

Save the Date! - 14th Annual Workers' Compensation Conference

Mark your calendars for the 14th Annual Workers' Compensation Conference, June 1-2, 2015, at the Hershey Lodge & Convention Center. From exciting speakers and stimulating topics to opportunities for networking and educational credits, this popular event has it all.

Watch our website during the coming months for more details and registration information. Visit www.dli.state.pa.us and click on "Workers' Compensation," then "Conferences, Seminars, Training."

A Message from the Directors

News & Notes is a quarterly publication issued to the Pennsylvania workers' compensation community by the Bureau of Workers' Compensation (BWC) and the Workers' Compensation Office of Adjudication (WCOA). The publication includes articles about the status of affairs in the workers' compensation community as well as legal updates on significant cases from the Commonwealth Court.

Among the numerous articles featured in this issue are important notices from the BWC and WCOA regarding recent enhancements to WCAIS functionality, a notice

about Self-Insurance Guaranty Fund assessments and information regarding a gala reception and dinner celebrating the 100th anniversary of the enactment of the Pennsylvania Workers' Compensation Act. Additionally, we continue to feature the outstanding article entitled "A View from the Bench," in which judges from the Pennsylvania Workers' Compensation Judges Professional Association summarize recent key decisions from the Commonwealth Court that are of interest to all workers' compensation attorneys.

We trust that stakeholders in the Pennsylvania workers' compensation system will find this publication interesting and informative, and we invite your input regarding suggested topics for inclusion in future publications. Suggestions may be submitted to RA-LIBWC-NEWS@pa.gov.

- Stephen J. Fireoved, Director – Bureau of Workers' Compensation
- Elizabeth Crum, Director – Workers' Compensation Office of Adjudication

Inside this Issue

BWC Notice: Important WCAIS Enhancements.....	2
WCOA Notice: Important WCAIS Enhancements	3
Use of Agreement to Compensate Code "W"	4
No SIGF Assessment.....	4
Key Staff Appointments and Departures	5
Data Quality Section Becomes Permanent	6
Stakeholder Needs & WCAIS Education.....	6
BWC Honors Women Veterans	6
Meet PACMAN	6
2015 Statewide Average Weekly Wage Announced	7
2014 GASE Award Winners	7
2015 GASE Award Nominations Sought	7
WC Act 100 th Anniversary Gala Reception & Dinner.....	8
PATHS Resource Update	10
Kids' Chance of PA.....	10
Prosecution Blotter	10
A View from the Bench.....	10

Safety Committee Box Score

Cumulative number of certified workplace safety committees receiving 5 percent workers' compensation premium discounts as of Dec. 17, 2014:

**10,816 committees covering
1,427,194 employees**

Cumulative grand total of employer savings:
\$559,426,473

Employer Information Services
717-772-3702

Claims Information Services
toll free inside PA: 800-482-2383
local & outside PA: 717-772-4447

Only People with Hearing Loss
toll free inside PA TTY: 800-362-4228
local & outside PA TTY: 717-772-4991

Email
ra-li-bwc-helpline
@state.pa.gov

*Auxiliary aids and services are available upon request to individuals with disabilities.
Equal Opportunity Employer/Program*

BWC Notice: Important WCAIS Enhancements

The following important enhancements to functionality were incorporated into the Workers' Compensation Automation and Integration System (WCAIS) on Dec. 9, 2014:

- Healthcare Services Review Update
- Claims Updates
- EDI Web Portal Updates
- EDI Updates

For enhancements affecting WCOA, please see the article entitled "Workers' Compensation Office of Adjudication Notice: Important WCAIS Enhancements, December 2014" on page 3.

Healthcare Services Review Update:

1. New Impairment Rating Designation Search Screen: Following the Dec. 9 WCAIS push, IRE physicians and staff now have search capability on the dashboard by either RFD# or injured worker's first and last name. This enhancement to your dashboard provides greater ease and efficiency when using the WCAIS system. The new screen is pictured below:

Search Criteria:

Please enter "IRE Request for Designation #" or "Request for Designation Status" to search for IRE Requests for Designation OR please enter a minimum of two other fields

IRE Request for Designation Number

IRE Request for Designation #:

Search **Clear**

IRE Request for Designation Information

Claimant/Employee First Name: Exact

Claimant/Employee Last Name: Exact

IRE Physician's County:

Request for Designation Status:

Search **Clear**

Claims Management Updates:

1. Document Description Added to List of Actions Grid: If an adjuster or claims staff member uploads a document on the Actions tab within a claim and adds a document description, the document description will now be viewable in the List of Actions grid. Previously, if a document description was added, it was not displayed. This change will help identify an exact document if the same type of form was uploaded multiple times. For example: adjuster uploaded multiple Supplemental Agreements for different periods of partial benefits and added the dates that benefits were paid in the document description. The adjuster can view the exact document by looking at the dates in the document description instead of having to view all of the Supplemental Agreements to find the one they are looking for.
2. Insurers and TPA Intake Documents Added to Profile: We added a tab to the "View Insurer and TPA Profile Screens" in WCAIS where claims staff can upload insurer and TPA registration documents. We need both of these screens to facilitate going paperless and to allow insurers and TPAs to view the documents in order to determine if any updates need to be sent to BWC.

