MARGOLIS EDELSTEIN

RECENT DEVELOPMENTS IN PENNSYLVANIA WORKERS' COMPENSATION
2007

FRED C. TRENOR AND JAMES S. EHRMAN

PHILADELPHIA OFFICE
The Curtis Center, 4th Floor
601 Walnut Street
Independence Square West
Philadelphia, PA 19106
215-922-1100

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

SCRANTON OFFICE
220 Penn Avenue
Suite 305
Scranton, PA 18503
570-342-4231

MARGOLIS EDELSTEIN
Fred C. Trenor, Esquire
James S. Ehrman, Esquire
525 William Penn Place
Suite 3300
Pittsburgh, PA 15219
412-281-4256
412-642-2380 (fax)
ftrenor@margolisedelstein.com
jehrman@margolisedelstein.com

CENTRAL PA OFFICE
P.O. Box 628
Hollidaysburg, PA 16648
814-224-2119

WESTMONT OFFICE
P.O. Box 2222
216 Haddon Avenue
Westmont, NJ 08108-2886
856-858-7200

BERKELEY HEIGHTS OFFICE
300 Connell Drive
Suite 6200
Berkeley Heights, NJ 07922
908-790-1401

WILMINGTON OFFICE
750 South Madison Street
Suite 102
Wilmington, DE 19801
302-888-1112

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Table of Contents

Table of Cases

NOTE

ALL ITEMS IN BOLD PRINT REPRESENT NEW INFORMATION FOR THE CURRENT MONTH.

RECENT DEVELOPMENTS IN PENNSYLVANIA WORKERS' COMPENSATION BY FRED C. TRENOR AND JAMES S. EHRMAN

Fred C. Trenor, Esquire
MARGOLIS EDELSTEIN
525 William Penn Place, Suite 3300
Pittsburgh, PA 15219
412-355-4935 (office)
412-443-5649 (cell)
412-642-2380 (fax)
ftrenor@margolisedelstein.com

James S. Ehrman, Esquire
MARGOLIS EDELSTEIN
525 William Penn Place, Suite 3300
Pittsburgh, PA 15219
412-355-4980 (office)
412-491-0954 (cell)
412-642-2380 (fax)
jehrman@margolisedelstein.com

I. LEGISLATIVE DEVELOPMENTS

PASSED LEGISLATION

The Pennsylvania Legislature passed a new Workers' Compensation Amendment H.B. No. 2738 which became effective on 10/16/06 and requires a mandatory trial schedule at the first hearing setting forth deadlines for evidence and future hearings. The deadlines will be enforced. Mediations will now be required no less than 30 days before Findings of Fact are due. Finally there is the creation of a resolution hearing procedure for Compromise and Release Agreements requiring a hearing within 14 days. There will be a requirement for the WCAB members to respond to a circulated draft Opinion within 30 days as a push for more prompt WCAB decisions. Two opinion writers have been assigned to each Board member to assist in drafting Opinions. The new act also establishes an uninsured guarantee fund for handling of uninsured employers.

Act 109 of 2006, See 23 Pa. C.S. Sec. 4308 (2006), effective 09/05/06, requires a WCJ before any decision is issued to collect from claimant written documentation of any arrears owed or written indication that no arrears are owed. The Judge is required to order payment of arrears for payment of the lien. The website for the information is located at www. dli.state.pa.us/ and then click on the "workers comp/SWIF quick link, then on the "Office of Adjudication" or "Bureau of Workers' Compensation" link. The Act 109 information can be viewed un the "Announcement" header.

Act 147, signed into law on 11/09/06, has created a fund for claimants to seek recovery from the Uninsured Employers Guaranty Fund. Forty five days notice must be given by the claimant to the Fund from the date the claimant knew of his injury. The Notice shall be filed on a Notice of Claim Against Uninsured Employer. See Sec. 123.802 of the Regs. The Fund will determine whether payment can then be accepted. If not, a "Claim Petition for Benefits Against the Uninsured Employer" may be filed after 21 days of the filing of the Notice of Claim. The regs. describes the procedure to be followed.

