered/referred?  
(a) What was the job's rate of pay? \$ \_\_\_\_\_ per \_\_\_\_\_ Permanent  Temporary   
(b) What were the scheduled working hours? \_\_\_\_\_ Full time  Part time   
(c) Where was the job located? \_\_\_\_\_  
(d) Please describe any unusual requirements or conditions of work  
\_\_\_\_\_  
(e) When was the job scheduled to start? \_\_\_\_\_  
(f) If the job was temporary, when was it scheduled to end? \_\_\_\_\_

I certify that the information I have provided is true and correct.

Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_  
Auxiliary aids and services are available upon request to individuals with disabilities.  
Equal Opportunity Employer/Program

UC-1921W

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condition of being employed, the employe would be required to join a company union, or to resign from, or refrain from joining, any bona fide labor organization.”

The Pennsylvania Department of Labor & Industry, Office of Unemployment Compensation Benefits, has created form UC-1921W, entitled “Employer Questionnaire - Refuse Suitable Work,” to assist employers to provide the required notification that suitable work was refused. Pennsylvania employers are encouraged to be an active partner in helping to improve UC payment integrity. Notify the department **within seven days** of the offer by faxing form UC-1921W to 717-772-0378.

## APPELLATE CASE LAW REVIEW

*RIO Supply, Inc. of PA v. Unemployment Compensation Board of Review, No. 1939 C.D. 2014, Filed September 18, 2015.*

Claimant, a warehouse manager earning \$30 per hour, plus health benefits and travel compensation, was demoted to driver, thereby reducing his salary to \$18 per hour and eliminating his health benefits and travel compensation. Following his demotion, he worked for 2 weeks but then quit due to the substantial change in his benefits. Claimant's application for unemployment compensation was denied.

At the referee's hearing, employer's president testified that claimant's demotion was premised upon the statements of a resigning driver during an exit interview that claimant encouraged the driver to leave because "it wasn't a good place to work." Employer's president further testified that he and claimant had no discussions after the demotion. The referee affirmed the UC Service Center's determination of ineligibility, noted that claimant was demoted and never discussed his dissatisfaction with employer prior to resigning. Thus, claimant failed to act in good faith.

The UCBR reversed, explaining that the focus of inquiry should have been whether the demotion was justified. The UCBR concluded employer failed to present competent evidence that claimant's demotion was his own fault. The only evidence employer had presented was based upon the uncorroborated, hearsay testimony of an employee who was resigning.

Employer appealed to the Commonwealth Court. The Court noted that a demotion premised on an employee's inability to perform his job responsibilities is justified and does not constitute a necessitous and compelling reason to quit. Conversely, a claimant will have necessitous and compelling reasons to voluntarily terminate employment if the demotion was unjustified.

Here, claimant testified that there was no reason for his demotion. Employer sought to rebut claimant's testimony by offering testimony from its president that claimant's demotion was based on a conversation with a driver who was resigning. Employer failed to present this driver as a witness. As a result, the president's testimony was mere hearsay. Because employer failed to present competent evidence to establish that claimant's demotion was his own fault, the UCBR correctly determined that claimant's demotion was not justified and, as such, claimant had a necessitous and compelling reason to quit. Benefits were thus awarded.

*Wilberto Torres-Bobe v. Unemployment Compensation Board of Review, No. 1648 C.D. 2014, Filed October 8, 2015.*

Claimant was found ineligible for benefits under section 402(e) of the Unemployment Compensation Law because his discharge was due to willful misconduct. Claimant argued that the UCBR erred or abused its discretion in its interpretation of 34 Pa. Code §101.128 by concluding that compelling reasons existed to allow a witness to testify by telephone. The facts are as follows:

Claimant worked for employer from April 10, 2008 to January 27, 2014 at a final hourly rate of \$12.85. Employer terminated claimant's employment for violating its rules against harassment. The local UC Service Center determined that claimant was eligible for benefits, and employer appealed. Prior to the hearing, employer requested permission via e-mail for an out-of-state employee and two other potential witnesses to participate by telephone. This request was granted. Notice of the hearing then stated that two witnesses, Anthony Milano and Charles (Chad) Peyton, would be testifying by telephone.

