

WORKERS' COMPENSATION NEWS

Newsletter of the Philadelphia Bar Association Workers' Compensation Section

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PA SUPREME COURT ISSUES DECISION ON MENTAL/PHYSICAL CLAIMS

By: Lee S. Fiederer, Esquire

On May 18, 2000, the Pennsylvania Supreme Court decided the matter of James H. Davis v. WCAB (Swarthmore Borough), No. 118 M.D. 1997. In deciding the case, the Supreme Court established that in "mental/physical" workers' compensation cases, the claimant must establish that the original mental injury arose from abnormal working conditions in order to recover benefits in connection with a subsequent physical disability.

Whether or not the Supreme Court actually set a new standard depends on with whom you speak. The Supreme Court concluded that it previously applied the abnormal working conditions standard in cases where a claimant suffered a mental injury that manifested through both mental and physical symptoms. However, this was not the understanding of dissenting Supreme Court Justice Nigro, nor was it the belief of the majority of practitioners.

By way of background, workers' compensation injuries which begin with a mental injury have long been treated differently from cases which begin with a physical component. It has been the law in Pennsylvania that in "mental/mental claims," that is, claims which began with a mental injury and resulted in a mental disability, have had the heightened standard of compelling the claimant to establish that the injury resulted from "abnormal working conditions." Martin v. Ketchum, 568 A.2d 158 (Pa. 1990). However, it has also long been the

understanding of the bar that other types of claims, such as those which have a mental genesis but result in physical disability, do not require the claimant to show abnormal working conditions. The case law for mental/physical cases followed the lead of Whiteside v. WCAB, 650 A.2d 1202 (Pa. Cmwlth. 1994). In Whiteside, a claimant seeking to avoid the difficult abnormal working condition standard successfully asserted that he also had physical disabilities resulting from the mental stimulus.

In Davis, the Supreme Court held that a mental/physical claim, where the claimant's physical symptoms result in disability, the claimant has the burden of establishing that the injury arose from abnormal working conditions in order to recover benefits. This holding reversed the underlying Commonwealth Court determination.

The facts of Davis are as follows: Claimant had been a Police Officer for 31 years. For 20 years, he had been second in command of an eight officer department. When the Chief of Police unexpectedly died, claimant was named Officer in Command. Claimant lacked the leadership ability and remained in the position for four months. Claimant left work and received a disability retirement pension.

Pa Supreme Court Issues Decision on Mental/Physical Claims

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Prior to leaving work, claimant had physical symptoms, including hand tremors. Claimant attributed his physical problems to a number of stressful incidents occurring over the course of his 31 year career.

The WCJ awarded benefits and concluded that claimant had sustained both mental and physical disabilities in the form of psychological diagnoses and disabling hand tremors, all of which were results of the job stress. The WCAB reversed the WCJ. The Commonwealth Court reversed the WCAB by holding that claimant did not have to establish an abnormal working condition because the claim should be characterized as a mental/physical. Ultimately, the Supreme Court left undisturbed the critical judicial finding that claimant had suffered a "hand tremor which directly effected his ability to continue his employment." From this undisturbed finding, it can be inferred that the claimant suffered a physical disability which had a mental genesis, meaning that claimant could arguably avoid the heightened "abnormal working condition standard".

The Supreme Court first cited to Martin, *supra*. It then cited to its precedent in Philadelphia Newspaper, Inc. v. WCAB, 675 A.2d 1213 (Pa. 1996), for the principle that it had previously applied the abnormal working condition standard in cases where claimant had suffered a mental injury that was manifested through both mental and physical symptoms. However, Philadelphia Newspapers never stated that claimant's physical symptoms were disabling. The Supreme Court next cited to Hershey Chocolate Company v. WCAB, 682 A.2d 1257 (Pa. 1996), for same proposition, but again that case never stated that claimant's physical symptoms were disabling.

It is interesting to note how clearly the Supreme Court has stated that the abnormal working condition standard applies to mental/physical claims where the physical element results in disability. The Supreme Court held that, "It is the nature of the injury asserted, not the presence or absence of physical symptoms that is controlling." Accordingly, the Supreme Court held that the "abnormal working conditions" standard apply to mental/physical claims.

Interestingly, in his dissent, Justice Nigro stated that the majority has placed an unsurpassable bar for claimants in mental/physical cases by imposing the abnormal working condition standard. The implications and impact in this case have yet to be determined. However, this past August, 2000, the Commonwealth Court recently issued a decision which appears to the apply the Davis standard. In the case of Daneker v. WCAB (White Haven Center), the Court proceeded to conclude that the distinction between mental/mental and mental/physical cases concerning the applicable burden of proof is no longer relevant. The Commonwealth Court further went on to state that they need not decide whether a claimant's claim is mental/mental or mental/physical in nature since the burden of proof (the requirement to proof abnormal working conditions) is the same in each case. The interpretation of Davis in Daneker and their impact upon the daily practice of workers' compensation remain to be seen but will no less be interesting to follow in this evolving area of the law.

