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Labor Law - Unemployment Compensation - Voluntary Termination of Employment

Christine M. Gass

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LABOR LAW — UNEMPLOYMENT COMPENSATION — VOLUNTARY TERMINATION OF EMPLOYMENT — The Supreme Court of Pennsylvania held that a claimant who is justifiably demoted and subsequently terminates his employment is not entitled to receive unemployment compensation.

Allegheny Valley School v. Pennsylvania Unemployment Compensation Bd., 697 A.2d. 243 (Pa. 1997).

Section 802(b) of Pennsylvania's unemployment compensation law¹ prohibits the granting of benefits to anyone who voluntarily terminates his employment without a "necessitous and compelling reason."² The legislature enacted section 802(b) to provide economic security to those persons unemployed through no fault of their own.³

On January 13, 1992, Darrell Callwood ("Callwood") began working for Allegheny Valley School ("Allegheny Valley") as an assistant house manager.⁴ Early in his employment, management notified Callwood of deficiencies in his performance.⁵ He was subsequently demoted from his position as assistant house manager and offered two alternate positions within Allegheny Valley.⁶

1. 43 PA. CONS. STAT. ANN. § 802(b) (1991 & West Supp. 1998). Section 802(b) provides, in pertinent part, "an employee shall be ineligible for compensation in any week — . . . (b) In which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature." *Id.*

2. *Allegheny Valley School v. Pennsylvania Unemployment Compensation Bd.*, 697 A.2d. 243, 248 (Pa. 1997). A "necessitous and compelling" cause is one which results from circumstances which produce pressure to terminate employment that is both real and substantial, which would compel a reasonable person under the circumstances to act in the same manner. *Taylor v. Unemployment Compensation Bd.*, 378 A.2d 829 (Pa. 1977).

3. *Allegheny Valley*, 697 A.2d at 247-48. The court recognized that economic insecurity is a serious menace to the general welfare of the Commonwealth. Therefore, the purpose of section 802 is to alleviate economic pressure and provide economic reassurance to those who are involuntarily unemployed or are idle through no fault of their own. *Id.*

4. *Id.* at 245. Allegheny Valley is an institution that provides for the care and education of developmentally disabled individuals. *Id.*

5. *Id.* The supervisors' complaints concerning Callwood's work performance included Callwood's failure to follow established routines, his inability to deal effectively with staff, his failure to use good judgment in his work, his deficiency in reporting information in a timely manner, and his inability to carry out his job responsibilities in a consistent and professional manner. *Id.*

6. *Id.* The alternate positions offered Callwood by Allegheny Valley were house manager aide or developmental care specialist. Both positions required Callwood to accept a reduction in salary of approximately \$4,000 per year. *Id.*

Callwood refused both offers, terminated his employment, and filed for unemployment compensation benefits with the Office of Employment Security ("OES").⁷

Allegheny Valley appealed OES' grant of benefits and the appeal was assigned to an unemployment compensation referee who affirmed the OES decision.⁸ Allegheny Valley appealed the referee's decision to the Unemployment Compensation Review Board ("Board"), which again affirmed.⁹ Next, Allegheny Valley appealed the Board's decision to the Commonwealth Court of Pennsylvania, which held that when a claimant's demotion is justified due to poor performance, the claimant may still receive benefits if he can show that he made a good faith effort to perform his job, or that his conduct did not rise to "willful misconduct."¹⁰ The Supreme Court of Pennsylvania granted allocatur to establish the factors that must be considered in determining whether a claimant had a necessitous and compelling reason for terminating his employment.¹¹ The court found that the facts did not support a finding that Callwood had a necessitous and compelling reason.¹²

A majority of the court recognized that voluntary termination of employment is not a complete bar to receiving unemployment compensation if one can show a necessitous and compelling reason for the termination.¹³ The court, however, rejected the argument

7. *Id.*

8. *Allegheny Valley*, 697 A.2d at 246. Both the Office of Employment Security and the referee concluded that Callwood's demotion and reduction in pay were necessitous and compelling reasons, thereby justifying voluntary termination. *Id.*

9. *Id.* The Board concluded that Callwood had worked to the best of his ability and the demotion and reduction in pay were unreasonable and unjustified. *Id.*

10. *Id.* In determining whether Callwood was entitled to benefits, the court applied a two-part test. First, the court must determine if the reason for demotion was unjustified, and if the answer is yes, no further inquiry is required, and the claimant is entitled to benefits. If the demotion was justified, the factfinder must determine whether the changes in the terms and conditions of employment were reasonably related to the reasons for demotion (citing *Old Forge Bank v. Unemployment Compensation Bd.*, 666 A.2d 761 (Pa. 1995)).

