

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2012



ENROLLED

House Bill No. 4007

(By Delegates Iaquinta, Longstreth, Fleischauer,
Jones, Stephens, Walker and Azinger)



Passed March 9, 2012

To Take Effect Ninety Days From Passage

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H. B. 4007

(BY DELEGATES IAQUINTA, LONGSTRETH, FLEISCHAUER,
JONES, STEPHENS, WALKER AND AZINGER)

[Passed March 9, 2012; to take effect ninety days from passage.]

AN ACT to amend and reenact §21A-6-3 of the Code of West Virginia, 1931, as amended, relating to unemployment benefits for certain spouses of military personnel; providing that an individual who has voluntarily quit employment to accompany a spouse serving in active military service who has been reassigned from one military assignment to another is not disqualified for benefits; and providing that the account of the employer of the individual who leaves employment to accompany a spouse reassigned from one military assignment to another may not be charged for those benefits.

Be it enacted by the Legislature of West Virginia:

That §21A-6-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-3. Disqualification for benefits.

- 1 Upon the determination of the facts by the commissioner,
- 2 an individual is disqualified for benefits:

3 (1) For the week in which he or she left his or her most
4 recent work voluntarily without good cause involving fault
5 on the part of the employer and until the individual returns to
6 covered employment and has been employed in covered
7 employment at least thirty working days.

8 For the purpose of this subdivision, an individual has not
9 left his or her most recent work voluntarily without good
10 cause involving fault on the part of the employer, if the
11 individual leaves his or her most recent work with an
12 employer and if he or she in fact, within a fourteen-day
13 calendar period, does return to employment with the last
14 preceding employer with whom he or she was previously
15 employed within the past year prior to his or her return to
16 workday, and which last preceding employer, after having
17 previously employed the individual for thirty working days
18 or more, laid off the individual because of lack of work,
19 which layoff occasioned the payment of benefits under this
20 chapter or could have occasioned the payment of benefits
21 under this chapter had the individual applied for benefits. It
22 is the intent of this paragraph to cause no disqualification for
23 benefits for an individual who complies with the foregoing
24 set of requirements and conditions. Further, for the purpose
25 of this subdivision, an individual has not left his or her most
26 recent work voluntarily without good cause involving fault
27 on the part of the employer, if the individual was compelled
28 to leave his or her work for his or her own health-related
29 reasons and notifies the employer prior to leaving the job or
30 within two business days after leaving the job or as soon as
31 practicable and presents written certification from a licensed
32 physician within thirty days of leaving the job that his or her
33 work aggravated, worsened or will worsen the individual's
34 health problem.

35 (2) For the week in which he or she was discharged from
36 his or her most recent work for misconduct and the six weeks

37 immediately following that week; or for the week in which he
38 or she was discharged from his or her last thirty-day
39 employing unit for misconduct and the six weeks
40 immediately following that week. The disqualification
41 carries a reduction in the maximum benefit amount equal to
42 six times the individual's weekly benefit. However, if the
43 claimant returns to work in covered employment for thirty
44 days during his or her benefit year, whether or not the days
45 are consecutive, the maximum benefit amount is increased by
46 the amount of the decrease imposed under the
47 disqualification; except that:

48 If he or she were discharged from his or her most recent
49 work for one of the following reasons, or if he or she were
50 discharged from his or her last thirty days employing unit for
51 one of the following reasons: Gross misconduct consisting
52 of willful destruction of his or her employer's property;
53 assault upon the person of his or her employer or any
54 employee of his or her employer; if the assault is committed
55 at the individual's place of employment or in the course of
56 employment; reporting to work in an intoxicated condition,
57 or being intoxicated while at work; reporting to work under
58 the influence of any controlled substance, as defined in
59 chapter sixty-a of this code without a valid prescription, or
60 being under the influence of any controlled substance, as
61 defined in said chapter without a valid prescription, while at
62 work; adulterating or otherwise manipulating a sample or
63 specimen in order to thwart a drug or alcohol test lawfully
64 required of an employee; refusal to submit to random testing
65 for alcohol or illegal controlled substances for employees in
66 safety sensitive positions as defined in section two, article
67 one-d, chapter twenty-one of this code; arson, theft, larceny,
68 fraud or embezzlement in connection with his or her work; or
69 any other gross misconduct, he or she is disqualified for
70 benefits until he or she has thereafter worked for at least
71 thirty days in covered employment: *Provided*, That for the

