

**THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:
MARCH 2013 AT A GLANCE
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RETIREMENT

- Pennsylvania Supreme Court affirms the Commonwealth Court and holds that the employer did not prove that the claimant that the claimant had retired from the workforce due to claimant's receipt of a disability pension. The receipt of the pension only showed that she could not perform her time-of-injury position but it does not necessarily follow that she, and all workers similarly situated to her, decided to forgo all employment and are retired from the workforce.
- Where the employer challenges the entitlement to continuing compensation on grounds that the claimant has removed himself or herself from the general workforce by retiring, the employer has the burden of proving that the claimant has voluntarily left the workforce.

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

If the employer produces sufficient evidence to support a finding that the claimant has voluntarily left the workforce, then the burden shifts to the claimant to show that there in fact has been a compensable loss of earning power. Conversely, if the employer fails to present sufficient evidence to show that the claimant has retired, then the employer must proceed as in any other case involving a proposed modification or suspension of benefits.

- The fact that claimant did not submit evidence showing that she was unable to work does not prove voluntary retirement, especially in light of the Employer's own medical testimony regarding Claimant's physical limitations, and the absence of evidence of available work within her restrictions or expert testimony regarding her earning power.
- The totality of the circumstances test places the burden upon the employer to show by the totality of the circumstances, that efforts to return a claimant to the workforce would be unavailing because the claimant has chosen to retire rather than return to the workforce.

Circumstances that could support a holding that a claimant has retired include: (1) where there is no dispute that the claimant retired; (2) the claimant's acceptance of a retirement pension; or (3) the claimant's acceptance of a pension and refusal of suitable work within her restrictions.

City of Pittsburgh v. WCAB (Robinson), No. 18 WAP 2011 (Decision by Justice Castille March 25, 2013). 3/12