THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:
MARCH 2011 AT A GLANCE

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REINSTATEMENT/ STATUTE OF LIMITATIONS/ CLAIM PETITION/EQUITABLE ESTOPPEL

- Although WCJ's can amend NCP's during proceedings involving any pending petition, this fact does not preclude the conclusion that the limitation provision of paragraph one of section 413 applies to that entire section of the Act.

  When a party is seeking either to obtain relief through the correction of an NCP under paragraph one of Section 413 of the Act, or is seeking to add additional consequential injuries to a claimant's compensable, work-related injuries under paragraph two of Section 413 of the Act, the party must file the petition within three years of the date of the most recent payment of compensation.

  The Claimant's Petition to Review the NCP to add Post Traumatic Stress Disorder was untimely where she filed her review petition seeking to expand the description of her original injury on March 22, 2007, which was more then three years after the parties executed a Supplemental Agreement suspending Claimant's benefits in February 2004.

- A clamant cannot rely upon a timely filed Petition for Reinstatement to Review and NCP if filed in excess of three years of the most recent payment of compensation.

- The fact that the employer referred the claimant for treatment for her PTSD did not lull Claimant into falsely believing that Employer considered her PTSD to be work-related under the doctrine of equitable estoppel. Equitable estoppel arises in the workers' compensation arena when an employer, "by its acts, representations, or admissions, or by its silence when it ought to speak out, intentionally or through culpable negligence induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts." The doctrine of equitable estoppel cannot toll the statute of limitations unless the Claimant can establish fraud, concealment or misrepresentation on the part of the employer.

- A claimant with a pre-existing injury, whether mental or physical, is entitled to benefits as long as she shows that her injury has been aggravated by a working condition to the point of disability. Whether or not the pre-existing condition is related to the work injury is irrelevant. The employer takes the employee as she comes. Therefore, the WCJ erred upon dismissing claimant's Claim Petition as

moot by failing to make findings whether Claimant might have been entitled to benefits based on an aggravation of her PTSD.

Dillinger v. WCAB (Port Authority of Allegheny County), No. 770 C.D. 2011 (Decision by Judge Friedman, March 1, 2012) 4/12

UTILIZATION REVIEW

- The WCJ did not commit an error of law by finding the chiropractic treatment under review was not reasonable and necessary although the WCJ found credible employer's medical expert who did not review the actual chiropractic reports post the date of the review where the medical treatment at issue was repetitive and ongoing in nature and where the Employer's medical experts addressed the specific chiropractic treatment currently under review, and both physicians credibly and persuasively opined that, having reviewed numerous records related to the ongoing chiropractic treatment, further treatment could not be justified based on the lack of evidence that such care was resulting in increased function or decreased pain.

  Moreover, section 306(f.1) (6) of the Act specifically contemplates prospective utilization review of health care treatment.

- A physician on the WCJ level may offer an opinion on the reasonableness and necessity of chiropractic treatment because although section 306(f.1)(6)(i) requires a peer review the treatment under review, this section only applies only to the initial utilization review by an authorized utilization review organization. There is no corresponding requirement in section 306(f.1) (6) (iv) of the Act, which governs a challenge to the utilization review determination. In the absence of such a requirement, the court follows the general rule that a physician is competent to testify in specialized areas of medicine, even though the physician is neither a specialist, nor certified in those fields.

Leca v. (Philadelphia School District), No. 679 C.D. 2011 (Decision by Judge McCullough FILED: March 7, 2012) 4/12

MEDICAL/SUSPENSION/FORFEITURE PETITION

- The Pennsylvania Supreme Court affirms the Commonwealth Court and holds that it is within the sound discretion of the WCJ to decide whether to suspend both indemnity and medical benefits where a claimant failed to attend a defense medical examination ordered by the WCJ pursuant to Section 314(a) of the Act.

The Court reasons that the General Assembly did not intend that "compensation" under Section 314(a) must always be restricted to wage loss benefits, because Article III does not restrict "compensation" to wage loss benefits in all cases.

- In the proper circumstances, "compensation" under Section314(a) **may** include medical benefits as well as wage loss benefits determined that "compensation" as used in Article III more frequently denotes wage loss benefits, but it may also, in proper context, denote medical benefits.

- The Act does not define "compensation" and the Act uses the term variously. Thus, one section of the Act will clearly evidence that the term only pertains to wage loss benefits, but another section of the Act will imply that the term encompasses medical benefits as well as wage loss benefits. For this reason, the definition of "compensation" as used in the Act must be decided on a section-by-section basis.

Giant Eagle, Inc. v. WCAB (Givner), No. A08-1066 (Decision by Justice McCaffery, March 13, 2012). 3/12