PROPOSED LEGISLATION

There are two pending legislative bills which merit mention: (1) H.B. No. 218, referred to committee on 02/07/07, allows an injured party to sue an employer in Common Pleas Court if the employer has acted with reckless, willful or wanton disregard for the safety of the employee; (2) H.B. No. 292, referred to committee on 02/07/07, contemplates including first responders in disaster response withing the definition of employees under the Act and those who voluntarily help responders after completing a community emergency response team program; (3) H.B. 465, referred to committee on February 26, 2007, amends section 108(m.1) in reference to the compensability of Hepatitis C to include Capitol Police, the Bureau of Narcotics Investigators, The Liquor Control Enforcement officers employed by the Pennsylvania State Police, Sheriffs and Deputy Sheriffs.

II. APPELLATE DEVELOPMENTS

ABNORMAL WORKING CIRCUMSTANCES

The Commonwealth Court affirmed the Workers' Compensation Appeal Board and Workers' Compensation Judge on April 14, 2007 denying compensation benefits to a prison nurse at a maximum security prison who failed to prove exposure to abnormal working circumstances that caused her anxiety attacks and psychiatric treatment. The nurse and his family were threatened frequently by inmates. Inmates threw urine and feces on the claimant. The claimant witnessed an inmate who severed his jugular and died. You should note that there were two dissenting opinions. Babich v. WCAB (CPA Department of PA), 1472 of 2006.

BAD FAITH CONDUCT

Whether the termination of an employee was bad faith conduct on their part is dependent upon a factual determination by the WCJ. The employer must present conclusive evidence of the violation of a company policy to establish that a loss of earnings is through fault of claimant. The violation herein was excessive absenteeism. The testimony of the employer left the possibility that some of the excessive absences were the result of calling off without sick days remaining. The Court, in a befuddled opinion, held that claimant was entitled to miss work because of her work injury as "illness" has been viewed as a defense to the claim of bad faith conduct by claimant. The question of bad faith is a question of fact. Shop Vac Corporation v. WCAB (Thomas) No. 217 C. D. 2007 filed July 25, 2007.

BAD FAITH FAILURE TO ACCEPT EMPLOYMENT

Once a claimant refuses to accept a job within his restrictions, claimant remains ineligible to receive benefits after the claimant becomes totally disabled once again. The claimant had an injury in April, 2006, He refused a modified job in November, 1997 and his benefits were suspended. Thereafter three years passed and claimant underwent surgery. Again the claimant recovered sufficiently to work at the original modified job, but it was not offered. Although claimant acknowledged he was capable of working the modified job, the Judge suspended his benefits. The PA Supreme Court found that claimant's bad faith relieved the employer to re-establish the existence of an available job. Pitt Ohio Express v. WCAB (Wolff) : Appeal of Wolff 912 A2d 206 (Pa. 2006).

CLAIMANT'S BURDEN IN A PENALTY PETITION

The Commonwealth Court, on June 1, 2007, held that when a Claimant files a Penalty Petition for the employer's failure to pay medical bills, the Claimant has the burden "to submit medical invoices on the proper form and with all the information needed to permit an employer to ascertain readily that the billed treatment is related to the work injury. The medical bills must be "either the HCFA form 1500, or the UB 92 form". Sims v. WCAB (School District of Philadelphia #1), 265 C.D. 2006.

CLAIMANT'S BURDEN REGARDING NOTICE OF ABILITY TO RETURN TO WORK

The Commonwealth Court, on June 8, 2007, held that where an employer has not filed a Notice of Ability to Return to work with the Bureau and prosecuting a Suspension Petition, the Claimant waged the issue as to whether the employer can prosecute the suspension Petition if the Claimant does not raise the issues before the Workers' Compensations Judge. Payne v. WCAB (Elwynly, Inc.), 216 C.D. 2007.

COMMON LAW MARRIAGE

The Commonwealth Court reversed the Workers' Compensation Appeal Board on February 13, 2007 and recognized a common law marriage that occurred after the decision of the Commonwealth Court in PNC Bank Corporation v. WCAB (Stanos), 831 A.2d 1269 (Pa. Commw. 2003) that prospectively abolished common law marriages effective September 17, 2003. Subsequently, the legislature by statute abolished common law marriages effective January 1, 2005 as follows:

> No common-law marriage contracted after January 1, 2005, shall be valid. Nothing in this port shall be deemed or taken to render any common-law marriage otherwise lawful and contracted on or before January, 2005, invalid.

The Commonwealth Court held that the legislature in effect had suspended the PNC decision. Costello v. WCAB (Kinsley Construction, Inc.), 831 C.D. 2006.