At the first hearing, Mr. Milano, who was employer's Human Relations and payroll manager, stated that he was calling from Ohio. Mr. Peyton, who was employed by a third-party vendor that repaired employer's equipment, stated that he was a contractor calling from a worksite in York, Pennsylvania. While claimant did not doubt the identity of either witness, he objected to Mr. Peyton testifying by telephone if he was within 50 miles of the hearing site in York. Mr. Milano argued that Mr. Peyton was a third-party testifying on employer's behalf, and employer did not want to interfere with another company's ability to conduct business. The referee overruled claimant's objection.

Based on the testimony presented at the hearing, the referee credited Mr. Peyton's testimony, and found that claimant had approached Mr. Peyton on January 14, 2014 while the latter was on a service call at employer's York location, and directed obscenities at him. Therefore, he concluded that claimant had engaged in willful misconduct, thus rendering him ineligible for benefits under section 402(e) of the Law.

Claimant appealed to the UCBR, arguing that the referee had erred and violated his due process rights by allowing Mr. Peyton to testify by telephone, absent evidence that the latter was more than 50 miles from the hearing site, or any facts establishing that he reasonably was unavailable, as required by 34 Pa. Code

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§101.128. The UCBR affirmed the referee's decision and adopted his findings and conclusions. The UCBR also added that a compelling employment reason as set forth in the regulations existed so as to permit Mr. Peyton to testify by telephone. Claimant then appealed to the Commonwealth Court, arguing that employer had not established a compelling reason to allow Mr. Peyton to testify by telephone.

The ultimate issue on appeal was whether Mr. Peyton's status as an employee of a third-party company that serviced employer's equipment, and employer's stated concern for maintaining that business relationship, had established that Mr. Peyton was unable to testify in person due to a compelling employment reason, or other compelling problem as contemplated by 34 Pa. Code §101.128. Claimant argued that mere inconvenience was an insufficient basis to permit testimony by telephone under §101.128, and that a real and substantial problem sufficient to overcome Pennsylvania's stated policy of preferring in-person testimony was required. Claimant also argued that allowing Mr. Peyton to testify by telephone was an abuse of discretion and a denial of his due process right to a fair hearing.

The Court held that employer's concern that Mr. Peyton's live testimony, and the corresponding imposition on his employer, would have had a detrimental impact on employer's business, which constituted a compelling problem rendering Mr. Peyton reasonably unable to testify in person for purposes of §101.128. Therefore, the Court held that the UCBR's determination neither was clearly erroneous nor manifestly unreasonable. Thus, it affirmed the UCBR.

*Gary H. Powell v. Unemployment Compensation Board of Review*, No. 1704 C.D. 2014, Filed November 6, 2015.

In this case, the claimant resigned from his employment, allegedly because the president of the company forcibly assaulted him. The claimant sought unemployment compensation benefits despite his voluntary resignation because he had a necessitous and compelling reason to quit. The Service Center found claimant to be ineligible for benefits and claimant appealed. At the hearing before the Referee, claimant was represented by an attorney who was suspended from practicing law, but who stated that he was present at the hearing as an advocate working pro bono. Claimant's advocate raised an issue concerning subpoenas that were not issued in a timely fashion. The Referee agreed that the timeframe was short and continued the hearing.

Thereafter, employer retained counsel who argued that claimant's advocate improperly represented

claimant because the Disciplinary Rules prohibit the representation. The relevant rule states that "a formerly admitted attorney is specifically prohibited from...appearing on behalf of a claimant in any hearing or proceeding before any judicial officer, arbitrator, court, public agency, referee, magistrate, hearing officer or any other adjudicative person or body." The referee agreed and claimant was advised to seek other counsel.