Continued on page 3

BWC Notice: Important WCAIS Enhancements

Continued from page 2

EDI Web Portal Updates:

In the December release, we made a few adjustments to the EDI Web Portal in order to make processing even easier for those who use it to submit transactions:

1. When an adjuster types in the JCN, WCAIS will only provide them with transactions available based upon the sequencing rules. This will help adjusters know which transactions may or may not be entered at any given time.
2. When an adjuster chooses a transaction type, WCAIS will only provide them with the screens relevant to the chosen transaction type. This will prevent confusion about which elements are necessary for each transaction.
3. When an adjuster types in a FEIN, WCAIS will auto-populate the entity name and primary address we have listed in the profile. This will save adjusters time inputting the data and will allow them to verify that the entity name and address will be correctly listed as the interested party in the claim. If there is a discrepancy, the adjuster will be able to correct it immediately, before it becomes a data quality issue.
4. If there are errors when a transaction has been submitted, the rejection reasons will show up as hyperlinks and will take the user back to the screen with the error so that the adjuster can correct the transaction on the spot.

EDI Updates:

In addition to the web portal updates, some additional validations were added to help maintain the integrity of the data in WCAIS:

1. Date Validations for EDI Submissions: We added some date validations to make sure that the claim data is accurate. For example: the claimant's date of birth cannot be on or after the date of injury.
2. The date we receive the EDI transaction will now be listed as the received date, in order to prevent sequencing issues.
3. We no longer allow both the Insurer FEIN and Claim Administrator FEIN to be updated in the same transaction.
4. There are additional edits on the Employer FEIN field that help maintain accurate data in WCAIS. FEINs that are invalid will no longer be accepted. If adjusters cannot locate the FEIN of an employer, they should email the EDI resource account so that staff can provide them with the FEIN or provide them with a placeholder FEIN if no FEIN can be located. The EDI resource account email address is RA-CMDEDI@pa.gov.

As always, feedback, questions and concerns may be addressed to the EDI resource account for answers and clarification on coding, sequencing and other related EDI matters.

Workers' Compensation Office of Adjudication Notice: Important WCAIS Enhancements December 2014

Since we went live with WCAIS in September 2013, we have continued to make improvements and resolve issues that stakeholders and staff have identified. Each quarter there is a software "release" that includes various changes for the Office of Adjudication staff and stakeholders as well as for the Bureau of Workers' Compensation and the Workers' Compensation Appeal Board. Changes are also made that impact functionality across all three program areas and are labeled as "common."

One of the most resounding comments received from both attorneys and staff is that they would like the ability to communicate using WCAIS. Although we cannot communicate as we do via email or phone, we want to include some functionality in WCAIS that will communicate actions, statuses or requests when matters are before a judge. Over the next several releases, our goal is to make incremental changes in this regard.

Several improvements aimed toward this goal were implemented with the December 2014 release:

1. A separate WCOA dashboard page was created for external users. There are grids on the WCOA dashboard that show users information about upcoming briefs, WCOA petitions/answers, WCOA requests, and judge communications. The link to the new WCOA dashboard will appear in the Quick Links box on the right-hand side of the regular dashboard.
2. From the new WCOA dashboard page, attorneys should now see a log of everything filed in a matter, e.g. requests, petitions and answers.
3. Also, the judge's action on that "Request" will be reflected as well. For example, if a party requests

Continued on page 4

Workers' Compensation Office of Adjudication Notice: Important WCAIS Enhancements December 2014

Continued from page 3

- a continuance using the "Request" tabs in WCAIS, and if the judge approves the continuance, "Approved" will appear in the status column of the WCOA Requests Grid on the new WCOA dashboard.
4. Attorneys will also see upcoming briefs due and any communications generated by the judge.
 5. A "File a WCOA Petition" hyperlink now appears as a quick link on external users' dashboards to enable them to file petitions directly from their dashboard without the need to go into a specific claim to do so.
 6. Proofs of service are now generated for petitions and answers filed by uploading a completed document, i.e. Petition for Commutation (LIBC-34), Fatal Claim Petition (LIBC-363), Petition for Joinder (LIBC-376), Occupational Disease Claim Petition (LIBC-396), Employee Challenge Petition (LIBC-751), Claim Petition for Additional Compensation from the Subsequent Injury Fund (LIBC-375), Claim Petition for Benefits from UEGF (LIBC-550) and Uploaded Completed Answer Form.
 7. When WCAIS generates a letter from the judge, the judge's name will appear on the correspondence, with the judge's office address located at the bottom.
 8. In addition to these enhancements for external parties, we included a number of enhancements for staff, such as creating a business event log that provides them with a log/history of who did what and when in any given dispute: documents/requests/exhibits filed, correspondence generated, events scheduled/canceled/conducted, rulings on requests, disputes merged, etc.
 9. WCOA is establishing a new WCOA Resource Center to assist internal and external stakeholders with their WCAIS-related questions and issues. The new resource account email address is WCOAResourceCenter@pa.gov. An 800-number will be provided in the upcoming weeks.

If you have suggestions to improve WCAIS, please let us know. You can email us at WCOAResourceCenter@pa.gov. We review each suggestion for possible inclusion in one of our quarterly releases, and we are always on the lookout for changes that have the most positive impact for internal and external users. Thanks to everyone for working with us in our efforts to both improve WCAIS and the workers' compensation system in Pennsylvania.

Reminder: Use Of Agreement To Compensate Code "W"

The Agreement to Compensate Code (DN0075) "W" (Without Liability) should only be used in a transaction that is being submitted to match a Notice of Temporary Compensation Payable (LIBC 501). Section 2.4 of the PA EDI Implementation Guide, under "Reporting Temporary Compensation on the Initial Payment Transaction," states:

When the claim administrator begins paying temporary compensation on a claim, the claim administrator is required to report those payments on an Initial Payment transaction. When submitting this transaction, the claim administrator must populate the Agreement to Compensate Code

(DN0075) with a "W" to indicate they are not accepting liability for the claim.

