

**THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:
SEPTEMBER 2015 AT A GLANCE
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JURISDICTION

- 305.2(a)(1), which addresses one's principal place of employment provides:

A claimant's employment is "principally localized" in this or another state when:

*(i) his employer has a place of business in this or such other state and he regularly works at or from such place of business, or (ii) having worked at or from such place of business, his duties have required him to go outside of the State not over one year, or (iii) **if clauses (1) and (2) foregoing are not applicable, he is domiciled and spends a substantial part of his working time in the service of his employer in this or such other state. (Emphasis added)***

Upon determining whether a claimant's employment is principally localized in Pennsylvania, the claimant must show he worked from Pennsylvania "as a rule, not as the exception."

The claimant's principal place of employment was not in Pennsylvania pursuant to 305.2(a)(1)(iii) of the Act where, although the claimant spent more time and drove more miles in Pennsylvania than any other state, he did not spend a substantial part of his working time driving in Pennsylvania when the driving the claimant performed in all the states in all states combined were tallied and compared to the percentage of time he drove and spent in Pa.

In this matter claimant drove 17% of his miles in Pennsylvania, compared to all other states, and spent 19% of his hours driving in Pennsylvania compared to all other states.

Therefore, he did not work from Pennsylvania as a rule.

- 305.2(d)(5) of the Act provides:

*An employee whose duties require him to travel regularly in the service of his employer in this and one or more other states **may, by written agreement with his employer, provide that his employment is principally localized in this or another state, and, unless such other state refuses jurisdiction, such agreement shall be given effect under this act.(Emphasis added).***

Premised upon 305.2(d)(5) of the Act WCJ did not commit an error of law by dismissing the claimant's Claim petition based upon lack of jurisdiction where the claimant's injury occurred **outside of Pennsylvania** and the claimant's signed time of hire employment contract that provided on-the-job injuries shall be exclusively governed by the workers' compensation laws of the State of Alabama and that for purposes of worker's compensation, Claimant's employment was principally localized within the state of Alabama.

The Pennsylvania Supreme Court, in interpreting this section 305.2(d)(5) of the Act has concluded an employee may enter into a written agreement establishing where the employee's employment is principally localized when an employee's duties require him to travel regularly in Pennsylvania and one or more other states.

However, the Court also held an Agreement that confers exclusive jurisdiction to another state is unenforceable when the work injury occurs in Pennsylvania.

- Section 305.2(d)(5) of the Act does not contravene the Full Faith and Credit Clause of the U.S. Constitution or the purpose of the Act and was not unconstitutionally applied to the claimant where he was receiving Workers' Compensation benefits under the Alabama Worker's Compensation Act.

Watt v. WCAB (Boyd Brothers Transportation), No. 53 C.D. 2015 Decision by Judge Simson, September 15, 2015) 9/15

IRE

- The Commonwealth Court holds that Section 306(a.2) of the Act is an unconstitutional delegation of legislative authority insofar as it proactively approved versions of the AMA Guides beyond the Fourth Edition, which was the edition of the AMA Guides in existence at the time the Pa. Legislature enacted Section 306(a.2) regarding IRE's.

Accordingly, the WCJ's granting of Employer's Petition for Modification, which was based upon an IRE that was premised upon the Sixth Edition of the AMA Guides to the Evaluation of Permanent Impairment that was the **most recent**

edition of the American Medical Association “Guides to the Evaluation of Permanent Impairment in existence at the time the IRE was performed, was vacated and remanded with instructions to apply the Fourth Edition of the AMA Guides in adjudicating the same.

- Article II, Section 1 states, “The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives.”

Article II, Section 1 of the Pennsylvania Constitution vests legislative power in the General Assembly, embodying the fundamental concept that only the General Assembly may make laws, and cannot constitutionally delegate the power to make law to any other branch of government or to any other body or authority.

Section 306(a.2) of the Act by requiring that the degree of impairment should be determined pursuant to the ***most recent edition*** of the American Medical Association “Guides to the Evaluation of Permanent Impairment” violates Article II, Section 1 because:

- The General Assembly has failed to prescribe any intelligible standards to guide the AMA’s determination regarding the methodology to be used in grading impairments.
- It is wholly devoid of any articulations of public policy governing the AMA in this regard and of adequate standards to guide and restrain the AMA’s exercise of this delegated determination by which physicians and WCJs are bound.
- Lacks a mechanism requiring governmental review of the Guides by the promulgation of regulations.
- The delegation here was to a private party. There is no accountability to the public, either directly through the rulemaking process providing for public input and comment or indirectly through the appointment and confirmation power and the power of the purse

In this case, the General Assembly adopted as its own the methodology enumerated by the AMA at the time it enacted Section 306(a.2)—that is, the methodology contained in the Fourth Edition of the Guides. The General Assembly has not reviewed and re-adopted the methodology contained in subsequent editions. The legislature has simply provided a private party—the AMA—with *carte blanche* authority to implement its own policies and standards, proactively adopting those standards, sight unseen.

Protz v. WCAB(Derry Area School District), No. 1024 C.D. 2014 (Decision by Judge Pellegrini, September 18, 2015) 9/15