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

BY MITCHELL I. GOLDING, ESQ.
KENNEDY, CAMPBELL, LIPSKI & DOCHNEY
(W) 215-430-6362

SUPERSEDEAS FUND REIMBURSEMENT

- Pennsylvania Supreme Court affirms the Commonwealth Court and holds that the employer was entitled to Supersedeas Fund Reimbursement for payment made of a surgical bill where the bill was for a date of service prior to the date that the employer filed its Petition for Termination with a request for Supersedeas but the bill was not received and paid by the employer after its request for supersedeas was denied.

  The fact that the bill was for treatment incurred prior to the request for supersedeas was not determinative because the bill was not received by the employer until after its request for supersedeas had been made and denied.

  This holding is consistent with the elements set forth by the Section 443(a) of the Act. First, this was a case in which a supersedeas had been requested and denied. Second, the request was made under provisions of Section 413. Third, payments were made as a result of the WCJ's August 20, 2004 denial of the employer's request for supersedeas. Fourth, the bill for the June surgery did not arrive until six weeks after the denial of supersedeas, and the denial meant the insurer was not relieved of the obligation to pay the bill, payment was indeed the result of the denial. Fifth, there was a final determination that compensation is not in fact payable following the WCJ's granting of the employer's Petition for Termination.

- To make reimbursement dependent on the date of the event giving rise to the bill, rather than the date the bill was received, would insert an additional element into the statute.

  Had supersedeas has been granted, payment would not have been made, but supersedeas was not granted and payment necessarily followed. It is the bill, post denial, which caused money to leave the coffers of the insurer. Therefore, payment resulted from the denial. The date the bill arose is irrelevant under the plain language of the statute.

Departments of Labor & Industry, Bureau of Workers' Compensation v.WCAB (Crawford & Company), *(No. 102 MAP 2009) (Decision by Justice Eakin, July 19, 2011).*

STATUTORY EMPLOYER

- Pennsylvania Supreme Court grants Petition for Allowance of Appeal filed by defendants, who were deemed statutory employers, by the Commonwealth Court who had held that pursuant to the second paragraph of Section 302(a) of the Act, an entity may be deemed a statutory employer, regardless of whether the entity was in control of the premises, where that entity contracted to have work performed by another of a kind which is a ***regular or recurrent*** part of the business, occupation, profession or trade of such person.

  The Commonwealth Court had reasoned that the elements of the McDonald test were applicable to Section 302(b) of the Act but not to Section 302(a) of the Act. Although it is true that the defendant owned the fields where the tomatoes were picked and it has been held that the owner of the premises cannot be considered a statutory employer when it contracts with another for work on its premises, that proviso emanates out of the McDonald test and only applies to Section 302(b) of the Act but does not apply to Section 302(a).

  The Supreme Court granting of the Petition for Allowance of Appeal was limited to address the following issues, as framed by the Petitioners:

  > *Whether a claimant must meet the five part test articulated by the Supreme Court in the seminal case of McDonald v. Levinson Steel Co. 302 Pa. 287, 152 A. 424 (1930) to establish statutory employer status?*
  >
  > *Whether an owner of property can be a "statutory employer" under the Pennsylvania Workers' Compensation Act and existing case law, in the face of 80 years of precedent finding the contrary?*

Six L's Packing Company v. WCAB (Williamson) No. 453 EAL 2010 (Per Curium, July 14, 2011)

NOTICE

- Pennsylvania Supreme Court reverses the Commonwealth Court and holds that the Commonwealth Court committed an error by finding that the claimant, upon giving notice of her injury, did not give a reasonably precise description of her injury as required by the notice provision of Section 312 of the Act.

  What constitutes adequate notice pursuant to Section 312 is a fact-intensive inquiry, taking into consideration the totality of the circumstances. Although Section 312 requires a claimant to inform his or her employer that the claimant received a work-related injury at a specified time and place, the notice only need be conveyed in ordinary language, can take into consideration the context and setting of the injury, and may be provided over a period of time or a series of communications, if the exact nature of the injury and its work-relatedness is not immediately known by the claimant.

Section 312 does not require that notice be given in a single communication or that conversations between the employee and employer be considered in isolation. The exact diagnosis is not necessary in order for an employee to provide adequate notice of the work injury to the employer. Rather, only a reasonably precise description of the injury is required.