The "W" should not be used in Pennsylvania when denying a claim because neither the FROI 04 nor the SROI 04 requires its use. Transactions submitted with the "W" will result in the claim status being updated to "Temporary." A claim in "Temporary" status may convert if no EDI transaction accepting or denying liability for the claim is submitted to update the claim status prior to the end of the 90-day temporary period. (Please see Section 2.4 of the Implementation Guide, under "Complying with the 90-Day Rule for Temporary Indemnity Claims," for more information.)

No Assessment for the Self-Insurance Guaranty Fund in 2014

The Bureau of Workers' Compensation has determined that the existing asset level of the Self-Insurance Guaranty Fund, or SIGF, remains sufficient to cover the claims being paid from the fund. As a result, the bureau will not issue an assessment against existing self-insurers for the maintenance of the SIGF in 2014 unless a sudden influx of new claims against the fund should occur.

This will be the fifth consecutive year in which existing self-insurers have been given relief from payment of an SIGF assessment. The SIGF is continuing the payment of workers' compensation benefits to injured workers who were employed by insolvent, former self-insured employers.

Key Staff Appointments and Departures

The Bureau of Workers' Compensation (BWC) recently welcomed Scott Weiant and Gina Wiskemann to two key staff positions and said farewell to Deputy Chief Counsel and Legal Division Chief Tom Kuzma.

Formerly the Health & Safety Division chief, Weiant was appointed to the newly created position of assistant bureau director, and Wiskemann was appointed as chief of the Claims Management Division, a position vacant due to the retirement of Kathy Dupin. Kuzma departed from BWC to accept a new position as counsel to the Workers' Compensation Office of Adjudication (WCOA).

Weiant occupied numerous leadership positions with the bureau prior to his appointment as assistant director in August 2014. In 2002 he brought 22 years of private industry experience to the commonwealth when he joined the bureau's Health & Safety Division as an accident and illness prevention analyst. Weiant went on to become the manager of the Certification and Education Section and eventually chief of the Health & Safety Division. During his tenure as division chief, he provided strong leadership throughout the development of WCAIS and the launch of the Health & Safety Division's outreach and training resource, PATHS. In his new position as assistant director,



Claims Management Division Chief Gina Wiskemann

Weiant directly oversees the operations of the Claims Management Division, the Health & Safety Division, the Compliance Section and the Uninsured Employers Guaranty Fund.

Wiskemann rejoined BWC with her November 2014 appointment as Claims Division chief. From 1998 to 2007 she had been a manager in the Claims Division, during which time she was instrumental in providing education and outreach to the bureau's stakeholders. Wiskemann's next position was as a regional business manager for the Department of Environmental Protection. With her return to the bureau, Wiskemann brings considerable knowledge of both bureau and Claims Division operations.

Also in November 2014, BWC said farewell to Deputy Chief Counsel and Legal Division Chief Thomas Kuzma. Kuzma left a legacy of over 18 years of dedicated service to the bureau and its legal interests. The bureau thanks him for his service and wishes him continued success in his new position as counsel to WCOA. In this new position, Tom will handle all legal matters and inquiries generally affecting WCOA and judges, and he will provide input and analysis for workers' compensation or related statutory, regulatory and policy initiatives impacting WCOA. He will also serve as a Fee Review hearing officer and act as liaison between WCOA and BWC on matters of common interest. WCOA is pleased to have someone with Tom's knowledge and skills on board to provide legal counsel and assistance.



Assistant Bureau Director Scott Weiant

Data Quality Section Assumes Permanent Status in BWC

In the post WCAIS go-live era, it became clear that a Data Quality Section was necessary to manage data across the three workers' compensation program areas: Bureau of Workers' Compensation, Workers' Compensation Office of Adjudication and Workers' Compensation Appeal Board. The purpose of the section is to assure that correct stakeholder data is attained, maintained and retained within the WCAIS system.

Clean and accurate data has helped achieve consistency and stability in the administration of the business of workers' compensation in Pennsylvania. The Data Quality Section has been empowered with the responsibility to oversee the management of data across the three program areas, which has proven to

be critical in achieving successful and enduring management of data. The section is staffed by an extremely knowledgeable group of employees who have considerable experience with WCAIS, the administration of claims and data management, including:

Tammy Laughman	-	Manager
Andrew Boyer	-	Management Technician
Erma Palmer	-	Management Technician
Calvin Campbell	-	Management Technician
Paul Hockenberry	-	Clerk 3

The section is a permanent addition to BWC and looks forward to delivering "world class" stakeholder service going forward.

Focus on Identification of Stakeholder Needs and WCAIS Education

WCAIS has been "live" for the Appeal Board since September 2012 and for the Bureau of Workers' Compensation and the Workers' Compensation Office of Adjudication since September 2013. The three workers' compensation program areas have focused considerable effort on the delivery of WCAIS education and outreach to all workers' compensation community stakeholders, including workers, employers, insurance carriers, third-party administrators and self-insured entities.

The outreach effort has included a vast array of communication tools, including seminars, conferences,

classroom training, conference calls, focus groups, web postings and email blasts. A robust education and training program will continue as system improvements and enhancements are released on a quarterly basis by the Department of Labor & Industry.

