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Workers' Compensation Resignation's Lasting Effect on Future Benefits

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Special to the Legal

This article addresses the complex and sometimes confusing interplay between Pennsylvania workers' compensation benefits and Pennsylvania unemployment compensation benefits and, specifically, what effect a resignation from employment in a workers' compensation claim context may have on a claimant's possible future receipt of unemployment compensation benefits.

In *Lee v. Unemployment Compensation Board of Review*, a 2011 Commonwealth Court case, a workers' compensation claimant employed by the Williamsport Area School District as a full-time classroom assistant suffered a herniated disc while restraining a student in the course of her employment activities. The claimant, Nicole Lee, began receiving workers' compensation benefits but was later released to light-duty work and eventually returned back to part-time light-duty work as an assistant secretary for the district, according to the opinion.

Ultimately, Lee and her employer's insurance carrier agreed to resolve her workers' compensation claim for \$12,500. Although not clear from the *Lee* decision, it appears the settlement was done pursuant to a compromise and release agreement under Section 449 of the Pennsylvania



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Workers' Compensation Act, as amended, 77 P.S. §1000.5. Lee also executed a separate resignation/release agreement wherein she agreed to resign her light-duty position as an assistant secretary. The resignation/release agreement contained, among other things, language stating she agreed to "waive any and all claims relating to my work injury(ies) that I have or may have against [Williamsport Area School District] including, but not limited to, any claim under the American[s] with Disabilities Act of 1990, as amended; the Pennsylvania Unemployment Act, as amended, or the Pennsylvania Human Relations Act, as amended," according to the opinion, written by Judge Patricia A. McCullough.

Following approval of the settlement by a workers' compensation judge (WCJ), Lee then applied for unemployment compensation (UC) benefits. The local UC job center office determined Lee was eligible for UC benefits because she was forced to resign as part of the settlement agreement and because she remained able and available for continuing work as an assistant secretary.

The district appealed to the referee level and, during her testimony before the referee, Lee agreed that she resigned her employment because her prior attorney advised her that the settlement would not take place if she did not sign the resignation/release agreement, according to the opinion.

The referee affirmed the local job center's determination granting UC benefits based on the rationale that Lee did not voluntarily terminate her employment but was rather forced to resign under an "invalid" agreement. The referee's determination was based upon Section 701 of the Unemployment Compensation Law, which reads in part, "No agreement by an employee to waive, release, or commute his rights to compensation, or any other rights under this act, shall be valid."

On appeal, the Unemployment Compensation Board of Review (UCBR) reversed the granting of UC benefits, finding Lee had in fact voluntarily terminated her employment in order to settle

her workers' compensation claim. That finding, coupled with the fact that continuing work was available to her within her medical restrictions if she did not settle the WC claim, was the UCBR's rationale for concluding that she did not establish a necessitous and compelling cause for voluntarily terminating her employment and therefore was ineligible for UC benefits.

Lee appealed to the Commonwealth Court raising one issue: "whether her separation from employment was involuntary because the resignation and release she signed at the workers' compensation settlement hearing is invalid as a matter of law," according to the opinion.

The court, however, rejected Lee's appeal and affirmed the denial of UC benefits. The court adopted the rationale of two previously unreported cases, *Black v. Unemployment Compensation Board of Review*, a 1999 decision, and *Hill v. Unemployment Compensation Board of Review*, a 2011 decision, and ultimately concluded that when a claimant agrees to execute a resignation in order to settle a workers' compensation claim, the claimant terminates his or her employment voluntarily without necessitous and compelling cause.

In *Black*, the claimant, Heather Black, was receiving workers' compensation benefits when she agreed to resign her employment in exchange for a settlement of her workers' compensation claim, according to McCullough. The claimant then sought and was granted UC benefits. The employer appealed and the referee found the claimant to be ineligible due to the fact she voluntarily terminated her employment without a necessitous and compelling cause. The UCBR affirmed and the Commonwealth Court thereafter affirmed the UCBR, concluding that the claimant was not forced to sign the settlement agreement and, thus, her resignation

was voluntary. The court further noted that because the claimant could have seen her workers' compensation claim to its conclusion, she did not have a necessitous and compelling reason to quit.

Likewise, in *Hill*, the claimant, Felicia Hill, was receiving workers' compensation benefits and ultimately left her position with her employer pursuant to a settlement and release agreement, according to McCullough. The claimant later filed for UC benefits and the referee deemed her ineligible because she voluntarily terminated her employment in order to settle the workers' compensation claim. The UCBR affirmed, holding that the claimant's position was not imminently threatened and she quit her position in order to settle a legal dispute. On appeal to the Commonwealth Court, the claimant asserted that she agreed to the compromise and release for health reasons and, therefore, had a necessitous and compelling reason to voluntarily quit. The Commonwealth Court affirmed the UCBR and concluded that the claimant did not establish an adequate health reason for quitting and that she voluntarily terminated her employment without good cause in order to settle her workers' compensation claim.

In *Lee*, although the Commonwealth Court ultimately deemed Lee ineligible for UC benefits due to her voluntary resignation, the court made quite clear that this was due to her voluntary resignation and not due to the release agreement also at issue in this case. The Commonwealth Court agreed with Lee that the resignation agreement she signed and, specifically, the language indicating she agreed to waive any and all claims relating to work injuries, were invalid under the Unemployment Compensation Law.

