**THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:**
**JANUARY 2012 AT A GLANCE**
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## CREDIT

- The offset against disability benefits in Section 204(a) of the Act for 50% of an individual's Social Security retirement benefit does not violate the Equal Protection Clause of Article I, Section 1 of the Pennsylvania Constitution because it is reasonably related to the legitimate governmental objectives of reducing workers' compensation costs for Pennsylvania employers and encouraging Social Security beneficiaries to participate in the workforce.

*Caputo v. WCAB (Commonwealth of Pennsylvania), No. 191 C.D. 2010 (Decision by Judge LEAVITT, January 5, 2012) 2/12*

## REINSTATEMENT/ STATUTE OF LIMITATIONS/ STATUTE OF REPOSE/ EQUITABLE ESTOPPEL/PENALTY

- Notwithstanding the fact the employer reinstated the claimant's compensation for periods following the expiration of 500 weeks of suspension by Supplemental Agreement the claimant was not entitled to a reinstatement of benefits because Claimant's benefits were suspended on September 20, 1989, when Claimant returned to his pre-injury position without a loss of earnings. Pursuant to Section 413(a) of the Act, therefore, Claimant had until approximately April 1999 to file a reinstatement petition before his right to benefits was completely extinguished. The claimant did not file a reinstatement petition until September 26, 2008; over nine years after the 500-week period had expired.

  Section 413 of the Act imposes a statute of repose whereby a Petition for Reinstatement must be filed within 500 weeks from a suspension of a claimant's benefits in order to be considered timely filed. The 500-week statute of repose not only limits a remedy, but completely and totally extinguishes a claimant's rights to benefits in the first instance. The expiration of the statute of repose deprives the Board of the jurisdiction to consider a claimant's petition and can never be waived by an employer. The purpose of the statute of repose is to encourage the prompt resolution of legal rights and to protect an employer from having to defend against stale claims. For this reason, the only exception to the statute of repose is if the claimant can establish estoppel against his or her employer.

Accordingly, under Section 413(a) of the Act, where a claimant's benefits are suspended because of no current loss of earnings, said benefits may be resumed only if the claimant files a reinstatement petition within 500 weeks from the effective date of the suspension. Absent circumstances justifying application of the doctrine of equitable estoppel, a reinstatement petition filed outside of the 500-week period will be considered time-barred by the statute of repose.

- The claimant's compensation was deemed suspended even though the Employer failed to suspend his benefits pursuant to a Supplemental Agreement during the statutory period because it was undisputed that Claimant returned to his pre-injury position without a loss of earnings on September 20, 1989, and that Claimant did not receive compensation benefits after that date. Therefore, the Employer was entitled to a suspension of Claimant's benefits as of September 20, 1989, notwithstanding the lack of a supplemental agreement or WCJ's order.

- The doctrine of equitable estoppel applies in situations where a party, through its acts, negligently misrepresents material facts while knowing or having reason to know that the party will justifiably rely on the misrepresentation to its detriment and indeed the other party does so rely. The two essential elements of equitable estoppel which a claimant must prove by clear and convincing evidence, is, first, inducement and, second, the justifiable reliance on the inducement.

  The relevant inquiry in determining whether equitable estoppel prevents an employer from raising a statute of repose defense under the Act is whether the employer's words or conduct convinced the claimant to not pursue his claim *within* the statutory period. In other words, the claimant not pursuing his claim within the statutory period is the *detriment* that must be caused by the employer's inducement. Under the statute of repose set forth in Section 413(a) of the Act, therefore, equitable estoppel applies only where the employer's words or conduct induce the claimant to not seek reinstatement of his benefits within the 500-week period.

  Here, because Employer voluntarily reinstated Claimant's benefits and pursued a Modification Petition *after* the 500-week statute of repose had already expired, Employer's actions could not have induced Claimant to not seek reinstatement of his benefits *within* the statutory period.

- Although the claimant filed his Petition for Reinstatement within three years of the most recent payment of compensation, the claimant's petition was barred by the statute of repose because Claimant's benefits were suspended due to Claimant's return to his pre-injury position without a loss of earnings.

  Section 413(a) of the Act's 500-week statute of repose, not its three year statute of limitations, governed the outcome of this case because the claimant's compensation had previously been suspended for 500 weeks.

Section 413(a) of the Act encompasses a three year statute of limitations. Section 413(a) of the Act provides, in pertinent part: "no notice of compensation payable, agreement or award shall be reviewed, or modified, or reinstated, unless a petition is filed with the department within three years after the date of the most recent payment of compensation made prior to the filing of such petition." Here, it is undisputed that Claimant filed his reinstatement petition within three years of his last payment of compensation.

