

**THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:
MAY 2018 AT A GLANCE
BY MITCHELL I GOLDING, ESQ.
KENNEDY, CAMPBELL, LIPSKI & DOCHNEY
(W) 215-861-6709
Mitchell.Golding@zuirchna.com**

COURSE AND SCOPE

- The fact that a job had a discrete and limited duration did not automatically render an employee commuting to that job from home a travelling employee for purposes of the going and coming rule.

The WCJ did not err in finding the claimant who was employed as an Electrical Foreman and suffered his injury traveling to a job site did not suffer an injury that was an exception to the “coming and going” rule. This is because she found that Claimant suffered his injury during his commute to a fixed job location.

The job site was fixed because the claimant had worked at the job site on the day of the accident and that he had worked exclusively at that job site for several weeks prior to the accident.

- To satisfy the employment contract exception to the coming and going rule, a claimant must satisfy two elements. First, the claimant must prove that a travel allowance is related to the actual expense and time involved in the claimant’s commute. Second, the claimant must prove that the employer provided or controlled the means of the commute.

Claimant did not satisfy the first point because claimant’s wages did not include pay for travel.

Claimant did not satisfy the second point. The relevant consideration in this matter was whether the employer named in the claim petition provided or controlled the means of his commute.

- Generally, under the ‘going and coming rule,’ injuries sustained while an employee is traveling to and from his place of employment are considered outside the course and scope of employment and are, therefore, not compensable under the Act. There are four exceptions to this general rule: (1) the employment contract includes transportation to and/or from work; (2) the claimant has no fixed place of work; (3) the claimant is on a special assignment or mission for the employer; or (4) special circumstances are such that the claimant was furthering the business of the employer.

Upon analyzing the going and coming rule the course of employment is construed more broadly for traveling employees. Whether a claimant is a traveling employee is determined on a case by case basis, and the court will consider whether the claimant's job duties involved travel, whether the claimant worked on the employer's premises, or whether the claimant had no fixed place of work.

The fact that an employer has a central headquarters from where the claimant sometimes works is not controlling.

Kush v. WCAB (Power Contracting Company), No. 1688 C.D. 2017 (Decision by Judge McCullough, May 17, 2018) 5/18

SUBROGATION

- The Pennsylvania Supreme Court affirms the Commonwealth Court and holds that the Pennsylvania State Police were not entitled to subrogation against the proceeds claimant received under the Heart and Lung Act, although the employer had issued a Notice of Compensation Payable that contained the notation "Remarks": "Paid Salary continuation. Heart & Lung Benefits by the employer" and medical bills were paid consistent with the fee schedule of the Workers' Compensation Act.

This is because pursuant to Section 1722 of the Motor Vehicle Financial Responsibility Law a claimant is precluded from recovering the amount of benefits paid under the Heart and Lung Act from the responsible tortfeasors and, hence, bars the right to subrogation by the employer who paid those benefits. There can be no subrogation out of an award that does not include these benefits.

The mere acknowledgement in an NCP of a work injury, and the specification of the amount of benefits to which an injured employee would be entitled under the Workers' Compensation Act, does not transform an injured employee's Heart and Lung benefits into Workers' Compensation Act benefits under the Motor Vehicle Financial Responsibility Law.

- Payment of related medical bills were using the "re-pricing" formula set forth in the Workers' Compensation Act does not constitute compensation payable under the Workers' Compensation Act. The Heart and Lung Act provides for the payment of all medical and hospital bills, incurred in connection with any such injury. Payment of a claimant's medical care and treatment is required under the Heart and Lung Act, and, regardless of the pricing schedule utilized, such payment constitutes a Heart and Lung benefit

Pennsylvania State Police v. WCAB (Bushta), No. 14 WAP 2017 (Decision by Justice Todd MAY 29, 2018) 5/18

