TR&C

Pennsylvania Unemployment Compensation Newsletter

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"But I Did My Best, Boss….."

When Does a Mistake or Error on the Job Become Willful Misconduct Under Section 402(e)?

The Commonwealth Court has long grappled with defining what type of behavior constitutes "willful misconduct" under Section 402(e) for the purposes of employee termination and the right to receive UC benefits. Should employee mistakes or errors be considered willful misconduct?

For example, in Herndon v. UCBR, 540 A.2d 633 (Pa. Cmwlth. 1988), the claimant was employed as a loan officer for a mortgage company and was discharged because she "made too many mistakes." Claimant was granted benefits by the UC Bureau, which reasoned that her "unsatisfactory performance, due to repeated errors" did not constitute willful misconduct. The Referee reversed and denied benefits pursuant to Section 402(e), while the Board granted benefits. In making its decision to award UC benefits, the Commonwealth Court explained that the employer has the burden of proving willful misconduct, and here, that burden was not met. The Court held that "mere incompetence or an inability to perform one's job responsibilities will not justify a finding of willful misconduct." *Citing* Geslao v. UCBR, 519 A.2d 1096 (1987)(*holding no willful misconduct where a hotel clerk mistakenly overbooked rooms but did not show an "unwillingness to work to the best of her ability"*). The Herndon record revealed nothing more than mere incompetence by a loan officer who made inadvertent mistakes in paperwork and always corrected those mistakes. There was no deliberate misconduct.

However, the Court has emphasized that there is a difference between those employees who try their best but whose performance fails to improve, versus those employees who purposefully disregard their obligations and duties thereby causing harm to their employers.

For example, in Culbreath v UCBR, 426 A.2d 1267 (Pa. Cmwlth. 1981), the claimant was a clerk in charge of ordering and distributing office supplies. She was terminated for wasting time on the job, not following instructions and having an "improper phone attitude." The Commonwealth Court denied benefits, stating that claimant was not working to the best of her ability, i.e., she failed to modify her behavior to be polite, meet deadlines or use her working hours properly. Finally, the Court explained: "It is true that mere incompetence, inexperience or inability to perform a job *will not constitute willful misconduct* so as to render an employee ineligible for benefits; however, *where poor quality of work product is the result of an unwillingness to work to the best of one's ability*, a disqualification will occur." *Citing* Markley v. UCBR, 407 A.2d 144 (1979).

Sometimes willful misconduct is difficult to characterize, especially when it seems like an employee is "doing their best" but still making mistakes. In Sacks v. UCBR, 459 A.2d 461 (Pa. Cmwlth. 1983), the claimant was a tailor who was discharged after he mis-cut expensive fabric because he tried to use "short-cuts to save time." The Court held that employer had proven that the claimant's level of work was not satisfactory and that he showed "intentional and substantial disregard of the employer's" business and financial interests.

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Similarly, in the recent case of Scott v. UCBR 36 A.3d 643 (Pa. Cmwlth. 2012), the Court denied benefits to a technician responsible for ensuring that all instrument trays were clean prior to delivery to a hospital operating room. Even though claimant held the same job for 20 years, for the two years prior to termination, his level of work declined such that he was sending "dirty" trays to the operating room. The trays visibly contained biological waste, thereby exposing surgical patients to possible infection. The Court held that inspection and delivery of the dirty trays by the claimant were not "mistakes," but rather, the result of claimant's "failure to diligently perform an important aspect of his job duties, and one that he was capable of performing."

As evidenced above, the Court appears willing to award benefits to those employees who try their very best but simply fail to improve and make inadvertent mistakes on the job. There is a clear distinction, however, from those cases where the employee fails to work to the best of his or her ability to the detriment of his em-

APPELLATE CASE LAW REVIEW

APPEAL BY ELECTRONIC SUBMISSION: TIMELY OR UNTIMELY??

The Department's regulation, 34 Pa. Code §101.82, which provides for the "time for filing appeal from determination of Department," provides the following:

> Electronic transmission other than fax transmission. The date of filing is the receipt date recorded by the Department appeal office or the Board's electronic transmission system, if the electronic record is in a form capable of being processed by that system. A party filing by electronic transmission shall comply with Department instructions concerning format. A party filing an appeal by electronic transmission is responsible for using the proper format and 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.