11. *Id.* "Allocatur" is the allowance of a writ or order. BLACK'S LAW DICTIONARY 49 (6th ed. 1991).

12. *Id.* (citing *Zerbe v. Unemployment Compensation Bd.*, 681 A.2d 740 (Pa. 1996)). In *Zerbe*, the court noted that the scope of review from an appeal of an adjudication of the Board is limited to determining whether a constitutional right has been violated, whether an error of law has been committed, or whether there is substantial evidence to support factual findings. *Id.*

13. *Allegheny Valley*, 697 A.2d at 248 (citing *Taylor v. Unemployment Compensation Bd.*, 378 A.2d 829 (Pa. 1977)). In *Taylor*, the supreme court held that a necessitous and compelling reason for termination of employment existed when "the pressure of real not imaginary, substantial, not trifling, reasonable not whimsical, circumstances compel the decision to leave employment." *Id.* at 832-33. The court reasoned that, in such circumstances,

that even if an employer were justified in demoting an employee, the employee may still be entitled to unemployment compensation.¹⁴ The court reasoned that a person should not reap unemployment benefits if the termination of his or her employment arose through his or her own fault.¹⁵ In addition, the court noted that forcing an investigation of factors other than the justification of demotion would have a chilling effect on an employer's right to maintain competent workers.¹⁶ Therefore, since Callwood had a history of poor job performance, the supreme court held that his demotion was justified and reversed the order granting him unemployment benefits.¹⁷

Justice Cappy dissented from the majority's application of section 802(b) of Pennsylvania's unemployment compensation law.¹⁸ Specifically, the dissent found that the majority's decision to consider only the justification of demotion before granting benefits was inconsistent with Pennsylvania's unemployment compensation law.¹⁹ Moreover, Justice Cappy stated that the new test promulgated by the majority did not give deference to various circumstances, other than demotion, which may require a person to terminate employment.²⁰ Justice Cappy concluded that the

although the termination decision was made by the employee, it was involuntary because it was compelled by forces beyond the worker's control. *Id.*

14. *Allegheny Valley*, 697 A.2d at 247. The supreme court expressly overruled *Old Forge Bank v. Unemployment Compensation Bd.*, 666 A.2d 761 (Pa. Commw. Ct. 1995). The supreme court held that if an employee is demoted for legitimate business reason, voluntary termination of his employment will make him ineligible for unemployment compensation. *Id.* at 766. Conversely, if an employee is unjustly demoted, he is entitled to compensation. *Unemployment Compensation Bd. v. Tune*, 350 A.2d 876 (Pa. 1976).

15. *Allegheny Valley*, 697 A.2d at 247-48. The court reiterated the policy behind the enactment of section 802, providing economic maintenance to those who are unemployed through no fault of their own. The court stated that if an employee's demotion was justified, he has neither a necessitous nor compelling reason for terminating his employment since the change of job responsibility and reduction of salary were his own fault. *Id.*

16. *Id.* (citing *Southeastern Pa. Trans. Auth. v. Unemployment Compensation Bd.*, 531 A.2d 60 (Pa. Commw. Ct. 1976), *overruled by Old Forge Bank v. Unemployment Compensation Bd.*, 666 A.2d 761 (Pa. Commw. Ct. 1995), *overruled by Allegheny Valley School v. Unemployment Compensation Bd.*, 697 A.2d 243 (Pa. 1997)). An employer can demote an employee for any valid reason. *Id.* To require an investigation of any other factor, aside from justification of demotion, allowing the award of unemployment compensation would force employers to retain incompetent workers or be liable for benefits. *Id.*

17. *Allegheny Valley*, 697 A.2d at 249.

