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Observations on Unemployment Compensation Payments

John P. Thomas

OBSERVATIONS ON UNEMPLOYMENT COMPENSATION PAYMENTS

Unemployment Compensation payments to claimants whose eligibility for payment and/or availability for work is questionable impose a burden upon the Unemployment Compensation Fund of approximately $40 million a year. Critics of the law as it has been interpreted decry such payments, called "loophole payments". They insist that legislation be enacted in order to preclude them.

The Pennsylvania Unemployment Compensation Law, enacted in 1936 through the inducement of, and in conformity with, the Federal Government's Social Security Act, has been the subject of controversy from the date of its enactment to the present day. Its constitutionality has been vigorously attacked [1] and its purpose and policy severely criticised. However, most of its adversaries, who have attacked the use of the police power for such sociological reform, have either fallen into silence or revised their thinking in the face of strict adherence by the lawmaking bodies to the principles behind the law.

During the recent recession unemployment compensation laws were given credit by Federal Government Economists for alleviating the economic hardship which accompanies unemployment, thereby helping to prevent a major depression. In order to fulfill their share of this task, the administrators of the Pennsylvania fund extended payment to half again the number of weeks to which a claimant is ordinarily entitled. This fact, along with chronic unemployment in four major areas of the Commonwealth, caused a serious depreciation of the reserve fund.

The depletion of the fund has caused critics to seek revisions in the law in order to stop payments which are technically within the law, but outside its stated purpose. These "loophole payments" concern persons who, although unemployed, are not honestly seeking new employment and who are removed from the labor market, but are still drawing jobless benefits. It is the purpose of this article to discuss some of the loopholes which make this possible. A necessary pre-requisite to such discussion is a knowledge of the provisions of the law pertaining to eligibility and those dealing with policy and interpretation.[2]

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[1] Boyerstown Burial Casket Co. v. Commonwealth, 366 Pa. 574, 79 A.2d 449 (1951); Commonwealth v. Perkins, 342 Pa. 529, 21 A.2d 45 (1941), *aff'd* 314 U.S. 586 (1942).

[2] The Declaration of Public Policy is as follows:

Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of the Commonwealth. Involuntary unemployment and its resulting bur-

In general the law limits payments to persons unemployed through no fault of their own, and to those who are in good faith able and available for suitable work.

The Courts have used the public policy provisions of the act as a corollary to specific provisions. In *International Furniture Company v. Unemployment Compensation Board of Review* it was said:

> (Declaration of Public Policy of unemployment compensation law) "must be considered in construing every provision of the statute and in determining eligibility for benefits in every case." [3]

But there sometimes is a conflict as to just which way the policy was intended to lead the courts—a strict administration of the law: [4]

> ". . . his resulting idleness while receiving retirement income is not the type of economic insecurity due to involuntary unemployment without fault which was within the contemplation of the legislature in the enactment of the Unemployment Compensation Law."

or a more relaxed administration: [5]

> ". . . the cardinal principle under which the Unemployment Compensation Act is administered is that an employee in covered employment can be denied its benefits only by explicit language in the act which clearly and plainly excludes him."

The qualifications for claimants are generally based upon wages earned, time worked previous to filing, registration for work, ability to perform and availability for suitable work, and *good faith.*[6]

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den of indigency falls with crushing force upon the unemployed worker, and ultimately upon the Commonwealth and its political subdivisions in the form of poor relief assistance. Security against unemployment and the spread of indigency can best be provided by the systematic setting aside, of financial reserves to be used as compensation for loss of wages by employes during periods when they became unemployed through no fault of their own. The principal of accumulation of financial reserves, the sharing of the risks, and the payment of compensation with respect to unemployment meets the needs of protection against the hazards of unemployment or indigency. The Legislature therefore declares that in its considered judgment the public good and the general welfare of the citizens of the Commonwealth require the exercise of the police power of the Commonwealth in the enactment of this act for the compulsary setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own. PA. STAT. ANN. tit. 43, § 752 (1952).

[3] 185 Pa. Super. 235, 239, 138 A.2d 207, 209 (1938).

[4] Warner Company v. Unemployment Compensation Bd. of Review, 186 Pa. Super. 186, 190, 142 A.2d 739, 740 (1958).

[5] Bliley Electric Co. v. Unemployment Compensation Bd. of Review, 158 Pa. Super. 548, 559, 45 A.2d 898, 904 (1946).