Where the appellant presents testimony and evidence to support a finding that he or she filed a timely appeal by email, notwithstanding the absence of that email appeal in the Board's records, the appeal may be deemed timely if the appellant's evidence is deemed credible. Where, however, the appellant merely argues that the email was sent and not received due to an administrative breakdown, the appeal is not effective. Rex G. Bennett v. UCBR, No. 2703 C.D. 2010, Filed December 16, 2011. (The same is true where the appellant files an appeal via facsimile. The absence of the appeal in the Board's record merely gives rise to an inference that the appellant did not file a timely appeal. The appellant may offer evidence to establish that the fax was, in fact, successfully transmitted to the UC Center in a timely fashion. Isaac J. Wright v. UCBR, 2739 C.D. 2010, Filed December 16, 2011.)

SECTION 701 OF THE LAW IS NOT VIOLATED WHERE EMPLOYEE RESIGNS AS PART OF RESOLUTION OF WORKERS' COMPENSATION CLAIM

Section 701 of the Law, 43 P.S. §861, states: "No agreement by an employe to waive, release, or commute his rights to compensation, or any other rights under this act, shall be valid." In the case of Nicole Lee v. UCBR, No. 2085 C.D. 2010, Filed December 21, 2011, the claimant suffered a work-related injury for which she received workers' compensation benefits. She and the workers' compensation carrier ultimately agreed to resolve her claim for $12,500. As a part of the settlement agreement, and on the advice of counsel, the claimant executed a separate resignation/release, which provided, inter alia, that claimant was waiving any and all claims against the employer, including any claim under the Unemployment Compensation Law. Claimant subsequently sought unemployment compensation benefits, arguing that the resignation/release was invalid because it contained a waiver of her right to unemployment compensation benefits in violation of §701 of the Law. The Court disagreed. In order for §701 to be relevant, a claimant must first establish that she has a *right* to benefits under the Law. Here, claimant elected to execute the resignation/release in order to settle her workers' compensation claim. As such, she terminated her employment voluntarily without necessitous and compelling cause and, therefore, was ineligible for benefits under §402(b) of the Law.

INHERENTLY DANGEROUS CONDUCT MAY BE WILLFUL MISCONDUCT

Grant Royster's co-workers frequently interfered with his ability to make his piece-rate as a molder by placing objects in his work area and delaying the arrival of the supplies he needed to complete his work. On January 15, 2010, he was using a front-loader to haul sand from one end of a building to another when a co-worker, Charlie Mitchell, deliberately maneuvered his forklift in Royster's way. Royster then used the front-loader to push Mitchell out of the way. Royster was terminated the next day for violating his employer's safety rules by driving the front-loader in an unsafe manner. Royster filed a claim for UC benefits, asserting that, although he moved Mitchell's forklift with the front-loader, doing so was not a rule violation because the front-loader was used regularly to free the forklift when it became stuck. At the hearing before the Referee, the employer present no first hand testimony to demonstrate Royster's violation of its policy. The Referee granted benefits, but the UCBR reversed, noting that Royster had received warnings in the past that future disciplinary actions would result in his termination and that employer discharged Royster for operating machinery in a reckless manner that jeopardized the safety of other workers and could have damaged company equipment. In its decision found at Grant Royster v. UCBR, No. 2569 C.D. 2010, Filed December 27, 2011, the Commonwealth Court agreed stating that: "even if claimant was reasonably frustrated and cautiously slid the forklift out of his way, he should have been aware that moving the forklift was inherently dangerous." Such behavior constitutes willful misconduct.

ACCEPTANCE OF OCCASIONAL WORK DOES NOT CONSTITUTE STATUS AS "INDEPENDENT CONTRACTOR"

Joan Silver began receiving unemployment compensation benefits in May of 2009 following the termination of her employment with NAVTEQ, Inc. In September 2009, she was contacted by Gerson Lehrman Group and asked if she would be interested in providing telephone consultations on an intermittent, as-needed bases with Gerson's clients. Silver agreed and, over the course of 5 months, engaged in 3 hours of work involving telephone calls. The UCBR determined that Silver was thus an independent contractor and ineligible for benefits. The Commonwealth Court disagreed, noting that Silver's activities for Gerson were "de minimis and insufficient to demonstrate that she is customarily engaged in an independently established trade, occupation, profession or business." The Court's complete opinion may be found at Joan B. Silver v. UCBR, No. 1366 C.D. 2010, Filed December 29, 2011.

