

ATTORNEYS AT LAW
WWW.MARGOLISEDELSTEIN.COM

SEPTEMBER 2004

IN THIS ISSUE:

- * **Recent decisions affecting Compromise and Release Settlements**
- * **Sufficiency of Expert Vocational Testimony**

MARSHALL A. HAISLUP, III - EDITOR,
WORKERS' COMPENSATION NEWS
MHAISLUP@MARGOLISEDELSTEIN.COM

1. **Compromise and Release:**

The Commonwealth Court has been quite active in reviewing Compromise and Release settlements over the past few months. In ***North Penn Sanitation v. WCAB (Dillard), 850 A. 2d 795 (Pa. Cmwlth 2004)***, the Court held that a WCJ has the inherent or implied power to set aside a previously approved Compromise and Release Agreement. At common law, a Compromise and Release Agreement can be set aside based upon a showing of fraud, deception, duress or mutual mistake. Here, the claimant lost the use of both eyes due to the work injury. This fact was not documented in the written Compromise and Release Agreement nor was it disclosed to the WCJ who originally heard and approved the settlement (claimant, by the way, participated in the settlement *pro se*; he could not see the written agreement and the defense counsel had to tell claimant where to sign as she physically held claimant's hand to the document). Claimant subsequently sought review to include a claim for "bilateral blindness". The Court affirmed the setting aside of the Compromise and Release Agreement on the basis of a material mutual mistake of fact- the failure of the parties to address claimant's blinding injury in the written Compromise and Release Agreement, even though claimant and the carrier were both aware of it.

In ***Wallace v. WCAB***, No. 2644 CD 2003, the Court held that a Compromise and Release Agreement which only addressed a work related inhalation injury did not judicially estop the claimant from subsequently pursuing a back injury claim.

In ***Stiles v. WCAB***, No. 1440 CD 2003, the Court dealt with a claim that the previous settlement should be set aside because claimant had severe mental injuries which resulted in her being unable to understand the economic value of her claim when she entered into the settlement. As claimant's mental competence was felt to have been adequately addressed at the settlement hearing, thereby resulting in claimant's understanding of the legal significance of the settlement, the Court held that claimant was collaterally estopped from seeking to set aside the settlement.

PHILADELPHIA OFFICE
THE CURTIS CENTER, 4TH FLOOR
INDEPENDENCE SQUARE WEST
PHILADELPHIA, PA 19106-3304
(215)922-1100
FAX (215)922-1772

HARRISBURG OFFICE
P.O. Box 932
HARRISBURG, PA 17106-0932
717-975-8114

PITTSBURGH OFFICE
310 GRANT STREET
THE GRANT BUILDING
SUITE 1500
PITTSBURGH, PA 15219-2203
412-281-4256

SCRANTON OFFICE
THE OPPENHEIM BUILDING
409 LACKAWANNA AVENUE
SUITE 3C
SCRANTON, PA 18503
570-342-4231

WESTMONT OFFICE
P.O. Box 2222
216 HADDON AVENUE
WESTMONT, NJ 08108-2886
856-858-7200

BERKELEY HEIGHTS OFFICE
THREE CONNELL DRIVE
SUITE 6200
BERKELEY HEIGHTS, NJ 07922
908-790-1401

WILMINGTON OFFICE
1509 GILPIN AVENUE
WILMINGTON, DE 19806
302-777-4680

2. Vocational Testimony

In the case of *Edwards v. WCAB*, No. 428 CD 2004 (Decided by the Commonwealth Court on August 24, 2004), the Court affirmed a suspension of benefits based upon an earning power evaluation where no job was available at the time of injury employer, but suitable work was located through a labor market survey, although no job was actually offered to the claimant. Notably, the Court indicated that portions of the vocational expert's testimony about the jobs which he located through his survey did not constitute hearsay, based upon Rule 703 of the Pa. Rules of Evidence and based on the expert's on-site investigation of some of the jobs which allowed firsthand observation of the duties to be performed in these jobs thereby providing a foundation for his expert opinion. The Court also confirmed that, under Act 57, a job offer is not necessary.

This is a publication of the Workers Compensation Department of the Philadelphia law office of Margolis Edelstein. Our department welcomes your comments or questions regarding the above or other matters of concern involving Pennsylvania workers compensation issues.

Joseph S. Bekelja (215-931-5807)
Marshall A. Haislup, III (215-931-5810)
Michael D. Eiss (215-931-5824)
Tina M. Rago (215-931-5809)

In Pittsburgh - Fred Trenor (412)281-4935
In Harrisburg - Barry Kronthal (717)760-7503
In Scranton - Michael Savitsky (570)342-4231
In Westmont - Michael Affanato (856)869-6716

Is there someone else in your organization who would benefit from this newsletter? If so, send us an e-mail at mhaislup@margolisedelstein.com in order to add a name to our mailing list.



THE CURTIS CENTER, 4TH FLOOR
INDEPENDENCE SQUARE WEST
PHILADELPHIA, PA 19106-3304