

which was sold to Koch Industries, Inc. in November, 1997. The Tonkawa Gas Processing facility in Woodward, Oklahoma processes liquefied natural gases, e.g. Ethane, Propane, Normal Butane, and Isobutane. The gas processed by the Woodward facility is only gas from Delhi pipelines. Production at the Woodward facility remained relatively constant during both 1996 and 1997. In December, 1997, with the acquisition of the Delhi Group by Koch Industries, an employment streamlining was implemented at the Woodward facility which resulted in a net employment loss of one position, a plant operator.

It is determined, therefore, upon further investigation, that employment declines at the Woodward facility were not as a result of a decline in production at the facility but rather, were the result of attempts by the firm acquiring the subject facility to increase operating efficiencies. Further, declines in production at the facility subsequent to the acquisition and the net employment reduction were attributable to a decline in the supply of raw materials (natural gas) which were used in the production of liquefied gas products at that facility and could not, therefore, have been attributable to increased imports of like or directly competitive products. Further, a review of imports of liquefied natural gases indicates that imports declined during 1997 compared to the previous year and are less than 10% relative to domestic production.

Conclusion

After consideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Tonkawa Gas Processing, Woodward, Oklahoma and Delhi Gas Pipeline Corporation, Dallas, Texas.

Signed at Washington, DC, this 23rd day of October 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment and Training Administration (ETA)

Unemployment Compensation for Ex-servicemembers (UCX) Program: Unemployment Insurance Program Letter Amending the Consolidated List of "Acceptable" Narrative Reasons for Separation Transmitted in UIPL No. 3-95, Change 1 to Include Those Dealing With "Inaptitude."

ETA has responsibility for administration of the UCX program, providing unemployment compensation benefits for ex-servicemembers. ETA issues interpretations affecting the UCX program in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies (SESAs). The UIPL described below is published in the **Federal Register** in order to inform the public.

UIPL 3-95, Change 2

To be eligible for UCX, an ex-servicemember must, among other requirements, meet the definition of "Federal service." This requires that the servicemember be separated under honorable conditions and have completed a first full term of service. If separated before completing the first full term, the separation must be for, among other reasons, "inaptitude," but only if the service was continuous for at least 365 days. On December 6, 1994, UIPL No. 3-95 was issued to all SESAs formally transmitting a new consolidated list of acceptable narrative reasons for separation, except those for "inaptitude," and instructions for their use in determining individual eligibility for UCX benefits.

UIPL No. 3-95 informed the SESAs that ETA would amend the list of "acceptable" narrative reasons for separation when it was determined which narrative reasons for separation were for "inaptitude." DOL has now finalized the list of "acceptable" narrative reasons for separation dealing with "inaptitude" in UIPL No. 3-95, Change 2.

Dated: November 5, 1998.

Raymond L. Bramucci,

Assistant Secretary of Labor.

DIRECTIVE: Unemployment Insurance Program Letter No. 3-95, Change 2

TO: All State Employment Security Agencies

FROM: Grace A. Kilbane, Director, Unemployment Insurance Service

SUBJECT: UCX Narrative Reasons for Separation from Military Service

1. *Purpose.* To amend the consolidated list of "acceptable" narrative reasons for separation transmitted in Unemployment

Insurance Program Letter (UIPL) No. 3-95 and UIPL No. 3-95, Change 1 to include those dealing with "inaptitude."

2. *References.* UIPL No. 3-95; UIPL No. 3-95, Change 1; 5 U.S.C. 8521(a)(1); and 20 CFR Part 614.

3. *Background.* On December 6, 1994, UIPL No. 3-95 was issued to all State Employment Security Agencies (SESAs) formally transmitting a new consolidated list of acceptable narrative reasons for separation, except those for "inaptitude," and instructions for their use in determining individual eligibility for UCX benefits. The military services began to use exclusively the consolidated list of "acceptable" narrative reasons for separation after October 1, 1993.

