THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:
JUNE 2014 AT A GLANCE
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RETIREMENT/SOCIAL SECURITY/ SUSPENSION/VOCATIONAL

- The claimant had not voluntarily removed herself from the work force requiring the suspension of her indemnity benefits where the claimant, as found by the WCJ, was not receiving a pension from Employer, had not applied for retirement, was receiving Social Security Disability Benefits and testified credibly that she had not looked for two years prior to the employer's filing of its petition because "it was very depressing".

  This is because there is no presumption of retirement arising from the fact that a claimant seeks or accepts a pension, much less a disability pension; rather, the worker's acceptance of a pension entitles the employer only to a permissive inference that the claimant has retired.

  Such an inference, if drawn, is not on its own sufficient evidence to establish that the worker has retired – the inference must be considered in the context of the totality of the circumstances.

  The WCJ must also evaluate all of the other relevant and credible evidence before concluding that the employer has carried its burden of proof.

  An employer cannot rely solely on a claimant's failure to seek work to prove voluntary retirement from the workforce, as an employer has a duty to make job referrals until a claimant voluntarily retires.

  In this matter, based upon the totality circumstance test, the WCJ found that claimant had not voluntarily removed herself from the work force based upon the WCJ's acceptance of claimant's testimony that she had a desire to work, did look for work but was unable to find employment within her restrictions and had not accepted a retirement pension.

- The receipt of Social Security Disability Benefits does not create the presumption in and of itself that the claimant has retired from the workforce.

  This is because under Social Security Disability is defined to include those who are unable "to engage in any substantial gainful activity" because of a medically determinable impairment which lasts for twelve months and is so severe that the individual "is not only unable to do his previous work but cannot, considering his

age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.

Thus, the receipt of Social Security Disability Benefits is actually not evidence that a person voluntarily withdrew from the workforce, but, rather, is evidence that the person's impairment took that person out of the labor market.

Keene v. WCAB (Ogden Corporation), No. 1421 C.D. 2010 (Decision by Judge Friedman, June 4, 2014) 6/14

COURSE AND SCOPE/ REASONED DECISION

- The claimant suffered an injury in the course and scope of his employer where, though he was not required to start his shift until 8:00 am, was found by the WCJ to have arrived at work between 6:30am and 7:30 am to retrieve cleaned uniforms from employer, who offered an optional cleaning service, and upon exiting his car after placing the clean uniforms in his vehicle slipped on ice in employer's parking lot hitting his head.

  This is because there is no bright-line test for assessing how long before commencement of the scheduled work day is a reasonable time for an employee to be furthering his employer's interests. The exact amount of time the claimant arrived before the start of the shift is not as important as the claimant's purpose or activities during that time.

  In this matter, there was no credible evidence to show that Claimant had abandoned his employment, or that he was engaged in something entirely foreign thereto, or that he acted contrary to any positive orders of his employer, or that he was a trespasser within the time leading up to his shift. Therefore, the WCJ did not err in finding that Claimant's injury occurred while he was in furtherance of Employer's interests and, therefore, was in the course and scope of his employment.

- Whether an employee is acting within the course of his employment is a legal determination to be made based upon the WCJ's findings of fact

  There are several listed factors considered when determining whether an employee is furthering an employer's business or affairs when injured while engaging in a personal activity during non-work hours.

  > First, in concluding that an employee was engaged in the furtherance of the business or affairs of the employer, much emphasis is placed on evidence demonstrating that the employer encouraged the activity at issue
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  > Second, emphasis is also placed on a finding that the activity the claimant was engaged in furthered a specific interest of the employer.

Third, the court will consider whether the activity was necessary to maintain a claimant's employment skills.

Moreover, once an employee is on the Employer's premises, actually getting to or leaving the employee's work station is a necessary part of that employee's employment, and thus, definitively furthering the employer's interests. Thus, even though not actually engaged in employer's work, an employee will be considered to have suffered an injury in the course of employment if the injury occurred on the employer's premises at a reasonable time before or after the work period.

An employer's premises includes a reasonable means of access to the situs of the Employer's business, including employee parking lots.

