



## **WHEN IS A JOB OFFER “SUITABLE” UNDER THE PENNSYLVANIA UNEMPLOYMENT COMPENSATION LAW?**

Under §402(a) of the Unemployment Compensation Law, a claimant is ineligible for compensation for any week in which, without good cause, he has failed to accept “suitable” work offered to him by the Board’s employment officer or any employer. When a job offer is “suitable” has been the subject of much litigation.

The Commonwealth Court most recently examined this issue in the case of *Commonwealth of Pennsylvania, Department of Education v. Unemployment Compensation Board of Review*, 890 A.2d 1232 (Pa.Cmwlth. 2006), which involved the claim of Carol Lucas. Ms. Lucas had been employed as a clerk-typist II for approximately six months. A few days before completing her probationary employment, she was discharged because of unsatisfactory work performance.

Often, under such circumstances, an employer who wishes to dispute the claimant’s right to benefits will argue that the claimant’s poor performance indicated a conscious disregard of the employer’s interests, constituting willful misconduct under §402(e) of the Unemployment Compensation Law.

Here, however, the employer did not make the customary argument, but rather asserted that Ms. Lucas should be denied benefits under §402(a), based on her refusal to accept the employer’s offer of suitable employment following her termination.

The evidence before the Referee established that two weeks after the claimant was discharged, the employer offered a temporary clerk-typist position with the Department of Transportation. On that same day, Ms. Lucas received her civil service test scores and notice that she had been reinstated on the list for permanent placement as a clerk-typist II. Assuming that a permanent position would become available,

Ms. Lucas refused the temporary assignment.

As a permanent state employee, Ms. Lucas would be paid \$11.62 per hour and would be eligible for health benefits, retirement benefits and earned leave. In comparison, as a member of the temporary clerical pool, she would have been paid \$8.57 per hour, or 26% less than the permanent position. In addition, she would have received no benefits and would have earned no leave.

The Referee concluded that the claimant was eligible for benefits. The Unemployment Compensation Board of Review agreed, stating that Ms. Lucas had good cause for refusing the employer’s offer of a temporary position. The offer was not for “suitable work.” The Commonwealth Court agreed.

When, then, is work “suitable?” Section 4(t) of the Law provides:

“Suitable Work” means 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...”

The Court has held that the most important factor in this type of case is the length of time that the claimant has been unemployed. Following are some examples as to how this issue is decided on a case-by-case basis:

- *Ellwood City Hospital v. Unemployment Compensation Board of Review*, 457 A.2d 231 (Pa.Cmwlth. 1983) – Claimant eligible for benefits where he was offered a lower paying

job after being laid off for only one week.

- *Donnelly v. Unemployment Compensation Board of Review*, 330 A.2d 544 (Pa.Cmwlth. 1975) – Claimant ineligible for benefits where he refused work paying 22% less than his previous job after a 3½ month period of unemployment.
- *Rising v. Unemployment Compensation Board of Review*, 621 A.2d 1152 (Pa.Cmwlth. 1993) – Work as a truck driver at a significant reduction in pay was suitable work for a claimant, who had been a heavy equipment operator and who had been unemployed for two months.
- *Eichman v. Unemployment Compensation Board of Review*, 490 A.2d 1389 (Pa.Cmwlth. 1980) – After a year of unemployment, a job paying 55% less than the claimant’s previous earnings is “suitable.”
- *Unemployment Compensation Board of Review v. Kozinsky*, 335 A.2d 843 (Pa.Cmwlth. 1975) – A work offer representing a 63% decrease in wages was found suitable where the claimant had been unemployed for 10 months.

The basis for these decisions lies in the basic principle that a claimant is entitled to a “reasonable opportu-

nity” to find employment commensurate with his or her training and experience.

What is reasonable for one claimant may not be reasonable for another. When may an employer offer a lower paying position to a laid off employee, thereby limiting the employee’s right to receive unemployment compensation benefits? The simple answer is: “It depends.” Each case will be viewed differently, based upon its own facts.

A basic rule of thumb to remember, however, is that the Law is remedial in nature and will be liberally and broadly construed to the benefit of the claimant. When an individual has advanced skills by reason of training and experience, the Law will most likely be construed so as to allow that individual the opportunity to find advantageous employment utilizing his or her skills. While searching for that job, he or she will likely be deemed eligible to receive unemployment compensation benefits.



**FACT OF INTEREST:** The Pennsylvania Department of Labor and Industry has determined that the maximum weekly benefit rate for unemployment compensation purposes in the Commonwealth of Pennsylvania during calendar year 2006 will be \$497.

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

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