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

- When a private postmark is used to mail an appeal and no U.S. postmark is present, the appeal is filed on the date received by the Board.

  Under Section 111.3 of the Special Rules, an appeal is considered filed as of the date of the United States Postal Service postmark on the envelope. When a party uses a private postmark, the appeal is deemed filed as of the date the Board receives the appeal.

- Therefore, the WCAB did not commit an error of law where it quashed the claimant's appeal where at the time the Board received Claimant's appeal, the only evidence as to the date of mailing was the private postmark on the envelope and where the claimant did not include a copy of the form in her appeal document mailed to the Board, nor did she mail it separately to the Board. Further, Claimant did not identify on the Form 3817 the case to which it pertained.

- Under Section 423(a) of the Act, a party has 20 days to file an appeal with the Board. Appeals filed after this timeframe are untimely and divest the Board of jurisdiction to reach the merits of the issues raised in the appeal.

- Neither the Act nor the Special Rules authorize a party to use United States Postal Service Form 3817 Certificate of Mailing. Pennsylvania Rule of Appellate Procedure 1514 requires parties to use this form, or comparable forms, in appeals from governmental bodies to our appellate courts. However, this rule and its requirements are not applicable in proceedings before the Board. Because Rule 1514 does not apply to agencies, Form 3817s are not determinative of filing dates in agency appeals.

  Rule 1514 has two critical requirements for using Form 3817. First, the form must identify the case to which it pertains. Pa. R.A.P. 1514(a). Second, the party must include the form in the mailing, or mail it separately to the prothonotary. The clear import of these requirements is that they enable the prothonotary to view the case docket number and the United States Postal Service postmark on the Form 3817 and to immediately determine whether a filing is timely.

Mills v. WCAB (School District of Harrisburg) No. 1958 C.D. 2010 (Decision by Judge Simpson, June 15, 2011) 9/11

REASONED DECISION/ MEDICAL TESTIMONY / CAPRICIOUS DISREGARD

- There is no requirement in the law that the WCJ's decision be "well-reasoned" in the sense that a reviewing court agrees with the reasoning offered. The reasoned decision requirement is simply that the WCJ must articulate some objective reasoning to facilitate appellate review of the same. The decision is a reasoned one which does, indeed, facilitate effective appellate review.

  While the law does not require that a decision be "well reasoned," it does require that the decision be free from abuse of discretion, and free from material legal error.

- The WCJ, upon denying the claimant's Petition for Reinstatement, did not author a reasoned decision where he made the erroneous presupposition that use of the term "degenerative" automatically rules out a finding of causal connection to a prior work injury, which it does not. On several prior occasions, the Commonwealth Court has established the principle that mere reference to the "degenerative nature" of a claimant's injury is insufficient in ruling out work-relatedness, as the Court has made the determination that a degenerative condition may be activated or accelerated by work-related trauma. In other words, degenerative changes may be attributable to a claimant's work injury. A diagnosis that a condition is "degenerative" merely describes the condition, and does not, in itself, address the issue of causation.

  Therefore the WCJ committed an error of law where he failed to distinguish between degenerative disability produced by work-related trauma, and degenerative disability which is not related to Claimants work where the claimant's medical expert testified that Claimants degenerative disability was the natural progression of her original work injury. In failing to recognize the distinction between degenerative disability produced by work-related trauma and non-work-related degenerative disability, the WCJ erred by misreading claimant's medical expert's testimony and the misapplication of the law as a result.

- Although generally a WCJ may disregard the testimony of any witness, even though the testimony is uncontradicted, he does not have the discretion to capriciously disregard competent evidence without a reasonable explanation or without specifically discrediting it. At the very least the findings and conclusions of the fact finder must have a rational basis in the evidence of record and demonstrate an appreciation and correct application of underlying principles of substantive law to that evidence. When a WCJ rejects uncontradicted evidence and makes findings or conclusions which have no rational basis in the evidence of

record, that WCJ capriciously disregards competent evidence. Simply stated, a WCJ may not reject credible and uncontradicted medical evidence without explaining why the evidence is rejected.

Furthermore, a capricious disregard of evidence occurs when the fact-finder deliberately ignores relevant, competent evidence.

The WCJ disregarded competent evidence where she rejected claimant's medical expert's unrefuted testimony based upon a misapplication of the law.

Green v. WCAB (US Airways) No. 2539 C.D. 2010 (Decision by Judge Butler, August 22, 2011) 9/11

REINSTATEMENT/ SURVEILLANCE/ TERMINATION FOR CAUSE

- A claimant whose benefits are suspended upon a return to a light-duty job is ordinarily entitled to a reinstatement of benefits if he is subsequently separated from his employment. However, reinstatement will be denied if the employer can demonstrate that employment is available within the claimant's restrictions or would have been available but for the circumstances which merit allocation of the consequences of the discharge to the claimant, such as the claimant's lack of good faith. Whether the claimant was discharged for conduct evidencing a lack of good faith is a question for the WCJ, as fact finder, to determine.

  A claimant is entitled to a reinstatement upon his discharge, but only where the discharge is not based upon the conduct of the claimant.

  The WCJ did not commit an error of law upon denying the claimant's Petition for Reinstatement where the claimant, upon return to modified duty, was discharged by the employer because surveillance evidence showed Claimant to be performing activities well beyond his asserted "severe limitations" and to be running a home improvement business, notwithstanding the clamant had returned the Bureau forms denying outside employment or income.

- The argument that the surveillance only covered a limited period of time was an attack on the weight to be given the evidence, which is a matter entrusted to the WCJ.

- An employer is required to pay total disability benefits until it can provide the claimant a job within his capabilities or establish that there is work in the job market that he can perform. Not being candid but, rather, misrepresenting what a claimant can do will lead an employer to pay total disability benefits to which the claimant is not entitled. This is a serious breach of trust.

- Where Employer proved that Claimant misrepresented his abilities and the facts around his self-employment, he was not entitled to a reinstatement of benefits.

- A claimant need not be aware of a work rule in order to have a discharge be considered his responsibility.

  Here the claimant was dismissed because he told the Bureau, Employer and medical professionals that he did not work and could not work because of his physical limitations notwithstanding surveillance that showed otherwise. Lying about matters material to one's compensation eligibility does not require a specific work rule before a WCJ can find, as fact, that a discharge was the result of misconduct.

Sauer v. WCAB (Verizon Pennsylvania, Inc.) No. 1316 C.D. 2010 (Decision by Judge Leavitt, June 15, 2011) 9/11