The enhancements are identified and implemented by the department based, in large part, on the needs of the system stakeholders. As such, the outreach efforts by the department will continue as the three program areas continue to strive for the delivery of "World Class Customer Service."

BWC Honors Women Veterans

The bureau celebrated Veteran's Day 2014 with a brief but very interesting presentation from four female members of its staff, who recounted their accomplishments on active duty and concluded with personal messages regarding the significance of the day to each of them.

The following staff members spoke to a "packed house" at the OLCAM Building on Nov. 10, 2014:

- Wanda Englishbooth (Claims Management Division) – Gunnery Sergeant, US Marine Corps
- Jennifer Solorzano (Health Care Services Review Division) – Airman, United States Air Force
- Dolores Williams (Claims Management

Division) – Specialist, United States Army

- Courtney Shadle (Administrative Support Division, Mailroom) – Petty Officer Second Class, United States Navy

The presentation was enhanced with a fascinating collage of pictures of both men and women BWC veterans in uniform while on active duty, coupled with a special Veteran's Day video. Thanks to John Reale (Office of Information Technology), Petty Officer Second Class, United States Navy for putting together the wonderful audio-visual presentation.

Gratitude is also extended to all of the BWC veterans for their service.

Meet the Pennsylvania Claims Management Network (PACMAN)

The Pennsylvania Claims Management Network (PACMAN) is a group of claims management professionals who meet quarterly at the Bureau of Workers' Compensation (BWC) for the purpose of discussing issues important to the workers' compensation industry and making recommendations to BWC or the Workers' Compensation Office of Adjudication (WCOA) if corrective action is deemed necessary for the system.

Representatives of BWC and WCOA participate in the meetings and provide reports and updates on a

variety of matters relevant to the workers' compensation community, such as the Workers' Compensation Automation and Integration System (WCAIS) and Electronic Data Interchange (EDI). The PACMAN members are veterans to Pennsylvania workers' compensation and always raise interesting issues that stimulate robust discussions. From time to time, attorneys, vendors and subject matter experts are invited to speak at meetings.

Continued on page 7

Meet PACMAN

Continued from page 6

Current members of PACMAN include:

Dennis McKendry, ACS Claims Services
Kevin Ruth, Westfield Insurance Company
Marie Johnson, Elwynn Inc.
Judy Bobb, Erie Insurance Company
Sherri Tumolo, Lackawanna Insurance Group
Nancy Ricard, Eastern Alliance Insurance Group
Steve Wagner, UPMC
Mike Woytovich, Cincinnati Insurance Company
Rick McCarty, State Workers' Insurance Fund
Steve Fireoved, Bureau of Workers' Compensation
Gina Wiskemann, Bureau of Workers' Compensation

If you would like to consider joining PACMAN, please contact Dennis McKendry from ACS Claims Services at 717-795-9997 or DMcKendry@acsclaim.com.



Standing: Mike Woytovich, Kevin Ruth, Steve Fireoved, Nancy Ricard, Dennis McKendry, Judy Bobb, Steve Wagner, Sherri Tumolo, Liz Crum
Seated: Ricky McCarty

Meetings for 2015 are scheduled on the following dates:

Feb. 12, 2015 Aug. 13, 2015
May 14, 2015 Nov. 12, 2015

2015 Statewide Average Weekly Wage Announced

Based upon the Statewide Average Weekly Wage as determined by the Department of Labor & Industry for the fiscal year ending June 30, 2014, the maximum compensation payable under the Workers' Compensation Act, under Article 1, Subsections 105.1 and 105.2, shall be \$951.00 per week for injuries occurring on and after Jan. 1, 2015. For purposes of calculating the update to payments for medical treatment rendered on and after Jan. 1, 2015, the percentage increase in the Statewide Average Weekly Wage is 2 percent.

Under the act, workers suffering a work-related injury are entitled to indemnity (wage-loss) benefits equal to

two-thirds of their average weekly wage. However, there are minimum and maximum adjustments provided in the act, and the benefit rate is set using the annual maximum in place at the time of injury. The maximum is based on the Department of Labor & Industry's calculation of the statewide average weekly wage.

For a schedule of current and past weekly rates, and for instructions on how to calculate the weekly rate, visit www.dli.state.pa.us. Click on "Workers' Compensation," then "Claims Information," then "Statewide Average Weekly Wage."

2014 Governor's Award for Safety Excellence Winners Announced

The Governor's Award for Safety Excellence recognizes employers that have achieved the highest standards in workplace safety. Any Pennsylvania employer is eligible for the Governor's Award for Safety Excellence. Information and criteria used to determine finalists include workplace injuries/illnesses vs. industry standards; and innovation and strategic development of safety policy and approaches.

The application process for the Governor's Award for Safety Excellence is highly competitive. The award recognizes successful employer-employee safety programs that produce tangible safety improvements.

The five 2014 Governor's Award for Safety Excellence winners are:

- Cambria County Transit, Cambria County
- Emergency Medicine Of Western PA, Allegheny County
- J&J Fire Protection, Butler County
- United Industrial Group, Washington County
- VitaCare, Bucks County

2015 GASE Award Nominations Open

Each year, select Pennsylvania employers are presented with the Governor's Award for Safety Excellence for demonstrating outstanding progress in accident and injury prevention. The Governor's Award is a great way to recognize both the hard work that goes into preventing injuries and the remarkable results that can be achieved by safety excellence. Employers can nominate themselves, or they can be nominated by another party. All nominations must be submitted by June 1, 2015.