18. *Id.* (Cappy, J., dissenting). Justice Cappy was joined in dissent by Justice Nigro. *Id.*

19. *Id.* Justice Cappy asserted that the prior test applied by the appellate court allowed an employer to demote an employee, yet still provided the employee who is working to the best of his ability with economic assurance. *Id.*

20. *Id.* at 250. Justice Cappy identified other life factors which may force an employee to terminate his employment, including legal duties and family obligations. *Id.* (citing

majority's policy concerns were without merit because they allowed unemployment compensation only if an employee can show that his demotion was unreasonable. Such a decision left no safe haven for the employee who worked to the best of his ability, but was forced to terminate his employment because of circumstances beyond his control.²¹

The United States' Unemployment Compensation Act originated in English social welfare legislation.²² Using the British insurance model, the United States Social Security Administration published selected portions of England's unemployment insurance act that served as a basis for the American compensation plan.²³ Congress' enactment of the Unemployment Compensation Act in 1935 induced the states to do the same.²⁴ Pennsylvania adopted a system of unemployment compensation in 1937.²⁵ The Pennsylvania legislature enacted the Unemployment Compensation Act to combat the indigence that falls on the unemployed worker.²⁶ The legislature believed that the most efficient way to guard against this threatened poverty was to set aside financial reserves to provide economic sustenance to those who became unemployed through no fault of their own.²⁷ The concept of "no fault" was stressed further

Philadelphia Parking Authority v. Unemployment Compensation Bd., 654 A.2d 280 (Pa. Commw. Ct. 1995)). The dissent asserted that in deciding whether an employee has a necessitous and compelling reason for terminating his employment, a court must examine the impact of the pressuring situation upon the employee. *Id.* at 282.

21. *Allegheny Valley*, 697 A.2d at 251. Justice Cappy rejected the majority's holding that looking into factors beyond justification for demotion will cause employers to retain incompetent workers for fear of being subject to claims for unemployment. *Id.* The dissent countered the majority's policy argument by noting that an employee who is justifiably demoted has never been able to retain benefits, and employers have always had the option of terminating incompetent workers. *Id.*

22. *Bliley Electric Co. v. Unemployment Compensation Bd.*, 45 A.2d 898 (Pa. 1946). England was the first common law country to develop unemployment compensation insurance as a form of social obligation to employees. *Id.* at 901.

23. *Id.* at 901 n.1. In 1938, the Social Security Administration published *Benefit Decisions of the British Empire: A Codification and Text of Selected Decisions*. The volume contains 759 decisions by the Umpire under the British unemployment insurance acts. They were selected with special reference to the problems created by the provisions in the various American acts, and have provided the foundation for much of the administrative law on the subject. *Id.*

24. *Id.* at 901.

25. 43 PA. CONS. STAT. ANN. § 751 (1991 & West Supp. 1998).

26. 43 PA. CONS. STAT. ANN. § 752 (1991 & West Supp. 1998). The Unemployment Compensation Act was created to promote the general welfare of the citizens of the Commonwealth. *Id.* It was the widely held belief that economic insecurity due to unemployment bred indigency, and providing economic sustenance to those involuntarily unemployed would combat this destitution. *Id.*

27. *Id.*

in the act's comment on the ineligibility of one who has voluntarily terminated employment to collect compensation.²⁸

In the 1938 case of *Department of Labor and Indus. v. Unemployment Compensation Bd.*,²⁹ the court addressed the meaning of "voluntary termination," which renders a claimant ineligible for benefits.³⁰ The court held that the word "voluntarily" refers to leaving work through one's own motion — not through discharge or dismissal.³¹ The court further noted that a "voluntary act" is the antithesis of one forced upon the employee by extraneous factors.³² In determining whether benefits should be awarded, the court stated that compensation should be withheld only when the cause of leaving employment cannot be attributed to reasonable objective factors.³³