TEST TO DETERMINE IF AN INDIVIDUAL IS "SELF-EMPLOYED" AND THUS INELIGIBLE FOR UC BENEFITS

Where an individual's services are preformed free of the employer's control and the claimant's services are the type performed in an independent trade or business, the individual is engaged in "self-employment" and, therefore, ineligible for unemployment compensation benefits. There are a number of factors relevant to whether an individual is free of "control": 1) is there a fixed rate of remuneration? 2) are taxes withheld from the individual's pay? 3) does the employer provide on-the-job training? 4) does the employer hold regular meetings the individual is expected to attend? 5) is the individual expected to submit periodic progress reports to the employer? For a detailed and interesting review of the issue, please see the Commonwealth Court's decision in the case of Stage Road Poultry Catchers v/ Commonwealth of PA/Dept. of Labor & Industry/ Office of UC Tax Services, No. 2615 C.D. 2010, Filed December 29, 2011.

ACCEPTANCE OF TEMPORARY WORK DOES NOT CONSTITUTE A NECESSITOUS AND COMPELLING REASON TO QUIT FULL-TIME POSITION

Mathew Brant quit his full-time job as a marketing coordinator with Solar Innovations to pursue an opportunity with a temporary staffing agency that gave him greater flexibility to pursue his education. His contract with the staffing agency was only for 30 days, although he believed it would last 6 months. After 30 days, he found himself unemployed and sought benefits. He alleged that he quit his job with Solar Innovations for necessitous and compelling reasons. The Commonwealth Court held that, where one quits a stable, full-time, non-temporary job and accepts a temporary job, benefits are unavailable. The ultimate unavailability of work for Mr. Brandt was the result of his personal choice. An offer of full-time but temporary employment does not constitute a firm offer of employment that would provide an employee cause of a necessitous and compelling nature to voluntarily quit a non-temporary position.

See Solar Innovations, Inc. v. UCBR, No. 933 C.D. 2011, Filed January 5, 2012.

LICENSING REGULATIONS ARE FACTOR TO CONSIDER, BUT NOT DISPOSITIVE, ON "INDEPENDENT CONTRACTOR VS. EMPLOYEE" ISSUE

The Cosmetology Law and regulations require salons to provide all tools and equipment for their licensees who provide services outside the salon and to keep records for all services rendered outside the salon. While the Law and the regulations tend to establish that licensees are then "employees" of the salon and not independent contractors, the Cosmetology Law and regulations do not prohibit all independent contractor relationships within the field of cosmetology. The regulations are a factor to consider, but not a dispositive factor. For a detailed analysis, please see the Commonwealth Court's decision in Osborne Associates, Inc., d/b/a Generations Salon Services v. UCBR, No. 194 C.D. 2011, Filed January 10, 2012.

CLAIMANT MAY BE ABLE TO BE GAINFULLY ENGAGED IN SIDELINE AND STILL BE ELIGIBLE FOR UC BENEFITS

Since 1986, and while employed full-time by Johnson Controls, William Risse engaged in a sideline business doing writing, photography, consulting and script-writing services. When terminated from Johnson Controls in 2009, Risse applied for and received unemployment compensation benefits. In 2010, his benefits were suspended when he contracted with a Senate campaign to provide consulting services. When the campaign ended, his request to have his UC benefits resumed was denied. The Commonwealth Court reversed that denial noting that, under §402(h) of the Law, to determine if an individual who engages in self-employment is ineligible for benefits, it must first be determined if: 1) the self-employment began prior to termination from full-time employment; 2) the self-employment continued without substantial change after the full-time employment was terminated; 3) the claimant remains available for full-time employment; and 4) the self-employment was not the primary source of claimant's livelihood. The claimant bears the burden of proving that his activity is non-disqualifying under this section. Here, Risse's earnings from his consulting business in 2010 were similar to his earnings in 2004 and 2006. His sideline activity had not changed and he was not in the process of transitioning that activity into full-time employment. For a complete copy of the Court's decision, as well as Judge Cohn Jubelirer's concurring opinion, please see William R. Risse v. UCBR, No. 1111 C.D. 2011, Filed January 12, 2012.

EVIDENCE OF WILLFUL MISCONDUCT MUST COMPORT WITH REASON FOR DISCHARGE

In the case of Yusef Saleem v. UCBR, No. 152 C.D. 2011, Filed January 27, 2012, the Commonwealth Court concluded that, despite evidence given before the Referee which established that the claimant engaged in conduct contrary to employer's interests and fell below the standard of behavior employer could expect of its employee, claimant was still entitled to benefits because that was not the reason originally asserted by employer as the basis for claimant's discharge. When discharged, claimant, a school clinician, was told that he was being discharged for unprofessional conduct because he filed a police report against a student. At the hearing before the Referee, employer presented evidence establishing that claimant's actions in handling the incident with the student violated employer's procedures. Employer's witnesses acknowledged that it had no policy against filing charges against a student. Up until the hearing, claimant's eligibility for benefits turned on whether his filing of criminal charges against the student constituted willful misconduct as that was the reason given by employer for claimant's discharge. Because the Referee and the UCBR determined claimant ineligible for benefits on a factual basis different than the factual basis initially given by employer for claimant's discharge, the order of the UCBR was reversed and benefits were granted.

