Winning Your Unemployment Compensation Case

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Pennsylvania employers understand and support unemployment compensation as a safety net for employees who lose their jobs through no fault of their own. What is frustrating for an employer, however, is financing unemployment benefits for someone who voluntarily quits or is discharged for misconduct.

Two Pennsylvania appellate courts, the Commonwealth Court and the Pennsylvania Supreme Court, often decide unemployment compensation cases and provide guidance that is binding for all employers in the Commonwealth. The following very recent cases, most decided within this past year, should help handle any unemployment compensation claim.

When is a work rule not a rule? – When it is not consistently enforced

Gordon Terminal Services Company, 211 A.3d 893 (Commonwealth Court, June 3, 2019). Claimant was fired for using his cell phone, but testified under oath that it was common for employees, and even supervisors, to use their personal phones to watch sporting events during work hours. The Court held that the employer failed to prove willful misconduct because it could not prove that its rule against cell phones was consistently enforced. The Court decided in favor of the claimant.

When is a witness not a witness? – When his testimony is hearsay and not based on personal observation

Gordon Terminal Services Company, 211 A.3d 893 (Commonwealth Court, June 3, 2019). The employer's main witness was the company's vice president, who did not personally observe the claimant using his cell phone and had no personal knowledge of whether such violations were tolerated. Therefore, his testimony was not persuasive, and benefits were granted.

Walker, 202 A.2nd 896 (Commonwealth Court, January 27, 2019)
In this unusual case, the employer prevailed thanks to the claimant, who admitted in her testimony that she went on personal errands during work time and decided on her own not to return to work before the end of the day. The employer failed to send witnesses to the hearing, but prevailed due to admissions of misconduct by the claimant.

When is a weapon not a weapon? – When it is not used in a threatening manner

Cambria County Transit Authority, 201 A.3d 941 (Commonwealth Court, January 8, 2019) The employer alleged that the claimant threatened its HR assistant by pretending to throw a knife at her. The claimant admitted that she picked up the knife, which was kept in the employee lounge, but claimed she immediately replaced it on the table and never pointed it or motioned to throw it. The Unemployment Compensation Board of Review held that the knife was not used in a threatening manner, so it could not be considered a weapon.

Can a claimant be eligible for benefits during incarceration for a crime? – Yes, if the employee is serving the sentence on weekends only

Harmon, 207 A.3d 292 (PA Supreme Court, April 26, 2019)
Pennsylvania law provides that an employee shall not be eligible for benefits "for any weeks of unemployment during which the employee is incarcerated after a conviction." 43 P.S. §802.6(a). The Pennsylvania Supreme Court reversed the Unemployment Compensation Board and the Commonwealth Court, holding the claimant did not improperly receive unemployment benefits because when he was incarcerated only on weekends. The Court determined that such a

claimant was “able and available for suitable work and thus eligible for benefits.”

When is an employee required to complain? – Before she resigns, if she plans to file for unemployment compensation

Mazur, 193 A.3d 1132 (Commonwealth Court, September 7, 2018)
Claimant alleged she resigned her employment because of extreme emotional distress caused by ongoing harassment and discrimination. Claimant was found ineligible for benefits because she failed to exhaust her alternatives before resigning. Claimant had the burden of proving that she made a reasonable effort to preserve her employment by bringing work place problems to the attention of her supervisors.

When is non-work work conduct willful misconduct? – When it has a direct effect on the claimant’s fellow employees and work place

Cummins, 207 A.3d 990 (Commonwealth Court, April 12, 2019) Claimant posted about her supervisor on Facebook that she would have “sliced his throat open” if his treatment of her had not happened at work. This conduct constitutes a threat because it expresses a desire to inflict harm upon a particular coworker and disregards the standard of behavior an employer can rightfully expect from an employee. So, even though the claimant did not make the threatening statement at work, it had an impact in the work place, and she was not eligible for benefits.

Allegheny County – Fifth Judicial District, 2019 WL 2306187 (Commonwealth Court, May 31, 2019) The Court’s full time project coordinator was convicted of DUI while off duty. Although the employer was entitled to discharge the claimant for violating its code of conduct, the employee was eligible for benefits because the misconduct did not affect the performance of his job.

When is a fact-finder not a fact-finder? – When it willfully and deliberately disregards competent and relevant evidence

Bertram, 206 A. 3d 79 (Commonwealth Court, March 22, 2019) The Unemployment Compensation Board’s finding that the claimant was fired for calling his supervisor a “liar” was discredited by testimony that the supervisor had already announced the claimant’s lay-off in a meeting of employees and the fact the employer did not raise this as a basis for discharge in its answers to the U.C. Bureau’s questionnaire. The Court held she should receive benefits.

When is an investigation not an investigation? – When it is a form of harassment

Indiana University of Pennsylvania 202 A.3d 195 (Commonwealth Court, January 9, 2019). Claimant was eligible for benefits because she had necessitous and compelling reason to resign her employment when she was refused information concerning the specifics of a complaint about her or the findings of employer’s investigation.

When is a voluntary layoff not voluntary? – When it is offered as an alternative to downsizing

Philadelphia Regional Port Authority, 191 A.3d 68 (Commonwealth Court, July 20, 2018). A Claimant who voluntarily accepted an incentive payment to be laid off was still eligible for benefits, because it was prompted by a memorandum from the employer that it planned to reduce its work force by 30% “across all levels and functional areas.”

When is a voluntary quit not for compelling and necessitous reasons? – When it is based upon “personal preferences” rather than circumstances beyond the claimant’s control

Leason, 108 A.2d 509 (Commonwealth Court, November 21, 2018). Claimant argued he was compelled to quit his position because his spouse accepted a full time position as an art teacher in another state. Claimant was denied benefits, because his spouse’s decision to relocate was motivated by her own desire to better utilize her training and

obtain better pay and not as a result of her employer's decision or some circumstance beyond her control.

For additional information contact Bob McTiernan or any of our Labor & Employment lawyers.