THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:
AUGUST 2018 AT A GLANCE

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FEE REVIEW/ COMPROMISE AND RELEASE AGREEMENT/ DUE PROCESS

- A valid C&R agreement is binding upon the parties but the scope of Section 449(a) is limited to "parties interested" that wish to "compromise and release any and all liability" under the Act.

  A C&R agreement, to which a provider/pharmacy was not a party, cannot be used to deprive a provider of the review procedures and excuse the employer from paying the provider. To do so would violate the Act and due process.

  Due process requires notice and an opportunity to be heard before property or property rights may be taken. Notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance.

  Since the Pharmacy was not a party to a 2016 C&R Agreement it was not subject to the provisions of the C&R that dissolved liability to pay for any past, present and future compound creams.

  Therefore, Claimant had no authority to release Employer from its liability to Pharmacy because Claimant was not "the person with the claim." Nor could Employer release itself from its liability to Pharmacy established by the Medical Fee Review Section.

  The parties to a C&R agreement can bind each other, but they cannot release themselves from liability to a person who is not a party to the C&R agreement and who has been given neither notice nor opportunity to be heard on the C&R Agreement.

- A C&R Agreement cannot be employed to avoid the procedures in the Act for challenging a provider's invoice or a fee review determination that the invoice must be paid. To hold otherwise would eviscerate Section 301(f.1)(5) and (6) of the Act and violate the due process of law guaranteed to providers.

- In dicta court notes that The Addendum to Paragraph 10 to the C&R purports to exclude Pharmacy's 2016 invoice from its reach for the stated reason that the prescribing doctor had a financial interest in Pharmacy. The court notes that there has not been a legal determination that this financial relationship, if it exists, violates the Act.

Armour Pharmacy v. Bureau of Workers' Compensation Fee Review Hearing Office (National Fire Insurance Company of Hartford) No. 1613 C.D. 2017 (Decision by Judge Leavitt, August 7, 2018) 8/18

IRE/REINSTATEMENT

- The WCJ erred by dismissing claimant's Petition for Reinstatement based upon her finding that the claimant failed to raise a constitutional challenge to the IRE provisions upon defending against the employers earlier litigated Petition for Modification that successfully modified the claimant's compensation based upon an IRE.

  This is because a claim is not waived and the doctrine of administrative finality is not bar to the petition, so long as the Reinstatement Petition is filed within three years of the date of the most recent payment of compensation.

  Here, when Claimant filed his Petition for Reinstatement, he had not yet exhausted his 500 weeks of partial disability. As such, the petition was filed well within the applicable time constraints.

  Since no hearing has been held on the merits of Claimant's Petition for Reinstatement, the court remanded this matter for further proceedings to determine whether Claimant continued to be disabled by his work injury.

- Even the context of a post Protz IRE Petition for Reinstatement, Section 413(a) the Act permits a claimant to seek modification of her disability status by a reinstatement petition, as long as the petition is filed within three years of the date of the most recent payment of compensation. As such, an employer cannot have an expectation of finality until the three-year period has expired.

Timcho, Jr. v. WCAB (City of Philadelphia), No. 158 C.D. 2017 (Decision by Judge Leavitt, August 17, 2018) 08/18

OCCUPATIONAL DISEASE/NOTICE

- Notice of a work-related injury is a prerequisite to receiving workers' compensation benefits, and the claimant bears the burden of showing that proper notice was given. The timing of the notice is governed by Section 311 of the Act, which provides, in part, that a claimant must provide notice within 120 days of either the date of the injury or the date at which the claimant knows, or by the exercise of reasonable diligence should know, of the existence of the injury and its possible relationship to his employment.

  The discovery rule under Section 311 allows that "employees who suffer an injury that is not readily and immediately ascertainable have the same rights under the Act as those employees who sustain an injury as long as they proceed with reasonable diligence.

The standard of reasonable diligence requires a reasonable effort to discover the cause of an injury under the facts and circumstances present in the case. While reasonable diligence is an objective standard, it is sufficiently flexible to take into account the different capacities people have to deal with the circumstances they confront.

In order to trigger the running of the 120-day period for notice, a claimant must have: (1) knowledge or constructive knowledge, (2) of a disability, (3) which exists, (4) which results from an occupational disease or injury, and (5) which has a possible relationship to the employment.

In this matter the WCAB failed to properly analyze the issue of whether Claimant provided timely notice pursuant to Section 311 of the Act because the WCAB adopted the broad proposition that the notice period does not begin to run until the claimant is advised by a physician that he has an occupational disease and that it is related to his work.

Requisite knowledge to provide notice after receiving the physician's diagnosis must be paired with the finding that the claimant proceeded with reasonable diligence in acquiring that knowledge.

The crux of the issue relating to notice is not when did Claimant actually knew of the work-relatedness of his injury, but when Claimant, through the exercise of reasonable diligence, but when Claimant, through the exercise of reasonable diligence, should have known the work-relatedness of his injury.

This matter was remanded for a determination of whether Claimant made a reasonable effort to discover the cause of his injury under the facts and circumstances present in the case where claimant testified that sometime after July 2011, he read an article discussing Pennsylvania's passage of a law regarding cancer in firefighters and how it may affect their rights under the Act and thereafter sought the services of an attorney to discuss his workers' compensation rights and entered into a fee agreement with counsel on August 5, 2012 but did not receive a medical confirmation of the correlation between his firefighting duties and stomach cancer on or about September 16, 2014, at which time he filed his Claim Petition.

The court reasoned that while it is true that sufficient knowledge for the purposes of notice requires more than an employee's suspicion, to hold that the 120-day notice period can only begin once a claimant receives a physician's confirmation would be illogical. Such a holding would not only provide a claimant with a potentially unlimited timeframe in which to provide notice, but it would also serve to nullify the reasonable diligence requirement of Section 311 of the Act.

East Hempfield Township v. WCAB (Stahl) No. 1058 C.D. 2017 (Decision by Judge Brobson, June 1, 2018, ordered published August 24, 2018) 8/18