POOR WORK PERFORMANCE *MAY* CONSTITUTE WILLFUL MISCONDUCT

Mere incompetence, inexperience or inability to perform a job generally will not support a finding of willful misconduct; however, an employee's failure to work up to his or her full, proven ability, especially after multiple warnings regarding poor work performance, must be construed as willful misconduct because such conduct demonstrates an intentional disregard of the employer's interest or the employee's obligations and duties. In the case of Larry D. Scott v. UCBR, No. 466 C.D. 2011, Filed February 1, 2012, the claimant had been employed for several years as a CSR Tech, whose job duties included inspection and processing of trays with instruments and items to be used by surgeons. Claim-

ant was to examine the trays to ensure that the instruments and items on the trays were cleaned before being sterilized and sent to the operating room. The evidence before the Referee established that claimant was warned and/or disciplined for dirty trays on at least 3 occasions from August 2009 to May 2010. Following the last incident, claimant was warned that further infractions could result in his termination. In August 2010, claimant failed to properly inspect another tray, which included suture material form a previous surgical procedure. The Commonwealth Court held that, at the very least, claimant's continued poor work performance demonstrated an intentional disregard of the employer's interest or the employee's obligations and duties. As such, claimant engaged in willful misconduct and was ineligible for benefits.

DEPARTMENT'S DETERMINATIONS AS TO "EMPLOYEE" VS. "INDEPENDENT CONTRACTOR" MUST BE CONSISTENT

The basic principles of uniformity and equity prevent the Unemployment Compensation Board of Review from deeming a claimant to be an independent contractor when another agent of the Department has determined that claimant to be an employee. See e.g., Thomas R. Hartman v. UCBR, No. 1794 C.D. 2010, Filed January 27, 2012. In that case, the claimant, who worked as a videographer, was discharged due to a dispute over employer's requirement that claimant arrive a minimum of 1 hour prior to the starting time of each job. Employer supplied all equipment, paid a fixed rate even when the job did not take place, required that its business cards be distributed at the job and determined what clothing claimant was to wear. After his discharged, claimant filed an application for benefits. Although employer contended claimant was an independent contractor, the local service center concluded otherwise and awarded benefits. After a hearing, the referee also awarded benefits. Employer filed a timely appeal from the referee's decision. In the meantime, a tax agent employed by the Department of Labor & Industry determined claimant was an employee and assessed unemployment compensation tax against employer. Employer opted to accept and pay the assessment without appealing the tax agent's determination. Employer also sought to withdraw its appeal, but the UCBR denied employer's request, determined claimant was an independent contractor and reversed the referee's decision. The Commonwealth Court reversed the UCBR, stating that it would be manifestly unfair for the Department to take the position that claimant is an employee for purposes of assessing unemployment tax, yet subsequently disregard that position when claimant becomes unemployed.

RESIDENT CLAIMANT WHO WORKS OUTSIDE COMMONWEALTH MAY BE FINANCIALLY INELIGIBLE FOR BENEFITS

Theresa Pagliei, a Pennsylvania resident, worked for Farmers Insurance Group from 1998 to 2010. In 2006, Farmers moved her work site from Pennsylvania to Delaware, where she worked continuously until she was laid off. Her application for benefits was denied inasmuch as no wages had been reported during her base year, rendering her ineligible for benefits. She appealed and, at the hearing before the Referee, confirmed that she worked only in Delaware during the last 12 months of her employment, but submitted documentation showing that she paid income taxes to Pennsylvania. She did not know if Farmers reported her wages to Delaware. The Referee concluded she was not financially eligible for benefits under §404 of the Law because her services for wages in Delaware did not constitute "employment" for purposes of §4(1)(2)(B) of the Law. The UCBR affirmed the Referee's decision. The Commonwealth Court agreed, noting that "employment" includes service performed within or both within and without Pennsylvania if the service is localized within Pennsylvania or the service is not localized in any state but some of the service is performed within this state. A claimant has the burden to prove financial eligibility for unemployment benefits. Thus, to be eligible, this claimant must establish that she was required to perform some of her services within Pennsylvania. She could not, and benefits were appropriately denied. See e.g., Theresa M. Pagliei v. UCBR, No. 519 C.D. 2011, Filed February 3, 2012.