COURSE OF EMPLOYMENT

Judge Mary Leavitt wrote an Opinion on December 19, 2006 holding that an employee walking to work was a covered employee even though a third party tort feasor had struck the employee while intoxicated and claimant was walking on a public sidewalk. The Judge determined that claimant had parked at a lot for employees and had taken the public sidewalk in conformity with the employer's lack of opposition. Thus claimant was in furtherance of the employer's business under Sec. 301. A major reasoning of the Court was based on the fact that claimant was on the employer's premises. Allegheny Ludlum Corporation v. WCAB (Hines) No. 1022 C.D. 2006.

DEPENDENCY OF A PARENT

The Commonwealth Court, on April 9, 2007, affirmed the Workers' Compensation Appeal Board and Workers' Compensation Judge who awarded partial dependency benefits to a mother whose daughter had been killed during the course of employment. A parent must establish that he or she is dependent on the financial contributions of the deceased child "to any extent". Wyoming Valley Health Care Systems v. WCAB (Kalwaytis), 2109 C.D. 2006.

EARNING POWER ASSESSMENT

Where employer's labor market survey reflects higher wages than the actual job, wages claimant receives which he obtained after the Notice of Ability to Return to Work and before being advised of the positions in the labor market survey, the employer is permitted to have the earning power assessment introduced into evidence and accepted as credible by the WCJ. The Commonwealth Court determined that notwithstanding Kupchinsky, the post Act 57 era permits use of the earning power assessment and a Judge's finding based on that assessment. Here the WCJ believed the earning power assessment over the actual wages which was the basis for the WCJ's decision. CRST v. WCAB (Boyles) No. 1954 C. D. Filed July 30, 2007.

ENTITLEMENT TO A PHYSICAL EXAM

The Commonwealth Court held that employer was entitled to a physical exam although initially denied by the WCJ. The claimant and defendant had settled the indemnity issues for $36,000, but defendant remained liable for reaonable and necessary medical expenses. The prescriptions of claimant were not paid and thus she filed a UR. The UR found the expenses reasonable and necessary. The employer filed a Petition to Compel the Physical Exam of the claimant. The WCJ had initially refused the exam on the basis defendant's reason for the exam was to find a change in the claimant's condition which had been found by the UR to be reasonable. Since the UR found such treatment reasonable, it was unnecessary for such exam. The Commonwealth Court determined the employer was entitled to the exam and it was so ordered. Davis v. WCAB (Woolworth Corporation) No. 1873 C. D. (2006) filed July 5, 2007.

FAILURE BY AN EXPERT TO KNOW OF PREEXISTING CONDITION

Claimant filed a petition on August 27, 2004 alleging a low back injury and a herniated disc at L5-S1 while at work on November 7, 2003. On February 3, 2006, the WCJ denied her benefits stating that claimant's medical expert was equivocal because the expert had no knowledge of claimant's prior medical records, treatment, or any of the prior diagnostic tests. Where a medical expert has an incomplete history, that is relevant, then the opinions expressed are not competent. Claimant acknowledged that she had suffered from back injuries prior to November 7, 2003. The claimant's expert, a board certified neurosurgeon, failed to appreciate that claimant had complained of back pain since November 3, 2006. The defendant introduced the emergencyroom reocrd for 11/10/03 which disclosed complaints beginning November 3, 2006. Julie Marconi v. WCAB (United Disability Services) 21 PAWCLR 268 (2007).

FAILURE TO FILE AN APPEAL TO THE BOARD WITHIN 20 DAYS

The Board has quashed an appeal which was mailed within the 20 days but not received by the Bureau until after the 20 days. On March 24, 2006, the Board received a Notice of Appeal from the WCJ decision. The WCJ rules require the filing of the notice of appeal shall be in person or by mail. 34 PS. Sec 111.3. If by mail it is deemed complete upon deposit into the mail. The US Postal Service postmark is sufficient when the appeal is properly stamped and addressed but not received by the WCAB. Here the notice of appeal had a Pitney Bowes U.S.Postal Mark and was received 4 days after the 20 day period. Without the proper U.S Postal Service mark the appeal was untimely and was quashed. Vacca v. Philadelphia Gas Works, 22 PAWLCLR 56 Decided April 17, 2007 by Commissioner Wilson.

