

## **THE IMPACT OF FILING FOR AND RECEIVING UNEMPLOYMENT INSURANCE BENEFITS IN ARIZONA ON A CLAIM FOR SOCIAL SECURITY DISABILITY BENEFITS?**

In a November 15, 2006, Chief Judge Frank Cristaudo wrote:

... the receipt of unemployment insurance benefits does not preclude the receipt of Social Security disability benefits. The receipt of unemployment benefits is only one of many factors that must be considered in determining whether a claimant is disabled.

Thus, the Social Security Administration (SSA) has acknowledged that a claimant for disability benefits is not automatically precluded from receiving disability benefits just because (s)he filed for and received unemployment insurance benefits. This statement is consistent with several court decisions. **However**, an application for unemployment benefits is evidence that the SSA and an Administrative Law Judge (ALJ) may consider with all of the medical and other evidence to decide if someone is disabled.

Some ALJs inquire about the application for and receipt of such benefits and others do not. Some ALJs will use the evidence of an application for such benefits as a basis to determine that the claimant is not fully credible because by applying for unemployment benefits the claimant is alleging an ability to work but stating that (s)he is unable to find a job. The claim for disability benefits is a claim that the claimant is unable to work.

**While it is true that some ALJs will use the evidence to support a denial of a claim or to establish the later onset of disability, I believe that if you need the funds to survive and the Arizona Department of Economic Security finds you entitled to unemployment benefits (even though you have an impairment that significantly limits you), that it is not an unreasonable decision to apply for and receive unemployment benefits. However, you must understand and accept the risk that the ALJ hearing your claim may well refuse to authorize you to receive benefits for the period during which you have received unemployment benefits and, perhaps beyond. If you are not willing to accept this risk you should not file for unemployment benefits, or continued benefits. Further, it is essential that you be forthright with the SSA and the ALJ. Honesty is essential. Should you receive unemployment benefits and the issue arises, appropriate arguments can be made and a decision made as to whether the date of alleged onset should be amended.**

One of the arguments that can be made is that when one is applying for unemployment benefits (s)he is only indicating the availability for "suitable" work. There are court decisions from other jurisdictions that recognize that a claimant need not accept work that is unsuitable in light of health considerations.

Further, the SSA's own regulations recognize that even though an individual is able to perform some levels of work, an individual may still be considered "disabled" considering claimant's age, education, and work experience. 20. C.F.R. Part 404, Subpart P, Appendix 2, Medical-Vocational Guidelines.

If is for these reasons that I believe that, if necessary, it is appropriate to file for and receive unemployment benefits, so long as you are willing to assume the risk that goes along with doing so. Of course, if you are able to survive without doing so, then this removes the issue as one of the potential impediments of qualifying for Social Security Disability Benefits.

With respect to Supplemental Security Income Benefits, the amount of unemployment benefits would likely preclude the receipt of SSI benefits, since the claimant would likely not meet the indigency requirements of the law.