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Pennsylvania Unemployment Compensation Newsletter

Thomson, Rhodes & Cowie, P.C. Two Chatham Center, 10th Floor, Pittsburgh, PA 15219 (412) 232-3400

Without an Extension Federal EUC Benefits are Phased Out

Since May 1, 2007, any claimant who established an Unemployment Compensation (UC) benefit may have qualified for Emergency Unemployment Compensation (EUC) benefits. EUC benefits pay claimants the same rate they received from regular UC up to 53 weeks after the claimant's regular UC benefits are exhausted. Unlike state benefits, these benefits are federally funded and not charged to employers.

As of June 2, 2010, the EUC program has begun phasing out, and as it appears that Congress will not be passing any new laws further extending the EUC program beyond this date, no new EUC benefits can be set up. Pursuant to the current law, only those claimants who exhausted their regular benefits prior to the week ending May 22, 2010 are eligible to receive Tier 1 EUC benefits, and only those claimants who exhausted their Tier 1-3 EUC benefits prior to the week ending May 29, 2010 are eligible to receive the next tier of EUC benefits. Those claimants who have exhausted the original amount of their Tier 2 benefits after the week ending May 29, 2010 may still qualify to receive increased Tier 2 EUC benefits for either 0.6 or 1 weeks. The last payable week of EUC benefits is the week ending November 6, 2010.

Additionally in Pennsylvania, as of June 5, 2010, High Unemployment Period Extended Benefits are no longer payable. Accordingly, after a claimant has exhausted their regular UC, the only extended benefits (EB) now available are regular EB. Regular EB pays qualifying claimants 50 percent of the total amount of regular UC the claimant was financially eligible to receive on the claimant's most recent claim for regular UC. Thus qualifying claimants who were receiving regular UC for 26 week are eligible for 13 weeks of regular EB, and those qualifying claimants who received 16 weeks of regular UC are eligible to receive regular EB for 8 weeks. However, EB may only be paid for weeks ending during an EB period. Currently, Pennsylvania is in an EB period which began with the week ending February 21, 2009.

By Daniel J. Margonari
TR&C Summer Associate

COMMONWEALTH COURT CASE REVIEWS

Peter A. LaChance v. Unemployment Compensation Board of Review, No. 438 C.D. 2009, Filed December 15, 2009 ♦ Claimant was separated from his employment with St. Mary's Medical Center under conditions which did not disqualify him from receiving unemployment compensation benefits. Claimant's application was denied, however, because the Service Center found him to be self-employed. Claimant appealed. The Referee found that claimant had been employed by St. Mary's from August of 2007 through October 15, 2008. Prior to taking that position, in 2000, claimant began a business called the Quintessence Corporation. When he became employed by St. Mary's, he ceased actively putting time into Quintessence, although he and his wife retained 100% ownership in the corporation. When his employment with St. Mary's ended, he again increased the time he spent on Quintessence. Based on these findings, the Referee concluded that claimant was self-employed and therefore ineligible to receive benefits. Claimant appealed, arguing that his case fell under the "sideline activity exception," which applies when the following conditions are met: (1) the self-employment activity precedes valid separation from full-time employment; (2) it continues without substantial change after separation; (3) the claimant remains available for full-time work after separation; and (4) the self-employment activity is not the primary source of the claimant's livelihood. All of these conditions must be met for the exception to apply. The Court found that claimant met conditions (1), (3) and (4), but could not meet condition (2). While working for St. Mary's, claimant did almost no work for Quintessence. After his employment ceased he began to actively work for Quintessence. The denial of benefits was affirmed.

John Erik Grever v. Unemployment Compensation Board of Review, No. 1008 C.D. 2009, Filed February 16, 2010 ♦ Claimant, a technician employed by Firestone Tire & Service, was observed by a co-worker placing two gallons of oil into his personal vehicle. At the co-worker's request, claimant put the oil back. When subsequently questioned by the store manager about the incident, claimant stated he had received permission from a supervisor to take the oil without paying for it. The evidence showed that the supervisor had not granted claimant permission to take the oil. Claimant was the fired. Due to the claimant's willful misconduct, the Referee denied claimant's application for unemployment compensation benefits. The UCBR affirmed. Before the Commonwealth Court, claimant argued that the UCBR erred inasmuch as he proved on appeal, through the judicial notice and judicial admissions doctrine, that employer and employer witnesses were untruthful before the Referee. Claimant submitted "extra-record evidence" to support his appeal. The UCBR moved to strike the extra-record documents attached to claimant's appeal, which consisted of employer's answer to claimant's PHRC complaint. The Court granted the UCBR's motion inasmuch as the answer to the PHRC complaint was available to claimant prior to the issuance of the UCBR's decision. Claimant failed to request for reconsideration asking the UCBR to accept the newly discovered evidence. Thus, the Court was bound by the facts certified in the record because claimant did not raise the issue at the earliest possible time. The UCBR's motion to strike was granted and the decision of the UCBR was affirmed.