In 1942, the legislature revisited section 802(b) of the Unemployment Compensation Act, and codified the notion that one who voluntarily terminates his employment can only receive benefits upon a showing of good cause.³⁴ The phrase "good cause" was interpreted by the supreme court, in 1946, in *Bliley Elec. Co. v. Unemployment Compensation Bd.*³⁵ In addressing the issue of whether a married woman's desire to leave work and tend to her ailing husband constituted a valid reason for terminating employment, the Superior Court of Pennsylvania defined the meaning of "good cause" in the statute.³⁶ The court determined that "when the pressure of real, not imaginary, substantial, not trifling,

28. 43 PA. CONS. STAT. ANN., § 802(b) (1991 & West Supp. 1998).

29. 3 A.2d 211 (Pa. Super. Ct. 1938).

30. *Department of Labor and Indus.*, 3 A.2d at 211. Elbert Elmer terminated his employment after advice from his doctor that his position delivering milk aggravated a rheumatic condition. *Id.* at 214. In a companion case, John Priest terminated his employment after being laid off. *Id.* at 215.

31. *Id.* at 213. The court noted that the statute was designed to address those actions, not due to conduct on part of the employer, which sever the employment relation. *Id.*

32. *Id.* at 214. The court noted that any act or disturbing cause which would force one to terminate his employment is involuntary and does not affect entitlement to benefits. *Id.*

33. *Id.* In awarding Elmer benefits, the court held that the influences forcing the claimant to quit his job were not completely subjective. *Id.*

34. 43 PA. CONS. STAT. ANN., § 802(b) (1991 & West Supp. 1998).

35. 45 A.2d 898 (Pa. 1946). Claimant took a leave of absence to visit her husband in the armed forces in South Carolina. *Id.* She then notified her employer that she wished to remain in South Carolina since her husband had been hospitalized. *Id.* Upon her return, the claimant was assigned to lighter work because of her pregnancy; she subsequently terminated her employment. *Id.*

36. *Bliley*, 45 A.2d 898 (Pa. Super. Ct. 1946). The court noted that the concepts of willfulness and intention are associated with voluntariness, but the simple fact that one wills termination does not mean that his leaving was voluntary. *Id.*

reasonable, not whimsical, circumstances compel the decision to leave employment, the decision is voluntary in the sense that the worker has willed it, but involuntary because outward pressures have compelled it."³⁷ In conclusion, the court stated that in determining "good cause," one must look at the factors surrounding the termination. Pressures such as necessity, family obligations, and legal duties clearly justify an employee's termination.³⁸ The *Bliley* court held that because the claimant left employment to care for her sick husband, she had "good cause" for terminating and, therefore, was entitled to benefits.³⁹

In 1955, the legislature again amended section 802(b); this amendment substituted "a cause of a necessitous and compelling nature" for "good cause."⁴⁰ The enactment of the 1955 amendment allowed Pennsylvania courts to exercise discretion in creating a reasonable definition of "necessary and compelling good cause."⁴¹ In *Erie Forge and Steel Corp. v. Unemployment Compensation Bd.*,⁴² the court examined whether an employee who refuses work because he believes that the transfer offered him is not commensurate with his skills or earning capacity has a necessitous and compelling reason for terminating his employment.⁴³ Before answering this question, the court examined the essence of "a necessitous and compelling good cause."⁴⁴ The superior court held that to be classified as "good cause," an employee's conduct must meet the reasonable person standards of ordinary common sense and prudence.⁴⁵ The court also held that a commendable motive for

37. *Id.* at 903.

38. *Id.* The superior court recognized that certain extraneous factors, such as personal and legal obligations may transform voluntary action into involuntary unemployment. *Id.*

39. *Id.* "But in the circumstances she was obliged to make the decision, and her surrender to the compulsion of her legal obligations provided the good cause which justified the voluntary relinquishment of her employment." *Id.*

40. 43 PA. CONS. STAT. ANN. § 802(b) (1991 & West Supp. 1998).

41. *Id.*

42. 115 A.2d 791 (Pa. Super. Ct. 1955), *overruled on other grounds by* Shay v. Unemployment Compensation Bd., 227 A.2d 174 (Pa. 1967).

