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DIRECTIVE: UNEMPLOYMENT INSURANCE PROGRAM LETTER 13 - 83

TO: ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM: ROYAL S. DELLINGER, Acting Administrator for Regional Management

SUBJECT: Questions and Answers on Implementation of the UCX Amendments of 1982 under P.L. 97-362

1. Purpose. To supply answers to significant questions on the UCX Amendments of 1982, in order to insure uniform implementation of subject amendments.

2. Reference(s). 5 USC 8521, P. L. 97-362, UIPL NO. 9-63, and UCX Handbook.

3. Background. The UCX law, amended by P.L. 97-362, provides significant changes in UCX eligibility requirements for ex-service members.

4. Instructions. The attached questions and answers related to the UCX amendments should be used as a guide in making UCX determinations of eligibility under P.L. 97-362.

5. Action Required. SESAs should provide copies of attached questions and answers to all appropriate staff

6. Inquiries. Direct inquiries to appropriate regional office.

7. Attachment. Questions and answers on UCX amendments of 1982.

QUESTIONS AND ANSWERS ON UCX AMENDMENTS OF 1982 (P.L. 97-362)

A. Federal Service

1. Question. How will an individual's military service as a member of a National Guard or reserve components be identified?

Answer. One of the following entries should appear in item 2 of the claimant's DD Form 214 if the individual was a member of the National Guard or reserve component:

Army: ARNGUS or USAR
Air Force: ANGUS or USAFR
Navy: USNR
Marines: USMCR
Coast Guard: USCGR

2. Question. How can it be determined that an ex-servicemember has completed a "full term of service"?

Answer. When a "full term of service" is completed, the individuals DD Form 214 (item 18, 23, 25 or 28) should have entries, such as "Expiration Term of Enlistment" (ETS), "Expiration Term of Service (ETS), or "Retirement." Form 56-16 is used in lieu of DD Form 214 for commissioned officers of the National Oceanic Atmospheric Administration (NOAA).

If the individual was a member of the National Guard or reserve component, the period of service entered in item 12 of the DD Form 214 must equal 180 days or more to qualify as a full term of service, otherwise, such service is not Federal service for UCX entitlement.

If the DD Form 214 or NOAA Form 56-16 does not clearly indicate that the individual completed a "Full term of service" and the claimant alleges to have done so, use ETA 8-43 to verify such information. (Refer to Chapter VI of UCX Handbook).

3. Question. When an individual has not completed a "full term of service," how will the SESA know if the individual's period of service may be determined as Federal service for UCX entitlement under P.L. 97-362?

Answer. Ex-service members discharged or released under honorable conditions before completing their first full term of active service will have a period of creditable Federal service, if separated:

- A. For the convenience of the Government under an early release program,
- B. Because of medical disqualification, pregnancy, parenthood, or service-incurred injury or disability,
- C. Because of hardship, or
- D. Because of personality disorder or inaptitude, but only if the service was continuous for 365 days or more.

Entries on the Form DD 214 should provide a narrative reason, such as, “for the convenience of the Government”, “because of pregnancy”, “because of hardship”, “because of inaptitude”,

There may be cases when the narrative does not include one of the specific reasons in (a) through (d) above, when in fact the individual was separated for such reason. In such questionable cases, such as, “reason marginal performance”, “because of drug abuse”, and ETA B-43 must be used to verify the claimant’s allegations that his/her separation was for one of the reasons in (a) through (d) above.

The military service may soon furnish narrative reasons on whether an early release does or does not conform with one of the four categories. In the meantime, the ETA 8-43 will be used.

4. Question. May separation program designators (SPDs) be used to determine Federal service under P.L. 97-362?

Answer. SESAs will not use SPDs to determine Federal service under P.L. 97-362. (Refer to item 5.c. (4) of UIPL)

5. Question. How can the determination be made that an individual’s character of service is under honorable conditions?

Answer. Item 24 of the DD Form 214 will show the character of discharge. If such item shows either “Honorable” or “Under Honorable Conditions,” the individual’s period of service is considered as being under honorable conditions.

If “other than honorable”, “bad conduct,” “dishonorable,” or, for an office, “resigned for the good of the service” is shown on DD Form 214, the individual’s period of service is not considered as being under honorable conditions. The Veterans Administration will not be requested to adjudicate “other than honorable” or “bad conduct discharges.” If an individual is dissatisfied with his/her character of discharge, it is his/her responsibility to request the appropriate branch of the military service to reissue a DD Form 214.

For those separated on and after October 1, 1982, and their respective periods of service are less than 180 days, the Department of Defense directed the Armed Forces to enter “Entry Level Separation” in item 24 of the DD Form 214. This entry means that the individual’s character of service was “Under Honorable Conditions”.