In general, the receipt of UC benefits by an employee in Pennsylvania was historically not a bar to receipt of workers'

compensation benefits and vice versa. There are three general elements for entitlement to benefits under the Unemployment Compensation Law: (1) an involuntary discharge of an employee (2) who is capable of continuing to perform work and (3) who has not engaged in willful misconduct, as in the Commonwealth Court's 1989 ruling in *Charles v. Unemployment Compensation Board of Review*.

An injured worker who is entitled to receive disability benefits under the Workers' Compensation Act may simultaneously recover UC benefits where the work injury prevents the employee from performing his or her pre-injury job but does not prevent him or her from performing other modified work available in the labor market, as in the Commonwealth Court's 1983 ruling in *Kowal v. Commonwealth Unemployment Compensation Board of Review*.

However, under the Unemployment Compensation Law, an employee who voluntarily terminates his or her employment without a necessitous and compelling reason is ineligible for UC benefits. The Commonwealth Court has previously held that when an employee resigns, leaves or quits without action by the employer, the employee has voluntarily quit for purposes of UC benefits, as in its 2007 ruling in *Davila v. Unemployment Compensation Board of Review*. When determining whether or not a claimant has resigned or quit voluntarily, the court examines the totality of the circumstances involved.

Under Section 204(a) of the Pennsylvania Workers' Compensation Act, employers, insurance carriers and third-party administrators paying workers' compensation indemnity benefits are entitled to a dollar-for-dollar credit against the net amount of unemployment compensation a claimant is receiving. In addressing the policy considerations underlying Section 204(a) "off-

sets,” the Pennsylvania Supreme Court explained in its ruling in *Kramer v. Workers’ Compensation Appeal Board (Rite Aid Corporation)* that “the subject legislation serves a legitimate state interest in reducing the cost of workers’ compensation benefits in Pennsylvania by allowing employers to avoid paying duplicate benefits for the same loss of earnings.” In this regard, the mandate of Section 204(a) cannot be waived by the employer and the WCJ is required to reduce an award of benefits to an employee by the amount of UC benefits received, regardless of whether the employer has requested the offset, as the Commonwealth Court held in its 2008 decision in *Costa v. WCAB (Carlisle Corp.)*.

Section 123.6(a) under the Act 57 regulations of the Pennsylvania Workers’ Compensation Act specifically references that the credit should be taken from the “net” amount of unemployment compensation a claimant is receiving, as in the 2009 decision in *Philadelphia Gas Works v. WCAB (Amodei)*. As noted on the Pennsylvania Department of Labor & Industry’s website, all unemployment compensation benefits are considered gross income for federal income tax purposes, however they are not taxable by the commonwealth of Pennsylvania and local governments. Recipients may choose to have federal income tax withheld from the UC benefit payments at the rate of 10 percent of the weekly benefit rate plus the allowance for dependents (if any). The 10 percent deduction is based on the recipient’s gross weekly benefit rate (i.e., the amount of benefits payable before deductions for earnings, benefit reduction, child support and so forth).

Claimants, insurance adjusters, third-party administrators and employers were often asked before *Lee* what effect a settlement containing a resignation from employment would or could have on a claimant’s future receipt of UC benefits. Typically, unless the workers’ compensation attorney also served as in-house counsel, the answer likely to be received was: “This is an area outside the

scope of Workers’ Compensation and you should inquire with your employment counsel,” according to claimants attorney Glen Neiman in his blog, “Pennsylvania Workers’ Compensation Lawyer.” Neiman noted that “[u]ntil recently, we told them the honest answer — maybe. It depended on the identity of the Unemployment Compensation Referee, the wording of the resignation and the status of the medical clearance (one must be capable of some type of employment to be eligible for unemployment compensation).”

In the realm of workers’ compensation law, employer and claimants counsel were not the only ones to steer away from the interplay of workers’ compensation and unemployment compensation law. The Pennsylvania Workers’ Compensation Act currently does not grant WCJs jurisdiction with respect to resignation agreements. When issuing a decision on a petition for approval of a compromise and release agreement, the WCJs in the commonwealth, as a practical matter, will typically not reference any resignation in their decisions. In fact, during a compromise and release approval hearing (testimony taken in open court), many WCJs do not even allow either counsel to question a claimant concerning his or her resignation from employment, nevermind allowing the executed resignation to be attached as an exhibit to the proceeding or included within the settlement documents.

The *Lee* decision has now clarified a former gray area in the interplay between workers’ compensation and unemployment compensation law in Pennsylvania. As this is a very recent decision, only time will tell what effect this new Commonwealth Court decision will have on the number of workers’ compensation settlements and, specifically, the number of claimants who will voluntarily execute a resignation agreement, now knowing they are also giving up their possible rights to future UC benefits.

After *Lee*, counsel for both parties should therefore consider the following:

- In any settlement of any workers’ compensation, should it include a resignation and release agreement?

- If so, does the resignation and release agreement contain specific language that indicates that the claimant is voluntarily resigning his or her employment and that the claimant may be giving up rights under other acts like the Unemployment Compensation Act?

- Should the claimant be questioned about the resignation and release agreement during the underlying compromise and release hearing that makes up the settlement of the workers’ compensation case?

A claimant’s testimony, and the subsequent hearing transcript, may provide critical evidence in the event a claimant attempts to seek unemployment compensation benefits at some point in the future, something that can have a significant financial effect on both the claimant and employer. •