

**THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:  
FEBRUARY 2014 AT A GLANCE  
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**FEE REVIEW**

- The Bureau's Medical Fee Review Section lacked jurisdiction to determine whether entity that filed a Fee Review was a medical provider. Since the Bureau lacked jurisdiction to consider the Insurers challenge to its Medical Fee Review Section's fee determination based upon Insurer's argument that the moving entity was not a Medical Provider, the Medical Fee Review Section lacked jurisdiction to act upon the merits of the moving entities Fee Review Applications.

This is because Fee Review is designed to be a simple process with a very narrow scope limited to determining the relatively simple matters of amount or timeliness of payment for medical treatment. This would include disputes over the amount of payment where the medical fee has not been calculated in accordance with the compensation fee schedule or medical billing protocols.

The Fee Review process presupposes that liability has been established. In cases in which liability for a particular treatment is at issue, the claimant, not the medical provider, must pursue compensation before a WCJ in the regular course. Accordingly, a Fee Review proceeding is not undertaken to determine liability for a particular treatment.

In fact, Regulation 127.255 directs the Bureau to return a fee Review Application as prematurely filed if the insurer "denies liability for the alleged work injury" or "has filed a request for utilization review of the treatment." Since the Insurer in this matter disputed the provider's identity the Bureau should have dismissed the applications as prematurely filed.

*Selective Insurance V. Bureau of Workers' Compensation Fee Review Hearing Office (The Physical Therapy Institute), No. 613 C.D. 2013 (Decision by Judge Leavitt, February 4, 2014) 2/14*

**PSYCHIATRIC CLAIM**

- Pennsylvania Supreme Court vacates and remands Commonwealth Court decision that held that where the claimant worked in a state liquor store in a high crime neighborhood the claimant was not subject to abnormal working conditions where

employer provided Claimant with training on workplace violence – some of which was specifically geared toward robberies and thefts – as well as “pamphlets and educational tools on the handling of a robbery”, which the Commonwealth Court reasoned meant the Claimant should have anticipated being robbed at gunpoint. The Commonwealth Court had further reasoned that given the frequency Employer’s stores had been robbed and the proximity of the recent incidents, robberies of liquor stores is a normal condition of retail liquor store employment in today’s society.

The cases is remanded for reconsideration of Payes v. Workers' Compensation Appeal Board (State Police), 79 A.3d 543, 552 (Pa. 2013) (holding that, because psychic injury cases are highly fact-sensitive, a reviewing court must give deference to the fact finding functions of the WCJ and limit review to determining whether the WCJ's findings of fact are supported by the evidence).

It will be recalled in Payes the Pennsylvania Supreme Court reversed the Commonwealth Court and affirmed the WCJ’s award of benefits and held claimant, who was a state trooper, suffered a compensable psychiatric injury, diagnosed as posttraumatic stress disorder, where he struck and killed a woman who, dressed entirely in black, who intentionally stepped in front of his car while he was traveling on Interstate 81 resulting in the death to the woman and where, following the accident the Police Officer attempted to resuscitate the woman through mouth-to-mouth resuscitation notwithstanding the fact that woman was bleeding profusely from the mouth.

PA Liquor Control Board V. WCAB(Kochanowicz), No. 779 MAL 2011(Per Curiam, February 12, 2014) 2/14

### **CLAIM PETITION/ MEDICAL TESTIMONY**

- The claimant’s medical expert’s testimony was competent to support Claimant’s Claim Petition seeking ongoing benefits even though the expert could comment upon the claimant’s status since his last exam. This is because a claimant’s medical expert is not required to be an eyewitness to the claimant’s disability throughout the pendency of a Claim Petition and a WCJ is free to rely on a claimant’s testimony in determining the chronological length of disability.
- The WCJ did not commit an error by not suspending claimant’s compensation, upon granting claimant’s Claim Petition, where claimant’s medical expert testified that he anticipated that Claimant would be able to return to work in the future.

This is because a medical expert's speculative testimony is insufficient basis for a WCJ's finding of fact

- In a claim proceeding the burden is on the claimant to establish a right to compensation and prove all necessary elements to support an award, including the burden to establish the duration and extent of disability. However, it is a fundamental principle of workers' compensation law that the WCJ is the final arbiter of witness credibility and evidentiary weight. The WCJ may accept or reject, in whole or in part, the testimony of any witness. Moreover, the WCJ's fact-finding authority includes the authority to draw reasonable inferences from the evidence. The evidence, and the reasonable inferences deducible therefrom, must be viewed in the light most favorable to the prevailing party below.

*Pennsylvania Uninsured Employers Guaranty Fund v. WCAB (Bonner and Fitzgerald) No. 300 C.D. 2013 (Decision by Judge McCullough, February 12, 2014) 2/14*