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

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ATTORNEY FEES/TERMINATION PETITION

- The employer presented a reasonable contest upon prosecuting its Petition for Termination and defending against the claimant's Petition to Review despite the fact employer's medical expert did not believe the claimant had suffered a work injury where the medical expert still testified that clamant was fully recovered assuming Claimant had suffered a compensable work injury that was recognized as a right wrist sprain by the NCP.

- The employer presented a reasonable contest in prosecution of its Petition for Termination that addressed the specific diagnoses recognized by the NCP although the WCJ ultimately expanded the nature of the injury by granting the claimant's Petition to Review. This is because at the time the parties were litigating both petitions the employer was solely required to address the injury recognized on the NCP.
  Although the WCJ discredited the testimony of Employer's expert in favor of Claimant's expert, which was within the WCJ's sole province to do, this did not render Employer's filing of the Termination Petition unreasonable especially in light of the conflicting medical evidence.

  It is true that by failing to have its expert express an opinion about whether Claimant fully recovered from the expanded work injury alleged in Claimant's Review Petition, Employer assumed a risk that its Termination Petition would be denied and Claimant's Review Petition would be granted. However, this did not make Employer's contest of the Review Petition unreasonable where the employer presented competent medical evidence that Claimant fully recovered from the accepted work injury.

- Upon litigating a Petition for Termination a medical expert must, at a minimum, acknowledge an accepted or established work injury. A medical expert's opinion will not support a termination if that medical expert does not acknowledge the accepted work injuries and does not opine full recovery from those injuries. A termination petition based solely on testimony that failed to acknowledge the established work injury will be insufficient to support a Petition for Termination.

In this matter the employer's medical expert was sufficient to support the Petition for Termination where despite reservations that the claimant suffered a work related injury he accepted that the claimant did for purposes of offering his opinion.

Sarmiento-Hernandez v. WCAB (Ace American Insurance Company), No. 1799 C.D. 2016 Petitioner (Decision by Judge Cohn Jubelirer, February 13, 2018) 2/18

PSYCHIATRIC CLAIM

- The claimant was required to prove his psychiatric injury pursuant to the "mental-mental" and not "physical-mental" standard where he suffered a psychiatric injury following exposure resulting from a diesel leak but the Judge concluded that the claimant did not suffer a physical injury.

  This is because although the physical injury itself is not required to be disabling under the Act, its presence or lack thereof, and its relationship to the mental injury, is determinative to whether the physical-mental standard applies.

  In this matter the "mental-mental" standard did not apply because Claimant did not establish that his mental injury resulted from a work-related, triggering physical stimulus., Although Claimant experienced some symptoms immediately following his exposure, such as vomiting, choking, runny nose, watery eyes, sweating and shaking, throat pain and abdominal pain and headaches, these symptoms were insufficient to support an application of the physical-mental standard because they were transient and quickly resolved before his discharge from the ER.

- Mental injuries fall into three categories:
  1) mental-mental, whereby a mental or psychic condition is caused by a psychic stimulus;
  2) mental-physical, whereby a psychic injury manifests itself in some physical form; and
  3) physical-mental, whereby a physical injury results in psychic distress

  If a claimant's mental disability was caused by a psychological stimulus, the mental-mental standard applies. To prevail under the mental-mental standard, a claimant must prove abnormal working conditions.

  Where the physical-mental standard applies the claimant is not required to prove abnormal working conditions. For this standard to apply the claimant must establish that the mental injury resulted from a triggering physical stimulus and arose during the course of employment. The claimant must prove that a physical work injury requiring medical treatment caused a psychological injury. However, a claimant need not prove that he or she suffered a physical disability that caused a mental disability for which he or she may receive benefits. Nor must a claimant show that the physical injury continues during the life of the mental disability.

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Frankiewicz v. WCAB (Kinder Morgan, Inc.), No. 20 C.D. 2017 (Decision by Judge Wojcik, November 14, 2017) 2/18

COURSE AND SCOPE

- The claimant, who was employed as a Flight Attendant, suffered an injury in the course as scope of employment although at the time of the injury she was not actually engaged in the furtherance of Employer's business where the claimant injury herself after slipping on a wet shuttle floor that she was on to return to her car in the employee parking lot following a return flight.

  The injury was in the course and scope of employment although the parking lot was not owned by the employer, employer did not own or exercise control over the shuttle buses and employer did not require employees to use the airport employee parking lots.

  The claimant's injury was deemed to be in the course and scope of employment because she satisfied the three prongs of Workmen's Comp. Appeal Bd. (Slaugenhaupt) v. United States Steel Corp., 376 A.2d 271, 273 (Pa. Cmwlth. 1977) that stands for the proposition that injury is within the course and scope of employment although the claimant was not actually engaged in the furtherance of Employer's business if she establishes that (1) the injury occurred on Employer's premises, (2) Claimant's presence thereon was required by the nature of her employment, and (3) the injury was caused by the condition of the premises or by operation of Employer's business thereon.

  The claimant satisfied the first prong that the injury occur on the employers premises because the shuttle bus was such an integral part of Employer's business as to be part of the premises, in addition to being a customary means of ingress and egress.

  The claimant satisfied the second prong that requires that the nature of Claimant's employment required her to be on Employer's premises where she was injured. The court has held that once an employee is on the employer's premises, actually getting to or leaving the employee's work station is a necessary part of employee's employment. Here, Claimant's presence on the shuttle bus was a necessary part of her employment, because it was the means by which she traversed between her work station (i.e., the terminal) and the parking lot designated for airport employees. Claimant's utilization of the shuttle bus service was expected, so long as she elected to drive to work. Claimant's presence on the shuttle bus, therefore, was so connected to her employment relationship that it was required by the nature of her employment.

- In construing the term "premises" as contemplated by Section 301(c)(1) of the Act, the determinative question is whether the site of the accident is so connected with the employer's business as to form an integral part thereof. In this analysis, the critical factor

is not the employer's title to or control over the area, but rather the fact that the employer had caused the area to be used by employees in performance of their assigned tasks. Further, the Court has held that reasonable means of access to the workplace is considered an integral part of the employer's business, and, therefore, is part of the employer's premises.
Moreover, an employer's premises includes reasonable means of access to the workplace, whether or not the employer owns the land. Further, an employer's premises is property that could be considered an integral part of the employer's business. Property becomes integral to an employer's business when the employer causes employees to be in the area.

A means of access customarily used by employees for ingress and egress can be such an integral part of an employer's business as to be considered part of the premises.

- Any injury occurring to an employee up until the time he 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 work station is a necessary part of employee's employment.

US Airways, Inc. v. WCAB (Bockelman), No. 612 C.D. 2017 (Decision by Judge Brobson, February 22, 2018) 2/18