THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:
AUGUST 2014 AT A GLANCE
BY MITCHELL I GOLDING, ESQ.
KENNEDY, CAMPBELL, LIPSKI & DOCHNEY
(W) 215-861-6709

COURSE AND SCOPE/ JUDICIAL ESTOPPEL/EVIDENCE

- The employer was not judicially estopped from defending against the claimant's Claim Petition on the basis of Course and Scope of Employment on the basis of its answer to the claimant's Civil Complaint, later withdrawn by the claimant, where the employer, seeking immunity from the Civil Suit, alleged that the claimant's injury occurred in the Course and Scope of Employment.

  This is because the doctrine of Judicial Estoppel provides that a party to an action is estopped from assuming a position inconsistent with his or her assertion in a previous action, if his or her contention was ***successfully maintained***. Accordingly, judicial estoppel is properly applied only if the court concludes the following: (1) that the appellant assumed an inconsistent position in an earlier action; and (2) that the appellant's contention was "***successfully maintained***" in that action.

  Settlement of a claim, despite binding the parties and ending an action, does not equal "*successfully maintain*." The "successfully maintain" element of judicial estoppel based on the action of a decision-maker, not the actions of the parties.

  Accordingly, the Claimant's act of voluntarily withdrawing his civil action means he did not successfully maintain his Civil Action, meaning Judicial Estoppel does not apply.

- An employer's Answer to a Civil Action is admissible to a Workers' Compensation proceeding because a WCJ may consider prior inconsistent statements when assessing witness credibility.

- The claimant's injury was in the Course and Scope of employment where the claimant became injured after he quit but while still on the employer's premises while removing his belongings from Employer's truck at Manager's request and under managers supervision.

  This is because the phrase "arising in the course of employment" in Section 301(c)(1) of the Act is construed to include injuries sustained in ***furtherance of the business or affairs*** of the employer, as well as certain other injuries which occur on premises occupied or controlled by the employer.

  By removing his belongings from Employer's truck under Manager's supervision,

Claimant was furthering Employer's interests.

- An employee may be found to be within the Scope of Employment, even when not furthering an employer's interests. This is because Section 301(c)(1) of the Act does not preclude a claimant from seeking benefits for such an injury after the employment relationship has ceased provided he can establish the injury occurred in the course of employment.

  Under this scenario the following three factors are applied to the Course and Scope of employment analysis: 1) on employer's premises; 2) required to be on premises, and 3) injured due to a condition of employer's premises.

  Applying these factors the WCJ did not commit an error of law upon granting the claimant's Claim Petition where she found claimant was on Employer's premises, and was acting on Employer's direction at the time he was on the premises, and was injured by tripping over Employer's pallet on the warehouse floor.

Marazas v. WCAB(Vitas Healthcare Corporation), No. 337 C.D. 2014 (Decision by Judge Simpson, August 11, 2014) 8/14

COURSE AND SCOPE

- Under Section 301(c)(1) of the Workers' Compensation Act (Act), injuries occur during the course and scope of employment when they are "sustained while the employee is actually engaged in the furtherance of the business or affairs of the employer, whether upon the employer's premises or elsewhere."

  Not compensable under the Act are those "injuries sustained while the employee is operating a motor vehicle provided by the employer if the employee is not otherwise in the course of employment at the time of injury."

- Generally, under the "going and coming rule," injuries sustained while an employee is traveling to and from his place of employment are considered outside the course and scope of employment and are, therefore, not compensable under the Act.

  Such injuries will, however, be considered to have occurred during the course and scope of employment if one of the following four exceptions applies:

  (1) The claimant's employment contract includes transportation to and from work;
  (2) The claimant has no fixed place of work;
  (3) The claimant is on a special mission for employer; or
  (4) The special circumstances are such that the claimant was furthering the business of the employer.

One with no fixed place of employment is a traveling employee. Whether a claimant is a traveling employee is determined on a case by case basis, and the court will consider whether the claimant's job duties involve travel, whether the claimant works on the employer's premises, or whether the claimant has no fixed place of work.

The course of employment is broader for traveling employees.

The fact that an employer has a central office at which an employee sometimes works is not controlling.

A cable installer, closely fits the category of 'traveling employee'.

The claimant, who was employed as a cable installer, suffered a motor vehicle accident within the course and scope of employment, although it occurred while the Claimant was driving his company vehicle to Employer's facility prior to the beginning of his work, because the claimant had no fixed place of work and was a traveling employee. This is because although claimant reported to his employer's office in the morning, he was there for no more than fifteen minutes and then spent his whole workday to install services or make repairs for his employer's customers. The fact that he initially stopped at his employer's office is not dispositive.

As a traveling employee, Claimant was entitled to a presumption that he was working for Employer during the drive from his house to Employer's facility.

To rebut this presumption, Employer had to establish that Claimant's actions at the time of the injury were so foreign to and removed from his usual employment that they constituted an abandonment of that employment

Holler v. WCAB (Tri Wire Engineering Solutions, Inc.) No. 2209 C.D. 2013(Decision by Judge Brobson, August 22, 2014) 8/14