Additional information, nomination forms and overviews of past winners can be found at www.dli.state.pa.us; click on "Workers' Compensation," then "Health and Safety," then "Governor's Award for Safety Excellence." You can also obtain award information by contacting Peggy Day, program coordinator, at 717-772-1635 or by email at marday@pa.gov.



Dear Colleague:

In early June, 2015, all of us will be marking the centennial of the Pennsylvania Workers' Compensation Act—an amazing piece of living legislation that has proven to be of enormous benefit to millions of workers and thousands of employers. We will celebrate this “Grand Bargain” at a gala cocktail reception and dinner in Hershey on the evening of Monday, June 1, in conjunction with the 2015 Department of Labor & Industry Workers' Compensation Conference June 1-2.

We invite you, your friends, your colleagues and business associates to commemorate this once in a lifetime event. In past years many of you have met for dinner or a drink on that evening of the conference, and often that meant going off-premises to do so. This year, however, the Centennial Gala will offer you the opportunity to stay right at the Convention Center where you can enjoy a terrific reception and meal, with wine and beverages included. We promise you an event you will long remember—and one devoid of long speeches!

Please take the opportunity to register now for the festivities. You may reserve an entire table for 10 at a cost of just \$1,200, or you may individually register for \$125 a person. When you compare the cost of this event with an off-premise dinner, we think you will agree that this is yet another “grand bargain.” Moreover, you can be assured that the evening will not be a late one, so you would still have time for one-on-one socializing.

Your hard work has helped shape our workers' compensation system into the very best in the country. Let's celebrate those efforts together. Mark your calendars now, and please take the opportunity to register for the Centennial Gala using the enclosed form. We'll see you in Hershey!

Very truly yours,

R. Burke McLemore, Jr.

R. Burke McLemore, Jr., Centennial Committee Chair

Steering Committee: R. Burke McLemore (chair), Hon. David B. Torrey, Benjamin L. Costello
Committee: Daniel K. Bricmont, Hon. Elizabeth A. Crum, Stephen J. Fireoved, Jeffrey S. Gross,
Barbara L. Hollenbach, C. Robert Keenan III, Toni J. Minner, Peter A. Pentz,
Daniel R. Schuckers, Susan H. Swope, Matthew L. Wilson
Mailing address: Pam Kance | PBA | 100 South Street | P.O. Box 186 | Harrisburg, PA 17108-0186
Tel: 800-932-0311 ext. 2243 | Email: pam.kance@pabar.org | Website: <http://wc100pa.org>



*The Pennsylvania Bar Association
Workers' Compensation Section Centennial Celebration Committee
cordially invites you to a*

Gala Reception & Dinner

*Monday, June 1, 2015
at the Hershey Lodge & Convention Center*

*to celebrate the 100th Anniversary of the enactment
of the Pennsylvania Workers' Compensation Act.
Join us in marking this historic event.*

*6 p.m.
Cocktails and hors d'oeuvres*

*7 p.m.
Dinner
Filet and crab cake entrée
Wine service*

Business attire preferred



Please return this form to the PBA Meetings Department.

Yes, I plan to attend the Gala Reception/Dinner at \$125 per ticket.

Name _____ Spouse/Guest Name _____
Sup ID _____ Company _____
Address _____ City _____ State _____ Zip _____
Phone _____ Email Address _____

Yes, I would like to reserve a table, which includes seating for 10 guests at \$1,200 per table.

Sponsoring Company Name _____

A check, payable to PBA, is enclosed.

Or charge my: Mastercard Visa AMEX Discover

Acct# _____ Exp. Date: _____ Authorized amount: \$ _____

Billing Address: _____

Registration deadline for the reception/dinner is May 18, 2015. After the deadline, no refunds will be issued.

Return completed registration form and payment by May 18, 2015 to:
PBA Meetings Department, 100 South Street, Harrisburg, PA 17108-0186
Fax Credit Card Registrations to 717-213-2507
For more information, call 800-932-0311 ext. 2231.

PA Training for Health and Safety

"PATHS" Your No-Fee Safety Training Resource

The Bureau of Workers' Compensation, Health & Safety Division's PATHS training resource is still on the move. We continue to expand our area of safety information, having just added the topics of "Nail Gun Safety," "Cold Weather Injuries" and "Infectious Diseases" to our list, with "Bullying" and "School Safety" soon to follow. Our safety webinars now total 116. Three of this number, "OSHA 510 (Construction Safety) 10 & 30 Hour," "OSHA 511 (General Industry Safety) 10 & 30 Hour" and "CPR, AED & Basic First Aid" have minimal costs for materials, while 113 webinars are offered free of charge. We have also added two free 15-20 minute recorded webinars.

The popularity of this extraordinary, mostly FREE resource initiative is evidenced by the number of individuals trained just in 2014 alone – 20,340 as of Dec. 4. This is an increase of 58 percent over 2013, translating to 8,433 more attendees.

Employers and employees from 25 states and three countries have taken advantage of this program. You, too, may take advantage of this outstanding resource by visiting PATHS at www.dli.state.pa.us/PATHS or by contacting the Health & Safety Division at 717-772-1635. You may also reach us via email at RA-LI-BWC-PATHS@pa.gov.

Kids' Chance of PA

Each year, Kids' Chance of Pennsylvania (Kids' Chance of PA) makes a significant difference in the lives of Pennsylvania families by providing scholarship support to help eligible students pursue and achieve their higher education goals. This year, Kids' Chance of PA awarded 55 scholarships totaling \$158,500 to deserving students.

families would struggle to send their son or daughter to college. I cannot thank you enough for your generous gift," says student recipient Joshua, who is attending Penn State University this year.