At the second hearing, claimant again appeared with an attorney whose license was in a suspended status. The referee refused to allow the attorney to represent claimant and, thus, claimant continued the hearing pro se. The referee then found that claimant failed to establish a necessitous and compelling reason for leaving work. Claimant appealed and the UCBR affirmed.

Claimant then appealed to the Commonwealth Court, arguing that the UCBR erred in applying the Disciplinary Rules to prohibit the suspended attorneys from representing him. Section 214 of the UC Law, as confirmed by the Supreme Court in *Harkness v. UCBR*, 920 A.2d 162 (Pa. 2007), permits non-attorney representatives to represent individuals during a referee hearing, and claimant's advocates were acting as representatives, not attorneys.

The Court agreed. Claimant had a statutory right to be represented by his designee at the hearing. That representative need not be an attorney because representation before an unemployment referee does not constitute the practice of law. Moreover, only the Supreme Court and Disciplinary Board have the power to interpret and enforce the Disciplinary Rules, not the UCBR. Accordingly, the order of the UCBR was vacated and the matter remanded for a new hearing.

*Charles D. Williams v. Unemployment Compensation Board of Review*, No. 2363 C.D. 2014, Filed October 20, 2015.

After the death of his parents, who owned a landscaping company, claimant became the owner of the company and assumed 100% of the stock. However, in 2007, he transferred 100% of his stock in the company to his wife. Since then, claimant's wife has been the owner, president, vice president, secretary and treasurer of the company. He no longer is an owner or officer of the company, has no control over the hiring or firing of employees, has no check-signing privileges, pays unemployment taxes on his salary, and continues to work for the company and to supervise the field work.

In February 2014, claimant filed a claim for UC benefits, which the local service center denied. He

then appealed to the referee, who found that, although his wife was the president of the company, claimant held 100% of the stock. Therefore, the referee concluded that claimant was self-employed and, thus, ineligible for UC benefits under §402(h) of the Unemployment Compensation Law.

Claimant appealed to the UCBR, which remanded the matter to the referee for a supplemental hearing on the self-employment issue. At this hearing, claimant introduced evidence that, in February 2007, he had transferred 100% of his stock in the company to his wife. The UCBR affirmed the referee's decision, determining that claimant was not self-employed under §402(h) of the Law because he had no ownership interest in the company; however, the UCBR determined that claimant was employed by his wife, and therefore his wages were excluded from his base-year salary under §4(l)(4)(5) of the Law.

Claimant then filed a petition for reconsideration, which the UCBR denied on December 3, 2014. He then petitioned the Commonwealth Court for review of that decision.

The Commonwealth Court's review in this matter was limited to the UCBR's denial of reconsideration. The Court stated that to determine whether good cause exists for the grant of reconsideration, the UCBR must consider whether the party requesting reconsideration has presented new evidence or changed circum-

stances, or whether the UCBR failed to consider relevant law. The Court said that before the UCBR can grant reconsideration, there must appear of record some reason to support this exercise of discretion.

After reviewing claimant's petitions and the case record, the Court concluded that good cause existed for the grant of reconsideration because the UCBR had failed to consider relevant law in rendering its October 20, 2014 decision. Specifically, the Court stated that the UCBR had failed to consider *Wedner v. Unemployment Compensation Board of Review*, 296 A.2d 792 (Pa. 1972) and its progeny, which address whether the UCBR may pierce the corporate veil of a family-owned corporation to deny UC benefits under §4(l)(4)(5) of the Law, in deciding the merits of the case.

Thus, the Court concluded that the UCBR had abused its discretion in denying claimant's request for reconsideration. The Court reversed the UCBR's December 3, 2014 order, and remanded the matter to the UCBR for reconsideration of its October 20, 2014 decision in light of the relevant case law.



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 will provide 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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