Pennsylvania Turnpike Commission v. Unemployment Compensation Board of Review, No. 1104 C.D. 2009, Filed December 3, 2009, Reported February 19, 2010 ♦ Claimant worked for employer as its Chief of Staff for Operations and Administration. Effective November 20, 2008, employer eliminated claimant's position. She filed for unemployment compensation benefits. The Service Center issued a notice of financial determination on December 2, 2008 advising that claimant was financially eligible for benefits. The notice advised that December 17, 2008 was the last day to appeal the Service Center's determination. Claimant began receiving benefits and employer did not appeal. Without any intervening activity, the Service Center issued a second notice of financial determination on January 20, 2009, advising that claimant was <u>not</u> financially eligible to receive benefits. Claimant filed a timely appeal. At the hearing, employer's representative testified that employer did not receive a copy of the first notice issued by the Service Center advising that claimant was eligible. The representative also acknowledged, however, that employer would have been aware of claimant's receipt of benefits shortly after the payments to claimant began. Employer did not, however, appeal the first notice. The Referee sustained claimant's appeal and vacated the Service Center's second notice declaring claimant ineligible for bene-

fits. The UCBR affirmed the Referee's decision, noting that the Service Center lacked jurisdiction to issue the second notice where employer failed to appeal the first notice of eligibility. Employer appealed to the Commonwealth Court, which affirmed the UCBR's decision. The Court agreed with the UCBR that, absent a timely appeal, the first notice became final and binding on the parties. The Service Center lacked jurisdiction to issue the second notice. Employer argued that its filings placed the Service Center on notice of its challenge to claimant's financial eligibility and that the Bureau's forms contain conflicting language which misled it as to the necessity for filing an appeal of the first notice. Unfortunately for employer, the forms in question were not made a part of the record before the Referee. Employer could thus not prove that it responded to the Service Center's request for information or that it raised the issue of claimant's eligibility for benefits. Further, even if the forms had evidenced employer's challenge to the Service Center's eligibility determination, the forms do not negate employer's obligation to file an appeal from the first notice. The Court flatly rejected the employer's argument that the Bureau's forms are misleading. Accordingly, the decision of the UCBR affirming claimant's eligibility for benefits was affirmed.

Resource Staffing, Inc. v. Unemployment Compensation Board of Review, No. 1875 C.D. 2009, Filed May 13, 2010 ♦ RSI entered into a 6-month contract with claimant, an experienced Microsoft systems engineer, pursuant to which claimant was required to complete a specific project for a client of RSI. Claimant was given the discretion to control the means and manner of his work. The evaluation of his performance was to be made by the client. After the project was completed, claimant's application for benefits was approved by the Service Center. Employer appealed, arguing that claimant was not an employee, but rather was self-employed. Under §402(h) of the law, an employee is ineligible for benefits for any week in which he is engaged in self-employment. The Court agreed with employer. The evidentiary record reflected that RSI did not have control or the ability to control claimant's work or manner of work. RSI did not provide claimant with daily assignments. Instead, claimant was given work each day by a manager employed by the claimant. Claimant was supervised by various individuals who worked for the client. As such, RSI sustained its burden of proof that it did not control claimant's work or manner of performance. The Court also noted that the evidence established claimant operated independently. He was free to perform services for other employers. Accordingly, the order granting benefits was reversed.

Anderson Equipment Company v. Unemployment Compensation Board of Review, No. 2034 C.D. 2009, Filed May 19, 2010 ♦ At the time of hire, employer notified claimant that his position was subject to the terms and conditions of employer's Collective Bargaining Agreement (CBA) with the International Union of Operating Engineers. Under the terms of the CBA, all employees are required to become members of the Union and employer may not employ non-Union members for more than 90 days. At the end of his 90-day probationary period, claimant was again told that he was required to initiate his Union membership with a fee of $240, and thereafter maintain his membership at a rate of 2% of his gross pay. Claimant stated that he did not have the money because his overtime hours had been cut and he had spent the money during the Christmas holiday. Claimant was given an extension of time within which to initiate and pay his Union dues. Despite the extension of time, and despite written and oral notification that he must make payment, claimant failed to do so. Employer then terminated claimant's employment. Claimant's claim for unemployment compensation benefits was denied by the Service Center. The Referee affirmed the denial; however, the UCBR reversed. Employer then appealed to the Commonwealth Court, arguing that claimant failed to establish good cause for his willful failure to join and maintain Union membership pursuant to the CBA. The Court agreed. Under §402(e) of the Law, an employee is not eligible for benefits if his unemployment is due to his discharge for willful misconduct connected with his work. Here, there was no dispute that employer had a rule requiring new employees to join the Union. Employer then met its burden of establishing willful misconduct given claimant's violation of that rule. The burden then shifted to claimant to establish good cause for his violation. "Good cause" is established where the action of the employee is justifiable or reasonable under the circumstances. From the time he was hired, claimant knew the Union fees and dues must be paid at the end of his probationary period. Claimant failed to make arrangements to have the money available. Expenses incurred during the Christmas holiday are not a reasonable excuse. His failure to save the money was a willful disregard of the employer's interests with respect to the CBA. As such, he was not entitled to benefits.

Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219

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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.

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.