6. Question. Once a full term of service is completed, do restrictions on eligibility for completing less than a full term apply to subsequent periods of service?

Answer. No, for subsequent periods of service, eligibility depends only on whether the service was under honorable conditions. The length of the break in service has no effect on eligibility.

B. Monetary Entitlement

1. Question. What is the total amount of UCX benefits payable under the Act, as amended?

Answer. Under the Act, 5 USC 8521 (c) (2) provides that “ the aggregate amount of compensation payable on the basis of Federal service to any individual with respect to any benefit

year shall not exceed 13 times the individual's weekly benefit amount for total unemployment." Refer to item 6a of UIPL No. 9-83.

2. Question. If a UCX claimant had an aggregate amount payable of 13 times his/her WBA with respect to a benefit year, may the claimant establish a new aggregate amount for a subsequent benefit year based on the same period of service?

Answer. No, the total amount of compensation payable for all benefit years established after separation from the military service shall not exceed 13 times the WBA. (Refer to item 6a of UIPL no. 9-83.)

3. Question. If a UCX claimant eligible for 13 x his/her WBA, only received 10 times his/her WBA during the benefit year, may he/she draw additional UCX benefits during a subsequent benefit year?

Answer. No, compensation does not have to be paid to be considered payable. (Refer to item 6a of UIPL No. 9-83.)

4. Question. If an individual exhausted his/her aggregate amount of 13 times WBA, may he/she be paid EB or FSC?

Answer. No, the individual cannot be paid more than 13 times WBA, (Refer to item 6a of UIPL No. 9-83).

5. Question. Can the claimant's WBA be increased to provide the claimant his/her total award in less than 13 weeks?

Answer. No, the claimant's WBA is determined according to State Law.

6. Question. If an individual aggregate amount payable was only 10 times his/her WBA with respect to a benefit year, may he/she establish a new aggregate amount based on a subsequent benefit year?

Answer. Yes, the individual is entitled to the balance of the aggregate amount (3 x WBA) minus any EB or FSC payable.

7. Question. If an individual exhausts a UCX entitlement that is less than 13 x WBA, is the individual eligible for additional UCX under EB or FSC?

Answer. Yes, if the individual is eligible for EB or FSC, as an exhaustee of a UCX claim, the individual may be paid EB or FSC, but not to exceed 13 x WBA for a combination of UCX, EB and FSC.

8. Question. If an individual is separated from the Armed Forces on November 3, 1982, and files a UCX-only claim, what is the earliest week that individual can be credited for a waiting period week or paid for a week of unemployment?

Answer. In a "calendar week" State, the individual is eligible for a waiting period week or a compensable week that begins December 5, 1982. In a "flexible week State", the individual is eligible for a waiting period week or a compensable week that begins December 2, 1982. (Refer item 6c of UIPL No. 9-83)

9. Question. In question 8, is the above individual restricted as to when he/she may establish a benefit year?

Answer. That individual may establish a benefit year at any time, according with State Law.

10. Question. Can a State backdate a UCX claim?

Answer. Any request for backdating shall be determined under the unemployment insurance law of the State to which the military service and wages area assigned. However, benefits or waiting period credit may be allowed only for weeks beginning after October 25, 1982 (Refer to item 6c of UIPL 9-83).

11. Question. If an ex-service member applied for UCX entitlement in September 1981, but did not qualify for UCX entitlement under the 1981 amendments, is the individual entitled to FSC based on a backdated UCX claim on which the benefit year expired because of backdating?

Answer. A UCX claimant is entitled to benefits payable of 13 x WBA. The entitlement on the expired claim is deemed to be benefits payable. Thus, these claimants would have no further entitlement to either EB or FSC, unless the aggregate amount payable for UCX is less than 13 x WBA.

12. Question. Once an individual meets the criteria for completion of a “full term of active service”, what criteria must he/she meet with respect to a subsequent period of service?

Answer. Any subsequent period of service, whether it immediately follows the first full term of active service or not, may be considered creditable Federal service, provided the individual’s separation from the service was under honorable conditions. (Not including active duty in a reserve status unless for a continuous period of 180 days or more). Refer 5 USC 8521 (a), as amended.

13. Question. After an ex-service member qualified for UCX entitlement under P.L. 97-262, and returned to active duty with the armed forces, can the ex-service member use the subsequent period of service to qualify for UCX benefits?

Answer. Yes, such period of service may be used under the Act to qualify for UCX benefits. Prior service in the base period for the second benefit year is also creditable Federal service to the extent such service was not in the first base period if the UCX entitlement in the first benefit year was less than 13 x WBA.

