

**[J-61-2012] [M.O. - Baer, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

HAROLD G. DIEHL, JR.,	:	No. 51 MAP 2011
	:	
Appellant	:	Appeal from the Order of the
	:	Commonwealth Court, dated September
v.	:	20, 2010, at No. 2421 CD 2009 affirming
	:	the Order of the UCBR, dated November
	:	10, 2009 at No. B-09-09-F-3990
	:	
UNEMPLOYMENT COMPENSATION	:	
BOARD OF REVIEW (ESAB GROUP,	:	
INC.),	:	ARGUED: May 8, 2012
	:	
Appellee	:	
	:	
	:	
	:	

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: December 28, 2012

I join the majority opinion, including its holding that the voluntary layoff proviso may embrace, in appropriate circumstances, a termination that an employer labels an “early retirement option.” I write separately to elaborate that, regardless of the employer’s characterization of the termination as a retirement option or a layoff, an employee who accepts a qualifying offer will be “otherwise eligible” for compensation only if he remains within the labor pool (i.e., becomes unemployed), and not if he elects to separate from the workforce (i.e., retires). See 43 P.S. §801 (providing that, to be eligible for compensation, an unemployed employee must, inter alia, actively search for employment and be able to work and available for suitable work). In my view, this

determination turns on “the factual matrix at the time of separation,” rather than on the terminology utilized to classify that separation. Warner Co. v. UCBR (Gianfelice), 396 Pa. 545, 551, 153 A.2d 906, 909 (1959) (addressing eligibility for unemployment compensation in the context of a collective bargaining agreement); see also Hussey Copper Ltd. v. UCBR, 718 A.2d 894, 899 (Pa. Cmwlth. 1998) (“[T]he relevant inquiry in determining the cause of a claimant's unemployment is confined to the surrounding circumstances existing at the time of the claimant's departure.”) (citations omitted). As such, and in line with the majority’s suggestion, I believe that this case should be remanded for further findings as to whether Appellant is otherwise eligible for benefits. See Majority Opinion, slip op. at 7 n.5.