

**THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:  
MAY 2015 AT A GLANCE  
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**LACK OF PROSECUTION/MEDICAL TESTIMONY/WCJ**

- A WCJ's denial of a request for a continuance is not necessarily tantamount to a deprivation of one's due process rights. Rather, a WCJ's decision to grant or deny a request for a continuance is discretionary and subject to review only upon a clear showing of an abuse of discretion.

34 Pa. Code §131.13(j) lists several factors a WCJ may consider in adjudicating a request for a continuance or postponement, which include:

- (1) The positions of the various parties relating to the request for a continuance or postponement.
- (2) The number of prior continuances or postponements or denials of continuances or postponements and at whose request they were granted or denied.

Pursuant to 34 Pa. Code §131.13(j) the WCJ did not abuse her discretion upon dismissing the claimant's Claim Petition, filed pro se, without prejudice where in the course of eleven months five hearings were held and the claimant, though testifying at the third hearing, never proceeded with deposing a medical expert, which was necessary since this was a claim for greater than 52 weeks.

The dismissal of claimant's Claim Petition was solely the result of Claimant's repeated failure to adhere to the deadlines set forth by the WCJ, even when they were extended multiple times.

- It is true that medical evidence may not be necessary in cases where the causal connection is obvious.

The Commonwealth Court has held that:

*An "obvious" connection involves a nexus that is so clear that an untrained lay person would not have a problem in making the connection between the new symptoms and the compensated injury; the new symptoms would be a natural and probable result of the injury...If, however, the connection is not obvious, then the burden will be on the*

*claimant to establish the connection through unequivocal medical testimony*

In this matter the claimant was required to present medical evidence in support of her Claim Petition for greater than 52 weeks because the connection to work and her allegation of major depressive disorder and its associated symptoms as a result of the long-term harassment, hostile work environment, and race, gender, and age discrimination would not be obvious to an untrained layperson

*Roundtree v. WCAB (City of Philadelphia), No. 1182 C.D. 2014 (Decision by Judge Pellegrini, May 8, 2015) 5/15*

### **CLAIM PETITION/ NOTICE OF ABILITY OF RETURN TO WORK/ VOCATIONAL**

- The Pennsylvania Supreme Court holds that the employer's obligation to provide the claimant with the Notice of Ability to Return to Work (LIBC-757) pursuant to Section 306(b) (3) of the Act does not arise until after a claimant has become entitled to workers' compensation benefits.

This is because as reflected in the legislative history, Section 306(b) (3) was intended to speak to an employer's burden in a suspension proceeding, after a compensable injury has been established, and was not meant to impose a requirement upon employers in all circumstances where alternative employment is offered to an injured employee.

Section 306(b)(3) presumes that the work-related injury has caused a disability, that the claimant is receiving ongoing benefits for that compensable injury, and that the employer seeks to utilize the medical evidence it obtained in an attempt to reduce its existing liability by decreasing the amount of benefits it has to pay.

Therefore, the WCJ did not commit an error of law upon granting the claimant's Claim Petition for a closed period where the suspension was premised upon employer's job offer made within the claimant's capabilities that was proffered before the claimant filed her Claim Petition and was offered in the absence of employer's issuance of a Notice of Ability to Return to Work (LIBC-757).

It was further noted that before making any job offer the employer had issued a Notice of Denial rejecting claimant's contention she had suffered a work related injury.

- It is true that once an injured employee meets her burden of proving an entitlement to disability benefits in a Claim Petition proceeding, the burden shifts to the employer to prove entitlement to a suspension of those benefits through competent evidence.

In this matter the employer proved it was entitled to a suspension based upon the job offer made to the claimant following the employer's issuance of its Notice of Denial, which was made in the absence of the issuance of a Notice of Ability to Return to Work (LIBC-757).

This is because in a claim proceeding it is the claimant's burden to prove the extent and duration of disability and the WCJ is free to grant benefits for a closed period if the evidence supports such finding.

*School District of Philadelphia v. WCAB (Hilton), No. 34 EAP 2014 (Decision by Justice Baer, May 26, 2015) 5/15*