After the issuance of UIPL No. 3-95, the Department of Labor (DOL) received several inquiries from SESAs regarding the effective date of the new instructions for using the consolidated list of acceptable narrative reasons for separation that was contained in UIPL No. 3-95. UIPL No. 3-95 stated that the new consolidated list of acceptable narrative reasons for separation was effective for all separations from military service on or after December 6, 1994, the date of the directive. Since the DOL did not provide for a retroactive application of the consolidated list in UIPL No. 3-95, some SESAs assumed that UIPL No. 25-83 and Changes 1-12 were controlling for the period October 1, 1993, to December 5, 1994.

Consequently, UIPL No. 3-95, Change 1 was issued revising the effective date of UIPL No. 3-95 and provided clarifying instructions concerning the effective dates of lists of "acceptable" narrative reasons for separation.

Further, UIPL No. 3-95 informed the SESAs that the DOL would amend the list of "acceptable" narrative reasons for separation when it was determined which narrative reasons for separation were for "inaptitude." DOL has now finalized the list of "acceptable" narrative reasons for separation dealing with "inaptitude."

The contents of this directive will also be issued as a Change 14 to *ET Handbook No. 384, Second Edition*.

4. *DOL Definition of "Inaptitude."* DOL defines "inaptitude" as being "unsuitable for military service for reasons largely related to personal characteristics not reflected by acts of serious misbehavior."

5. *Narrative Reasons for Separation Meeting DOL's Definition of Inaptitude.* DOL determined that 20 narrative reasons, listed in the attachment to this directive, constitute "inaptitude" under the above definition for UCX qualifying purposes. DOL estimates that this broader definition will allow approximately 2,500 to 3,000 additional claimants per year to qualify for UCX.

6. *Effective Date.* The narrative reasons for separation that DOL has determined constitute "inaptitude" within the meaning of 5 U.S.C. 8521(a)(1)(B)(ii)(IV) shall be effective for all initial claims filed on and after the date of this directive. However, where State law permits, a monetary redetermination must be issued when: (1) a claimant requests a redetermination on a new or previously denied claim or files an additional or renewed claim for benefits, and (2) the claimant's military service is within

the State's base period at the time of the request or effective date of claim.

Any redetermination of monetary eligibility must be based upon the "new list" of acceptable narrative reasons for discharge. This applies to any claimant who has or who would have had a benefit year in effect which would have included UCX wage credits, if not for the denial based on the prior list of acceptable narrative reasons for discharge. However, this new interpretation only impacts weeks of unemployment after the date of this directive, i.e., although a redetermination may result in future eligibility or a higher weekly benefit amount, no back payments will be made as a result of wage credits that were unavailable to the claimant prior to the date of this directive.

The new list of "acceptable" narrative reasons for separation constituting "inaptitude" represents a substantial expansion from October 1, 1993, of both the types and the numbers, of separations designated as "inaptitude." Prior to October 1, 1993, there was only one DOD narrative reason used to denote discharges for "inaptitude." This reason was designated as "Unsuitability—Inaptitude." However, since October 1, 1993, the DOD had ceased using this narrative reason.

Although it is a sound rule of administrative law to apply new statutory interpretations prospectively, UIPL No. 3-95 announced an intent to make retroactive the amended list of "acceptable" narrative reasons for separation constituting "inaptitude." DOL initially believed that a substantial number of ex-servicemembers might have been prejudiced by having no discharges designated as "inaptitude" from late 1993 until the new "inaptitude" list was released and thus examined whether to apply this expanded list retroactively to October 1, 1993. However, as explained below, DOL, in consultation with DOD, has since determined that very few servicemembers would be prejudiced by an application that was only prospective and, therefore, the public interest would not be served by a retroactive application.