43. *Erie Forge*, 115 A.2d at 792-93. The facts showed that the claimant was employed as a bricklayer. *Id.* However, due to a lack of work for bricklayers, the claimant was temporarily transferred to the labor department. *Id.* The claimant refused the transfer, terminated his employment, and sought unemployment benefits. *Id.*

44. *Id.* at 794. (citing *Horning Unemployment Compensation Case*, 112 A.2d 405 (Pa. 1955)). Generally, an employee who is out of work through his own action is beyond the reach of the Unemployment Compensation Act. *Horning*, 112 A.2d at 406. Yet, this general rule is qualified since an employee who left his employment may be entitled to benefits if his termination was prompted by good cause. *Id.*

45. *Erie Forge*, 115 A.2d at 794.

leaving employment is not necessarily a "good cause."⁴⁶ Applying this definition, the court held that a refusal to accept a profitable transfer does not make one "involuntarily unemployed" as defined in the act.⁴⁷

In the later case of *Wojciechowski v. Unemployment Compensation Bd.*,⁴⁸ the court addressed the similar issue of whether an assembler who refused work on a riveting machine had a necessitous and compelling cause for ending employment.⁴⁹ The court held that to have a necessitous and compelling reason for terminating employment, certain requirements must be satisfied.⁵⁰ First, the decision to terminate employment must rest on good faith and evince a sincere desire to work and be self-sufficient.⁵¹ Second, one must always be willing to accept proffered work and must have sound and reasonable grounds for refusing employment.⁵² In *Wojciechowski*, the court found that because the claimant refused to try work on the riveting machine, she did not show a sincere desire to be self-sufficient; thus, the termination of her employment did not rest on good faith, and she was not entitled to collect compensation.⁵³

After addressing the general requirements of a necessitous and compelling cause, the court, in *Fegely v. Unemployment Compensation Bd.*,⁵⁴ sought to discover whether circumstances,

46. *Id.* (citing *Sun Shipbuilding & Dry Dock Co. v. Unemployment Compensation Bd.*, 56 A.2d 254, 258 (Pa. 1948) (holding that "a laudable motive for leaving employment and a good cause within the meaning of the Act are entirely different things.")).

47. *Id.*, 115 A.2d at 793. The court recognized that the claimant had an absolute right to terminate his employment; however, the transfer did not constitute a cause which would compel a reasonable person to terminate his employment. *Id.* Therefore, because the claimant had no good cause for terminating his employment, he had not achieved the status of unemployment within the purview of the statute. *Id.*

48. 142 A.2d 756 (Pa. Super. Ct. 1958).

49. *Wojciechowski*, 142 A.2d at 757. Mary Wojciechowski was employed as a toy assembler by American Metal Specialties. *Id.* Because of insufficient assembly work at American Metal, Wojciechowski was referred to the Kemline Manufacturing Company, where she was offered work on a riveting machine. *Id.* Wojciechowski refused the position and filed for unemployment in accordance with section 802(b). *Id.*

50. *Id.* at 758.

51. *Id.* "There can be no 'good cause' which does not rest on good faith. Good faith in this context, embraces not only the merely negative virtue of freedom from fraud but also positive conduct which is consistent with a genuine desire to work and to be self-supporting." *Id.*

52. *Id.* "A claimant who seeks benefits must at all times be ready and willing to accept suitable employment from the employment office or any employer, and must have substantive and reasonable grounds for refusing offered work." *Id.*

53. *Id.*

54. 159 A.2d 574 (Pa. Super. Ct. 1960).

such as demotion, qualify as necessitous and compelling reasons for employment termination.⁵⁵ Relying on precedent,⁵⁶ the court held that a refusal to accept suitable work offered by the same employer does not constitute a necessitous and compelling reason for termination.⁵⁷ The court also explicitly stated that the legislature designed the Unemployment Compensation Act to apply to those persons who refuse proffered work after being involuntarily unemployed, as opposed to those who are gainfully employed and terminate their employment because of mere dissatisfaction with the job tendered.⁵⁸ The court concluded that because the claimant refused suitable work offered by his current employer, his case did not fall within the scope of the Unemployment Compensation Act, and he was not entitled to collect compensation.⁵⁹