[6] The qualifications for securing unemployment compensation payments are contained in PA. STAT. ANN. tit. 43, §§ 801, 802 (1952). The following are the applicable provisions of these sections.

> Sec. 801 Compensation shall be payable to any employe who is or becomes unemployed, and who—
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> (a) Has, within his base year, been paid wages for employment equal to not less than thirty (30) times his weekly benefit rate;

The loophole claimants who will be discussed in this article are those unemployed by reason of retirement or pregnancy, married women who have left their employment to live with their husbands, and "Double Dippers" (claimants who register for a second round of benefits on the basis of the same lay-off used in the first round).

RETIRED WORKERS

More than half the reported loophole payments each year are made to retired workers. In the second calendar quarter of 1958, although the amount of unemployment compensation paid was extremely high, retired workers collected six cents of every dollar paid.[7]

It was in 1950, fourteen years after the enactment of the law, that a decision was first rendered by an appellate court on the question of eligibility of a person receiving a pension.[8] At that time no other appellate court of any jurisdiction had been called upon to meet the problem. The Pennsylvania Superior Court, in remanding the case, declared that the receipt of pension payments alone would not be sufficient to disqualify a claimant from unemployment compensation benefits. The court likened pension benefits to receipts from private investments, but cautioned that it would be another question if the pension plan under which the claimant was drawing benefits had provisions which would force him to choose between the pension and further employment.

(b) Has registered for work at, and thereafter continued to report at, an employment office in accordance with such regulations as the secretary may prescribe. . . .
(d) Is able to work and available for suitable work. Provided, that a claimant shall be conclusively presumed to be unavailable for work with respect to any week of unemployment after seven and one-half months of pregnancy and until after thirty days of confinement.
(e) Has been unemployed for a waiting period of one week. . . .
(f) Has, Subsequent to his voluntarily leaving work without good cause or to his discharge or suspension from work for willful misconduct connected with his work, been paid remuneration for services in an amount equal to or in excess of eight (8) times his weekly benefit rate irrespective of whether or not such services were in "employment" as defined in this act.

Sec. 802 Ineligibility of Compensation

An employe shall be ineligible for compensation for any week—
(a) In which his unemployment is due to failure, without good cause, either to apply for suitable work at such time and in such manner as the department may prescribe, or to accept suitable work when offered to him by the employment office or by any employer, irrespective of whether or not such work is in "employment" as defined in this act: Provided, that such employer notifies the employment office of such offer within three (3) days after the making thereof.
(b) In which his unemployment is due to voluntary leaving work without cause of a necessitous and compelling nature. . . .
("Employment" as defined in the acts is to include those jobs which have been designated by the legislature as covered employment.)

[7] Pennsylvania Chamber of Commerce, Legislative Spotlight (January, 1959).
[8] Keystone Mining Co. v. Unemployment Compensation Bd. of Review, 167 Pa. Super. 256, 75 A.2d 3 (1950).

Since this decision there have been other restrictions imposed upon payment of benefits to a retired worker. A claimant cannot *voluntarily* retire and collect jobless pay,[9] nor can he be eligible for unemployment compensation if he retires as a result of a collective bargaining agreement which makes retirement mandatory.[10] The theory in the latter case is that the union is his agent and signs the contract for him. Therefore he is a party to the contract and he has agreed to retire. In this case the court held his retirement voluntary, in the legal sense, and precluded him from asserting involuntary unemployment.

A retired claimant's unemployment must be involuntary, both actually and legally, or the result of a "necessitous and compelling reason".[11] Many claimants, in order to qualify under "necessitous and compelling", complain to the employer that their particular job is affecting their health. If they are not given more suitable work, they leave the employment, collect the pension benefits and apply for unemployment compensation. The claimant's burden of demonstrating that he is "able and available for suitable work" [12] is fulfilled by having his physician complete a form provided by the bureau concerning his physical capacities. It is a rare case indeed where a claimant's own physician will find that he is unable to do any kind of work.

Those who are disqualified because their retirement is voluntary (legally or actually) can remove the disqualification, and receive benefits based upon wages earned in the position from which they are retired, by earning eight times the weekly benefit rate to which they would have been entitled had there been no disqualification.[13] The work is not required to be in "covered employment" (employment of the type necessary to qualify for benefits), so it is relatively easy for the claimant to obtain such employment. Some of these persons obtain seasonal work of an agricultural nature. When the work ends the claimant is unemployed because of "lack of work" and, since the maximum unemployment compensation rate is $35 per week, $280 (eight times $35) is the most that he must earn to remove the disqualification.

