

**WHEN THE WORLDS OF UNEMPLOYMENT AND
WORKERS' COMPENSATION COLLIDE**

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On December 21, 2011, the Pennsylvania Commonwealth Court held that the execution of the resignation/release ending the employment of a Workers' Compensation Claimant, as part of a negotiated resolution for a Compromise and Release Agreement approved by a Workers' Compensation Judge, precluded the subsequent recovery of unemployment compensation benefits. In the Appeal of Nicole Lee v. Unemployment Compensation Board of Review, No. 2085 C.D. 2010, the Commonwealth Court, in a Decision written by Judge Patricia McCullough, considered what legal effect, if any, did such a resignation/release demanded by a Workers' Compensation defense attorney as necessary to resolve her workers' compensation injury claim, have on the school district assistant secretary's subsequent application for unemployment compensation benefits. In this instant case, Claimant had testified that she resigned her position with her employer/school district because her former attorney told her that her workers' compensation settlement would take place if she did not sign the resignation/release. However, the employer's director of Human Resources testified that modified work as an assistant secretary remained available to the Claimant and that defense attorney for the insurer required Claimant to resign, as part of the settlement agreement without the employer's knowledge.

The Commonwealth Court analyzed this legal issue under the provisions of the Unemployment Compensation law, Act of December 5, 1936, as amended, 43 P.S. 801, *et seq.*

The UC Service Center had concluded that the Claimant was eligible for benefits under the Unemployment Compensation Law 402(b), because she was forced to resign as part of the

settlement agreement and that Claimant was eligible for benefits, since she remained able and available for continuing work as an assistant secretary. The school district appealed and a UC Referee conducted a hearing. The Referee affirmed Claimant's entitlement to UC benefits after concluding that she was eligible for benefits because she did not voluntarily terminate her employment, but rather, was forced to resign under an invalid agreement. On appeal, the Unemployment Compensation Board of Review reversed, finding that the Claimant voluntarily terminated her employment in order to settle her workers' compensation claim and that continuing work within her medical restrictions was available had the Claimant not accepted the settlement agreements. The Board also determined that the Claimant did not establish a necessitous and compelling cause for voluntarily terminating her employment and, therefore, held that she was ineligible for benefits under Section 402(b) of the Unemployment Compensation Law, 43 P.S. §802(b), whereupon, Claimant appealed to the PA Commonwealth Court.

In her Appeal, Claimant argued her separation from employment was involuntary because the resignation and release that she signed at the Workers' Compensation Settlement Hearing was invalid as a matter of law. Section 402(b) of the Unemployment Compensation Law renders a claimant ineligible for benefits, if she voluntarily terminates her employment without cause of a necessitous and compelling nature. Whether Claimant has voluntarily quit or has been discharged is a question of law and subject to the Court's review. When an employee resigns, leaves or quits without action by the employer, the employee has voluntarily quit for purposes of unemployment. In determining whether a claimant has quit voluntarily, the Court must consider the totality of the circumstances. In the instant case, the Commonwealth Court relied upon legal rationale set forth in two prior unreported Opinions. Accordingly, the

Commonwealth Court held that when a claimant agrees to execute a resignation/release in order to settle a workers' compensation claim, the claimant terminates her employment voluntarily without a necessitous and compelling cause, rendering her ineligible for unemployment compensation benefits. Although Section 701 of the Unemployment Compensation Law, as amended, 43 P.S. §861, provides that no agreement by an employee to waive, release, or commute his rights to unemployment compensation . . . shall be valid. By relying upon a Pennsylvania Supreme Court Decision, the Commonwealth Court side-stepped this legal argument. The Court explained that for §701 to be relevant, a claimant must first establish that she has a right to unemployment compensation benefits under the law. Thus, the Commonwealth Court reasoned that the Board did not overlook or disregard §701 of the Act and concluded that the claimant had waived her rights to benefits by signing the resignation/release. Instead, the Board determined that the claimant was ineligible for benefits pursuant to §402(b) of the Unemployment law because she chose to terminate her employment in order to settle her workers' compensation claim. The Court upheld the denial of Unemployment Compensation benefits under these circumstances.

Oftentimes, the resolution of a workers' compensation injury claim implemented by Compromise and Release Agreement and approved by a Workers' Compensation Judge, is part of the "global settlement" in which defense counsel is asked to address a variety of employment law-related issues, including Unemployment Compensation. From my personal experience, it is better to follow a TERM philosophy by working closely with the workers' compensation insurance adjuster and the employer's decision-makers to discuss and understand the rights and obligations of the parties, especially where an end to the employment relationship is sought. Many employers have legitimate concerns that a lump sum resolution of a Workers'

Compensation injury claim will have an adverse labor relations impact upon its workforce; and, therefore, an employer may require a letter of resignation/release ending the injured workers' employment so that they can go their respective "separate ways." The need for a letter of resignation/release should not arise as an eleventh hour surprise to the parties at the time of the Compromise and Release Hearing, but rather, it should be discussed thoroughly, and agreed to by the parties as a part of employee benefits and "global resolution." Essentially, the more the defense attorney knows of the needs of the employer, the better able he is to achieve a comprehensive negotiated resolution and is more likely to avoid future misunderstandings and potential additional litigation. This writer often encourages the active participation of the Employer in any mediation held before a Workers' Compensation Judge. It is also important to note that attorneys employed by insurance companies, known as "house counsel" are under strict guidelines to avoid providing advice, and/or negotiating and/or actions that involve employment law related matters outside the narrow scope of resolving the workers' compensation injury claim. However, such limitations on actions by "house counsel" may not fully address the needs of the Employer/Client.

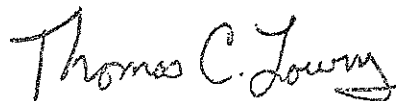
Based upon this new case of Nicole Lee v. Unemployment Compensation Board of Review *supra*, a simple letter of resignation does not require separate bargained-for consideration in order to preclude a claimant from being awarded unemployment compensation benefits. However, it has been this writer's experience that with a general release and separation agreement in which the employee is asked to give up any and all rights under federal and state law, including discrimination claims, it is better to include separate consideration provided by the employer apart from the settlement of the Workers' Compensation Injury claim. This may include the written promise of the employer not to oppose the employee's application for

unemployment compensation benefits for example. Such an employee would still be required to demonstrate to the UC authorities that he or she became unemployed and remained available for suitable work, so to become eligible for benefits.

This writer had his own litigation experience in obtaining a favorable ruling from the Unemployment Board of Review (Appeal No. B-07-09-A-4387, in the case of Michael McLeod v. Philadelphia Direct, in which I was able to effectively demonstrate that the workers' compensation settlement required claimant to resign. After conferring with his attorney, the claimant accepted the settlement offer and resigned. We were able to demonstrate through an employer witness that continuing work was available to the Claimant, had he not chosen to accept the workers' compensation settlement offer and resign. The Board of Review found the Claimant to be ineligible for compensation, since his unemployment was due to voluntarily leaving work without a cause of necessitous and compelling nature. The Board reasoned that the claimant chose to become unemployed in order to accept the workers' compensation settlement offer, and, therefore, he could not be said to be unemployed through no fault of his own.

I trust that this legal analysis proves helpful to you and I remain available to answer any questions that you may have.

Sincerely,



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