THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:
MAY 2010 AT A GLANCE
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CLAIM PETITION/WCJ

- The WCJ did not commit an error of law upon granting the claimant's Claim Petition for a closed period with a termination of compensation notwithstanding the fact that the claimant's treating physician, found credible in part, testified that the claimant's work-related flexor tenosynovitis was "irreversible".

  This is because the Commonwealth Court decision of Hebden v. WCAB (Bethenergy Mines, Inc.), 534 Pa. 327, 632 A.2d 1302 (1993), which held that an employer's petition to challenge an employee's continued disability caused by irreversible occupational disease could not be re-litigated, applies to the occupational disease and termination setting and by contrast the current case involved a Claim Petition.

- In a Claim Petition proceeding no work-related injury has been yet recognized, which means it is the claimant's burden to establish all the necessary elements to support an award. Moreover, the claimant must not only prove that she has sustained a compensable injury but also that the injury continues to cause disability throughout the pendency of the Claim Petition proceeding. If a WCJ feels that evidence supports a finding of disability only for closed period, she is free to make such a finding.

- Commonwealth Court in a footnote clarifies that its holding in Hebden, concerning the *res judicata* effect of a prior finding that a claimant suffers from a nonreversible occupational disease, only precludes a challenge to a claimant's current disability status where the claimant's condition is clearly irreversible, such as the case of a *progressive occupational disease*. If medical science deems the condition to be irreversible at the time the parties seek to challenge the prior situation or adjudication, no review may be had.

- In a workers' compensation proceeding the WCJ is the ultimate fact finder and, in that role, is free to accept or reject the testimony of any witness, including a medical witness, in whole or in part. In this matter, the WCJ was free to credit the claimant's medical expert's opinion that claimant sustained a work-related injury but not credit his opinion that the condition was irreversible and find credible the employer's expert's testimony that the claimant was recovered.

Milner v. WCAB (Mainline Endoscopy Center), No. 2331 C.D. 2009 (Decision by Judge Friedman, May 18, 2010).6/10

UTILIZATION REVIEW/MEDICAL PAYMENT/REGULATIONS

- While Section 306(f.1)(5) of the Act unambiguously provides for suspension of payment to medical providers if there is a dispute concerning the reasonableness and necessity of treatment, Sections 127.208(e) and (g) of the Regulations just as clearly provide that such suspension of payment ends if there is a UR Determination that the treatment was reasonable and necessary.

  Accordingly, the employer violated the Act where it continued to suspend payment of claimant's medical expenses upon receipt of an unfavorable Utilization Review Determination notwithstanding the fact that it subsequently filed a Petition Seeking Review of that same Utilization Review Determination.

- It is well settled that administrative agency's interpretation of a statute is given controlling weight unless it is clearly erroneous. Sections 127.208(e) and (g) of the Regulations are not only consistent with the language of Section 306(f.1) (5) and (6) of the Act; they clearly explain and enforce the Act as well as expedite the UR process.

Scranton School District v. WCAB (Carden), No. C.D. 2009 (decision by Judge Butler, March 12, 2010). 6/10

COURSE AND SCOPE/REASONED DECISION

- The claimant who slipped go to her car during her unpaid lunch break in a parking lot 10 feet away from the building where her employer's office was suffered her injury in the course and scope of her employment notwithstanding the fact that the employer neither leased or owned the parking lot and the employer shared the parking lot with other tenants of the corporate park.

  This is because upon construing the term "premises" as contemplated by Section 301(c)(1) of the Act, the determinative question is not whether the employer had title to or control over the site of the accident, but rather whether this site of the accident was so connected with the employer's business as to form an integral part thereof. Reasonable means of access to the workplace is considered an integral part of the employer's business, and, therefore, it is considered part of the employer's premises.

  In this matter, the parking lot was integral part of the employer's business because it was a reasonable means of access to the workplace. The parking lot was adjacent to the workplace and the location of claimant's fall was only 10 feet from the workplace entrance. Although the employer shared the parking lot with other tenants of the corporate campus, the portion of the lot closest to workplace was used by employer's employees and it is in the front row of that parking lot where the claimant's car was parked.

- Employer's parking lot was used in the operation of the employer's business where it was located between the workplace and another building housing the employer's operations and employer's employees traversed the parking lot to go from one building to the other.

- Claimant's injuries occurred in the course and scope of employment notwithstanding the fact that claimant's fall occurred while she was going on her one-half hour mandatory unpaid 30-minute lunch break.

