



## **“COMMON SENSE” TEST USED TO ESTABLISH “WILLFUL MISCONDUCT”**

Section 402(e) of the Unemployment Compensation Law provides that a claimant shall be ineligible for compensation for any week “in which his unemployment is due to his discharge for willful misconduct connected with his work.” Over the years, numerous court decisions have defined willful misconduct as 1) an act of wanton or willful disregard of the employer’s interests, 2) a deliberate violation of the employer’s rules, 3) a disregard of the standards of behavior which the employer has a right to expect of an employee, or 4) negligence indicating an intentional disregard of the employer’s interests or of the employee’s duties and obligations to the employer.

Allan Schnitzer brought a loaded gun to work and then lied about it during an investigation conducted by his employer. As a result, he was fired. His employer, however, had no formal policy prohibiting guns at the work place. As such, the claimant sought unemployment compensation benefits.

In finding that the claimant had engaged in “willful misconduct,” the Commonwealth Court noted that “where common sense dictates that certain actions are grounds for discipline...there need not be a policy prohibiting such conduct.” A policy prohibiting guns is not necessary for an employee to understand the wrongfulness of bringing a loaded gun to the workplace. In addition, lying to the employer about having a loaded gun at work constitutes an act of willful or wanton disregard of the employer’s interest

and a disregard of behavior which the employer has a right to expect. As such, benefits were appropriately denied.

The complete text of the Court’s opinion may be found at *Allan B. Schnitzer v. Unemployment Compensation Board of Review*, 880 A.2d 728 (*Pa.Cmwltth.* 2005), or by e-mailing us at: [uc@trc-law.com](mailto:uc@trc-law.com).

## **FINDING OF PROBABLE CHILD ABUSE INSUFFICIENT TO ESTABLISH WILLFUL MISCONDUCT AS A MATTER OF LAW**

Woods Services operates a residential treatment facility serving disabled children and adults. It suspended one of its employees when that employee allegedly punched a 17-year old client in the face. An investigation was conducted by the Office of Children, Youth and Families (OCY), which found that a charge of child abuse was “indicated.” Because a residential facility serving children is prohibited by state law from employing anyone with an indicated report of child abuse on his or her record, the employee was then terminated.

At the hearing before the UC Referee, only the findings of the OCY were introduced into evidence. Wood Services argued that the OCY determination was proof of the employee’s willful misconduct “as a matter of law.”

The Commonwealth Court disagreed. The employer was still required to produce evidence directly linking the OCY’s finding of child abuse to the claimant for purposes of establishing willful misconduct. The mere existence of

the indicated report of child abuse does not constitute willful misconduct *per se*.

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

**CLAIMANT MUST ATTEMPT TO PRESERVE EMPLOYMENT RELATIONSHIP TO ESTABLISH NECESSITOUS AND COMPELLING CAUSE TO LEAVE EMPLOYMENT**

Under §402(b) of the Unemployment Compensation Law, where a claimant has voluntarily terminated his or her work, the claimant bears the burden of proving that such termination was with cause of a necessitous and compelling nature if he or she is to be eligible for benefits.

The Commonwealth Court has consistently held that a key element the claimant must establish is that he or she has taken all reasonable and necessary steps to *preserve* the employment relationship.

For example, in the case of



*Pennsylvania Liquor Control Board v. Unemployment Compensation Board of Review*, 879 A.2d 388 (Pa.Cmwlth. 2005), the claimant became too ill to perform his job tasks and the PaLCB could not then accommodate the claimant's restrictions. The PaLCB notified the claimant that he would have to resign, but also indicated that he could pursue other Commonwealth employment and provided him with a Civil Service Application. The claimant simply resigned, did not complete the application, and filed for unemployment compensation benefits. Benefits were initially granted because the claimant's employment was voluntarily terminated for necessitous and compelling reasons. The Board of Review reversed that decision

because the claimant failed to complete the Civil Service Application and, thus, failed to take all reasonable and necessary steps to preserve the employment relationship.

By providing claimant with the application, the employer was offering a reasonable accommodation. As such, the claimant was appropriately denied benefits.

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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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