Since the first Pennsylvania decision, Connecticut and New Jersey have faced the basic problem of whether retired workers who received pensions should be entitled to benefits. The Connecticut court held that the claimant

[9] Hall v. Unemployment Compensation Bd. of Review, 160 Pa. Super. 65, 49 A.2d 872 (1946); Campbell Unemployment Compensation Case, 180 Pa. Super. 74, 117 A.2d 799 (1955); PA. STAT. ANN. tit. 43, § 802(b) (1953).

[10] Warner Company v. Unemployment Compensation Bd. of Review, 186 Pa. Super. 186, 142 A.2d 739 (1958).

[11] PA. STAT. ANN. tit. 43, § 802(b) (1953).

[12] PA. STAT. ANN. tit. 43, § 801(d) (1953).

[13] PA. STAT. ANN. tit. 43, § 801(f) (1953).

was not entitled to benefits while he was receiving pension payments.[14] The court reasoned that the pension payments served the same purpose as wages and were a substitute for wages that had been lost due to unemployment. This was sufficient to disqualify him although pension payments do not come under the meaning of the term "wages" as used in their unemployment compensation law.

The New Jersey court refused benefits to one who retired pursuant to a collective bargaining agreement which made retirement mandatory.[15] In that case there was *dicta* to the effect that it was not the purpose of the law to render assistance to a planned retirement program. But, in the same year, a claimant who left work for good cause and collected a pension was allowed unemployment compensation benefits by the New Jersey court.[16] The court stated that the fact that he was collecting a modest pension did not conclusively establish that he was not able, ready, or willing to work.

It would seem that the New Jersey courts have achieved the same result as Pennsylvania. The Connecticut court, however, refuses to recognize the analogy between pension payments and receipts from income producing property or other private means. Their position is that pension payments preclude unemployment compensation payments.

Pregnant Women

According to the statute a pregnant woman will be considered eligible for unemployment compensation benefits except for a period of approximately two and one-half months before the birth and thirty days afterward.[17] Of course the pregnant woman is required to meet the other requirements of the Act pertinent to eligibility, but, as with pensioners, this burden is light.

To avoid having her severance from employment considered voluntary the pregnant woman requests lighter work commensurate with her condition. If there is none available she leaves her employment for "necessitous and compelling" reasons. The fact that she is narrowly restricted in her availability for employment, both because of her inability to perform certain tasks and the natural reluctance of employers to hire a pregnant woman, has no effect upon her qualification. Indeed, the statute, by specifically authorizing payments to pregnant women until a certain time, precludes any such contention.

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[14] Kneeland v. Administrator, Unemployment Compensation Act, 138 Conn. 630, 88 A.2d 376 (1952).

[15] Campbell Soup Co. v. Bd. of Review, 24 N.J. Super. 311, 94 A.2d 514 (1953).

[16] Krauss v. A & M Karagheusian Inc., 24 N.J. Super. 277, 94 A.2d 339 (1953). Claimant received $10.90 per month pension.

[17] Pa. Stat. Ann. tit. 43, § 801(d) (1953).

However, since the Pennsylvania Superior Court's decision in the claim of Lois Rainbow Smith, decided on January 2, 1959, it is possible that most, if not all, pregnant women will be precluded from benefits by way of company policy.[18] In the *Smith* case the claimant was informed at the time she began her employment that there was a company policy prohibiting women from working beyond their fifth month of pregnancy. Later she signed a statement to the effect that she had been informed of all company policies and agreed to abide by them. The court decided that her agreement to abide by the regulations became a condition of her employment. Her subsequent unemployment due to pregnancy was therefore declared voluntary within the meaning of the unemployment compensation law.

In effect the court decided that an employer's policy, universally enforced, of which claimant has been notified will, if violated, cause pregnant claimants to be declared ineligible for benefits. The court ruled that the policy was intended to safeguard and protect employees in such a physical state from possible accident, not only while working but from conditions arising out of and incidental to the employment, and therefore was a reasonable condition. To the contention that this was doing indirectly what could not be done directly, i.e., forcing an employee to sign away rights to unemployment compensation in violation of the statute,[19] the court answered that since this was a legitimate condition of employment it was not the type meant to be barred.