  It is well established in Pennsylvania that any injury occurring to an employee up until the time she leaves the premises of the employer, provided that it is reasonably proximate to work hours, is compensable. The rationale behind this rule is that once an employee is on the employer's premises, actually getting to or leaving the employee's workstation is a necessary part of that employee's employment.

  Although this will typically apply to situations where the employee is arriving at the workplace to commence a workday, or departing from the workplace at the completion of the workday, there is no reason why this rule should not be applicable to the present situation where the claimant was required to take her lunch break at a time pre-determined by employer and was permitted to leave employer's premises. Although claimant was on her "lunch break" for the purposes of employer's time clock, her presence on employer's premises remain so connected to the employment relationship that it was required by the nature of her employment.

- Section 422(a) of the Act states, in pertinent part, that all parties in a workers' compensation case are entitled to a reasoned decision containing findings of fact and conclusions of law based upon the evidence as a whole which clearly and concisely states and explains the rationale for the decision so that all can determine why and how a particular result was reached. The decision of a WCJ is "reasoned" if it allows for meaningful appellate review without further elucidation.

  The WCJ did not write a reasoned decision where the WCJ merely found that the claimant sustained an injury to her "back, neck, and legs without further clarification as to what specific injuries claimant incurred as a result of the slip and fall."

  To the extent the Judge failed to provide sufficient specificity as to description, extent and/or scope of claimant's specific work injuries, the WCJ failed to issue a "reasoned decision" as required by Section 422(a) of the Act.

ICT Group v. WCAB (Churchray-Woytunick) No. 2315 C.D. 2009 (decision by Judge Brobson, May 26, 2010). 6/10

EMPLOYER/EMPLOYEE RELATIONSHIP

- The Judge did not commit an error of law, premised upon her credibility determinations, by finding that the claimant was not in the course and scope of her employment when she was injured after taking a tuberculin test during the pre-employment phase of the hiring process.

  This is because the claimant was not an employee of the employer at the time she took the test because the test was a perquisite to employment and at the time she took the test the claimant was a mere applicant, albeit a strong candidate to work for the employer.

  It was immaterial that the claimant was subsequently offered a job by the employer and worked for the employer. The claimant was an applicant going through the hiring process at the time she suffered her injury. Claimant may have ended up not getting a job had she failed the tuberculin test or unsuccessfully completed any of the employer's other requirements for employment.

  No benefits need be paid if the employer/employee relationship is not established.

- A claimant who files a Claim Petition must establish an employer/employee relationship in order to be entitled to benefit under the Act. An employment relationship may exist when wages are not being earned. The term "employee" in analyzing Section 309 of the Act has been found not to be limited to the actual date an employee worked for wages, but encompasses the period of time that an employment relationship is maintained by the parties. A determination regarding the existence of an employer/employee relationship is the question of law subject to the Court's review.

Moberg v. WCAB (Twining Village) No. 1767 C.D. 2009 (decision by Judge Flaherty, March 17, 2010). 6/10

NOTICE OF COMPENSATION DENIAL

- The Notice of Compensation Denial Form for Medical Only (box 4 checked off) is currently being issued by the Bureau and is an acceptable means of accepting an injury for medical purposes only. Accordingly, an employer may properly issue a "Qualified" Notice of Compensation Denial to accept a work injury for medical purposes only.

  Therefore, it was not improper for the employer to issue a "Qualified" Notice of Compensation Denial rather than a Medical Only Notice of Compensation Payable where it acknowledged that a work-related injury occurred but disputed the claimant's disability.

Forbes Road CTC v. Workers' Compensation Appeal Board (Consla), No. 919 C.D. 2009 (Decision by Judge Butler, May 27, 2010). 6/10

NOTICE

- Pennsylvania Supreme Court Grants claimant's Petition for Allowance Appeal that sought review of Commonwealth Court Decision that held that Section 312 of the Act does not require an exact diagnosis but only a reasonably precise description of the injury.

  The Commonwealth had found that the claimant's message on the employer's voicemail that she had "work-related problems" was not sufficient notice. This message did not give a reasonably precise description of the claimant's work injury to the employer as required by Section 312.

  The Supreme Court framed the issue before them as follows:

  > *"What constitutes sufficient notice, including how specific the description of the injury must be, under Section 312 of the Workers' Compensation Act? In addressing this issue, the parties are also to address if, and when, the burden shifts to the employer to conduct a reasonable investigation into the circumstances surrounding the injury."*

Gentex Corporation and Gallagher Bassett Services v. WCAB, (Morack), No. 439 MAL 2009 (Per Curiam order, June 1, 2010) 7/10