THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:
SEPTEMBER 2009 AT A GLANCE
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MEDICAL BENEFIT/HOME MODIFICATION

- Pursuant to Section 306(f.1)(1)(ii) the term "orthopedic appliances" includes modifications made to a claimant's home to accommodate his restrictions resulting from his work-related injury. Pursuant to this same section an employer is obliged to pay for repair of modifications that were initially negligently performed.

  This holding is not consistent with the Court's decision in Bomboy v. WCAB (South Erie Heating Company), 572 A.2d 248 (Pa. Cmwlth. 1990) where the Court held that the requirement that an employer provide home modification at the employer's expense is limited to a one-time expenditure. An exception to the one time expenditure rule would exist where the modification needed to be repaired due to normal wear and tear and where a repair to the modification must be made because the modification was negligently made in the first place.

Equitable Resources v. WCAB (Thomas), No. 80 CD 2009 (Decision by Judge Cohn Jubelirer, September 2, 2009).

PETITION FOR SUSPENSION/MODIFICATION/VOCATIONAL

- A claimant's testimony based subjective belief about her work abilities, which is not supported by the restrictions imposed by a physician, will not be enough to defeat a Petition for Modification or Suspension once the employer has fulfilled its burden of proof by showing that it made appropriate work available to the claimant within her capabilities and restrictions.

  Accordingly, the claimant was required to present medical evidence in her defense once the employer fulfilled its burden of proof in support of its Petition for Modification.

- Reinstatement principles, such as those set forth by Latta v. WCAB (Latrobe Die Casting Co.), 642 A.2d 1083 (Pa. 1994), which held that a claimant's testimony alone can satisfy her burden in support of a Petition for Reinstatement where compensation has been suspended, does not apply to the Petition for

Modification/Suspension Petition scenario where the employer has fulfilled its burden of proof of by showing that work is available to the claimant within her capabilities.

World Kitchen, Inc. v. WCAB (Ridout), (Decision by Judge Leavitt, June 15, 2009 and amended September 14, 2009). 10/09

COURSE AND SCOPE OF EMPLOYMENT/ATTORNEY FEES

- Pursuant to Section 440 of the Act, a claimant who is successful in whole or in part in litigation is entitled to an award of attorney fees, unless the employer's contest is reasonably based. The employer has a burden of presenting sufficient evidence to establish a reasonable basis for its contest. Whether an employer's contest is reasonable is a question of law fully reviewable on appeal.

  A reasonable contest is established where the employer presents medical evidence that is contrary to the claimant's evidence where it is evident the employer's contest is not frivolous or done to harass the claimant. The reasonableness of an employee's contest also depends on whether the contest was prompted to resolve a genuinely disputed issue, which can be legal or factual or both.

  The employer presented a reasonable contest in defense against the claimant's Claim Petition because its contest was prompted to resolve the genuinely disputed issue whether claimant's injury occurred on its premises, and therefore in the course and scope of employment, because the claimant fell in a parking lot that the employer did not own but rather paid the landlord a fee for maintenance and the non-exclusive right to use the parking lot and adjoining sidewalk. Moreover, the employer did not mandate where employee should park; the parking lot was open for use by members of the public.

- An injury that occurred while the claimant was not furthering the Employer's business can still be considered to have occurred in course of employment if the claimant establishes that:

  (1) Her injury occurred on the employer's premises;
  (2) She was required by the nature of her employment to be present on the employer's premises; and
  (3) The injury was caused by the condition of the premises or by operation of the employer's business or affairs thereon.

- For purposes of the Act, the term "premises" is property "owned, leased or controlled by the employer to a degree where that property could be considered an integral part of the employer's business.

Thompson v. WCAB (Cinema Center), *No. 621 C.D. 2009 (Decision by Judge Leavitt, September 24, 2009). 10/09*