14. Question. If the first full term of service was under honorable conditions and subsequent period of services was under other than honorable conditions, can a benefit year be established using the first full term of service?

Answer. Yes, if there are enough UCX wage credits based on the first full term of service in the State’s base period to establish a benefit year.

C. Joint Claims

1. Question. If a claimant exhausted the UCX aggregate amount (13 x WBA) of a joint UCX-I claim, what is the status of the individual's UI entitlement?

Answer. When the claimant exhausts the UCX aggregate amount (13 x WBA) of the UCX joint claim, SESA will make a monetary redetermination excluding the claimant's UCX base period wages. If the claimant remains monetarily eligible based on State-UI wages, then benefits are payable as redetermined for the rest of the year. (Refer item 7 of UIPL No. 9-83).

2. Question. If a claimant files a joint UCX-UI claim and is separately eligible for State-UI before the fifth week beginning after the week the individual was separated from the Armed Forces, what is the status of the individual's State-UI entitlement during the period that the individual is not eligible for UCX?

Answer. If the claimant is monetarily eligible based on UI wages, the individual should be paid State-UI benefits if all other eligibility requirements are met. See item 7b of UIPL No. 9-83.

3. Question. If after receiving UCX-01 joint benefits in the amount of 13 x WBA, the claimant remains monetarily eligible for State-UI benefits after excluding the UCX wages in the monetary redetermination, what charges, if any, will be made to the Federal Government for benefits paid?

Answer. Since the benefits are State UI-only, there will be no further charges to the Federal Government for benefits paid.

4. Question. A person with military service filed a UI only claim in April 1982; his/her military service was not creditable at that time; and his/her UI-only claim was exhausted before October 25, 1982. (1) Can his/her claim be redetermined to include UCX wages in the base period, thus increasing WBA and/or duration? (2) How are benefits paid after October 25 charged, since all UI entitlement is exhausted?

Answer. (1) The claim can and should be redetermined. (2) All added benefits resulting from redetermination are chargeable to UCX since all UI entitlement under State law was used.

5. Question. A joint UI/UCX claimant separately eligible for UI, receives a military pension. When he/she received 13 times his/her UCX WBA, his/her claim is redetermined to exclude military service from the base period. Must the military pension be deducted from the remaining UI entitlement?

Answer. Since the remaining entitlement is State UI only, the UCX employer is no longer a base period or chargeable employer, the pension need not be deducted unless the State law provides for deducting all private and Governmental pensions.

6. Question. A UCX claimant establishes valid UI entitlement with a weekly benefit rate of \$50. After four weeks, his/her Federal military wages are included in the monetary, and his/her WBA increases to \$156. The claimant has a military pension. Since the military is a base period and chargeable employer, his/her pension must be deducted from his/her WBA:

- a. If the pension reduces his/her WBA to zero on a joint UI-UCX claim, should military wages then be immediately removed, and a straight UI determination be issued (without pension deduction)?
- b. If the pension reduces his/her WBA to \$6, should the claimant be paid \$6 per week for the duration of his/her benefit year (since he/she will never reach the maximum 13 times his/her WBA of \$ 156)?

Answer.

- a. No, the military wages cannot be removed from the determination. They are in the base period and the pension is deductible.
 - b. Depends on whether the State law provides for charging \$6 against the MBA, or the full WBA of \$156 against the MBA.
7. Question. If a claimant has established a benefit year for a State-UI claim that began before October 25, 1982, and the claimant's military service did not meet the criteria at that time for creditable Federal service, but as of October 25, 1982, his/her military service meets the UCX criteria according to P.L. 97-362, what should be done?

Answer. A monetary redetermination should be made to include UCX base period wages. However, the monetary redetermination only applies to compensable weeks that begin after October 25, 1982, for any such weeks that remain in the benefit year. (See item 7c of UIPL No. 9-83).

8. Question. If the claimant in question 7, exhausts his/her State-UI amount before exhausting his/her UCX aggregate (13 x WBA) amount before the end of the benefit year, what should be done?

Answer. UCX benefits are payable in the rest of the benefit year, if such benefits do not exceed 13 x WBA at the joint WBA level. The weekly amount payable is the joint WBA.

9. Question. If the claimant exhausts his/her aggregate UCX amount (13 x WBA), but still has State-UI entitlement remaining in the benefit year, what should be done?

Answer. A monetary redetermination should be made after excluding the claimant's UCX base period wages. If the claimant remains monetarily eligible based on State-UI wages, then benefits are payable as redetermined during the rest of the year.