In support of the contention that no pregnant women should be allowed to receive benefits, it has been asserted that they are not in the class of persons intended to be protected from the hazards of unemployment. Since they are so restricted in their availability for work it is a near certainty that they will be unable to procure work and will receive benefits for the entire period covered by the statute. Also, it is claimed, most of them are not honestly seeking work after the birth of the child, but merely drawing benefits as long as they can while avoiding proffered employment.

On the other hand, this latter contention is a matter of fact in the individual case. Supporters of the payment of benefits contend that pregnant women *are* of the class intended to be protected. They point to the Declaration of Public Policy, which states that economic insecurity due to unemployment and the resulting burden of indigency is to be prevented, and protest

[18] Smith v. Unemployment Compensation Bd. of Review, 187 Pa. Super. 560, 146 A.2d 59 (1958). Allocatur was allowed to the Pennsylvania Supreme Court. As of this writing the case has not been decided.

[19] PA. STAT. ANN. tit. 43, § 801 (1936). This section provides that no employer shall require a waiver of unemployment compensation as a condition of employment.

that pregnancy is more the result of natural law than it is individual whim. They maintain that the rigors of unemployment are even harder to withstand when pregnant, and that employers should not be allowed to control the denial of benefits on the basis of unilateral lay-off rules in pregnancy cases; that it is unfair to allow arbitrary dismissal for a sustained period of someone who is both able and willing to continue in her work. The legislature, it is asserted, in setting time limits for the drawing of benefits by pregnant claimants meant to rule out only those who could no longer work because of pregnancy.

MARRIED WOMEN

A married woman who leaves her employment in order to live with her husband has been adjudged by the courts as not being disqualified from unemployment compensation by reason of her leaving. The first two cases in which this view was maintained, *Teicher Unemployment Compensation Case* [20] and the *Sturdevant Unemployment Compensation Case,*[21] concerned women who had left defense jobs during the Second World War in order to join their husbands who were in the armed forces. In the former the claimant was disqualified in spite of the court's ruling on the validity of her reason for leaving her employment because she removed herself from the labor market by moving to an army post. Justification for the ruling in the *Sturdevant* case was found in the *dicta* of the *Teicher* holding, in the legal right of the husband to select the marital domicile and in the corresponding duty of the wife to reside with him. Compliance with that duty was held to satisfy the requirement of "good cause" for leaving employment. To further buttress this interpretation of the statutory requirement, the court pointed out that at a time when other jurisdictions were changing the wording of their statutes to avoid this meaning, the Pennsylvania General Assembly, in response to a call from Governor James to liberalize the unemployment compensation law, used the words "good cause". And, after the court had made its decision in the *Teicher* case, the legislature amended that section of the act but retained the words "good cause".[22]

These decisions have been the subject of severe criticism, and have been singled out for rebuke by both the Supreme and Superior courts of Pennsyl-

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[20] 154 Pa. Super. 250, 35 A.2d 739 (1943).

[21] Also known as Blilley Elec. Co. v. Unemployment Compensation Bd. of Review, 159 Pa. Super. 548, 45 A.2d 898 (1946).

[22] PA. STAT. ANN. tit. 43, § 802(b) (1953). A later amendment took out "good cause" and substituted "necessitous and compelling." As a result the bureau stopped payments to married women who had left work to be with their husbands, but the policy was subsequently reversed and benefits to such claimants are now being paid.

vania.[23] It would seem that a case arising on the above principle would be overruled, but when deciding the *In Re Mills Unemployment Compensation* Case,[24] the Superior Court ruled that the Supreme Court should pass upon this holding and the case was certified to the Supreme Court, which responded by quashing the writ on the grounds that the Department of Labor had no right to appeal.[25]

As the situation stands the only restriction placed upon this type claimant concerns the labor conditions in the area to which she moves. If there is an adequate opportunity, equal or nearly so, for employment in her particual job skill, benefits will be granted.

Double Dippers

In accordance with the law, unemployment compensation benefits are paid according to wages earned by the claimant during his "base year". "Base year" is defined in the law as ". . . the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year." [26]

With payments contingent upon wages earned during the "base year", and the "base year" ending three to six months prior to the date of the claim, many claimants are eligible, after the expiration of thirty weeks of benefits, to apply for additional compensation since they have worked during some part of the "base year" in operation at the time of the second application. For example: a claimant whose last day of work was October 30, 1957, and who applied for benefits on November 1, 1957, would have a base year upon which to claim, from July 1, 1956, through June 30, 1957. Then, if he was still unemployed on November 1, 1958, even though he has drawn the maximum of thirty weeks' benefits, he can file for compensation and the base year in operation at that time is July 1, 1957, thru June 30, 1958, a part of which he was employed. He will be entitled to draw more benefits.[27] Such a claimant is called a Double Dipper.