FAILURE TO FILE A TIMELY ANSWER

In two Commonwealth Court decisions a strict interpretation of the infamous Yellow Freight rule was imposed. (1) The Court's Opinion held that a Claim Petition and correspondence from the insurer were sufficient evidence to find employer/insurer liable for the allegations in the Claim Petition. Specifically, claimant filed a Claim Petition on February 25, 2003 when he alleged an attack on May 17, 2002 as the employee was making a delivery in the scope of his employment. The Claim Petition was served on the employer, U.S. Specialty, and the carrier claimant believed was the insurer. No Answer was filed. A hearing was held on April 16, 2003, at which the claimant appeared but the employer and carrier did not. The case was continued for claimant's counsel to investigate the proper insurer. A second hearing was held on June 9, 2003. Only the Claimant appeared. Claimant's counsel brought two letters from U.S. Specialty denying coverage and one an admission of coverage. The WCJ continued the hearing a second time for claimant to contact the Bureau to find out who the proper carriers was. The WCJ then dismissed the Petition believing the claimant had failed in his duty to find out who the insurer was. The Board remanded back to the Judge for a reasoned decision. On remand the Judge found the Claim Petition together with a letter by the carrier to a police department asking for a report wherein it stated that it was the carrier for the employer as sufficient for liability. The insurer appealed to the Board. The WCAB reversed stating that the claimant had the burden of proving the insurer was the proper party and when reviewing the Bureau records, along with the referred to correspondence above, did not believe claimant had met his burden of proof. The Commonwealth Court reversed finding substantial evidence (the Petition and letter by the carrier to the local police dept) as sufficient to sustain the claimant's burden of proof applying on the Yellow Freight principles. Brady v. WCAB (Morgan Drive Away, Inc. And U.S. Specialty),1713 C.D. 2006, 22 PAWCLR 49, decided on April 16, 2007 by Senior Judge Flaherty. (2) A claimant suffering hearing loss was awarded 260 weeks of disability based on the failure of the employer to file an Answer to the claimant's Petition notwithstanding evidence submitted by employer to the contrary. The facts of "permanent" loss of hearing due to prolonged exposure to high levels of noise without adequate ear protection was a fact admitted by the failure to Answer by employer. PIAD Precision Casting v. WCAB(Bosco), 379 C.D. 2006, 22 PAWCLR 50 decided April 27, 2007.

FAILURE TO ISSUE NOTICE OF COMPENSATION PAYABLE

A particularly nasty decision held that a claimant that had received compensation under a Temporary Notice of Compensation Payable for injuries sustained on May 14, 2003 to claimant's head, neck and back when struck by a bundle of newspapers, but the claimant returned to work for 2 1/2 hours on July 19, 2003, and a Notice of Denial issued acknowledging an injury but no disability the employer was sanctioned 50% penalties on the indemnity payments owed. The Commonwealth Court found that an Notice of Compensation Payable should have been issued and not a denial, which required the claimant to litigate the claim and retain counsel. George Jordan v. WCAB (Philadelphia Newspapers Inc.0 2007 Pa. Comm., LEXIS 128 FILED March 28, 2007. Judge McGinley's strict interpretation needs to be carefully considered in light of recent decisions regarding both penalties and attorneys fees.

The Commonwealth Court held, on August 13, 2007, that an employer is not entitled to recoupment of indemnity benefits paid to a claimant because of an error in the calculation of the average weekly wage because the employer failed to issue a Notice of Compensation Payable or an Agreement. Dollar Tree Stores, Inc. v. WCAB (Reichert), 797 C.D. 2007.

NOTE: In the Pitfalls of Pennsylvania Workers' Compensation, failure to issue a Notice of Compensation Payable results in the employer being liable for all injuries claimed by the claimant to be work related.