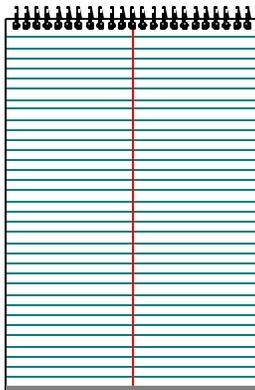
BUREAU OF WORKERS' COMPENSATION
APPOINTS TWO NEW JUDGES

By: **Kenneth N. Brodsky, Esquire**

Earlier this year, the Pennsylvania Bureau of Workers' Compensation appointed two new Workers' Compensation Judges. The Bureau has appointed Pamela Santoro, Esquire and Karen Wertheimer, Esquire as Workers' Compensation Judges.

Judge Pamela Santoro was appointed in July 2000 and assumed her formal duties on August 14, 2000. Judge Santoro has recently completed training and is receiving judicial assignments in both Lancaster, Pennsylvania as well as the State Office Building in Philadelphia. In our recent discussion, Judge Santoro advised that she will be receiving approximately 25% of her case assignments from the Lancaster, Pennsylvania office.

A 1986 graduate of Wake Forest Law School, Judge Santoro has been actively practicing workers' compensation since 1989. In discussing her recent appointment to the bench, Judge Santoro stated that she was "excited to be appointed and is look forward to her new responsibilities and working with members of the Bar".



ALTERNATIVE DISPUTE RESOLUTION --
MEDIATION

The Co-Chairs of the Philadelphia Bar Association Workers' Compensation Section would like comments and feedback regarding an Alternative Dispute Resolution System and Mediation Program. Specifically, the Co-Chairs would like any comments, suggestions or other useful information which would help in evaluating an Alternative Dispute Resolution Program as it relates to workers' compensation claims. If you have any comments, suggestions or ideas, please feel free to contact the following Co-Chairs:

Judge A. Michael Snyder (215)560-2125

Daniel J. Siegel, Esquire (215)567-7955

Patrice A. Toland, Esquire (215)587-1093

UPCOMING BAR ASSOCIATION NEWS
FOR 2001

As many of you may be aware, the Co-Chair for the Philadelphia Bar Association Workers' Compensation Section for 2001 will be Judge Martin Burman, Niki Ingram, Esquire as well as Jeffrey Gross, Esquire. The Chair People for 2001 are looking for comments, suggestions and ideas for the Bar Association Lunch Program. The Co-Chairs are also looking for other ideas , suggestions and feedback from Members of the Bar which would benefit all Member of this Section. If you have any comments or suggestions or ideas, please feel free to contact the 2001 Co-Chairs as follows:

Judge Martin Burman - (610)436-3595

Niki Ingram, Esquire - (215)575-2704

Jeffrey Gross, Esquire - (215)629-7225

UPCOMING EVENTS

On **Wednesday, October 18, 2000** at the PBI/PBEC Education Center located at The Wanamaker Building, 10th Floor, Suite 1010, (Juniper Street entrance) Judges Colins and Smith will be conducting a seminar for Workers' Compensation Mediation before the Commonwealth Court. The seminar begins at 12:30 p.m. until 2:30 p.m.. Registration and lunch begins at 11:45 p.m.. If you are not already registered, you may contact the customer service line toll free at (800)247-4PBI or (717)796-0804 Monday through Friday , 9:00 a.m. to 5:00 p.m.. You may also visit their website at <http://www.pbi.org> or register at the door but please call ahead for availability.

Workers' Compensation Section Meeting of the Philadelphia Bar Association

October 18, 2000 at 3:00 p.m., at the Philadelphia Bar Association, 11th Floor, 1101 Market Street, Philadelphia, Pennsylvania. Ms. Audrey C. Talley, Esquire of Drinker, Biddle & Reath, LLP will be addressing our members.

November 15, 2000 meeting will begin at 12:00 p.m. with a luncheon and is held at the 11th Floor Conference Room, 1101 Market Street, Philadelphia, Pennsylvania. Mr. Gabriel L.I. Bevilacqua, Esquire of Saul, Ewing, Remick & Saul, LLP will be appearing before us.

COMPENSATION SECTION

Membership in the Workers' Compensation Section of the Philadelphia Bar Association is \$20.00 per year for all members of the Association. Section meetings are generally held monthly at the Bar Association Headquarters, 11th Floor, 1101 Market Street, in Philadelphia. The Section sponsors both educational and social activities for its members and guests.

The 2000 Co-Chairs of the Section are the **Honorable A. Michael Snyder, Patrice A. Toland, Esquire and Daniel J. Siegel, Esquire**. The Chairs-Elect for 2001 are the **Honorable Martin Burman, Niki Ingram, Esquire and Jeffrey Gross, Esquire**

WC News

WC News is the newsletter of the Workers' Compensation Section. The opinions expressed in *WC News* do not reflect the opinions of the Workers' Compensation Section or the Bureau of Workers' Compensation, and are solely the opinions of the authors.

NEWSLETTER COMMITTEE

Chairs: **Kenneth N. Brodsky & Louis J. DeLuca, Jr.**

Members: **Kenneth N. Brodsky, Louis J. DeLuca, Jr. and Eric Leichtzin**