The most discouraging feature of the Double Dipper loophole is the tendency of other loophole claimants to reach into the second round of benefits, strongly indicating the validity of the contention that the loophole claimants are in reality out of the labor market. Approximately thirty-three per-

[23] Sun Shipbuilding & Dry Dock Co. v. Unemployment Compensation Bd. of Review, 358 Pa. 224, 56 A.2d 254 (1948); Edwards v. Unemployment Compensation Bd. of Review, 184 Pa. Super. 262, 132 A.2d 897 (1957).

[24] 164 Pa. Super. 421, 65 A.2d 436 (1949).

[25] 362 Pa. 342, 67 A.2d 214 (1949).

[26] Pa. Stat. Ann. tit. 43, § 753 (1951).

[27] Pa. Stat. Ann. tit. 43, § 804 (1955).

cent of retired claimants collecting during the second quarter of 1958 were in their second round. About ten percent of the women whose unemployment was connected with pregnancy were in their second round. But only two percent of the "laid off" claimants were in their second round.[28]

CONCLUSIONS

Although the accident of date is determinative of many rights and duties under our system of law where there is no other feasible method of administering those facets of the law, there is little reason for the legislature to allow the continued use of the formula outlined above in the payment of benefits. To permit this is an encouragement to certain claimants to resist employment rather than actively seek it. If the intention of the legislature is to allow thirty weeks' benefits, then the statute should so state. If the intention is to allow benefits for a longer period, the legislature should so provide, but allowing extra benefits to some who just "happen" to have been laid off near the end of a quarter is, at best, unreasonable.

Concerning the other loophole claimants, it is evident that not all in any particular class lack sincerity of motive. Some, such as the pregnant woman who is able to work and wants to work, find unemployment resulting in a greater financial burden than most normal "laid off" claimants. Others want to continue working but are bound to retire because of a contract made for them concerning which they had little control. The purpose in the enactment of the Unemployment Compensation Law was, as pointed out in the Declaration of Public Policy, to provide security against the burden caused by lack of work, and to keep, as long as possible, the victims of unemployment from becoming wards of the Commonwealth. Legislation to eliminate payments to a particular class because *some* members of the class are improper recipients of payments is no more justified than allowing benefits to all persons, regardless of the reasons for their unemployment.

The menace to the Unemployment Compensation Law, as to most social legislation, lies not in theory, but in abuse. The law, in stating the qualifications for securing benefits, allows its administrators a great deal of discretion in prescribing additional requirements for demonstrating a person's good faith. Requiring a Bureau doctor to pass upon the individual's employment capacity would serve to eliminate those who are not properly members of the labor force. Requiring the claimant to actively seek employment rather than remain passive until referred by the Employment Service would

[28] See note 7 *supra.*

not be unreasonable especially in view of the fact that a claimant is supposed to be available for work at all times during the week for which he is claiming. Requiring claimants, particularly those who cannot be contacted by telephone, to visit the Employment Office more than the once a week necessary to sign for benefits would also help to filter out those individuals who are more interested in a paid vacation than work.

It is suggested that a system whereby claimants are issued two or three cards each week, which are to be signed by employers with whom the claimant has in good faith consulted concerning employment, ought to be established. This would give the Bureau a convenient means of establishing the sincerity of the claimant's motive.

The cooperation of employers in hiring through the Employment Service and in promptly reporting claimants, who refuse suitable work, is necessary to *any* efficient administration of the act. Since it is the employers who are paying the bill, through their contributions to the Unemployment Compensation Fund, and since, by and large, employers are the severest critics of the administration of the Law, such cooperation *should* be forthcoming.

In this, as in all forms of social activity, the pendelum of public thinking vacillates from one extreme of the arc to the other. Rational people recognize that neither extreme is the remedy, for overcorrection of any evil always produces an equal evil as a replacement. Unless the proper corrective measures are taken, public animosity toward the relatively small group of individuals who are abusing the philosophy of Unemployment Compensation may cause legislation which will overcorrect and be grossly unfair to a much larger group of honest people.

JOHN P. THOMAS.