To learn more about Kids' Chance of PA, please visit our website at www.kidschanceofpa.org.

"Without organizations like Kids' Chance, many

Prosecution Blotter

Section 305 of the Pennsylvania Workers' Compensation Act specifies that an employer's failure to insure its workers' compensation liability is a criminal offense and classifies each day's violation as a separate offense, either a third-degree misdemeanor or, if intentional, a third degree felony.

The violators and locations are as follows:

Berks County

On Nov. 13, 2014, Judge Stephen B. Lieberman accepted Lynn M. Zerbe, doing business as Golden Ridge Assisted Living, Inc., Womelsdorf, into the ARD program of Berks County. Zerbe was placed on 24 months probation and ordered to pay restitution in the amount of \$12,418.58 to the Uninsured Employers Guaranty Fund.

Montgomery County

On July 10, 2014, Paul A. Giovinazzo, doing business as Paul Giovinazzo Roofing, located in Ambler, pled guilty to one misdemeanor count of the third degree in the Montgomery County Court of Common Pleas, was sentenced by Judge William R. Carpenter to serve 12 months probation and was ordered to pay \$113,020.99 to the Uninsured Employers Guaranty Fund.

First-time offenders may be eligible to enter into the Accelerated Rehabilitative Disposition (ARD) program. Defendants who enter the ARD program waive their right to a speedy trial and statute of limitations challenges during the period of enrollment; they further agree to abide by the terms imposed by the presiding judge. Upon completion of the program, defendants may petition the court for the charges to be dismissed. Although acceptance into the program does not constitute a conviction, it may be construed as a conviction for purposes of computing sentences on subsequent convictions.

A View From The Bench

Prepared by the Committee on Human Resource Development of the Pennsylvania Workers' Compensation Judges Professional Association.

Thomas Dougherty v. WCAB (QVC, Inc.)

The Commonwealth Court in *Thomas Dougherty v. WCAB (QVC, Inc.)*, (No. 386 C.D. 2014, Oct. 14, 2014), 2014 WL5140047, addressed the burden of proof in a Petition to Reinstate Benefits following a claimant's discharge from work for unsatisfactory work performance. The *Dougherty* case involves the claimant's petition to review

the order of the WCAB, which affirmed the WCJ's decision dismissing claimant's reinstatement petition under Section 413(a) of the PA Workers' Compensation Act.

The facts in *Dougherty* are not complicated. The claimant hurt his achilles tendon in January 2009 and returned to work to his regular position as a corporate video producer **with restrictions** that his supervisor was aware of and accommodated. That supervisor was later laid off. The claimant's corporate video producer position

Continued on page 11

A View From The Bench

Continued from page 10

was eliminated in April 2010, and he was transferred to a writer-producer position, which is a less physically demanding job than his date of injury job. In 2011, the claimant was discharged from his position based on unsatisfactory work performance. The claimant then filed reinstatement and penalty petitions.

The WCJ credited the testimony of the claimant's treating physician that the claimant had restrictions upon his return to work in June 2009 and could only perform sedentary work. The treating physician also testified that additional restrictions were issued in April 2011 limiting the claimant's lifting and standing. Based on the claimant's testimony, the WCJ found that he was capable of performing the writer-producer position and that his inability to do that job was not due to his work-related physical restrictions. The WCJ concluded that the claimant's earning power was not adversely affected by his work-related disability and dismissed the reinstatement and penalty petitions.

The claimant appealed the WCJ's finding that his loss of earning power was not related to his work-related disability. The WCAB affirmed the WCJ's decision, concluding that the claimant was not entitled to the presumption that his loss of earnings was caused by his work injury. The Commonwealth Court found that the WCJ and the WCAB erred in requiring the claimant to demonstrate a causal connection between his layoff and continued disability. The Commonwealth Court concluded that, inasmuch as the WCJ had found that the claimant had returned to work to his pre-injury position with restrictions, the claimant is entitled to the presumption that the loss of earnings power is causally related to the work injury. The court explained that the focus must be on the restrictions when the claimant returned to work at his pre-injury position, not his post-injury position. The Commonwealth Court vacated the decision of the WCAB and remanded it to the WCAB with instructions to remand it back to the WCJ.

The Commonwealth Court discussed the difference between a suspension based on a return to work without restrictions versus a return to work with restrictions. In the former situation, the claimant must affirmatively establish the work injury caused the loss of earnings. In the latter, the claimant is entitled to the presumption, and the burden shifts to the employer to prove the loss of earnings was not caused by the work injury.

Injuries While Traveling to Work

The Pennsylvania Commonwealth Court has recently issued two opinions involving employees injured while traveling to work. These situations involve Section 301(c)(1) of the Workers' Compensation Act (act), 77 P.S. Sec. 411(1).

Employee Driving Company Vehicle

The relevant statutory provisions were summarized by the court in *Holler v WCAB (Tri Wire Engineering)*, (No.

2209 C.D. 2014, Pa. Cmwlth., Oct. 17, 2014), 2014 WL 5369869. The court wrote: "Under Section 301(c)(1)... injuries occur during the course and scope of employment when they are 'sustained while the employee is actually engaged in the furtherance of the business or affairs of the employer, whether upon the employer's premises or elsewhere.' Not compensable under the Act are those 'injuries sustained while the employee is operating a motor vehicle provided by the employer if the employee is not other wise in the course of employment at the time of injury.'" Note: The *Holler* opinion had been issued on Aug. 22, 2014, and was re-issued on Oct. 17, 2014, following an unopposed application for reconsideration. The order in the Oct. 17, 2014, opinion clarified that the matter was to be remanded to a WCJ for further proceedings on the claimant's claim petition.