"BUSINESSMAN" VS. "EMPLOYEE"

In 1972, the Supreme Court held in Starinieri v. UCBR that persons who exercise a *substantial degree of control* over a corporation and who become unemployed are "business people" and are ineligible for benefits just as self-employed individuals are ineligible. Thereafter, in 1983, the General Assembly enacted §402.4 of the Law, which provides that, notwithstanding other provisions of the Law, an officer of a corporation deemed to be self-employed because he exercised a substantial degree of control over the corporation and becomes unemployed due

to the corporation's *involuntary* bankruptcy proceeding is eligible for benefits. The General Assembly intended that, no matter how much control a claimant exercised over the corporate employer, the claimant would still be eligible for benefits where the loss of employment was caused by an event outside his control, i.e., the involuntary liquidation of the company. The Commonwealth Court recently addressed these issues in the case of Brandon J. Dunkelberger v. UCBR, No. 1199 C.D. 2011, Filed February 7, 2012. In that case, claimant was employed as vice-president of Window World, was a one-third owner of the corporation and served as a director. The president of the corporation and his wife held 2/3 of the corporate stock and they used their majority vote to terminate claimant's employment as vice-president. Until his termination, claimant exercised substantial policymaking control over Window World. Accordingly, the Court found that claimant fell squarely within the definition of a "businessman" and not an employee. The Court acknowledged that, in enacting §402.4, the General Assembly set a standard for a limited class of business persons under which their eligibility is determined not by their status but by their ability to control their employment due to involuntary bankruptcy. Nevertheless, business persons like claimant who, by virtue of their minority shareholder status, are unable to prevent the termination of their employment do not fall within the specific parameters of §402.4, such that the Starinieri doctrine applies. Claimant was found to be ineligible for benefits due to his status as a businessman.

TEST TO DETERMINE "EMPLOYEE" OR "INDEPENDENT CONTRACTOR"

Under §402(h) of the Law, an individual is ineligible for unemployment benefits in any week in which he or she engaged in self-employment. While the Law does not define "self-employment," "employment" is defined as follows: "Services performed by an individual for wages shall be deemed employment subject to this act, unless and until it is shown to the satisfaction of the department that--(a) such individual has been and will continue to be free from control or direction over the performance of such services both under the contract of service and in fact; and (b) as to such services such individual is customarily engaged in an independently established trade, occupation, profession or business." Both factors must be met before an individual is deemed to be an independent contractor. In the case of Marietta B. Minelli v. UCBR, No. 440 C.D. 2011, Filed February 9, 2012, the claimant signed an independent contractor agreement and was free to work for others. Overall, she was free from control and direction in the performance of her services. Nevertheless, she was not deemed to be self-employed because the second factor was not met, i.e., she was not, and never had been, customarily engaged in an independently established trade or business. In fact, she performed work as a consultant on an "as needed" basis for DK Harris and ultimately performed only a total of 22 hours of work over a 3-day period of time. The Court found such a limited amount of work over such a short time period to be simply insufficient to establish that claimant was customarily engaged in an independently established trade, occupation, profession or business. Benefits were thus granted.

MERE TESTIMONY THAT EMPLOYER HAS A HARASSMENT POLICY IS INSUFFICIENT TO PROVE THE EXISTENCE OF A RULE THAT CLAIMANT VIOLATED

In the case of Anthony E. Lewis v. UCBR, No. 1552 C.D. 2011, Filed April 16, 2012, the claimant engaged in a verbal confrontation with one of his co-workers, during which the two men discussed their familiarity with firearms and how tough they were. Both men were discharged. Claimant, who was denied unemployment compensation benefits by the local service center, timely appealed to a referee. At the hearing, employer's only witness testified that employer has "rules and regulations" and a "harassment policy." The referee concluded claimant violated employer's policy prohibiting threatening conduct and was thus ineligible for benefits. The UCBR affirmed. The Commonwealth Court disagreed, noting that the determination of willful misconduct was not supported by substantial evidence. Employer did not identify any specific rule or policy that claimant violated, nor did it present any documentary evidence of such a policy. Testimony that employer has "rules and regulations" and a "harassment policy" is insufficient to establish the type of policy that the UCBR found claimant violated. An employee's remark that he is "tough," without more, cannot be construed as a threat of physical harm. Moreover, even if employer had proven the existence of a policy, the UCBR made no finding that claimant was aware of that policy or should have been aware of it. Thus, employer failed to prove claimant's deliberate violation of a work rule. Benefits were granted.