FAILURE TO PAY MEDICAL FEES

WCJ has jurisdiction of awarding penalties and counsel fees when carrier fails to timely pay medical bills under the fee review provision of the Act. The Commonwealth Court has determined that if a defendant/carrier fails to pay a medical fee pursuant to the fee review section 306(f.1)(5), the WCJ has jurisdiction to award penalties despite the fact that the fee review procedure has not been exhausted prior to filing the penalty petition. Claimant was injured in 2003 with the partial amputation of her right middle finger. A Notice of Compensation Payable was issued. Claimant developed RSD, which injury was included in the work injury. The carrier repeatedly failed to timely pay the medical providers. As a consequence claimant retained counsel and filed a Penalty Petition. The WCJ awarded a 50% penalty. The Commonwealth Court believed that although the fee dispute provision of the Act requires the provider to file a fee dispute to recover fees, the claimant has the ability to pursue a Penalty Petition when these expenses are not paid timely. The Court held that the WCJ did have jurisdiction of the issue and had the authority to award penalties and counsel fees to claimant. Hough v. WCAB(AC&T) No. 2198 C.D. filed July 17, 2007.

FEE DISPUTE APPLICATION

The Commonwealth Court, on August 23, 2007, held that a provider must timely file a fee dispute application in accordance with Section 306(f.1)(5) and further holds that while an insurer is not obliged to pay medical bills until the proper forms and reports have been submitted, if the insurer does pay without the proper forms and reports, the provider must timely file a fee dispute application. University of Pennsylvania Hospital v. Bureau of Workers' Compensation (Tyson Shared Services, Inc.), 508 C.D. 207.

FEES

Attorneys fees paid to an attorney continue to be owed after his death and to his estate. Angino v. Franks Beverages, 22 PAWCLR 58 decided April 27, 2007 by Chairperson McDermott.

IMPAIRMENT RATINGS EVALUATION

The Commonwealth court, on June 18, 2007, held that if an employer seeks and obtains an IRE during the pendency of the employer's Termination Petition, the employer is not precluded from obtaining a termination of benefits. Weismantle v. WCAB (Lucent Technologies), 1393 C.D. 2006.

INDEPENDENT RATING EVALUATION

The Supreme Court, on April 17, 2007, reaffirmed that the employer and its insurance carrier must seek an independent rating evaluation within 60 days after 104 weeks to obtain an automatic self-execution reduction; however, an IRE can be requested after the 60 day window, but to change benefits requires a Decision from a Workers' Compensation Judge. Dowhower v. WCAB (Capco Contracting), 94 M.A.P. 2006.

JURISDICTION

An Opinion by President Judge James Collins found on November 22, 2006 that a Judge had jurisdiction to determine a UR notwithstanding the medical records sent by the medical provider more than 30 days after the assignment in contradiction to the County of Alleghenyv. WCAB (Geisler) 875 A. 1222 (2005) which held that a judge had no jurisdiction to review the UR where the provider reviewed has failed to send medical records within 30 days. The Commonwealth Court found the WCJ was required to inquire and hold hearings to determine what efforts were to comply with the URO regulations and in effect overturning the automatic dismissal by Geisler, supra.

Commissioner Hoffman decided that a claimant, who was a resident of Virginia, but was hired by telephone for defendant, a Pennsylvania Company, that the claimant was not principally localized in any state. Claimant testified that he was injured in Washington, D.C. but understood that he was not principally localized in any state. The WCJ found that claimant had entered a contract in Pennsylvania with the telephone company and that claimant's employment was not localized in any state. Lanier v. Arc Tech, 22 PAWCLR 60, decided on April 3, 2007. The Board affirmed based upon Sec. 305(a)(2) of the Act.

MASSAGE THERAPISTS

The Commonwealth Court, on August 24, 2007, held the employer is not liable for massage therapist who is not a licensed healthcare provider, even if prescribed by a medical doctor. Pennsylvania does not have a program for the licensing of massage therapists, although the massage therapist in this case was a nationally certified massage therapist. Boleratz v. WCAB (Air Gas, Inc.), 147 C.D. 2007.

NOTE: The dissenting opinion arguing that massage therapy is compensable if prescribed by a physician.

OFFSET PROVISIONS NOT APPLICABLE TO FATAL BENEFITS OF A WIDOW

The Commonwealth Court held on April 5, 2007 that the offset provisions of Section 204(aa) with regard to Social Security Old Age Benefits does not apply to Section 307 fatal benefits. Frank Bryan, Inc. v. WCAB (Bryan), 984 C.D. 2006.

OLD AGE SOCIAL SECURITY OFFSET

The Commonwealth held, on August 14, 2007, an employer is not entitled to Section 204 credit for old age social security offset until the employer notifies the claimant with a Bureau form LIBC 756 pursuant the rules and regulations Section 125.50. Maxim Crane Works v. WCAB (Solano), 2224 C.D. 2006.