72 purpose of this subdivision, the words "any other gross
73 misconduct" includes, but is not limited to, any act or acts of
74 misconduct where the individual has received prior written
75 warning that termination of employment may result from the
76 act or acts.

77 (3) For the week in which he or she failed without good
78 cause to apply for available, suitable work, accept suitable
79 work when offered, or return to his or her customary self-
80 employment when directed to do so by the commissioner, and
81 for the four weeks which immediately follow for such
82 additional period as any offer of suitable work shall continue
83 open for his or her acceptance. The disqualification carries
84 a reduction in the maximum benefit amount equal to four
85 times the individual's weekly benefit amount.

86 (4) For a week in which his or her total or partial
87 unemployment is due to a stoppage of work which exists
88 because of a labor dispute at the factory, establishment or
89 other premises at which he or she was last employed, unless
90 the commissioner is satisfied that he or she: (1) Was not
91 participating, financing or directly interested in the dispute;
92 and (2) did not belong to a grade or class of workers who
93 were participating, financing or directly interested in the
94 labor dispute which resulted in the stoppage of work. No
95 disqualification under this subdivision is imposed if the
96 employees are required to accept wages, hours or conditions
97 of employment substantially less favorable than those
98 prevailing for similar work in the locality, or if employees are
99 denied the right of collective bargaining under generally
100 prevailing conditions, or if an employer shuts down his or her
101 plant or operation or dismisses his or her employees in order
102 to force wage reduction, changes in hours or working
103 conditions. For the purpose of this subdivision if any
104 stoppage of work continues longer than four weeks after the
105 termination of the labor dispute which caused stoppage of

106 work, there is a rebuttable presumption that part of the
107 stoppage of work which exists after a period of four weeks
108 after the termination of the labor dispute did not exist because
109 of the labor dispute; and in that event the burden is upon the
110 employer or other interested party to show otherwise.

111 (5) For a week with respect to which he or she is
112 receiving or has received:

113 (a) Wages in lieu of notice;

114 (b) Compensation for temporary total disability under the
115 workers' compensation law of any state or under a similar law
116 of the United States; or

117 (c) Unemployment compensation benefits under the laws
118 of the United States or any other state.

119 (6) For the week in which an individual has voluntarily
120 quit employment to marry or to perform any marital, parental
121 or family duty, or to attend to his or her personal business or
122 affairs and until the individual returns to covered employment
123 and has been employed in covered employment at least thirty
124 working days: *Provided*, That an individual who has
125 voluntarily quit employment to accompany a spouse serving
126 in active military service who has been reassigned from one
127 military assignment to another is not disqualified for benefits
128 pursuant to this subdivision: *Provided, however*, That the
129 account of the employer of an individual who leaves the
130 employment to accompany a spouse reassigned from one
131 military assignment to another may not be charged.

132 (7) Benefits may not be paid to any individual on the
133 basis of any services, substantially all of which consist of
134 participating in sports or athletic events or training or
135 preparing to so participate, for any week which commences

136 during the period between two successive sport seasons (or
137 similar periods) if the individual performed the services in the
138 first of the seasons (or similar periods) and there is a
139 reasonable assurance that the individual will perform the
140 services in the later of the seasons (or similar periods).

