THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:
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SUPERSEDEAS FUND REIMBURSEMENT

- The employer was entitled to reimbursement from the Supersedeas Fund where it filed a Petition for Termination with a request for supersedeas on July 19, 2004, had supersedeas denied by the WCJ on August 30, 2004 and on January 25, 2005 paid a medical bill for treatment received on October 11, 2004 for treatment rendered to the claimant on June 1, 2004.

  This is because the supersedeas Section 443 of the Act does not speak of disability or the accrual of liability; rather, the statute speaks to payments of compensation paid as a result of a denied supersedeas request. The provision contains no plain language prohibiting reimbursement of retroactive benefits.

  In this case, there was no evidence presented that the employer/insured unilaterally stopped paying benefits to the claimant. The insurer at all relevant times provided benefits to claimant and, at no time, wrongfully stopped providing payments to claimant. The language of Section 443 of the Act is clearly focused on payments made rather than on periods of disability and contains no plain language prohibiting reimbursement of retroactive benefits. Thus, the right to reimbursement relates to payments made after denial of a supersedeas request.

  The Court reasoned that unlike cases involving retroactive benefits accruing from employer's unilateral cessation of benefits under Section 413, there was no reasonable argument that insurer wrongfully stopped benefits. Additionally, no argument was made that the insurer could have requested supersedeas sooner or had wrongfully done anything to avoid the payments in question. Reimbursement may be had for all payments actually made after supersedeas denial, including payment of benefits awarded retroactively for earlier periods of disability.

  Here, it did not matter that the date of service of the medical expenses in question preceded the date of supersedeas – what matters is that the treatment in question was later determined to be ineligible for payment, and the bill for that treatment was submitted to and paid by the employer after supersedeas was requested and denied.

Department of Labor & Industry Bureau of Workers' Compensation v. WCAB (Crawford & Co.), No. 2211 C.D. 2007 (Decision by Judge Jubelirer, February 2, 2009).
3/09

CREDIT/PENSION/UNEMPLOYMENT/REGULATION

- An employer who paid the clamant a pension following the claimant's work injury was only entitled to an offset for the net and not the gross amount that the claimant received.

- The Court in dicta and in a concurrent opinion states that the employer is entitled to an offset for only the net amount of Unemployment, Social Security (Old Age), Severance and Pension Benefits that the employee receives. In a concurring opinion, Judge Jubelirer writes expressly that this Court's decision overrules the Commonwealth Court's prior decision of Steinmetz v. WCAB (Cooper Power Systems), 858 A.2d 182 (Pa. Cmwlth. 2004), which held that the employer was entitled to a credit for the gross amount of Severance Benefits and Unemployment Compensation paid to the claimant.

  The Court reasoned that under Section 204(a) the employer is only entitled to a credit for what was "received by an employee" and the claimant receives the net not the gross amount. Moreover, the Court notes that part of its reasoning in Steinmetz was that applying the offset to the net amount of Unemployment Compensation benefits would create unnecessary administrative problems. The Bureau has since adopted Regulation 123.4(f) that provides an administrative procedure whereby the employer could obtain the difference between the net and gross. This provision states, in pertinent part:

  > *When Federal, State or local taxes are paid with respect to amounts an employee receives in unemployment compensation, Social Security (old age), severance or pension benefits, the insurer shall repay the employee for amounts previously offset, and paid in taxes, from workers' compensation benefits, when the offset was calculated on the pretax amount of the benefit received. To request repayment for amounts previously offset and paid in taxes, the employee shall notify the insurer in writing of the amounts paid in taxes previously included in the offset.*

- Unless the Court determines that a regulation is clearly erroneous or violative of the legislative intent, the interpretive regulation adopted by the administrative agency will be accorded deference. Regulations that implement Section 204(a) of the Act do not conflict with the statutory language, at issue, and simultaneously, they further both the intent underlying the 1996 amendment to the 2004(a) of the Act and the remedial purpose of the Act.

Philadelphia Gas Works v. WCAB (Amodei), No. 350 C.D. 2008 (decision by Judge Friedman, decision February 4, 2009).

Reinstatement/Vocational

- Although "a no work position" offered by an employer may be considered available within the meaning of Kachinski, if it is approved by a physician found credible by the WCJ, in this matter the "no work position" was not available to the claimant where the claimant's treating physician, found credible by the WCJ, did not release the claimant to perform the job because the claimant had difficulty staying awake and concentrating because of the medication he was on and where the record reflected that the claimant had been reprimanded and threatened with termination if he fell asleep on the no work position again.

- An employer does have to prove a change in condition when a petition is based upon job availability within the claimant's restrictions rather than a change in the claimant's physical condition.

Channellock, Inc. v. WCAB (Reynolds) No. 884CD2008 (decision by a Judge Jubelier, December 11, 2008).