NOTE: We cannot overemphasize the obligations of employers and insurance companies to file timely Bureau forms with a claimant and with the Bureau.

ONE SENTENCE ORDERS

Claimant had been ordered to attend a vocational interview based upon a petition by the employer. The claimant failed to appear for the interview. The WCJ entered an Order simply forfeiting benefits to claimant based upon his failure to attend the interview. The Commonwealth Court has held that under the circumstances of this petition and acknowledgment that claimant failed to appear, the Order was sufficient and a remand would be a wasteful exercise. Joan Bradley v. WCAB (County of Allgegheny), 343 C.D. 2006 filed 2-23-07.

PENSION OFFSET

On August 1, 2007, the Commonwealth Court held the employer is not entitled to a pension offset to a sum of $4500, which the claimant had rolled over into an IRA. Gadonas v. WCAB (Boling Defense and Space Group), 1943 C.D. 2006.

RE-LITIGATION

The Commonwealth Court held on March 6, 2007 that where claimant has filed a second review petition to decide the correct AWW based upon a recent decision changing the law, claimant was barred where the issue had been previously litigated or could have been litigated. The Commonwealth Court held that changes in decisional law do not permit such refilings based on the doctrine of "law of the case". Jeffrey Merkel v. WCAB (Hofmann Industries), No. 1586 C.D. 2006.

SEXUAL HARASSMENT

The Supreme Court reversed the Commonwealth Court and reinstated benefits to a coal miner who was victimized sexually by a supervisor. The Commonwealth Court had determined that the claimant had not been exposed to abnormal working conditions. The Supreme Court disagreed. The importance of the case is that sexual harassment is cognizable as a work injury under Pennsylvania law. The claimant in the present case had had preexisting emotional problems from a commanding officer in Vietnam. Claimant has flashbacks. In 1994 while working for the defendant, claimant had three incidents in which sexual harassment occurred. Claimant began missing work and claimed total disability. The first incident described the supervisor say "You have a nice looking butt, come up here and sit down next to me". The second incident involved the supervisor stating that he would like to have intercourse with him. The third event was the supervisor telling claimant that he had " a nice pair of legs". The Judge granted benefits. In part the benefits were granted because they were considered abnormal as the supervisor had been disciplined. I t was not normal joking but intended to cause emotional harm. The Board affirmed. The Commonwealth Court on the other hand believed that although the incidents were crude and unacceptable they were actionable in the rough business of mining. The Supreme Court disagreed strongly with the Commonwealth Court and found a course of conduct which constituted an injury for which disability had resulted and thus was compensable.

SCARRING

The WCAB has reversed a WCJ decision granting 17 weeks of compensation to a firefighter who had two marks on the left side of his neck - one was 1 ½ inches long by 1/4 inch wide and a second 1 inch long by ½ inch wide. There were two additional spots of 1/4 inch and 1/16 inch. The WCAB believed that "most" Judges would have awarded between 50-65 weeks modifying the award to 60 weeks.

SLEEP DISORDER IS NOT AN INJURY

The Board has held that failure by an employee to adapt to shift changes is not an injury within the meaning of the Act. An injury is a lesion or change in body part which produces pain or harm or lesser use. Patrick Maguire v. FedEx Freight 21 WCLR 266 (PA. W.C.A.B. 2007).

SUBROGATION

The Commonwealth Court held on April 18, 2007, that subrogation rights and the workers' compensation liabilities of an employer can be transferred to a third party. See Section 319 of the Act and 34 Pa. Code 125.15. Risius v. WCAB (Penn State University), 791 C.D. 2006

SUPERSEDEAS

The Commonwealth Court, on June 8, 2007, held that when an employer appeals to the Workers' Compensation Appeal Board from a Decision of a Workers' Compensation Judge approving a Compromise and Release Agreement and obtains a supersedeas, but subsequently withdraws the appeal and pays the Compromise and Release amount, the employer cannot be subject to a Penalty Petition for frivolous appeal. Gregory v. WCAB (Narbon Builders), 2021 C.D. 2006.

TERMINATION DENIED ALTHOUGH INJURIES IN NCP RESOLVED

Commissioner Santone found that despite claimant's leg fracture having resolved, which was the described injury in the NCP, claimant continued having pain due to a nerve injury which the Board felt was not a distinct injury different from the leg fracture which then placed the added burden on the employer to prove the nerve injuries' resolution also. Bonnoni v. WCAB (Akers), 22 PAWCLR 54.

