



Pennsylvania Unemployment Compensation Newsletter

Thomson, Rhodes & Cowie, P.C. Two Chatham Center, 10th Floor, Pittsburgh, PA 15219

(412) 232-3400

How much is your former employee receiving in UC benefits?

Unemployment compensation benefits are calculated according to §404 of the Pennsylvania Unemployment Compensation Law. The amount of benefits received may be determined by locating the highest quarterly earnings of the claimant's base-year as set forth in the "Rate and Amount of Benefits" table, which may be found at -

<http://www.dli.state.pa.us/landi/cwp/view.asp?a=357&q=236806>



The weekly rate of compensation is listed in **Column B** of the table. The total amount of benefits a claimant is entitled to receive is determined by the amount of credit weeks he or she worked during the base-year. A "credit week" is any week during the base-year in which the claimant has been paid at least \$50 for employment as defined by statute. If an individual worked 18 or more credit weeks during the base-year, he or she is entitled to 26 weeks of benefits (**Column D**). If an individual worked 16 to 17 credit weeks during the base-year, he or she is entitled to 16 weeks of benefits (**Column E**). If an individual has not worked at least 16 credit weeks in the base-year, he or she is not eligible for benefits.

The Unemployment Compensation Law requires that a new maximum weekly unemployment compensation rate be calculated every year. The table is amended accordingly. For example, workers whose benefit year began on or after the effective date of January 6, 2008, the maximum weekly benefit rate was \$539. The maximum benefits amount applies only to new claims filed on or after the effective date and does not affect claims filed before that date. The effective date and maximum weekly unemployment compensation rate for 2009 have not yet been published.



DECISIONS OF NOTE...

Ductmate Industries, Inc. v. Unemployment Compensation Board of Review, No. 1912 C.D. 2007, Filed March 12, 2008. ♦ After playing a prank, claimant was reassigned to a separate assembly line. Claimant told crew leader he would rather not work than report to the other assembly line, and continued to work at his previously assigned station. Employer discharged claimant for violating a rule against refusing assigned tasks. Crew leader testified that he immediately reassigned claimant, but claimant maintained that he was 1) asked to report to the alternate assembly line after finishing his current job, and 2) said he would rather not work as a joke. Claimant's

benefits were denied pursuant to §402(e) of the Unemployment Compensation Law. The Unemployment Compensation Board of Review (UCBR), reversed, finding claimant's understanding that he was to finish his current assignment before relocating to be credible. Maintaining that the UCBR is the ultimate fact-finder in unemployment compensation matters, the Commonwealth Court held that the UCBR could reasonably infer its conclusions from the evidence. Although refusing a work assignment constitutes willful misconduct as a matter of law, because the UCBR found claimant's testimony credible, his actions did not constitute willful misconduct. Claimant was thus entitled to benefits.

General Motors Corp. v. Unemployment Compensation Review Board, No. 882 C.D. 2007, Filed May 13, 2008. ♦ Claimant retired at age 59 with 37.8 years of service with GM (employer). The retire-

ment was governed by a Supplemental Pension Agreement (SPA) between the UAW and GM. The SPA qualified claimant for an early retirement option of \$2,950 per month until age 62, since he had accrued more than 30 years of service. After retiring, claimant applied for unemployment compensation and was awarded \$497 per week by the UC Service Center; however, this amount was offset to \$0 by claimant's retirement pension under §404 of Unemployment Compensation Law which provides:

"[T]he weekly benefit amount payable to such individual for such week shall be reduced, but not below zero, by the pro-rated weekly amount of the pension. . . . (ii) If the pension is entirely contributed to by the employer, then one hundred per centum (100%) of the pro-rated weekly amount shall be deducted." 43 P.S. § 804(d)(2). The Commonwealth Court upheld the pension offset. No benefits were paid.

Weems v. Unemployment Compensation Board of Review, No. 1738 C.D. 2007, Filed April 15, 2008.