In *Unemployment Compensation Bd. v. Tune*,⁶⁰ the court addressed whether a justified demotion constitutes a necessitous and compelling reason for terminating one's employment.⁶¹ The court reiterated the well-settled principle that for a cause to be necessitous and compelling, it must be substantial, real, and reasonable, not imaginary or trifling.⁶² The court also stated that a

55. *Fegely*, 159 A.2d at 575. Fegely was employed by the Westinghouse Electric Company. *Id.* Due to a seniority provision reached in the collective bargaining process between his employer and the union, Fegely could avoid being laid off by accepting a transfer to a job as a machinist's helper. *Id.* Fegely refused this offer because he preferred to stay in his classification as a burner. *Id.*

56. *Id.* at 575. The court cited *Erie Forge and Steel Co. v. Unemployment Compensation Bd.*, 115 A.2d 791 (Pa. Super. Ct. 1955). See *supra* notes 42-47 and accompanying text for a discussion of *Erie Forge*.

57. *Fegely*, 159 A.2d at 575 (citing *Erie Forge and Steel Corp. v. Unemployment Compensation Bd.*, 115 A.2d 791 (Pa. 1955)). In *Erie Forge*, the court stated that one who voluntarily terminates his employment instead of accepting work that is within his capabilities has failed to meet the necessitous and compelling standard for termination. *Erie Forge*, 115 A.2d at 794.

58. *Fegely*, 159 A.2d at 576 (citing *Erie Forge and Steel Corp. v. Unemployment Bd.*, 115 A.2d 791, 793 (Pa. 1955)).

59. *Id.* at 575-76. The court noted that the burden of proving a necessitous and compelling cause is on the employee. *Id.* Because the only testimony offered was that of the employee who refused the position as a machinist's helper because he wished to retain his classification as a burner, the court found that the employee failed to show a necessitous and compelling reason for termination. *Id.*

60. 350 A.2d 876 (Pa. Commw. Ct. 1976).

61. *Tune*, 350 A.2d at 877. Claimant was employed as the Assistant Director of Security. *Id.* During work, an altercation over a gambling debt developed between the claimant and another employee. *Id.* Both employees were suspended and subsequently demoted. *Id.* After serving the suspension, the claimant was asked to return to work as a Security Supervisor; he refused and terminated his employment. *Id.*

62. *Id.* at 877. The court recited the holding of *U.S. Steel Corp. v. Unemployment*

“justified demotion” is one that the employee brings upon himself.⁶³ The court viewed the termination of employment by one who is to blame for his own demotion as equivalent to refusing employment because of mere dissatisfaction with working status — he who voluntarily terminates employment merely because of job dissatisfaction is not entitled to compensation.⁶⁴ The *Tune* court determined that the claimant brought his demotion upon himself and, therefore, did not qualify for benefits.⁶⁵

In 1987, the supreme court, in *Southeastern Pa. Trans. Auth. v. Unemployment Compensation Bd.*,⁶⁶ considered whether an unjustified demotion constitutes a necessitous and compelling cause, thus allowing one to terminate her employment and earn unemployment benefits.⁶⁷ The court explored whether voluntary termination because of the employee’s discontent with a demoted position is a compelling cause, finding that the answer turns on the justification of that demotion.⁶⁸ The court also noted that in certain circumstances, one who is placed in an unsuitable position has a necessitous and compelling reason to quit his employment voluntarily.⁶⁹ In its holding, the court further stated, that although an employee must be willing to accept reasonable changes in job assignment, a change created by an unjust demotion is not reasonable and, therefore, constitutes a necessitous and compelling cause within the purview of Section 802(b) of the Unemployment

Compensation Bd., 333 A.2d 807 (Pa. Commw. Ct. 1975).

63. *Tune*, 350 A.2d at 877.

64. *Id.*

65. *Id.* The court found that the claimant’s participation in an altercation over a gambling debt justified his demotion. *Id.* The court affirmed the decision of the Board denying benefits because the claimant failed to sustain his burden of showing a necessitous and compelling reason for employment termination. *Id.*

66. 531 A.2d 60 (Pa. Commw. Ct. 1987).

