THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:
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RETIREMENT/PLEADINGS/ PENALTY

- An employer need not prove the availability of suitable work to obtain a suspension when the employer establishes, under the totality of the circumstances, that the claimant has voluntarily retired from the workforce.

  Where a claimant accepts a retirement pension, that claimant is presumed to have voluntarily retired from the work force, and the employer is entitled to a suspension unless the claimant can show that he is seeking employment or that the work-related injury forced him to retire.

  Here, the Claimant accepted a retirement pension meaning the burden shifted to Claimant to demonstrate that he is seeking employment or that his work-related injury forced him to retire. The Claimant testified that he was not seeking employment and although Claimant testified that he retired because of his work-related injury, the WCJ rejected this testimony as not credible.

- The WCJ did not commit an error of law upon denying the claimant's Penalty Petition after the employer failed to file a Petition for Suspension but rather unilaterally suspended the claimant's compensation after the claimant signed a Special Attrition Plan, for receipt of a lump sum of $35,000.00 and that provided that the Claimant was not under duress, and was not disabled and also contained a general release of all claims against the employer including disability pay and benefits.

  This is because Claimant clearly had notice that a suspension was possible, and Claimant was given an opportunity to defend against it. Moreover, because Employer already ceased paying Claimant's benefits, albeit improperly, and because Employer denied the material allegations of Claimant's penalty petition, it was clear that Employer was seeking a continuation of that suspension.

  Therefore, this was not a case where the WCJ sua sponte suspended Claimant's benefits after the close of the record. Because strictness of pleadings is not required in workers' compensation cases, and in the interest of judicial economy, the WCJ was empowered to take appropriate action based on the evidence presented.

- Although the employer technically violated the Act after it believed the claimant had retired from the workforce, the employer did not err by failing to assess a penalty. This is because the WCJ found that Claimant voluntarily retired from the work force and thus was not entitled to benefits after his retirement, the same basis upon which he suspended benefits. He further found that, although Employer violated the Act by failing to follow the proper procedures (i.e., because no supplemental agreement, final receipt, or order was obtained before payments ceased), no penalties could be computed because no benefits were due.

- The law applicable to the finding that the WCJ was empowered to grant order the Suspension in the absence of the filing of a Petition for Suspension is well-established.

  The rules governing pleadings in workers' compensation cases do not mirror the Pennsylvania Rules of Civil Procedure and should be liberally construed. Furthermore, the court has never required absolute and unreasonable strictness in pleadings in workers' compensation cases, and, if one party effectively puts the adverse party on notice as to the theory of relief which is sought, the WCJ will be authorized to grant the relief requested.

  A WCJ is empowered under the Act to take appropriate action based upon the evidence presented and a claimant can be placed on notice of the relief sought during the proceedings.

  The general rule in workers' compensation is that if an employer wants to change the character of the claimant's disability, the employer must file a petition specifically requesting the relief sought.

  A WCJ has authority to suspend/terminate a claimant's benefits in the absence of a formal petition where doing so would not be prejudicial to the claimant, i.e., the claimant is put on notice that a suspension/termination is possible and is given the opportunity to defend against it. Whether the claimant has adequate notice depends on the totality of the circumstances of a particular case. This includes the procedural history, the factual history, the nature of the claimant's petition, and the nature of the employer's response to the claimant's petition.

Krushauskas v. WCAB (General Motors) No. 446 C.D. 2011 (Decision by Judge Leadbetter, October 11, 2012) 10/12

SUBROGATION

- The Pennsylvania Supreme Court Holds that the Employer did not have the right to subrogation where it sought subrogation against the proceeds of a third party recovery that the claimant received from SEPTA.

- This is because the portion of Section 23 of Act 44, which provides that government shall "benefit from sovereign and official immunity from claims of subrogation or reimbursement from a claimant's tort recovery," bars any claim made by an employer for the recoupment of workers' compensation benefits it paid

- The right to subrogation and reimbursement has been described as absolute and Automatic and the General Assembly expanded this right with Section 25(b) of Act 44.

  Sovereign immunity, however, is just as fundamental pursuant to Article I, Section 11 of the Pennsylvania Constitution, as only the General Assembly may waive the immunity of the Commonwealth upon duly enacted legislation.

  In 1993 when the General Assembly was expanding the "absoluteness" of subrogation and reimbursement in workers' compensation by reinstating the rights of all employers/insurers to seek workers' compensation subrogation and reimbursement in cases involving the Motor Vehicle Financial Responsibility Law, it specifically provided for no "subrogation or reimbursement from a claimant's tort recovery" in cases involving the Commonwealth or its political subdivisions with the enactment of Section 23 of Act 44.

  Therefore the Assembly created the lone exception to comprehensive right of subrogation and reimbursement: by prohibiting it in tort cases involving the Commonwealth, its political subdivisions, and the agencies, officials, and employees thereof

FRAZIER v. WCAB((BAYADA NURSE) No. 56 EAP 2010 (Decision by Justice Baer , September 28, 2012)