

Testimony of Donald Konkle
Pa. Fire and Emergency Services Institute Executive Director

Good Afternoon, I thank Chairman Miller and the members of the committee for inviting me to testify.

PFESI represents Pennsylvania's fire and emergency first responders and their organizations. I have shared HB 927 with the leadership of the fire service and I received very little comment. There has been general support for the bill.

However, we do have two concerns.

First, Section 9 6 (ii) on page 15 states

(ii) The minor has successfully completed a course of training equal to the standards for basic firefighting established by the Department of Education and the Department of Conservation and Natural Resources.

PFESI urges that the Department of Education be changed to read The Office of State Fire Commissioner. This is consistent with current practice.

Second, Section 9 2 (i) on page 16 reads.

(i) Operate high pressure hose lines except during training activities.

WE believe high-pressure hose lines need to be defined. Is it a booster line with 60 pounds pressure or a hydraulic line from the jaws of life at 6000 pounds pressure? PFESI will be happy to work with you to better define this term.

PFESI urges the passage of HB 927. I will be happy to answer any question you may have.

plicity in counsel's failure to appear, the petitioner was prejudiced by the referee's decision to proceed and was entitled to a remand. *Williams v. Unemployment Compensation Board of Review*, 484 A.2d 831 (Pa. Cmwlth. 1984).

Testimony

Witnesses

Where claimant's attorney elected not to have witnesses testify after the referee had questioned the relevance of the testimony, no refusal to permit testimony in contravention of claimant's due process rights has been established. *Wilkins v. Unemployment Compensation Board of Review*, 502 A.2d 283 (Pa. Cmwlth. 1985).

A referee's failure to notify a claimant that the Board could take steps to have a subpoena enforced when claimant's witness failed to appear was harmless error where the witness' testimony, had it been given and had it confirmed all that the claimant had alleged, would only have been cumulative. *Ehmann v. Unemployment Compensation Board of Review*, 483 A.2d 587 (Pa. Cmwlth. 1984).

Unrepresented Claimants

The regulation obligates a referee to inform a claimant of a right to counsel, to aid claimant in the examination and cross-examination of witnesses, and to give claimant assistance compatible with the impartially discharge official referee's duties. *Zimmerman v. Unemployment Compensation Board*, 836 A.2d 1074, 1078 note 5 (Pa. Cmwlth. 2003). The referee's conduct falls short of this standard when referee chastised claimant for not reading (and remembering) the terms of Non Competition Agreement, quarreled with Claimant's description of the Agreement, and, *sua sponte*, objected to Claimant's attempted testimony about employer's treatment of other employees allowed to work in spite of having agreed to a noncompete on grounds of hearsay. *Id.*

The regulation obligates a referee to inform a claimant of a right to counsel, to aid claimant in the examination and cross-examination of witnesses, and to impartially discharge official referee's duties. *Zimmerman v. Unemployment Compensation Board of Review*, 836 A.2d 1074, 1078 note 5 (Pa. Cmwlth. 2003). The referee's conduct falls short of this standard when referee chastised claimant for not reading (and remembering) the terms of Non Competition Agreement, quarreled with Claimant's description of the Agreement, and *sua sponte*, objected to Claimant's attempted testimony about employer's treatment of other employees allowed to work in spite of having agreed to a noncompete on grounds of hearsay. *Id.*

The claimant was provided with written notice of the hearing, which included notice of his rights. The claimant was also advised of his rights by the referee, and was afforded the opportunity to be heard throughout the trial. The referee, however, is not required to assume the role of the claimant's advocate. Therefore, the record reflects that the hearing was fair and impartial, and the claimant was afforded due process. *McFadden v. Unemployment Compensation Board of Review*, 806 A.2d 955 (Pa. Cmwlth. 2002).

The referee has a responsibility to assist a pro se claimant at a hearing so that the facts of the case necessary for a decision may be adequately developed. The referee failed to inform claimant that claimant could have requested a continuance of the hearing in order to secure and present testimony from employer. This evidence would have aided in the development of necessary factual determinations. *Coates v. Unemployment Compensation Board of Review*, 676 A.2d 742 (Pa. Cmwlth. 1996).

By virtue of this regulation, a claimant appearing at the referee's hearing without counsel is entitled to assistance from the referee in the development of the claimant's case and advice as to claimant's basic rights. *Jennings v. Unemployment Compensation Board of Review*, 675 A.2d 810 (1996).