- An injury may be sustained 'in the course of employment' under Section 301(c)(1) of the Act in two distinct situations:

  (1) where the employee is injured on or off the employer's premises, while actually engaged in furtherance of the employer's business or affairs; or

  (2) where the employee, although not actually engaged in the furtherance of the employer's business or affairs, (a) is on the premises occupied or under the control of the employer, or upon which the employer's business or affairs are being carried on, (b) is required by the nature of his employment to be present on the employer's premises, and (c) sustains injuries caused by the condition of the premises or by operation of the employer's business or affairs thereon.

  Thus, if an employee is actually engaged in furtherance of the employer's business or affairs when he is injured on an employer's premises, the injury was sustained in the course of his employment.

  The operative phrase 'actually engaged in the furtherance of the business or affairs of the employer,' must be given a liberal construction. Determining whether an employee is acting in the course of employment at the time of an injury is a question of law, which must be based on the findings of fact made by the WCJ.

- The reasoned decision requirement in Section 422(a) of the Act does not permit a party to challenge or second-guess the WCJ's reasons for credibility determinations. Unless made arbitrarily or capriciously, a WCJ's credibility determinations will be upheld on appeal.

  A capricious disregard of evidence occurs only when the fact-finder deliberately ignores relevant, competent evidence. Capricious disregard, by definition, does not exist where the WCJ expressly considers and rejects the evidence. Williams. The fact that a WCJ may not reiterate and/or pass specific review upon any particular line or portion of testimony does not necessarily constitute a capricious

disregard thereof. The reasoned decision requirement is simply that the WCJ must articulate some objective reasoning to facilitate appellate review of the same."

Ace Wire Spring and Form Company v. WCAB (Walshesky), No. 1916 C.D. 2013 (Decision by Judge Covey, June 10, 2014) 6/14

COURSE AND SCOPE

- The claimant did not suffer an injury in the course and scope of her employment where tem minutes after she completed work she crossed the street and was approaching an elevator in a parking lot, at the time she tripped and fell where the parking lot was owned and operated by a third party, who was responsible for its control and maintenance and the Claimant was not required to park in the parking lot and the employer was not the sole occupant of the parking lot.

  It was immaterial that the Employer: a) leased parking spaces in the commercial parking lot that was owned and operated by a third party; b) the parking lot was not open to the general public; c) a skywalk that connected the parking lot to the building where the claimant worked was owned by the employer; and d) the employer gave its employees the option of renting a space at a reduced subsidized rate.

  This is because the critical factor in determining whether a parking lot is part of an employer's premises 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. Property becomes integral to an employer's business when the employer requires employees to use that property.

  The fact that Employer provided subsidized parking is immaterial to a determination of whether the Linden Deck constituted Employer's premises.

  The fact that the skywalk connected the parking lot to one of the employer's building did not render the parking lot into the employer's premises. The skywalk was nothing more than an added convenience for employees who choose to rent a space in the parking lot.

  Therefore, the court concluded that the lot was not so integral to Employer's business that it constituted a part of Employer's premises because the injuries suffered by Claimant occurred on a private parking lot, owned and operated by a third party, who was responsible for its control and maintenance, and Claimant was not required to park in the lot.

- Generally, injuries that occur while commuting to or from a place of work are not considered to occur in the course of employment. However, a claimant is entitled to benefits if he is injured on the employer's 'premises' at a reasonable time before or after the work period.

In this situation, the claimant must prove all of the following:

The employee
(A) is on the premises occupied or under the control of the employer, or upon which the employer's business or affairs are being carried on;
(b) Is required by the nature of his employment to be present on his employer's premises; and
(c) Sustains injuries caused by the condition of the premises or by operation of the employer's business or affairs thereon.

The term "premises" is not necessarily limited to buildings or property controlled, occupied, or owned by the employer. Rather, the term "premises" can encompass property that could be considered an integral part of the employer's business. Property becomes integral to an employer's business when the employer requires employees to use that property.

