

**THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:
FEBRUARY 2019 AT A GLANCE
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SUPERSEDEAS FUND REIMBURSEMENT/PENALTY

- The employer was not entitled to reimbursement from the Supersedeas Fund for medical payment's it unilaterally withheld in violation of the Act notwithstanding the fact that the Employer subsequently prevailed on its Petition for Termination, which included a request for supersedeas.

This is because the employer's earlier violations of the Act may not be excused.

Holding otherwise would encourage employers to continuously violate the Act by unlawfully withholding payments. Therefore, an employer is not entitled to reimbursement from the Supersedeas Fund when the withheld benefits were paid retroactively pursuant to a penalty award.

Erie Insurance Company and Powell Mechanical, Inc. v. WCAB(Commonwealth of Pennsylvania, Department of Labor and Industry, Bureau of Workers' Compensation), No. 20 C.D. 2018 (Decision by Judge Brobson, February 21, 2019) 2/19

DOMESTIC SERVICE EXCEPTION

- The claimant, who suffered an injury performing her duties as a caretaker for a woman suffering from mild dementia, was not entitled to workers' compensation pursuant to the Domestic Service Exception.

This is because the claimant's duties consisted entirely of service to members of the household, which consisted solely of the woman she was caring for. Within Claimant's credible testimony, she specifically denied providing any other type of service, such as medical care, to the member of the household.

In this matter the claimant's main responsibility was to get the woman she was caring for ready for bed and making sure she stayed in bed throughout the evening.

- The court has held that one who cares for a child is excluded under the Domestic Service Exception. The same rule would apply to the claimant who cares for a woman suffering from mild dementia where the claimant provided no other service such as medical care.

- Based upon prior holdings the court's conclusion would have been different had the claimant's job involved performing duties similar to those of a nurse's aide and did not involve performing household duties.
- In general, the court has held that that one work qualifies for the domestic service exception if the claimant served or was employed to serve the needs of the household.
- The Domestic Service exception set forth by Section 321 of the Act that provides, in relevant part:

Nothing contained in this Act shall apply to or in any way affect:

(1) Any person who at the time of injury is engaged in domestic service: Provided, however, That in cases where the employer of any such person shall have, prior to such injury, by application to the Department of Labor and Industry (Department)] and approved by the Department, elected to come within the provisions of the Act, such exemption shall not apply.

Pamela Joan Van Leer v. WCAB (Hudson), No. 1127 C.D. 2018 (Judge Covey, February 27, 2019) 2/19