CLAIMANT MAY NOT BE REQUIRED TO REPAY OVERPAYMENT IF DOING SO WOULD CAUSE FINANCIAL HARDSHIP

Rita Deklinski was eligible for regular UC benefits; however, she received both UC benefits and EUC benefits for the weeks ending January 9, 2010 through February 20, 2010. Consequently, she received $2,478 in EUC benefits to which she was not entitled. The Department determined that the overpayment was fraudulent because she failed to notify the Department about the duplicate payments and assessed 9 penalty weeks against her. She appealed to a Referee and requested a waiver of repayment because doing so would cause her financial hardship. The Referee and the UCBR rejected the argument and denied her request for a waiver, but the Commonwealth Court vacated and remanded the case so as to allow her the opportunity to submit evidence to establish that the overpayment would cause her a financial hardship. Under §4005(b), the Department may waive repayment if the payment was without fault on the part of the individual and the repayment "would be contrary to equity and good conscience." For a complete copy of the Court's opinion, please see Rita J. Deklinski v. UCBR, No. 1379 C.D. 2011, Filed February 23, 2012. (Please note that a request for a waiver of repayment must be made in a *separate proceeding* from that in which the issue is whether the claimant received an overpayment and whether the overpayment was the result of fraud. See e.g., Tiffani A. Rouse v. UCBR, No. 2524 C.D. 2010, Filed March 15, 2012.)

REFUSAL TO ACCEPT TERMS OF NEW EMPLOYMENT CONTRACT PRIOR TO TERMINATION MAY BE DEEMED TO BE "VOLUNTARY QUIT"

In the case of Middletown Township v. UCBR, No. 189 C.D. 2011, Filed March 21, 2012, the claimant was employed as the township manager when, on June 7, 2010, the township supervisors voted not to renew claimant's contract, which provided for automatic renewal each year on July 9 unless 30 days notice was given to claimant. On June 8, 2010, the township notified claimant that his contract would not be renewed. Claimant continued working through July 8, 2010. Prior to that date, the township attempted to negotiate a new contract with claimant, which substantially changed the terms and conditions of claimant's employment and which claimant rejected. He then filed for unemployment compensation benefits. The UCBR determined that the township had discharged claimant and awarded benefits inasmuch as the township failed to prove that it discharged claimant for willful misconduct. The Commonwealth Court agreed that claimant was eligible for benefits, but disagreed with the UCBR's analysis. Instead, the Court found that claimant had voluntarily quit his position with the township because, prior to July 8, 2010, claimant rejected the township's offer of a new contract that would have allowed claimant to remain employed. Consequently, claimant is deemed to have quit his position. Nevertheless, he is entitled to benefits inasmuch as the new contract offered by the township significantly changed the terms and conditions of employment, such that claimant had a necessitous and compelling reason to voluntarily terminate his employment.

EXEMPTION TO UNEMPLOYMENT COMPENSATION LAW

Under §(4)(l)(4)(8)(a) of the Law, the definition of "employment" excludes: "service performed in the employ of (i) a church or convention or association of churches or (ii) an organization which is operated primarily for religious purposes. In the case of Imani Christian Academy v. UCBR, No. 52 C.D. 2011, Filed March 21, 2012, the Commonwealth Court found that the employer "operated primarily for educational purposes." Therefore, although the school at which the claimant worked had a "strong religious influence," the main purpose of the school was education. Hence, the claimant's employment did not fall within the exemption and benefits were appropriately awarded.

VOLUNTARY QUIT VS. DISCHARGE

When an employee tenders his resignation with a specific effective date, and the employer involuntarily terminates the employee before such effective date, the separation is treated as a discharge under §402(e) of the Law from the date of the involuntary discharge until the resignation effective date. In order to prevent the employee from receiving UC benefits, the employer must then show that the claimant's employment was terminated due to willful misconduct. In contrast, the period after the resignation effective date is treated as a voluntary separation under §402(b) of the Law. Thus, the claimant then has the burden to establish that he had a necessitous and compelling reason to resign. For a detailed discussion, see the Commonwealth Court's decision in Steven L. Wert v. UCBR, No. 1792 C.D. 2011, Filed March 28, 2012.

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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.