

**THE LEGAL DIFFERENCE BETWEEN A VOLUNTARY QUIT AND A DISCHARGE  
CAN DETERMINE WHETHER THE FORMER EMPLOYEE QUALIFIES FOR  
UNEMPLOYMENT COMPENSATION**

Many unemployment compensation cases require an initial determination as to whether separation from employment was a voluntary quit or a discharge. Often times, it may not be clear if the separation was due to a voluntary quit or a discharge. The claimant has the burden to prove the exact nature of the separation when the manner of separation is in dispute. It is crucial that the nature of the separation be determined so that it is clear where the burden of proof lies. If a claimant was discharged, the burden of proof is on the employer to prove disqualifying conduct by the claimant. However, if the claimant's separation was due to a voluntary quit, the claimant must prove a necessitous and compelling reason for voluntarily terminating employment. The fact-finder will characterize a separation as a quit or discharge based upon the employer's final words or actions or the intent of the claimant or both. Employers should carefully consider arguing alternative theories of separation in close cases. An employer who fails to raise the issue as to whether a claimant was discharged for willful misconduct prior to judicial review of an administrative decision, will be held to have waived the issue. *Wing and King v. UCBR*, 496 Pa. 113, 436 A. 2d 179 (1981).

If an employer's language demonstrates both the immediacy and finality of a termination, the fact-finder will determine that the claimant was discharged. It is important that employers realize that the terms "fired" or "discharged" are not the only words that constitute a termination. A firing may be *inferred* from conduct and expressions such as "pick up your pay," "turn in your key," "pull your time card," "turn in your uniform," or "there's the door". The fact-finder will consider the totality of the situation to determine if the words and actions of the employer had the immediacy and finality of a discharge. For example, a claimant who had injured himself and

who was told by the employer to take time off and if work was available upon his recovery he could come back, did not quit but was discharged and eligible for benefits. *Mallia v. UCBR*, 95 Pa. Comwlth, 419,507 A.2d 1284 (1986). Additionally, an employer's language in view of claimant's inability to meet fruit picking standards constituted a discharge. *Torsky v. UCBR*, 81 Pa. Cmwth, 642, 474 A2d 1207 (1984).

If an employer's language leaves the employee room for choice, the requisite finality is lacking and the employee's separation may constitute a voluntary quit. Where an employer told an employee, "if you don't like it, leave", there is room for choice and the statement lacks finality. For example, where an employer' language was "how would you like to leave here?" the separation was determined not to be a discharge where the claimant's response to the question was to leave. Additionally, an employee was held to voluntarily quit when he left the work site in response to the manger's statement that they could leave if they did not like the work situation and that "as you soon as you walk out from that door, out of my place, you quit the job." *Monaco v. UCBR*, 525 Pa. 41, 565 A.2d 127 (1989).

The fact-finder may also consider whether the claimant demonstrated a conscious intention to quit. Merely leaving the work premises is not sufficient to demonstrate voluntary intent to terminate employment. The claimant must have a conscious intention to leave her employment for the fact-finder to find that a voluntary quit occurred. The claimant's intention must be determined in light of the totality of the circumstances. *Monaco*, 525 Pa. at 46. The claimant's intent often is inferred from the sequence of events during the separation. In a recent case, the claimant left the workplace in a fit of anger one morning and did not return that day nor contact the employer. The claimant was upset because her employer removed a signature stamp from her desk, an instrument that she used to conduct the employer's financial transactions. The

claimant interpreted the employer's actions an accusation of dishonesty. The employer told the other employees that claimant had quit and changed the locks on the facility but did attempt to contact her for 2 ½ hours. There, it was determined that the claimant voluntarily quit her employment by leaving the worksite without taking any steps to preserve her employment relationship. Accordingly, claimant was denied unemployment compensation benefits. *Iaconelli v. UCBR*, 892 A.2d 894 (Pa. Cwmlth 2006). Similarly, a claimant's failure to reclaim her employee badge and return to work was held to be sufficient evidence of her intention to quit, even though she refused to sign a resignation form. *Porter v. UCBR*, 61 Pa. Cmwlt, 505, 434 A.2d 245 (1981). Additionally, a prolonged absence may be regarded as a voluntary termination where the length and circumstances of the absence would indicate an intent to quit. And, failure to return to work or failure to request an extension of a leave of absence once expired may be determined to be a voluntary quit. *Postel v. UCBR*, 61 Pa. Cmwlt. 68, 432 A.2d 1145 (1981).

It is absolutely crucial that the employer raise the issue of the nature of separation in a close case. If it is demonstrated that an employee voluntarily quit her employment, the burden of proof falls upon the claimant to demonstrate compelling and necessitous reasons for the quit. If the employer clearly terminated the employee, then the employer's case should focus on demonstrating that the claimant engaged in disqualifying conduct.

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