67. *Southeastern*, 531 A.2d at 60. Claimant was employed as a Transportation Systems Specialist Complex. *Id.* The claimant was demoted when a new supervisor expressed dissatisfaction with his performance. *Id.* The facts showed that the claimant had a Bachelor’s Degree in Science and Mechanical Engineering, and that he had been employed in the engineering field for over twenty-five years. *Id.* The position offered to the claimant upon demotion required only minimal skill and had been previously held by a bus driver with no engineering experience. *Id.* After several requests for removal from the position, claimant terminated his employment. *Id.*

68. *Id.* at 63. (citing *Frankford Hospital v. Unemployment Compensation Bd.*, 445 A.2d 256 (Pa. Commw. Ct. 1982)). The issue addressed in *Frankford Hospital* was whether an unjustified demotion which causes an employee to terminate his employment constitutes a necessitous and compelling cause, thus allowing the employee to collect unemployment compensation. *Id.*

69. *Id.* at 62 (citing *Shay v. Unemployment Compensation Bd.*, 227 A.2d 174 (Pa. 1967)).

Compensation Act.⁷⁰ The court remanded to determine whether the claimant's demotion was justified, for only an *unwarranted* demotion entitles an employee to benefits.⁷¹

In the recent landmark case of *Old Forge Bank v. Unemployment Compensation Bd.*,⁷² the court revisited the issue of whether a justified demotion serves as an absolute bar to a voluntarily unemployed worker's right to collect unemployment compensation.⁷³ The court held that simply because some discipline may be authorized, employers do not have an unrestrained right to use irrational disciplinary measures against their employees.⁷⁴ Moreover, the court noted that, in investigating claims for unemployment compensation when the employee voluntarily terminates his employment, a court must focus on two inquiries.⁷⁵ Initially, the court must focus on the justification of the disciplinary measure.⁷⁶ If the court establishes that the discipline is warranted, the employer must show that the action taken was reasonable; if not, the court will deem the punishment excessive, allowing an employee to terminate his position and collect benefits.⁷⁷ The court reasoned that the new two-step inquiry furthers the purpose underlying the Unemployment Compensation Act because the process defers to those circumstances that may justify employer

70. *Id.* at 63. The court relied on the *Frankford* and *Tune* decisions in reaching its decision. *Id.*

71. *Id.* at 63-64. The court refused to infer justifiability from the previous findings of fact. *Id.* The court noted that, on one hand it was possible for an engineer with twenty-five years experience to allow his performance to deteriorate, yet in the alternative, it was also possible that the new supervisor merely wanted to replace the claimant with someone more familiar to the supervisor. *Id.*

72. 666 A.2d 761 (Pa. Commw. Ct. 1995).

73. *Old Forge*, 666 A.2d at 763. The facts showed that claimant had a history of absenteeism. *Id.* at 762. As a result of her constant absences, claimant's employer requested medical certification documenting an alleged disability which prevented the claimant from reporting to work as scheduled. *Id.* at 763. The claimant presented a note from her doctor stating that she had been treated for migraine headaches, but the note was devoid of any statement that such headaches prevented her from attending work. *Id.* Employer demoted the claimant to part-time to allow her to correct her medical condition. *Id.*

74. *Id.* at 765. The court reasoned, "While the correlative principle is certainly true, that an unjustified demotion in job position, or reduction in pay will provide good cause for a voluntary termination, simply because some discipline may be justified and warranted does not provide employers with an unbridled leave to take unreasonable disciplinary measures against its employees." *Id.*

75. *Id.* at 767.

