THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:
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OCCUPATIONAL DISEASE/MEDICAL TESTIMONY

- To establish that a firefighter's cancer is an occupational disease, pursuant to 108(r) of the Act, the firefighter must show that he has been diagnosed with a type of cancer "***caused by*** exposure to a known carcinogen which is recognized as a Group 1 carcinogen." By using the words "***caused by***" it is incumbent upon Claimant to prove that his cancer is a type of cancer caused by the Group 1 carcinogens to which he was exposed in the workplace to establish an occupational disease.

  Only then do the presumptions in Section 301(e) and (f) of the Act come into play.

  Section 301 (e) provides:

  > *If it be shown that the employe, at or immediately before the date of disability, was employed in any occupation or industry in which the occupational disease is a hazard, it shall be presumed that the employe's occupational disease* ***arose out of and in the course of his employment,*** *but this presumption shall not be conclusive.*

  Section 301 (f) provides in pertinent part:

  > *Compensation pursuant to cancer suffered by a firefighter shall only be to those firefighters who have served* ***four or more years in continuous firefighting duties****, who can establish direct exposure to a carcinogen referred to in section 108(r) relating to cancer by a firefighter and have successfully passed a physical examination prior to asserting a claim under this subsection or prior to engaging in firefighting duties and the examination failed to reveal any evidence of the condition of cancer. The presumption of this subsection may be rebutted by substantial competent evidence that shows that the firefighter's cancer was not caused by the occupation of firefighting.*

  This presumption relieves the firefighter of the need to prove that his cancer was caused by his workplace exposure and not another cause. So long as the firefighter can show four years of continuous service and the absence of cancer prior to that service, he is entitled to compensation under Section 301(f) of the Act,

- The WCAB's affirmation of the WCJ's granting of claimant's Claim Petition was vacated and this matter was remanded because the WCAB erred in concluding that if claimant had cancer generally and was exposed to any Group 1 carcinogens, he had met his initial burden. The WCAB failed to give effect to the words "caused by" between "cancer suffered by a firefighter" and "exposure to a known [Group 1] carcinogen" as used in Section 108(r) of the Act

  Upon remand, the claimant had to establish that melanoma is caused by a Group 1 carcinogen, thus rendering it an occupational disease under Section 108(r). Only at that point would the presumption in Section 301(e) comes into play and assist Claimant, who is relieved of having to rule out other causes for his melanoma, such as his outdoor lifestyle.

  The WCJ must then determine whether Claimant had "four or more years in continuous firefighting duties, can establish direct exposure to a carcinogen referred to in section 108(r) and successfully passed a physical examination prior to engaging in firefighting duties and the examination failed to reveal any evidence of the condition of cancer

- Upon remanding this matter the Commonwealth Court directed the WCAB to determine whether the Act requires a medical expert to satisfy Pennsylvania Rule of Evidence 702, i.e., the Frye standard. This section provides:

  > *A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:*
  >
  > *(a) the expert's scientific, technical, or other specialized knowledge is beyond that possessed by the average layperson;*
  > *(b) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; and*
  > *(c) the expert's methodology is generally accepted in the relevant field.*

City of Philadelphia Fire Department v. WCAB (Sladek), No. 579 C.D. 2015 (Decision by Judge Leavitt, August 12, 2016) 8/16

LONGSHORE ACT

- The WCJ did not err by holding that the Longshore Act had exclusive jurisdiction over the claimant's injury where the ship on which Claimant was injured was located "on the water."
  This is because the Longshore Act provides employees who are injured over navigable waters while performing traditionally maritime functions remain exclusively in the jurisdiction of the Longshore Act.

- An employee is entitled to benefits under the Workers' Compensation Act when he establishes that he suffered a work-related injury in Pennsylvania that occurred in the course of an employment relationship. Sections 101 and 301(c) (1) of the Workers' Compensation Act.
  Alternatively, an employee is entitled to benefits under the Longshore Act if he establishes that his disability is the result of "an injury occurring upon the navigable waters of the United States.

  Maritime employees who are injured over navigable waters while performing traditionally maritime functions remain exclusively in the jurisdiction of the Longshore Act.

Savoy v. WCAB (Global Associates), No. 2613 C.D. 2015 (Decision by Judge Leavitt, August 25, 2016) 8/16