The court has distinguished the three year statute of limitations in Section 413 from the 500-week statute of repose. Section 413's three year limitation is totally inapplicable where there has been a suspension. The three year extension for filing of Modification/Reinstatement Petitions under Section 413 is inapplicable to reinstatements following suspensions and is applicable only to reinstatements following a termination of benefits.

- A claimant entitled to penalties only where the claimant is awarded benefits. Thus, even if there is a violation of the Act, a Penalty Petition cannot be granted unless there is past compensation due the claimant upon which an award of penalties can be assessed.

*Cozzone v. WCAB (PA Municipal/East Goshen Township), No. 664 C.D. 2011 (Decision by Judge Brobson, January 5, 2012) 2/12*

**REINSTATEMENT**

- A claimant seeking reinstatement of suspended benefits must prove that his or her earning power is once again adversely affected by his or her disability, and that such disability is a continuation of that which arose from his or her original claim.

  The claimant need not re-prove that the disability arose from his or her original claim. Once the claimant meets this burden, the burden then shifts to the party opposing the reinstatement petition.

  In order to prevail, the opposing party must show that the claimant's loss in earnings is not caused by the disability arising from the work-related injury. This burden may be met by showing that the claimant's loss in earnings is, in fact, caused by the claimant's bad faith rejection of available work within the relevant required medical restrictions or by some circumstance barring receipt of benefits that is specifically described under the provisions of the Act.

- The Pennsylvania Supreme Court in *Bufford v. Workers' Compensation Appeal Board (North American Telecom), 606 Pa. 621, 2 A.3d 548 (2010)*, eliminated the requirement that a claimant seeking reinstatement after a suspension of benefits prove that his or her loss of earnings was through no fault of his or her own.

Therefore, the claimant failed to fulfill her burden in support of her Petition for Reinstatement where the WCJ found that claimant's medical expert did not intend for a "no stairs" restriction to stop Claimant from going up and down stairs altogether but, instead, the doctor intended to restrict Claimant from going up and down stairs frequently and the WCJ found Claimant admitted that her work-related disability did not prevent her from going up and down several flights of stairs a day and that, at the time claimant's medical expert imposed the "no stairs" restriction, Claimant was able to go up and down the stairs at her place of employment four times a day. There was therefore is no credible record evidence that Claimant was unable to perform her light-duty position due to an inability, caused by her work-related disability, to go up and down stairs.

- A claimant is only partially disabled if she is working or she could be working at a lighter lesser paying job. Thus, Claimant failed to prove, that her earning power was once again adversely affected by her work-related disability where, though not recovered from her work injury, the WCJ found that she was able to perform her pre-injury position.

*Verity v. WCAB (The Malvern School), No. 356 C.D. 2011 (Decision by Judge Cohn Jubelirer, October 11, 2011) 2/11*

**VOLUNTARY REMOVAL FROM WORK FORCE/ RETIREMENT/ VOCATIONAL/ SOCIAL SECURITY**

- An employer need not prove the availability of suitable work when the employer proves by a totality of the circumstances that the claimant has voluntarily retired from the workforce.

- Where the work injury limited Claimant to light-duty work, but all of Claimant's medical conditions limited Claimant to sedentary work, it would be pointless for us to require Employer to establish the availability of light-duty work.

  The facts demonstrated that the claimant voluntarily removed herself from the workforce where she sought a disability pension that was based on her inability to engage in substantial gainful activity and where Claimant's work injury did not prevent Claimant from engaging in substantial gainful activity, though her non-worked related condition resulting in her receipt of Social Security disabled her.

- The receipt of Social Security Disability benefits could be evidence that the claimant's work injury forced him or her out of the labor market.

  If a WCJ finds that a claimant suffers from a work injury and no other non-work-related medical condition, then the receipt of Social Security Disability benefits can mean only that the claimant's work injury has forced him or her out of the labor market.

On the other hand, if the WCJ finds that the claimant suffers from a work injury and non-work-related medical conditions and that the work injury does not prevent the claimant from working, then the receipt of Social Security Disability benefits can mean only that the claimant is unattached to the workforce for reasons unrelated to the work injury.

- A claimant who has no intention of seeking employment has voluntarily withdrawn from the workforce. A claimant can rebut the presumption that he or she has voluntarily withdrawn from the workforce by showing that he or she was forced to withdraw from the workforce due to the work injury.

- The employer can prove that the claimant withdrew from the workforce by establishing that: (1) the claimant sought and received a retirement pension; (2) the claimant sought and received Social Security Disability benefits, which "precluded him from working"; and (3) the claimant failed to seek work for two years after receiving a Notice of Ability to Return to Work.