DOD has informed DOL that there were only seven discharges with a narrative reason related to "inaptitude" (designated as "Unsuitability—Inaptitude") during the three fiscal years immediately prior to October 1, 1993. This information suggests that very few servicemembers likely would have been discharged after 1993 for the "inaptitude" narrative reason for separation had the pre-October 1, 1993 narrative reason continued in use. Thus, very few individuals discharged after October 1, 1993, but prior to the date of this issuance, would have had any expectation of qualifying for benefits under the prior inaptitude list.

7. Action Required. SESAs are required to:

a. Distribute the contents of this directive and the attachment to all appropriate staff members.

b. Destroy the Attachment to UIPL 3-95 Change 1 and utilize the Attachment to this Change 2 to UIPL 3-95.

c. Announce in a newspaper of general circulation, and in other appropriate media such as veterans publications, the application of the operating instructions contained in

this directive and their effect on UCX eligibility. The announcements shall include mention of the authority under 20 CFR 614.9(a) to issue redeterminations of previously denied UCX claims.

8. *Inquiries.* Direct inquiries to the appropriate Regional Office.

9. *Attachment.* Revised List of "Acceptable" Narrative Reasons for Separation Meeting the Requirements of 5 U.S.C. 8521(a)(1)(B)(ii)(I)–(IV).

"ACCEPTABLE" Narrative Reasons for Separation Meeting the Requirements of 5 U.S.C. 8521(a)(1)(B)(ii)(I)–(IV)

For the convenience of the government under an early release program (5 U.S.C. 8521(a)(1)(B)(ii)(I))

Medal of Honor Recipient
Completion of Required Active Service
Insufficient Retainability (Economic Reasons)

Reduction in Force
To Attend School
Holiday Early Release Program
Defective Enlistment Agreement
Erroneous Entry (Other)
Intradepartmental Transfer*

Miscellaneous/General Reasons**

Because of medical disqualification, pregnancy, parenthood, or Service-incurred injury or disability (5 U.S.C. 8521(a)(1)(B)(ii)(II))

Pregnancy or Childbirth
Parenthood or Custody of Minor Children
Conditions, not Disability
Disability, Severance Pay
Disability, Permanent
Disability, Temporary
Disability, Existed Prior to Service, PEB
Disability, Existed Prior to Service, Med BD
Disability, Aggravated
Disability, Other

Because of hardship (5 U.S.C. 8521(a)(1)(B)(ii)(III))

Surviving Member
Hardship

*Effective for separations on or after September 1, 1994.

**Pertaining only to Army Officers' separations occurring from October 1, 1994 through August 31, 1995 and November 14, 1995 through July 1, 1996.

Because of personality disorders or inaptitude, but only if the service was continuous for 365 days or more (5 U.S.C. 8521(a)(1)(B)(ii)(IV))

Personality Disorder

The following are narrative reasons for separation that DOL has determined constitute "inaptitude" within the meaning of 5 U.S.C. 8521(a)(1)(B)(ii)(IV) and which are effective for all separations from military services on and after the date of this directive:

Conscientious Objector
Weight Control Failure
Ecclesiastical Endorsement
Secretarial Authority
Physical Standards
Erroneous Entry, Alcohol Abuse
Erroneous Entry, Drug Abuse
Non-selection, Permanent Promotion
Non-selection, Temporary Promotion

Failure to Complete a Commission or Warrant Program

Failure to Complete a Course of Instruction
Unsatisfactory Performance
Substandard Performance
Personal Alcohol Abuse
Alcohol Rehabilitation Failure
Drug Rehabilitation Failure
Military Personnel Security Program
Homosexual Admission
Homosexual Act
Non-retention on Active Duty

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL-2-94]

Electro-Test, Inc., Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of Electro-Test, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: Comments submitted by interested parties must be received no later than January 11, 1999.

ADDRESSES: Send comments concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program at the above address, or phone (202) 219-7056.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Electro-Test, Inc. (ETI) has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). ETI's expansion request covers the use of an additional test standard. OSHA recognizes an organization as an NRTL, and processes applications related to such recognitions, following requirements in § 1910.7 of Title 29, Code of Federal Regulations (29 CFR