



PA Workers' Compensation Case Law Updates

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MEDICAL EVIDENCE:

The WCJ denied the Claimant's Claim Petition and on appeal the Claimant argued that the WCJ's credibility determinations were based upon misapprehension of facts and incompetent evidence, and the Decision was not supported by substantial, competent evidence. The Commonwealth Court affirmed the denial of the Claimant's Claim Petition and explained that a reasonable mind could accept the testimony of Employer's medical expert as well as an Incident Report of the alleged work injury, as adequate to support a finding that Claimant's initial complaints were left-sided and the right-sided complaints of which Claimant subsequently reported are not related to the work incident. Accordingly, the WCJ's findings were found to be supported by substantial evidence. Additionally, the Court found that the WCJ's credibility determinations were supported by substantial, competent evidence and cannot be overturned on appeal. Stewart v. WCAB (Goodwill of Pittsburgh), (Pa. Cmwlth. 2020). August 26, 2020 (unreported opinion)¹.

EMPLOYEE V. INDEPENDENT CONTRACTOR:

The Claimant was doing delivery work for a newspaper company when he slipped and fell on a customer's driveway. The Court denied benefits to the Claimant on the basis that the Claimant was an Independent Contractor as the Employer did not have "control" over the performance of the Claimant's duties. In reaching its conclusion that the Claimant was an Independent Contractor as opposed to an Employee, the Court noted that the Claimant executed an Independent Contractor Agreement, was not provided transportation to deliver papers, was not provided with a delivery route, was not reimbursed for costs of transportation, and was free to deliver other newspapers, even from competitors of the Employer. Shannon v. WCAB (Ogden Newspapers of PA), (Pa. Cmwlth. 2020) August 25, 2020 (unreported opinion).

CLAIM PETITION:

The Court affirmed the WCJ's Decision granting the Claimant's Claim Petition with a Termination of benefits awarded. The Court emphasized that on a Claim Petition, it is the Claimant's burden to prove duration of disability throughout the pendency of the Claim Petition, which the Claimant failed to accomplish. Additionally, the Court stated that a Claimant's testimony concerning continuing disability is substantial evidence to support the WCJ's finding of ongoing disability. Forbes v.

¹ Unreported Opinions are not binding legal precedent but may be cited for persuasive legal authority.

WCAB (Home Helpers), (Pa. Cmwlth. 2020) August 20, 2020 (unreported opinion).

UNREASONABLE CONTEST ATTORNEY FEES:

The Claimant argued on appeal that in a “medical-only” case where the Claimant is unable to pay an attorney through a traditional conditional fee agreement, Section 440 of the Act should be interpreted to provide for the payment of attorney fees by the Employer even if the Employer presents a reasonable contest. The Court rejected the Claimant’s argument for attorney fees on appeal and again held that attorney fees are precluded for payment by the Employer if the Employer presents a reasonable contest in the underlying litigation. Lorino v. WCAB (Cmwlth. of PA), (Pa. Cmwlth. 2020) August 19, 2020 (unreported opinion).

IMPAIRMENT RATING EVALUATIONS (IRE’s):

The Employer appealed an Opinion of the Workers’ Compensation Appeal Board (WCAB) arguing on appeal that an IRE performed prior to Act 111 should be valid, on the basis that the IRE complies with the requirements of Act 111. The Commonwealth Court rejected Employer’s argument and held that employers are required to have an updated IRE subsequent to Act 111 and in accordance with its requirements. However, the Court held that should the updated IRE result in an impairment rating less than 35 percent and assuming the prior change in status from “total” to “partial” disability based upon a prior IRE was not appealed or upheld on appeal, employers are entitled to a credit for the weeks of partial disability paid from the first IRE up until when the Claimant filed the Reinstatement Petition. Rose Corporation v. WCAB (Espada), (Pa. Cmwlth. 2020) August 17, 2020.

The Claimant filed an appeal to the Commonwealth Court alleging that benefits should be reinstated as of the date benefits were modified from total to partial based on the former IRE provisions of the Act, as opposed to the date of Claimant’s Reinstatement Petition. The Court found that the Claimant’s benefits should only be reinstated as of the date of the Reinstatement Petition because Claimant was not litigating the underlying IRE when the *Protz II* Opinion was issued, rather Claimant’s modification from total to partial disability was effective and had not been appealed. Accordingly, the Court held that Claimant is entitled to reinstatement of total disability as of the date of the Reinstatement Petition, not the effective date of the prior change in disability status from total to partial. White v. WCAB (City of Philadelphia), (Pa. Cmwlth. 2020) August 17, 2020.

120 day Notice Requirement:

The Court affirmed the WCJ's Decision denying the Claimant's Claim Petition for failure to provide timely notice of the alleged work injury. The Court emphasized that the relevant inquiry for satisfying the 120 notice requirement is not simply whether Claimant actually knew or should have had reason to know that his firefighting activities caused his stomach cancer, but rather, whether Claimant could have discovered the work-relatedness of his stomach cancer through the exercise of reasonable diligence at any point prior to the time he obtained the report from his medical expert. Because the Claimant failed to exercise reasonable diligence in ascertaining a causal relationship between his cancer and firefighting duties, he failed to provide timely notice of an alleged work injury. Stahl v. WCAB (East Hempfield Township), (Pa. Cmwlth. 2020) August 14, 2020. (unreported opinion).

Suspension Petition:

The WCJ Suspended the Claimant's benefits as of the date the Employer's medical expert testified by deposition. On appeal, the Commonwealth Court affirmed the WCAB's Order modifying the Suspension of benefits to the date of the medical expert's examination, not the deposition. The Court stated that, "we note, as did the Board, that in other contexts involving a change in claimant's benefit status, the date of the medical examination is determinative. Everson v. WCAB (Al-Mar RV), (Pa. Cmwlth. 2020) August 7, 2020 (unreported opinion).

RES JUDICATA:

The Claimant filed a Reinstatement Petition against Radnor School District, which then filed a Joinder Petition against ACTS Retirement Life Community. The Joinder Petition was ultimately denied as procedurally untimely filed. The Claimant then filed a Claim Petition against ACTS Retirement Life Community, which sought to dismiss the Claim Petition on the basis of *res judicata*. The Commonwealth Court found that *res judicata* does not apply to the Claim Petition against ACTS because the dismissal of the Joinder Petition was on procedural grounds, and was not a final judgment *on the merits*. Accordingly, the Claim Petition was permitted against ACTS. Jackson v. WCAB (Radnor School District and ACTS Retirement Life Community), (Pa. Cmwlth. 2020) August 4, 2020 (unreported opinion).