UNREASONABLE CONTESTS

Judge Bonnie Brigance Ledbetter wrote an Opinion on December 5, 2006 that an employer who defends a Reinstatement Petition by relying solely on the credibility and cross examination of the claimant's medical expert risks an award of attorney's fees if the reinstatement is granted. The Commonwealth Court found that when claimant met her burden on the reinstatement, the employer then was required to show that its contest was reasonable. The significance of the Opinion is the careful scrutiny given the Court on counsel fees awarded as the rule in cases as opposed to the exception and that an employer, to avoid counsel fees, has burden of showing a reasonable basis. Virna Wood v. WCAB (Country Care Private Nursing) 1272 C.D. 2005.

UNTIMELY FILED SCARRING CLAIMS

The Commonwealth Court held that where claimant suffered an injury in 1991 but had neck surgery giving rise to the scarring claim in 2004 Sec. 315 of the Act precludes claimant recovery for specific loss of scarring by the statute of limitations. Kelley v. WCAB (Standard Steel), No. 1434 C.D. 2006, 2007 Pa. Commonwealth LEXIS 99 filed March 6, 2007.

UTILIZATION REVIEW DETERMINATION

The Commonwealth Court affirmed, on February 12, 2007, the Workers' Compensation Appeal Board setting aside a Utilization Review Determination when the Utilization Review report discussed the medical treatment provided by another physician associated with the same practice but

did not present any evidence with regard to the named provider. The employer had requested a Utilization Review of the medical treatments of Dr. A, but relied on the office notes and records of his associate, Dr. B, without providing any office notes or records of Dr. A. The employer has requested the review of the medical treatments of Dr. A and "all other providers under the same license and specialty." According to the Commonwealth Court the employer should have specifically named all doctors whose medical records were under review. Bucks County Community College v. WCAB (Nemes, Jr.), 950 C.D. 200.

URO DETERMINATIONS

The Commonwealth Court affirmed the Workers' Compensation Appeal Board and Workers' Compensation Judge on April 4, 2007 with regard to findings that Maxidone was not reasonable or necessary for a low back injury, but reversed with regard to blood patches being unreasonable and unnecessary. Sweigart v. WCAB (Burnham Corporation), 1714 C.D. 2006.

III. BUREAU DEVELOPMENTS

1. On December 5, 2006, Judge Ledbetter was appointed President judge of the Commonwealth Court.

2. A new WCJ has been appointed to the Erie District – Jean Best, formerly of Dallas Hartman's office, will shortly be announced as Judge.

3. Please remember that the Bureau Conference is scheduled to be held from 05/30/07 and 06/01/07 with an agenda that will cover many significant Pa. developments and take the opportunity to meet the Judges along with physicians such as Steven Conti and others. If you wish to be registered, we would be delighted to assist you, just let us know.

IV. LITIGATION DEVELOPMENTS AND RESULTS

Below is a report card of our results in Western Pennsylvania. A win is when our petition is granted or the claimant's petition is dismissed. A loss is when our petition is denied or the claimant's petition is granted. In 2005 we received a new account that wanted to settle as many claims as possible; hence, the increase in the median settlement amount. Our largest settlement has been $150,000 and our lowest $0. Since 2000 we have recovered $458,000 from the Supersedeas Fund.

We have three attorneys serving western Pennsylvania...Stewart Karn, Jim Ehrman and me. Together our workers' compensation litigation experience is almost 100 years.

We invite you to visit our web page where we have a number of articles and publications, particularly, The Pitfalls of Pennsylvania Workers' Compensation and Recent Developments in Pennsylvania Workers' Compensation.

			Report Card	
	Win	Lose	settle	Median settlement
1999	73.3%	6.7%	20.0%	$32,500.00
2000	75.9%	10.3%	13.8%	$35,000.00
2001	59.4%	9.4%	31.3%	$40,000.00
2002	33.3%	13.9%	52.8%	$12,500.00
2003	34.5%	6.9%	58.6%	$27,500.00
2004	41.7%	8.3%	50.0%	$23,750.00
2005	33.3%	7.9%	58.7%	$47,500.00
2006	25.7%	5.7%	68.6%	$55,000.00