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Pennsylvania Unemployment Compensation Newsletter

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FEARS CONCERNING JOB SECURITY NOT "NECESSITOUS AND COMPELLING CAUSE" TO LEAVE EMPLOYMENT

The Commonwealth Court recently considered 18 appeals involving former employees of Verizon who accepted some form of a voluntary termination offer and then sought unemployment compensation benefits. With the exception of one case, the Court determined that the individuals were ineligible for benefits under §402(b) of the Pennsylvania Unemployment Compensation Law.

Section 402(b) of the Law provides: "An employee shall be ineligible for compensation for any week...[i]n which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature."

What is "necessitous and compelling cause?" The Court defined it as circumstances which would compel a reasonable person under the circumstances to walk away from his or her employment. Those circumstances have to produce pressure that is both "real" and "substantial."

Mere fears of future layoffs, without direct statements from the employer to support an "imminent layoff or termination" are not enough to cause a reasonable person to quit. Consequently, such fears are not enough to prove "necessitous and compelling cause."

The Court also noted that in such cases the burden never shifts to the employer to prove continuing employment. Therefore, even if the claimant is correct in his or her belief that the employment relationship was about to be terminated, it is still his or her burden to establish necessitous and compelling reasons why he or she quit. If the employer chooses to put forth no evidence that continuing work was available to the claimant after he or she quit, the claimant is not automatically granted benefits.

The complete text of the Court's opinion may be found at *Linda A. Johnson v. Unemployment Compensation Board of Review, 869 A.2d 1095 (Pa.Cmwlth. 2005)*, or by e-mailing your request to us at: uc@trc-law.com.

TRADE READJUSTMENT ALLOWANCE BENEFITS vs. UNEMPLOYMENT COMPENSATION BENEFITS

The Trade Act, passed by Congress to "safeguard American industry and labor against unfair or injurious import competition, established a federal program that provides "Trade Readjustment Allowance (TRA) benefits to workers who are certified by the United States Secretary of Labor as persons adversely affected by import competition.

An employee is entitled to receive TRA benefits only where he or she has exhausted all rights to any unemployment insurance to which he was entitled (or would be entitled if he or she applied therefor).

The practical application of this system

were recently examined in the case of *Richard A. Glover v. Unemployment Compensation Board of Review, No. 924 C.D. 2004.*

Mr. Glover was a factory worker who, like his co-workers, lost his job due to overseas competition. Like his co-workers, he applied for and received TRA benefits. Unlike his co-workers, who made no attempts to be gainfully employed, he worked two part-time jobs. Those part-time jobs caused him to establish a base year, such that he could apply for unemployment compensation benefits if he lost those jobs. Consequently, he is "entitled" to state unemployment compensation benefits under the Trade Act, and is no longer entitled to the TRA benefits - which his "stay at home" friends continue to receive.

Does this seem right? The Commonwealth Court said "yes" in its decision issued on May 13, 2005. The pool of unemployment funds is not unlimited, and the requirement that a claimant exhaust his or her right to state funds prior to receiving TRA benefits is a legislatively mandated means of conserving those resources.

A copy of the Court's opinion is available upon request at: uc@trc-law.com.

HARKNESS UPDATE

The Commonwealth Court case, *Harkness v. Unemployment Compensation Board of Review,* that caused employers to retain counsel to represent them in unemployment compensation proceedings, is not over yet. Both the employer and the Board of Review have filed Petitions for Allowance of Appeal with the Pennsylvania Supreme Court. As of this writing, the Court has taken no definitive action with regard to either Petition.

In the meantime, however, legislation was passed by both the Pennsylvania Senate and House to effectively reverse the *Harkness* ruling. That legislation was signed into law by the Governor on June 15, 2005. As a result, corporate employers may once again be represeted by non-lawyers.

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.