◆ Employer dismissed claimant from her position for willful misconduct when she was incarcerated for nine months. Claimant appealed to the Commonwealth Court after the Service Center, Referee and UCBR all denied her benefits. The Court affirmed the denial of benefits, finding that incarceration constitutes willful misconduct in consequence of excessive absence lacking good or adequate cause. Claimant argued that her eligibility for a work-release program would permit her to continue employment, and that employer's refusal to participate in the program kept her from working. The Court found no evidence that claimant was enrolled in such a program, and even if the facts were as argued, employer could not be expected to change the conditions of employment to accommodate an employee convicted of a criminal offense. Benefits were denied.

Horton v. Unemployment Compensation Board of Review, No. 1815 C.D. 2007, Filed May 12, 2008.

◆ Employer terminated claimant for willful misconduct when he failed to follow his supervisor's orders. The supervisor had ordered claimant to process a product using a "scan sheet" rather than an invoice. Claimant responded that to do so would be contrary to company policy put forth by the Vice-President. The supervisor then allegedly spoke with the Vice-President on the telephone. Afterward, he fired claimant. The Referee refused to subpoena the Vice-President and benefits were denied. Claimant appealed. The UCBR found the refusal to issue the subpoena to be harmless error. The Commonwealth Court disagreed, noting that the Referee's refusal to subpoena the Vice-President to secure his potential testimony regarding company policy took away

claimant's ability to establish "good cause" for not following the supervisor's order.

Mountain Home Beagle Media v. Unemployment Compensation Board of Review, No. 255 C.D. 2008, Filed August 12, 2008.

◆ Employer received a Notice of Financial Determination, which indicated that August 28, 2007 was the last day to file an appeal. Employer faxed an appeal to the Department on August 27, 2007. The Department's records, however, reflected that the appeal was not received until September 6, 2007. The UCBR determined that employer failed to file a timely appeal and dismissed the appeal. Before the Commonwealth Court, employer argued that the UCBR erred inasmuch as it faxed its petition for appeal prior to the expiration of the appeal period. The Court disagreed. Where an appeal is transmitted by fax, the filing date is the date it is acknowledged as received by the Department or UCBR, not the date of the fax. Moreover, a party filing an appeal by fax is responsible for delay, disruption, interruption of electronic signals and readability of the document and accepts the risk that the appeal may not be properly or timely filed.

André S. Pearson v. Unemployment Compensation Board of Review, No. 2238 C.D. 2007, Filed June 11, 2008, Reported August 18, 2008.

◆ Claimant appealed UCBR's determination that he engaged in willful misconduct. Claimant was asked by his supervisor to undertake a specific task. The supervisor then stepped outside to speak with other personnel. Claimant assumed the supervisor was talking about him and confronted the supervisor. Supervisor asked claimant to look at him while he spoke with claimant; claimant refused. Supervisor then told claimant to punch out for the day and go home; claimant refused and said: "Why don't you make me leave?" Another supervisor attempted to escort claimant off the premises, and the two engaged in a physical altercation. Employer discharged claimant for insubordination and discourtesy toward other employees. Claimant's application for unemployment compensation benefits was denied. The Referee and the UCBR affirmed the denial, as did the Commonwealth Court, noting that disregarding an employer's clear and simple instructions without good cause constitutes willful misconduct. In addition, fighting or engaging in a physical altercation with a fellow employee or superior, without good cause, constitutes willful misconduct. Because claimant offered no evidence to support a finding of good cause for his actions, he was found ineligible for benefits.

Glatfelter Barber Shop v. Unemployment Compensation Board of Review, No. 1736 C.D. 2007, Filed

July 3, 2008. ♦ Claimant, a barber, was fired when he refused to sign a 10-mile radius non-compete contract. First, Commonwealth Court held that claimant barber was not a self-employed independent contractor (which would disqualify him for benefits) and instead found that the barber shop exhibited significant control over claimant's employment so as to qualify him as an employee. Second, claimant's failure to sign a non-compete contract did not rise to the level of willful misconduct which would warrant his firing and denial of benefits. Commonwealth Court upheld Board's decision to grant benefits after Referee initially denied benefits.

