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

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## SUBROGATION

- The employer was not entitled to subrogation against the proceeds the clamant, a Patrol Officer, received as the result of his work related motor vehicle accident where the clamant was paid Heart Lung benefits notwithstanding the fact employer was self-insured for Heart and Lung and Workers Compensation.

  It was not relevant that the employer issued a Notice of Compensation Payable that did not reference the Heart and Lung Act and sent the claimant weekly WC indemnity checks concurrently with payment of Heart and Lung benefits and that the claimant signed and returned these WC checks to Employer as required by law.

  This is because pursuant to Section 1720 of the MVFRL, the employer is not entitled to subrogation from the claimant's third-party recovery based upon payment of monies-indemnity and medical- paid under the Heart and Lung Act. It was not relevant that the employer kept the salary payments (under Heart and Lung Act benefits) separate from medical benefits (under WC Act benefits) and paid the medical benefits under the NCP because the Heart and Lung Act expressly provides for wages and medical benefits, and, therefore, both are statutorily required.

*DeHoratius v. WCAB (Upper Darby Township), No. 1901 C.D. 2016 (Decided by Judge Covey, August 8, 2017. Ordered published an OPINION rather than MEMORANDUM OPINION July 18, 2018) 7/18*

## TERMINATION

- WCJ's granting of employer's Petition for Termination was not in error where the WCJ found credible claimant's testimony that he still had ongoing pain even though this credible testimony was given five months following the IME that found claimant fully recovered.

  This is because although Claimant credibly testified that he continued to experience pain resulting from the work-related injury, the WCJ also found employer's medical experts testimony credible that Claimant had fully recovered from the work-related injury. Employer's expert's testimony evidenced that Claimant's physical examination was objectively normal, and any pain Claimant was experiencing resulted from degenerative

changes unrelated to the work injury. The WCJ, as factfinder, had the sole authority to weigh the evidence and reach this conclusion

- An employer's burden on a Petition for Termination is met when an employer's medical expert unequivocally testifies that it is his or her opinion, within a reasonable degree of medical certainty, that the claimant is fully recovered, can return to work without restrictions, and that there are no objective medical findings that either substantiate any ongoing complaints of pain or connect them to the work injury.
  The determination of whether a claimant's subjective complaints of pain are accepted is a question of fact for the WCJ. In the absence of objective medical testimony, the WCJ is neither required to accept the claimant's assertions, nor prohibited from doing so.

  Testimony by the employer's medical expert as to the existence of the claimant's complaints of pain does not require the WCJ to find for the claimant. What is relevant in deciding whether the termination of benefits is warranted is whether the claimant suffers from pain as a result of the work-related injury.

  In a case where the claimant complains of continued pain, this burden is met when an employer's medical expert unequivocally testifies that it is his opinion, within a reasonable degree of medical certainty, that the claimant is fully recovered, can return to work without restrictions and that there are no objective medical findings which either substantiate the claims of pain or connect them to the work injury. If the WCJ credits this testimony, the termination of benefits is proper.

*Hernandez v. WCAB (F&P Holding Co.), No. 1820 C.D. 2017 (Decision by Judge Covey, July 19, 2018)7/18*

**SUPPLEMENTAL AGREEMENTS/ ADMISSION OF LIABILITY/NOTICE OF TEMPORARY COMPENSATION PAYABLE**

- The employer did not admit liability or the nature of the claimant's injury where the claimant signed a Supplemental Agreement following issuance of a NTCP but before the employer issued the timely Notice Stopping the NTCP and the Notice of Denial.

  This is because the evidentiary record established that the Supplemental Agreements simply documented the change in earnings based on Claimant's return/release to work; they did not accept liability. They were not intended to function as an Agreement for Compensation and were not binding.

  As the Supplemental Agreements were filed merely to document the change in Claimant's WC benefits based on her return to work, they were not admissions of liability and, thus, Employer was not bound by the injury descriptions therein.

Thus, the Employer retained all of its rights and defenses with respect to the underlying claim despite the fact the Employer filed two Supplemental Agreements after it filed its NTCP.

- The Supplemental Agreements were signed in response to the decision Gereyes v. WCAB (New Knight, Inc.), 793 A.2d 1017 (Pa. Cmwlth. 2002) that held that the employer violated the Act when it unilaterally reduced the amount of compensation paid pursuant to the NTCP when the claimant returned to work.

  Gereyes was decided before the Bureau issued Regulation 121.7a(c) that now requires an employer to file an amended NTCP with the Bureau during the 90-day temporary compensation payable period to modify an NTCP

  Based upon Regulation 121.7a(c), when modifying an NTCP for any reason other than accepting liability, the proper filing is an amended NTCP.

- The WCJ did not err, upon granting claimant's Claim Petition in part also terminating claimant's compensation based upon finding employer's medical experts testimony credible that he claimant was recovered from his lumbar strain notwithstanding the fact the Supplemental Agreements recognized the claimant's injury as being 'left sacroiliitis sprain' and 'left leg sprain'.

  This is because the Supplemental Agreements were not binding since they were issued to modify the NTCP but before the timely issuance of the Notice Stopping the NTCP and the Notice of Denial.

*LifeQuest Nursing Center v. WCAB (Tisdale), No. 1250 C.D. 2017 (Decision by Judge Covey, July 19, 2018) 7/18*