PPL v. WCAB (Kloss), No. 1634 C.D. 2013 (Decision by Judge McCullough, June 11, 2014) 6/14

DEATH BENEFITS/ COMMON-LAW MARRIAGE

- The claimant was not entitled to Widow benefits based upon the doctrine of Common-Law Marriage where the claimant decedent allegedly entered into a Common-Law marriage in Wyoming in 2003, a State that did not recognize Common-Law marriage, and did not begin to live in Pennsylvania until 2009, which was four years after the Pennsylvania Legislature passed P.L. 954 (Act 144), which amended Section 1103 of the Marriage Law pertaining to common-law marriage and provides:

> *No common-law marriage contracted after January 1, 2005, shall be valid. Nothing in this part shall be deemed or taken to render any common-law marriage* ***otherwise lawful*** *and contracted on or before January 1, 2005 invalid.(emphasis added)*

This is because an "otherwise lawful" Common-Law Marriage would exclude recognition of a parties alleged Common Law Marriage entered into in a state that did not recognize Common-law marriage prior to January 1, 2005.

This holding is consistent with the courts prior holdings that the phrase "otherwise lawful" refers to "any of various reasons that previously might have rendered such a marriage unlawful".

- Marriage is a civil contract.

Historically, there were two forms of marriage: ceremonial and common law.

A common-law marriage could only be created by an exchange of words in the present tense establishing a marriage contract, or in other words, the legal relationship of husband and wife. A common-law marriage did not require any specific or magic words. All that was needed is proof of an agreement to enter into the legal relationship of marriage.

In November 2004, the General Assembly enacted Act 144, which amended 23 Pa. C.S. §1103 by abolishing common-law marriage as of January 1, 2005. However, Section 1103 included a grandfather clause for otherwise lawful common-law marriages contracted on or before January 1, 2005.

Bret Cooney (deceased) - Amanda Serrano v. WCAB (Patterson UTI, Inc.), No. 1681 C.D. 2013 (Decision by Judge Simpson, June 12, 2014) 6/14

MEDICAL BILLS/SUBROGATION

- The employer was obliged to pay the amount of the subrogation lien for medical directly to the Non-Occupational Health Care Insurer (Highmark) and or its collection agency (Healthcare Recoveries) and not to the claimant because the Non-Occupational Health Care Insurer asserted it's subrogation right, for the payment of medical bills it had made, during the litigation of the underlying Claim Petition that was found compensable.

  This holding in this case was distinguished from the holding of Frymiare v. Workers' Compensation Appeal Board (D. Pileggi & Sons), 524 A.2d 1016 (Pa. Cmwlth. 1987) where the court held that claimant was entitled to be paid directly the amount of medical expenses incurred because an employer must still pay medical expenses to a claimant even if a third-party, such as Highmark in this case, has already defrayed the cost but has not asserted its subrogation rights.

  The holding in this case was distinguished from the holding in Frymiare because in this case, in contrast to the Non-Occupational Health Care Insurer in Frymiare, Claimant submitted into evidence a letter from Healthcare Recoveries stating that Highmark had a subrogation lien for the awarded medical expenses. By contrast, in Frymiare the Non-Occupational Health Care Insurer had not asserted it's lien during the underlying litigation.

- The second paragraph of section 319 of the Act provides:

  > *Where an employe has received payments for the disability or medical expense resulting from an injury in the course of his employment paid by the employer or an insurance company on the basis that the injury and disability were not compensable under this act in the event of an agreement or award for that injury the employer or insurance company who made the payments shall be subrogated out of the agreement or*

award to the amount so paid, if the right to subrogation is agreed to by the parties or is established at the time of hearing before the referee or the board.

Under the provisions of Section 319 of the Act no subrogation is due unless claimed. Subrogation rights under the second paragraph of section 319 are not self-executing and a party asserting such rights must exercise reasonable diligence in protecting its interest. A party asserting subrogation rights must do so during the pendency of the claim proceedings.

Evans v. WCAB(Highway Equipment and Supply Company), No. 2252 C.D. 2013 (Decision by Judge McCullough, June 30, 2014)