141 (8) (a) Benefits may not be paid on the basis of services
142 performed by an alien unless the alien is an individual who
143 was lawfully admitted for permanent residence at the time the
144 services were performed, was lawfully present for purposes
145 of performing the services or was permanently residing in the
146 United States under color of law at the time the services were
147 performed (including an alien who is lawfully present in the
148 United States as a result of the application of the provisions
149 of Section 203(a)(7) or Section 212(d)(5) of the Immigration
150 and Nationality Act): *Provided*, That any modifications to
151 the provisions of Section 3304(a)(14) of the federal
152 Unemployment Tax Act as provided by Public Law 94-566
153 which specify other conditions or other effective date than
154 stated in this subdivision for the denial of benefits based on
155 services performed by aliens and which modifications are
156 required to be implemented under state law as a condition for
157 full tax credit against the tax imposed by the federal
158 Unemployment Tax Act are applicable under the provisions
159 of this section.

160 (b) Any data or information required of individuals
161 applying for benefits to determine whether benefits are not
162 payable to them because of their alien status shall be
163 uniformly required from all applicants for benefits.

164 (c) In the case of an individual whose application for
165 benefits would otherwise be approved, no determination that
166 benefits to the individual are not payable because of his or
167 her alien status may be made except upon a preponderance of
168 the evidence.

169 (9) For each week in which an individual is unemployed
170 because, having voluntarily left employment to attend a
171 school, college, university or other educational institution, he
172 or she is attending that school, college, university or other
173 educational institution, or is awaiting entrance thereto or is
174 awaiting the starting of a new term or session thereof, and
175 until the individual returns to covered employment.

176 (10) For each week in which he or she is unemployed
177 because of his or her request, or that of his or her duly
178 authorized agent, for a vacation period at a specified time that
179 would leave the employer no other alternative but to suspend
180 operations.

181 (11) In the case of an individual who accepts an early
182 retirement incentive package, unless he or she: (i)
183 Establishes a well-grounded fear of imminent layoff
184 supported by definitive objective facts involving fault on the
185 part of the employer; and (ii) establishes that he or she would
186 suffer a substantial loss by not accepting the early retirement
187 incentive package.

188 (12) For each week with respect to which he or she is
189 receiving or has received benefits under Title II of the Social
190 Security Act or similar payments under any Act of Congress,
191 or remuneration in the form of an annuity, pension or other
192 retirement pay from a base period employer or chargeable
193 employer or from any trust or fund contributed to by a base
194 period employer or chargeable employer or any combination
195 of the above, the weekly benefit amount payable to the
196 individual for that week shall be reduced (but not below zero)
197 by the prorated weekly amount of those benefits, payments or
198 remuneration: *Provided*, That if the amount of benefits is not
199 a multiple of \$1, it shall be computed to the next lowest
200 multiple of \$1: *Provided, however*, That there is no
201 disqualification if in the individual's base period there are no

202 wages which were paid by the base period employer or
203 chargeable employer paying the remuneration, or by a fund
204 into which the employer has paid during the base period:
205 *Provided further*, That notwithstanding any other provision
206 of this subdivision to the contrary, the weekly benefit amount
207 payable to the individual for that week may not be reduced by
208 any retirement benefits he or she is receiving or has received
209 under Title II of the Social Security Act or similar payments
210 under any Act of Congress. A claimant may be required to
211 certify as to whether or not he or she is receiving or has been
212 receiving remuneration in the form of an annuity, pension or
213 other retirement pay from a base period employer or
214 chargeable employer or from a trust fund contributed to by a
215 base period employer or chargeable employer.

216 (13) For each week in which and for fifty-two weeks
217 thereafter, beginning with the date of the decision, if the
218 commissioner finds the individual who within twenty-four
219 calendar months immediately preceding the decision, has
220 made a false statement or representation knowing it to be
221 false or knowingly fails to disclose a material fact, to obtain
222 or increase any benefit or payment under this article:
223 *Provided*, That disqualification under this subdivision does
224 not preclude prosecution under section seven, article ten of
225 this chapter.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2012.

Governor