*Burks v. WCAB (City of Pittsburgh), No. 980 C.D. 2011 (Decision by Judge Friedman, January 13, 2012) 2/12*

**NOTICE OF COMPENSATION DENIAL/ MEDICAL BENEFITS/ PENALTY/ CLAIM PETITION**

- In a proceeding on a claim petition, the claimant bears the burden of proving all the elements necessary to support an award of benefits. Thus, the claimant must establish that she sustained an injury during the course of her employment, and that she is disabled as a result of that injury. For purposes of workers' compensation benefits, the term disability is synonymous with loss of earning power. A claimant's burden to prove disability never shifts to the employer; rather, the burden remains with the claimant throughout the pendency of the claim petition proceeding.

  Even where an employer issues an NCD that acknowledges an injury, but disputes disability, the claimant maintains the burden of proving she is entitled to benefits.

- An employer may properly file an NCD when, although it acknowledges that a work-related injury has occurred, there is a dispute regarding the claimant's disability. On the NCD form the employer is given the option of acknowledging the occurrence of a work-related injury but declining to pay workers' compensation benefits because the employee is not disabled as a result of his injury within the meaning of the Act.

  The NCD form for medical only is currently being distributed by the Board and is an acceptable means of accepting an injury for medical purposes only.

Accordingly, an employer may properly issue an NCD to accept a claimed work injury for medical purposes only. Therefore, an employer may properly issue an NCD to accept a claimed work injury for medical purposes only.

Therefore, the employer's issuance of an NCD accepting liability for medical benefits, but disputing disability was proper where, as here, the employer asserted the cause of the disability is not the work incident, but rather a pre-existing condition.

- An employer violates Section 406.1 of the Act if it fails to issue an NCP, an NCD, or a NTCP within twenty-one days of receiving notice of a work-related injury. Consequently, it can be liable for penalties for failure to comply with this provision. Moreover, when an employer fails to issue an NCP or an NCD within the appropriate timeframe, thereby forcing the claimant to litigate the compensability of an injury, the employer will be liable for the payment of the claimant's attorney's fees unless it can prove its contest was reasonable. Thus, an award of penalties and attorney's fees are the appropriate remedies for an employer's failure to issue bureau documents within twenty-one days of receiving notice of a work-place injury.

  There is, however, no authority permitting an award of benefits to a claimant who would not otherwise be entitled to them based upon an employer's failure to comply with the Act. Therefore, the Employer's violation of the Act by failing to issue the appropriate document regarding an alleged injury does not render a claim compensable as a matter of law.

- Where a claimant in good faith seeks medical treatment for a work injury and the medical treatment itself either aggravates the existing injury or causes new, additional injury, the law regards the latter being causally related to the original work injury.

- Employer's voluntary payment for Claimant's surgery did not constitute an admission of liability.

*Zuchelli v. WCAB (Indiana University of Pennsylvania), No. 817 C.D. 2011 (Decision by Judge Simpson, October 12, 2011) 2/12*

**REINSTATMENT/ SUSPENSION/ PARTIAL DISABILITY/ SPECIFIC LOSS/ COMPENSATION/ STATUTE OF LIMITATIONS/ REPOSE**

- The Act sets time limits to a claimant's ability to seek a reinstatement to total disability. Those time limits are different, depending on whether the claimant seeking reinstatement has had his total disability benefits suspended or had them reduced to partial disability.

A claimant on partial disability can have his total disability compensation reinstated up to three years after expiration of 500 weeks of partial disability.

Where compensation benefits have been suspended, a reinstatement petition must be filed within 500 weeks of the effective date of the suspension. The 500-week limit for filing for reinstatement after a suspension is a statute of repose which not only limits a remedy, but also completely and totally extinguishes a claimant's right to benefits in the first instance.

Therefore, the claimant's Reinstatement Petition seeking total disability was time-barred because it was filed more than 500 weeks after disability benefits had been suspended.

- A claimant's Reinstatement Petition seeking specific loss benefits would be time-barred if it was filed more than 500 weeks after disability benefits had been suspended.

- The Act does not define the term "compensation." What constitutes compensation "must be made on a section-by-section basis, looking to the language of the section and the legislative intent behind it."

  Medical payments do not constitute "compensation" for purposes of Section 413(a) and, therefore, do not toll the statute of limitations for seeking to modify or reinstate benefits.

  Likewise, the performance of a light-duty job during the suspension period does not constitute "compensation." The Act does not speak to the kind of job a claimant performs, but only his earnings. In worker's compensation, it is not the claimant's level of injury that is controlling but, rather, how his residual injury affects his earnings.

- If a claimant is working after 500 weeks and up to the time he seeks reinstatement, he must prove that he has an "increased, work-related impairment" that precludes the continuation of the light-duty employment.

*Richard Palaschak v. WCAB (US Airways), No. 1699 C.D. 2010 (Decision by Judge Leavitt, January 23, 2012) 2/12*