In *Holler*, claimant was injured in a single vehicle accident while he was driving his company vehicle to the employer's facility prior to the beginning of his work day. The WCJ determined that the injuries sustained were not compensable because they were not sustained while claimant was in the course and scope of his employment. Claimant appealed, and the WCAB affirmed.

In its opinion, the Commonwealth Court summarized the applicable legal principles established by numerous prior appellate decisions. The opinion reads in relevant part as follows: "Whether a claimant is a traveling employee is determined on a case by case basis, and we consider 'whether the claimant's job duties involve travel, whether the claimant works on the employer's premises, or whether the claimant has no fixed place of work.' (Citations omitted.) '... (T)he Act must be liberally construed to effectuate its humanitarian objectives.' (Citations omitted.) Thus the course of employment is 'necessarily broader' for traveling employees... (citation omitted), and a traveling employee is exempt from the going and coming rule. (Citation omitted.)"

On appeal, Mr. Holler asserted that the second exception applied, arguing that he was a traveling employee because he had no fixed place of work. After setting forth the legal principles discussed above, the court discussed the very similar facts in an unreported 2012 opinion of the court, in which it had determined that a "cable technician is a traveling employee." That unreported opinion discussed was *Comcast Corporation v. WCAB (Clark)* (Pa. Cmwlth., 1645 C.D. 2011, filed April 18, 2012). In *Holler*, the court concluded that the facts involving Mr. Holler were "... factually indistinguishable from *Clark*. The court concluded that Mr. Holler was a 'traveling employee with no fixed place of work...and thus exempt from the going and coming rule.'" Finally, the court stated that there was no evidence in the record that claimant's actions were "foreign to and removed from (his) usual employment (such) that they constituted an abandonment of that employment." Therefore, the court concluded that claimant's injuries occurred during the course and scope of his employment and were compensable. As indicated above, the matter was ordered remanded to a WCJ for further proceedings on the claim petition. (The original WCJ decision, per the

Continued on page 12

A View From The Bench

Continued from page 11

agreement of the parties, had only addressed the “course and scope of employment” issue.)

Employee Driving Personal Vehicle

In *Simko v WCAB (United States Steel Corporation-Edgar Thompson Works)*, (No. 829 C.D. 2014, Pa. Cmwlth. Ct., Oct. 17, 2014), claimant was injured in an auto accident while traveling to work to attend a special safety meeting, which had been scheduled to begin 90 minutes prior to the regular shift. The WCJ had found that claimant was not entitled to benefits because he was not in the course and scope of employment when injured. The WCAB affirmed and claimant appealed.

The court summarized the relevant legal principles as follows: “As a general rule, an injury received by an employee while traveling to and from work is not compensable. However, such an injury is compensable if one of the following exceptions to the ‘coming and going rule’ exist: (1) the employment contract included transportation to and from work; (2) the employee has no fixed place of work; (3) the employee is on a special mission; or (4) special circumstances are such that the employee was furthering the business of the employer.” (Citation omitted.)

The court explained that the relevant facts were not in dispute and established that claimant was not on a special mission. The court also addressed whether the “special circumstances...furthering the business of the employer” exception could apply, since the claimant had left his home earlier than normal to attend the meeting. The court, citing prior precedent, stated: “(A) claimant must still show that he was acting for the employer’s benefit and convenience and not simply commuting to and from his place of employment...” (Citation omitted.) “[I]t is always in the employer’s interest that employees come to work... This interest, far from being a special circumstance, is a universal one.” (Citation omitted.) The court pointed out that even though the claimant did have to leave home earlier than normal to attend the safety meeting, the attendance at the safety meeting was “still part of the Claimant’s regular work duties. Therefore, the special circumstances exception does not apply.” The decision of the WCJ was affirmed by the court.

Nontraditional Treatments

In the case of *Rachel Babu vs. WCAB (Temple Continuing Care Center)*, 100 A 3rd 726, (Pa. Cmwlth., Sept. 15, 2014), the WCJ had to assess the compensability of “Ayurvedic medical care” or “Ayurveda,” which the claimant underwent in India in 2008 and 2010. The claimant’s petition had been dismissed on the basis that: (1) there was no evidence that the treatment providers were licensed in Pennsylvania; (2) there was no evidence that the services provided were under the supervision of a licensed Pennsylvania health care practitioner; and (3) the medical certificates submitted by claimant did not comply with the medical reports requirement under the

Pennsylvania act. The WCAB and Commonwealth Court both affirmed the WCJ.

The record revealed that none of the physicians who testified had indicated that they had ever recommended such treatment to a patient, and the medical report of the doctor who did recommend this treatment in India did not contain any mention of the treatment or the claimant’s need for that treatment. The court therefore concluded that claimant failed to establish that the ayurvedic services were provided under the supervision of, or based upon, a prescription from a licensed Pennsylvania health care practitioner. The court also rejected the claimant’s argument that, because she is a licensed registered nurse, the treatment should be considered to be under her own supervision, noting that there was no evidence that the claimant was trained in this type of treatment, exercised supervisory control over the practitioners or guided them in any way as they were performing the treatment which she obtained in India.

