THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:
FEBRUARY 2011 AT A GLANCE
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NOTICE/PENNSYLVANIA RULES OF CIVIL PROCEDURE/WCJ

- The Pennsylvania Rules of Civil Procedure do not apply in workers' compensation proceedings. Therefore, the Judge did not err in denying claimant's Motion for Summary Judgment.

- Whether an employee has complied with the notice requirements set forth by the Act is a question of fact to be determine by the WCJ.

  The WCJ did not commit an error of law where he concluded that the claimant did not provide timely notice in support of his Claim Petition where the WCJ, who as the ultimate fact finder is empowered to determine witness credibility and evidentiary weight, found credible the employer fact witnesses who cumulatively testified credibly that the employer had not received notice of claimant's June 2005 incident prior to receiving an email from the claimant on October 23, 2007, which was the date the claimant was terminated for cause.

Hershgordon v. WCAB (Pep Boys, Manny, Moe & Jack), No. 2031 C.D. 2010 (Decision by Judge Butler, February 8, 2011). 3/11

TERMINATION/SUSPENSION/NOTICE OF COMPENSATION PAYABLE

- The Commonwealth Court grants the claimant's Application for Reargument en banc and withdraws its opinion and order dated December 16, 2010 wherein it held that an employer is not precluded from obtaining to granting of a Termination, Suspension or Modification premised upon a medical exam conducted prior to the date the Notice of Compensation Payable was issued.

City of Philadelphia v. WCAB (Butler), No. 1245 C.D. 2009 (By the Court: Judge Bonnie Brigance Leadbetter February 24, 2011). 3/11

COURSE AND SCOPE

- The claimant's decision, on a "whim" to intentionally jump down approximately 12 flights of stairs while going to take his one half hour unpaid lunch leave at the employer's on campus dining facility, where the claimant had an employer sponsored meal plan, did not result in an injury in the course and scope of

employment because the claimant's actions cannot be viewed as furthering the employer's business or affairs.

Moreover, claimant was not taking a small, temporary departure or breaking from his employment to administer to his personal comfort; rather claimant was on his way to eat lunch on employer's premises when he intentionally jumped down the flight of stairs and was injured.

The actions taken by claimant in jumping down the stairs, while on his lunch break, were wholly foreign to his employment. The premeditated, deliberate, extreme, and inherently high-risk nature of Claimant's actions were sufficient to remove Claimant from the course and scope of his employment

- The fact that an employee found it convenient to eat his meals at work at a public eatery on employer's premises does not establish that employee was required to eat there. Moreover, whether or not an employer has a cafeteria on the premises should not be a dispositive factor in determining whether an employee was in a course and scope of his employment at the time of the injury.

- An injury is compensable under Section 301(c) (1) of the Act only if the injury arises in the course of employment and is causally related thereto. An injury may be sustained "in the course of employment" under Section 301(c) (1) of the Act where the employee is injured on or off the employer's premises while actually engaged in furtherance of the employer's business or affairs.

  The determination as to whether or not the claimant's injury resulting from his jumping over 12 stairs was in the course and scope of his employment starts with the analysis of whether he was actually engaged in furtherance of the employer's business or affairs by considering the nature of employment and claimant's conduct. An activity that does not further the affairs of the employer will take the employee out of the course and scope of his employment and serve as a basis for denial of the claim.

- Technically, a claimant who is at lunch and sustains an injury <u>off the employer's premises</u> is not acting in furtherance of the employer's business or affairs.

  Employees who remain <u>on employer's premises</u> for their lunch break and sustain an injury are generally considered to be in furtherance of the employer's business, unless the activity they are engaged in was so wholly foreign to their employment.

- Generally, neither small temporary departures from work to administer to personal comforts or convenience, nor inconsequential or innocent departures will break during course of employment.

  Upon determining whether or not the departure from work is lengthy or temporary, monumental, or minor, i.e., whether it is a break in the course of

employment or not – there is no fixed standard by which to make the determination. Additionally, the personal conflict doctrine recognizes that "breaks which allow the employee to administer to his personal comfort better enable him to perform his job and are, therefore, considered to be in furtherance of the employer's businesses.

- Certain factors to be considered important when determining whether an employee was furthering an employer's business or affairs when injured while engaging in a social or personal activity during a work break or non work hours.

  First, in concluding that an employee was engaged in the furtherance of the business or affairs of the employer, much emphasis is placed on evidence demonstrating that the employer encouraged the activity at issue.

  Second, emphasis is placed on the finding that the activity the claimant was engaged in furthered a specific interest of the employer.

  Third, the Court considers whether the activity was necessary to maintain a claimant's employment skills.

Penn State University v. WCAB (Smith), No. 630 C.D. 2010 (decision by Judge Brobson, February 22, 2011). 3/11