76. *Id.*

77. *Id.* The court stated that a "unilateral, substantial, unjustified, or unreasonable change in terms and conditions of employment" will constitute a necessitous and compelling good cause under section 802(b). *Id.*

chastisement, but the employee is not subjected to egregious forms of punishment.⁷⁸ The court held that the reduction in pay that accompanied a demotion to part-time status, was unreasonable and the claimant had a necessitous and compelling reason for terminating her employment.⁷⁹

Following *Old Forge*, an employee justifiably demoted by management may still have a necessitous and compelling reason for terminating employment upon a showing of unreasonable punishment imposed by the employer.⁸⁰ This decision remained in effect until the *Allegheny Valley* court expressly overruled *Old Forge* in favor of the previous rule that a justified demotion serves as a complete bar to compensation.⁸¹

The express public policy underlying the Unemployment Compensation Act and the *Allegheny Valley* decision was correction of the economic insecurity that accompanies unemployment. The key inquiry behind every court decision in which unemployment compensation is the core issue is whether the claimant was unemployed through no fault of his own.⁸²

After *Allegheny Valley*, any person who is justifiably demoted cannot collect compensation. The decision fails to recognize other life factors which may force an employee to terminate his employment. Moreover, the analysis by the supreme court, focusing solely on the justifiability of demotion, does not protect the employee who is working to the best of his ability but is still demoted. As noted by the dissent, the analytical framework chosen by the court allows employers to demote any employee, yet fails to provide employees with any form of restitution.⁸³

78. *Old Forge*, 666 A.2d at 766. The court noted that an employer still has the absolute right to terminate an employee upon a finding of willful misconduct. *Id.* However, the employee who is working to the best of his ability, and is forced to terminate his employment because of circumstances beyond his control, now has a safe haven under which he can voluntarily quit his job and still obtain economic relief provided by the act. *Id.*

79. *Id.* at 767.

80. *Id.*

81. *Allegheny Valley*, 697 A.2d at 248. The court stated, "We therefore, reject the current reasoning of the commonwealth court in *Old Forge*, because it is not an accurate statement of the law. Instead, we adopt the *Tune* line of cases that if a claimant refuses to accept a justified demotion and voluntarily quits, the claimant is ineligible for benefits under Section 802(b)." *Id.*

82. *Id.* at 247-48. The Act was designed to provide financial sustenance to those who were involuntarily unemployed or idle through no fault of their own. *Id.*

83. *Id.* at 249. Justice Cappy noted that in rejecting the comprehensive approach employed by the Commonwealth Court, the court places the employee who is demoted, even though he is working to the best of his ability, in severe danger of being forced to leave his position without remuneration. *Id.* at 249-50.

The supreme court's approach may be too narrow to adequately enforce the policy behind the Unemployment Compensation Act. Observation of the demoted employee's interest suggests two flaws in the majority's opinion. First, the focus on justification for demotion negates the impact of other circumstances that may force an employee to quit his job. That is, the majority's opinion will have a crippling effect on those justifiably demoted employees who are forced to accept such a severe decrease in wages that they can no longer support their families. These employees must either accept the demotion or quit and receive no unemployment relief.⁸⁴ Second, the single element test, applied by the majority, allows an unethical employer to avoid paying unemployment compensation benefits by demoting the employee. Such an employer may demote the employee to a position substantially lower than his or her qualifications merit. Again, the court's opinion forces the employee to accept the position or terminate employment, thus making him ineligible for benefits. This method allows the employer to use demotion as a way to circumvent the purpose of the statute.⁸⁵

On the surface, it is fairly easy to agree with the court's rationale, for it seems logical that an employee not working to full potential, who is subsequently demoted, should not be entitled to benefits when he terminates his employment because of displeasure with the demoted position that he brought upon himself. Further investigation reveals, however, that a more just rule may lie in an analysis that permits examination of the effect of the demotion upon the employee. Through the rule set forth in *Allegheny Valley*, a claimant must select the lesser of two evils, for this decision forces these claimants to either blindly accept demotion or terminate employment and lose their chance to collect unemployment compensation.

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84. *Id.* The dissent stressed the importance of focusing on the impact of the demotion on the respective employee. *Id.*

85. *Allegheny Valley*, 697 A.2d at 250. The dissent reasoned that an employer who demotes an employee to a position of significantly less pay has "constructively discharged" that employee. *Id.* Therefore, affirmation of the rule set forth in *Tune* fails to account for those situations where the employer uses unreasonable demotion as a form of discipline. *Id.*