THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:
JUNE 2013 AT A GLANCE
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IMMUNITY/WAIVER/SUBROGATION

- The claimant's signing of a Workers' Compensation Disclaimer whereby she waived her right to sue Employer's clients for damages related to injuries covered under the Workers' Compensation Act did not violate Section 204(a) of the Act, which states in pertinent part:

  > *"No agreement, composition, or release of damages made before the date of any injury shall be valid or shall bar a claim for damages resulting therefrom; and any such agreement is declared to be against the public policy of this Commonwealth."*

  This is because the legislature intended the provisions of §204(a) to apply only to agreements to bar a claim against an employer, and not to claims against a third party.

  The disclaimer was a guarantee to employer's customers that they would not be responsible for injuries sustained by employer's employees; it served as a benefit to employer's customers and in no way affected appellant's right to recover from her employer for work-related injuries as provided by §204(a) of the Act.

- The employer's loss of a right to subrogation, by virtue of having its employee sign a waiver not to sue the employer's customers in third party for injuries causing a compensable work injury, does not violate Section 319 of the Act. This is because a third-party release does not contravene an employer's right subrogation under §319 of the Act, because an employer may choose to waive that right.

  Claimant's employer's waiver of subrogation was a business decision affecting only itself – it did nothing to prevent claimant from receiving full and just compensation under the Act for her work-related injuries.

Bowman V. Sunoco, Inc., No. 27 EAP 2011 (Decision by Justice Eakin, April 25, 2013) 6/13

FATAL CLAIM/ STATUTE OF REPOSE

- The Commonwealth Court has consistently held, without exception, that Section 301(c)(1) denies benefits to a claimant when more than 300 weeks have elapsed between the commencement of the compensable injury and the injury-related death.

  Therefore, the WCJ did not commit an error by dismissing claimant's Fatal Claim Petition where decedent suffered his work injury on October 15, 2003 but NCP recognizing work injury was legally expanded by the WCJ in 2006 to include lumbar disc disruption resulting in total disc arthroplasty because decedent died June 13, 2010, which was 300 weeks after initial work injury.

  The Court found it was irrelevant that Decedent's work injury was legally expanded by the WCJ in 2006 to include lumbar disc disruption resulting in total disc arthroplasty. The fact remains that the compensable injury commenced in 2003.

Whitesell v. WCAB(Staples, Inc.), No. 205 C.D. 2013 (Decision by Judge Pellegrini, July 10, 2013) 7/13

SUSPENSION/ VOCATIONAL

- Pursuant to the Pa. Supreme Court case of Schneider, Inc. v. Workers' Compensation Appeal Board (Bey), 560 Pa. 608, 747 A.2d 845 (2000), an employer is not required to show job availability to obtain a suspension where the claimant was totally disabled by non-work-related conditions.

  However, the court has held that Schneider does not relieve the employer of its obligation to provide the claimant with the notice required by section 306(b)(3) of the Act.

  This is because requiring the employer to show that a sedentary or light-duty position is available to the claimant who is disabled from performing all employment would be an exercise in futility by virtue of the claimant's physical condition.

  Therefore the WCJ did not commit an error of law by suspending the claimant's compensation despite the fact the employer did not show there were jobs available that would pay the claimant a wage equal to or in excess of his pre-injury average weekly wage where the evidence supported WCJ's conclusion that Claimant's work injury had resolved to the point where he could perform sedentary work but for his non-work related injuries that rendered him incapable of all possible work activity.

SEPTA v. WCAB (Cunningham) No. 2045 C.D. 2011 (Judge McCullough July 12, 2013)7/13

RES JUDICATA/COLLATERAL ESTOPPEL/ VOCATIONAL

- The doctrine of collateral estoppel barred the employer's Petition for Suspension based upon the offer of a "no duty job" where the WCJ previously granted a Claimant's Petition for Reinstatement, concluding that Claimant was entitled to reinstatement of benefits because the no duty position performed by him was not within his capabilities because he had difficulty staying awake due to his prescribed medication he would be terminated for falling for sleep, and the subsequent Petition for Suspension was based upon the offer of the same "no duty job" but with the new caveat that the claimant would have to fall asleep four times before he risked termination.

- Technical res judicata and collateral estoppel are both encompassed within the parent doctrine of res judicata, which 'prevents the relitigation of claims and issues in subsequent proceedings. When a final judgment on the merits exists, a future suit between the parties on the same cause of action is precluded.

  In order for technical res judicata to apply, there must be: (1) identity of the thing sued upon or for; (2) identity of the cause of action; (3) identity of the persons and parties to the action; and (4) identity of the quality or capacity of the parties suing or sued.

  The doctrine of collateral estoppel often referred to as issue preclusion, is designed to prevent relitigation of an issue in a later action, despite the fact that the later action is based on a cause of action different from the one previously litigated.

- Collateral Estoppel applied to this matter because the issue in the original litigation was whether the No Duty Job was available to Claimant because Employer required him to remain awake while at his post and the medications he was prescribed as a result of his work-related injury caused him to fall asleep. The issue presented in the second petition was whether the No Duty Job was available to Claimant who continued to experience drowsiness and fall asleep.

  Although Employer modified its disciplinary policy to a progressive discipline policy, this policy could still result in termination for sleeping on the job, albeit not until the fourth violation in a year's time. As a result, the issues in each litigation were the same:

Channellock v. WCAB (Reynolds), No. 2027 C.D. 2011 (Decision by Judge McGinley FILED: May 8, 2013, Ordered reported July 10, 2013) 7/13