Port Authority of Allegheny County v. Unemployment Compensation Board of Review, Nos. 193-196 C.D. 2008, Filed September 4, 2008. ♦ Consolidated case in which Commonwealth Court held claimants were entitled to benefits despite choosing voluntary "early" retirement under Port Authority's Deferred Retirement Option Plan (DROP), which upon enrollment, dictates that employee retire at a specified year in the future in exchange for financial incentive. Port Authority opted to do away with DROP and fired claimants instead. Referee found Port Authority's discharge of claimants before future resignation dates constituted involuntary terminations which entitled them to benefits. Commonwealth Court held that employer fired Claimants before the agreed-to retirement date; therefore, claimants were considered to be "discharged" up until the agreed-upon retirement dates. After the retirement dates, the claimants were considered to have "voluntarily quit." Benefits were thus granted for the time period between discharge and the DROP agreed-to retirement date.

Patricia M. Dull v. Unemployment Compensation Board of Review, No. 679 C.D. 2008, Filed September 4, 2008. ♦ Commonwealth Court upheld UCBR's decision denying Claimant benefits due to untimeliness in filing appeal. Referee denied benefits because Claimant was fired for willful misconduct. Referee's Order denying benefits was timely mailed to the Claimant with explanation of how to appeal and the filing deadline. Claimant appealed Referee's Order five months late. Commonwealth Court held that Claimant was not entitled to file a late appeal despite being illiterate with a low IQ, when claimant clearly could have had someone read and respond to her mail in a timely fashion. Hence, benefits were denied.

First Federal Savings Bank v. Unemployment Compensation Board of Review, No. 427 C.D. 2007, Filed October 2, 2008. ♦ Commonwealth Court

upheld UCBR's decision that claimant was eligible for benefits because she had a necessary and compelling cause for voluntarily leaving her employment. Claimant was employed for 28 years when she suddenly quit. She was denied unemployment benefits. She appealed to Referee who also held that claimant quit employment without a necessitous and compelling nature for doing so and upheld her benefit denial. On appeal, the UCBR held that claimant was subject to intolerable working conditions due to co-worker's argumentative behavior. The UCBR found that claimant quit work for necessitous and compelling reasons (having to work in intolerable atmosphere) which put pressure on claimant to quit and that a reasonable person in the same circumstances would have also quit. Benefits were granted.

First Federal Savings Bank v. Unemployment Compensation Board of Review, No. 427 C.D. 2008, Filed October 2, 2008. ♦ Claimant, who had been employed for 28 years by First Federal Savings Bank, was criticized by a newly hired management team. As a result, she resigned. The Commonwealth Court found that claimant was unjustly reprimanded with abusive language and subjected to intolerable working conditions. She was disciplined and subject to ridicule and was not able to respond despite her efforts to have the problem addressed by her supervisors. The Court determined that a reasonable person under such circumstance would have felt compelled to terminate the employment relationship. As such, claimant established a necessitous and compelling cause for voluntarily leaving work. Benefits were granted under §402(b) of the Law.

Carson Helicopters v. Unemployment Compensation Board of Review, No. 253 C.D. 2008, Filed November 14, 2008. ♦ Following a hearing held on October 29, 2007, the Referee issued a decision granting claimant benefits. The mailing date listed on the decision was October 24, 2007, 5 days prior to the hearing. The decision indicated that November 8, 2007 was the last date for an appeal. Employer received the decision on November 9, 2007 in an envelope postmarked October 31, 2007. Employer immediately appealed. The UCBR remanded the case to the Referee for a hearing on the timeliness of employer's appeal. The UCBR ultimately dismissed the appeal because the employer failed to provide a witness with firsthand knowledge as to when the decision was received. The Commonwealth Court reversed, noting that the dates on the Referee's decision were internally inconsistent. The envelope showing the postmark of October 31, 2007 was sufficient evidence to establish employer's right to appeal without the testimony of any witnesses.

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.

The Newsletter is a semi-annual publication reviewing recent trends in Pennsylvania Unemployment Compensation Law. All original materials by Thomson, Rhodes & Cowie, P.C. The contents of this Publication may be reproduced, redistributed or quoted without further permission so long as proper credit is given to the Thomson, Rhodes & Cowie, P.C., Pennsylvania Unemployment Compensation Newsletter.

The Thomson, Rhodes & Cowie, P.C., Pennsylvania Unemployment Compensation Newsletter is intended for the information of those involved in the unemployment compensation system. The information contained herein is set forth with confidence, but is not intended to provide individualized legal advice in any specific context. Specific legal advice should be sought where such assistance is required.

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.