

## **A VIEW FROM THE BENCH**

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When thinking about workers' compensation, a few matters must be kept in mind. First and foremost, workers' compensation is by its very nature the preemption of tort liability claims against employers and thus it is the exclusive remedy by which a worker can seek damages from his employer for injuries sustained in the course of employment. As such, the workers' compensation system is a parallel system of judges, rules, procedures and appeals for actions by employees against their employers for workplace injuries.

Like any case presented in a judicial or administrative forum, the claimant in a workers' compensation case must prove the elements of his case in order to obtain a recovery. Inglis House v. Workers' Compensation Appeal Board (Reedy), 535 A.2d 135 (Pa.1993). In a claim petition a claimant must prove, 1.) An employment relationship with the defendant; 2.) That the claimant suffered a work-related injury in the course and scope of this employment; 3.) That the claimant gave timely notice of the accident or injury; and, 4.) That the claimant has suffered a disability as a result of the injury. Sherrill v. Workers' Compensation Appeal Board (School District of Philadelphia), 624 A.2d 240 (Pa. Cmwlth. 1993). Additionally, where there is no obvious causal connection between the employment and the injury, unequivocal medical testimony is necessary. Cromie v. Workers' Compensation Appeal Board (Anchor Hocking), 600 A.2d 677 (Pa. Cmwlth. 1991).

The best approach is to think about how you will draft the proposed findings of fact and conclusions of law as you prepare the case rather than after the evidence has been concluded. Just as when preparing a civil case you should start with the proposed standard jury instructions to outline the elements of your case, you should think about your proposed findings of fact and conclusions of law in selecting your witnesses and outlining your questions so that you will be able to establish the elements of your case. Cases are most often lost because an element, which was necessary to establish a claim was not supported by the evidence of record before the workers' compensation judge.

What does this mean? Well it means that if you have a case where there is a question of whether the claimant is an employee or an independent contractor, you are going to have to nail down the elements in order to establish that the claimant is indeed an employee and entitled to compensation in the first place. This is often the case where the employment relationship is an informal one such as when laborers are asked to "come along and help out" on a building project. If the claimant is an employee, then the next question may be, "whose employee is he?" There are rules regarding subcontractors and general contractors that you will have to consider, especially in regard to finding the party who has workers' compensation coverage in order for the claimant to obtain a recovery. This is also an issue in trucking cases where one company may own the truck but another company hires and obtains the drivers. If there is an issue of where the work was to be done or where the contract for hire was made, there may be a question of jurisdiction as to whether the extra-territorial provisions of the Pennsylvania workers' compensation act even apply to the claimant. Spending the time thinking through your

claim and doing some initial legal research at the beginning will eliminate problems down the road.

In presenting your case before the Workers' Compensation Judge, the importance of maintaining credibility cannot be overstated. As is the case in administrative law, the judge is both the trier of fact and arbiter of law. At the hearing level, the judge's credibility findings are final. Universal Cyclops Steel Corp. v. WCAB (Krawczynski), 305 A.2d 757 (Pa. Cmwlth. 1973). Simply stated, if you do not prevail on the issue of credibility before the judge it is unlikely that the case can be salvaged. You must therefore be careful not only in how your witnesses present themselves but also in how you conduct yourself as an attorney in maintaining credibility with the judge. If the judge knows that you will accurately present the facts and the applicable law, it will serve you well in both the short term and in the long run.

In addition to being familiar with the Workers' Compensation Act itself, 77 P.S. Section 1, *et seq.*, counsel must also consult the Rules of Administrative Practice and Procedure before the Workers' Compensation Judges and the Rules of Administrative Practice and Procedure before the Workers' Compensation Appeal Board. Even though these rules govern practice before the judges and the Board, they are often ignored by counsel. Not only will reviewing the rules clear up procedural questions in advance but also by reviewing the rules, you will avoid costly mistakes in presenting your case.

What I am advocating is basically a commitment to professionalism. There is no substitute for preparation, knowledge of the law and treating the judge and your opponent with respect through all aspects of the process. In my experience, the successful practitioners are the ones who try to follow these principles throughout their career.