Claimant also argued that this section of the act is unconstitutional because: (1) it creates a legislative classification between injured and non-injured workers that requires only injured workers to use Pennsylvania health care practitioners, and/or (2) the act creates a medical monopoly affecting interstate commerce. Both of the arguments were rejected by the court, citing *Kramer vs. WCAB (Rite Aid Corporation)*, 883 A.2d 518 (Pa. 2005).

Medical Evidence Challenging an IRE Opinion

It has long been common for claimants to defend against IRE proceedings by offering expert medical opinions of physicians who were not certified by the Department of Labor & Industry to perform IREs themselves. The Pennsylvania Commonwealth Court recently addressed that issue. In *Commonwealth of Pennsylvania/DPW vs. WCAB (Slessler)*, (No. 99 C.D. 2014, Oct. 30, 2014) 2014 WL 5472235, the claimant had challenged the opinion of the IRE physician by presenting expert opinion testimony from his treating psychologist rather than a physician. After a thorough discussion of what happened in the case as well as the applicable statutory authority, the court concluded that only physicians (osteopathic or medical doctors) are competent to provide expert opinion testimony on impairment rating evaluations. Accordingly, the expert opinion evidence offered by the claimant to rebut the IRE was incompetent. In Footnote 8, the court further clarified that claimants do not need to engage the services of physicians who are certified to perform impairment rating evaluations (IREs) to defend in such cases. The requirement to use a certified IRE physician only applies where an actual impairment rating evaluation is being performed under the act. Any competent physician can testify about an impairment rating evaluation; they simply can’t perform impairment rating evaluations unless they are certified.

The court also spent some time analyzing the way the WCJ had written the original decision in this matter, which suggested to them that the WCJ was substituting his own

Continued on page 13

A View From The Bench

Continued from page 12

expert opinion on medical matters rather than relying upon competent expert opinion evidence. The judge had indicated that he did not believe the IRE physician used by the employer and carrier had properly demonstrated that he had adequately considered all the guidelines and tables set forth in the guides, and that his expert opinions were therefore incompetent. On remand, the court instructed that "the WCJ should not consider the testimony of (Claimant's psychologist) and should issue new findings regarding (the IRE physician's) credibility and competency with sufficient reference to actual and competent evidentiary support for his new findings regarding (the IRE physician's) competency and credibility, or lack thereof... the WCJ should base those new findings not on his opinion of how physicians should properly apply the AMA Guides, but on competent evidence in the record that supports or challenges the reliability of (the IRE physician's) IRE and testimony concerning the AMA Guides... we reiterate that the WCJ may not use his own medical opinion regarding whether (the IRE physician) complied satisfactorily with the AMA Guides."

Parent Company of Wholly Owned Subsidiary Employer Entitled to §204(a) Pension Offset

In *Stepp v. WCAB (FairPoint Communications)*, 99 A 3rd 598 (Pa. Cmwlth., Sept. 10, 2014), the court had occasion to consider the concept of "directly liable" for compensation for the purpose of offsetting pension benefits from workers' compensation benefits. Claimant began working for Marianna Scenery Hill Telephone Company (Marianna) in January 1973. In September 2000, FairPoint Communications (FairPoint) acquired Marianna, when MGDV, a wholly owned subsidiary of FairPoint, purchased all of Marianna's stock, thus making Marianna a wholly owned second-tier subsidiary of FairPoint. Thereafter, Marianna continued to do business under its own name, but all corporate administrative functions, including human resources and benefits, were taken over by FairPoint. Marianna had always maintained the pension plan, contributing about 95

percent, and claimant's contributive share was about 5 percent. (Claimant did not contest this finding.) FairPoint never directly contributed to the plan.

Claimant remained a Marianna employee, but with his earnings paid through direct deposit by FairPoint. When he suffered a compensable injury in June 2008, his workers' compensation benefits were paid on behalf of FairPoint. His injuries precluded his return to work in any capacity after November 2008, resulting in his eventual retirement in June 2010. He contacted FairPoint to request his pension alternatives, and his benefit payments began in October 2010. In January 2011, FairPoint filed its notice of pension benefit offset. (FairPoint had filed a suspension petition in July 2010, but that was not the primary focus of this decision.)

Claimant filed a review petition, asserting that Marianna had funded his pension, not FairPoint, and that FairPoint was not the employer "directly liable" for his compensation, so that it was not entitled to take the offset. The workers' compensation judge denied the review petition and approved the offset, and the Workers' Compensation Appeal Board affirmed that decision, as has Commonwealth Court. In its analysis, the court enumerated several facts that established the relationship between the two entities. It discussed the intent of §204(a), as set forth in *Pennsylvania State University v WCAB (Hensal)*, 911 A.2d 225 (Pa. Cmwlth. 2006). It noted that FairPoint, as the purchasing corporation, succeeded to all rights and liabilities of Marianna, including its assumption of Marianna's workers' compensation obligations and rights. Thus, Marianna, as the "directly liable employer," had pension offset rights, and FairPoint stepped into its shoes when it bought it and assumed its workers' compensation responsibility. It was entitled to the offset as Marianna would have been; to do otherwise would negate Marianna's pension contributions and allow claimant to reap a windfall, both in contravention of §204(a)'s legislative intent. (*Hensal*.) Despite claimant's contention, there is no difference between a merger under §1929 of the Business Corporation Law of 1988, providing that the "survivor corporation" has all rights and obligations from both merging entities and the stock purchase in this matter that left the wholly owned subsidiary an intact entity.

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