- A short-term disability form that indicates the claimant did not believe her injuries were work related and listed additional ailments was not dispositive on the issue of notice where the claimant was not aware of her medical diagnosis or that her injury was work related until she subsequently saw her treating physician who made her aware of the work relatedness of her symptomatology.

  Therefore, the claimant gave timely notice where, while still employed by the employee, she informed them, in ordinary language, that she suffered pain in her hand and left work as a result of the pain. The context of that communication provided the employer information concerning the time and place of claimant's injury, as it occurred while claimant was at work. Claimant's complaint to her supervisor provided the employer with a reasonable description of her work injury and indicated the time and place at which it occurred. Although, at the time she initially informed her employer of her hand injuries, the claimant was unaware those injuries were work related, when she learned from her doctor that her injuries were work related, she informed her employer via voice message that she had work related problems. Therefore, the employer was aware that the claimant suffered a work related problem and knew that she had not returned to work since January of 2005 when she left work complaining of her hand injuries.

- Notice is a prerequisite to receiving workers' compensation benefits and the claimant bears the burden of demonstrating that proper notice was given. Sections 311 and 312 of the Act govern the timing and content of the notice. Section 311 provides that an employee has 120 days from the date of the injury, or from the date the employee learns that the injury is work related, to provide notice to the employer of the work related injury. Section 312 requires that notice inform the employer that a certain employee received an injury, described in ordinary language, in the course of his employment on or about a specified time, at or near a place specified.

  Thus, the plain language of the statute sets forth, generally, what is required of an injured employee in informing the employer of a work related injury.

- The Pennsylvania Supreme Court remarks in a footnote that pursuant to Section 406.1(a), once an employer has received sufficient notice of a work related injury, or knows of a work related injury, it must either promptly investigate the circumstances of the injury and determine if compensation is due, or risk sanctions for failing to conduct an investigation and promptly pay benefits. Section 406.1(a)'s prompt investigation requirement is triggered not only when a Claim Petition is filed, but when the injury is reported or known to the employer. The only responsibility of the employee is that he or she gives notice of the injury to the employer unless the employer already has knowledge of the occurrence.

Gentex Corporation and Gallagher Bassett Services v. WCAB (Morack), No. 33 MAP 2010 (Decision by Justice Todd, July 20, 2011). 8/11

HEART ATTACK / COURSE AND SCOPE OF EMPLOYMENT

- The decedent did not suffer a fatal heart attack in the course and scope of his employment where his heart attack occurred 11 days after the last day he worked subsequent to his receipt of a letter from the employer informing him that he was being terminated as an employee.

  The letter was sent by the employer to the claimant, after the claimant, following his involvement in a work injury and his return to regular duty work from light duty work, stopped working after the claimant's attorney wrote to the employer advising that the claimant was could not perform any type of manual labor.

- The Act does not impose on employers a risk of compensation for injuries that result from a decision to terminate an employee.

  Employers may have legitimate reasons for terminating an employee that are unrelated to a potential workers' compensation claim.

- Regardless of the location where an employee sustains a fatal injury, a claimant must still prove the essential elements to recover under the Act: (1) that the employee's injury arose in the course and scope of employment, and (2) that the injury was related to the employment. The location of an injury should be merely a factor for the Judge to consider.

- When a claimant asserts that he sustained a physical injury because of a psychic reaction to work conditions, the abnormal working condition test does not apply. Rather, a claimant's burden is simply to prove that (1) he is suffering from an objectively verifiable physical injury, and (2) the injury arose in the course of employment and was related thereto.

- Although an injury that occurs in the workplace need not have a causal relationship to work activities, when an injury occurs off-premises, the relationship between an injury and employment activities must be clearer. Location should be merely a factor for the Workers' Compensation Judge in considering whether an employee has sustained an injury arising in the course of

> employment and related to employment. Where a work injury appears to bear no relationship to events associated with employment activities but rather relates to a final act that is only work-related insofar as the event alters the employment relationship (such as the termination in this case), an injury associated with that final act does not arise in the course of employment.

Janet Little, dependent of David Little, deceased v. WCAB (B&L Ford/Chevrolet), No. 1857 C.D. 2010, (Decision by Judge Brobson, January 28, 2011). 8/11