

Legal Updates 2016 Workers' Compensation Conference

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Impairment Rating Evaluations (IRE's)



Constitutional Issues

- **Protz v. WCAB (Derry Area School District)**, 124 A.3d 406 (Pa. Cmwlth. 2015)
 - Court determined that the "most recent edition" language dealing with IREs was unconstitutional. IREs are to be done under the 4th edition not 6th edition. Supreme Court granted allocatur to both parties.
- **Winchilla v. WCAB (Nextstar Broadcasting)**, 126 A.3d 364 (Pa. Cmwlth. 2015) (allocatur denied)
 - Court determined the constitutional issue was waived because not properly raised in the Petition for Review.

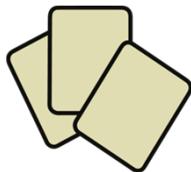
Duffey v. WCAB (Trola-Dyne, Inc.), 119 A.3d 445 (Pa. Cmwlth. 2015)

- An IRE is valid that addresses only the established work injury description, even though the injury description is subsequently later expanded.
- Supreme Court granted allocatur to address:
 - “Is IRE valid when only injury listed in NCP is considered, but additional injuries subsequently arose and were known at time of IRE but not formally added?”

IA Construction Corp. & Liberty Mut. Ins. Co. v. WCAB (Rhodes), 110 A.3d 1096 (Pa. Cmwlth. 2015)

- WCJ erred in disregarding an IRE doctor’s uncontradicted testimony where WCJ believed doctor (1) did not address all the diagnoses and (2) did not specialize in brain injuries.
- Supreme Court granted allocatur to address:
 - “Whether the Commonwealth Court overstepped its appellate function in making credibility judgments which is the sole function of the Workers’ Compensation Judge?”

Medical-Only
NCP’s



Sloane v. WCAB (Children’s Hospital of Philadelphia), 124 A.3d 778 (Pa. Cmwlth. 2015)

- Court determined that a medical-only NCP does not accept a loss of earning power and benefits are not considered in a suspended status.
- A claimant must file a Claim Petition within 3 years of date of injury after issuance of a medical-only NCP, not 500 weeks.

Ingrassia v. WCAB (Universal Health Svcs., Inc.), 126 A.3d 394 (Pa. Cmwlth. 2015)

- A medical-only NCP only accepts an injury, not a disability.
- A claimant carries burden of proof regarding disability in relation to the accepted injury and must file a claim petition to establish that disability rather than a reinstatement petition.

Church v. WCAB (Wayne Cook t/a Cook Landscaping), 1068 C.D. 2015 (Pa. Cmwlth. March 18, 2016)

- The court treated claimant’s benefits in a suspended state following employer’s issuance of a medical-only NCD.
- Claimant was allowed to file a reinstatement petition within 500 weeks instead of having to file a claim petition within 3 years to establish disability.
- Seems to conflict with both Sloane & Ingrassia.

Compromise & Release



Nicholson v. UCBR, No. 994 C.D. 2015 (Pa. Cmwlth. March 9, 2016)

- Claimant entered into a workers' comp C & R that was predicated upon him resigning his position.
- Claimant was denied unemployment and court concluded that Claimant receiving a workers' comp settlement was not a necessitous and compelling reason to resign.
- Court also rejected Claimant's argument that Employer had effectively discharged him before he signed resignation letter by failing to provide him a position within his medical restrictions.

Zuber v. Boscov's, 2016 WL 1392263 (E.D. Pa. April 8, 2016)

- Court determined that a workers' compensation C & R operated as a general release to bar a claimant's FMLA claim.
- The C & R stated that the claimant was agreeing to a full and final resolution of "all aspects" of work injury, which court determined covered other employment claims.

Pierce-Schmader v. Mt. Airy Casino and Resort, 2013 WL 4854524 (M.D. Pa. Sept. 11, 2013)

- Claimant entered into a workers' comp C & R predicated on her resignation and which specifically precluded reinstatement of her job, front pay, back pay, benefits or other monetary or equitable employment-related damages.
- Court determined in dicta that this C & R validly precluded Claimant from obtaining these other benefits and damages.

Schatzberg v. WCAB (Bemis Comp.), 1914 C.D. 2015 (Pa. Cmwlth. March 30, 2016)

- A medical provider is not entitled to payment of past medical expenses following a C & R which resolved all medical benefits for the work injury.
- The C & R must be specific in terms of reimbursement of past medical expenses or else they are not deemed included in the agreement.

What Constitutes Notice?



Gahring v. WCAB (R&R Builders, et al),
128 A.3d 375 (Pa. Cmwlth. 2015)

- A claimant with a prior work injury with Employer I provides adequate notice to Employer II when he told supervisor of Employer II that the additional hours and increased job duties were making his pre-existing back condition from injury with Employer I worse.
- Cites Gentex “collective communications” theory. Standard is claimant must inform employer that injury is “possibly” work-related.

Penske Logistics v. WCAB (Troxel), 132
A.3d 1029 (Pa. Cmwlth. 2015)

- Claimant only tells co-worker of his work-injury and slides injury report under door of manager’s office.
- Court found inadequate notice:
 - A co-worker was not an agent of employer who could receive notice.
 - There was no evidence that the manager ever received the report slid under the door.

Scenarios

- Employee says to supervisor first thing Monday morning:
“Shoulder hurts. I think I need to leave early today.”
- Employee says to someone at HR first thing Monday morning:
“Shoulder hurts. I think I need to leave early today.”

Voluntary Removal from Workforce



Chesik v. WCAB (Dept. of Military & Veterans' Affairs), 126 A.3d 1069 (Pa. Cmwlth. 2015)

- Claimant was receiving workers' comp benefits when she moved from Scranton to Nevada because she believed climate beneficial to non-work-related conditions.
- Court determined that Claimant had not removed herself from the work-force when she relocated to a different state for reasons unrelated to the work injury and was also receiving a disability pension.

Previous Case Law Overruled?

- Smith v. WCAB (Dunhill Temp. Sys.), 725 A.2d 1285 (Pa. Cmwlth. 1999).
 - Claimant found to have removed himself from workforce by joining the Peace Corps and moving to Africa.
- Blong v. WCAB (Fluid Containment), 890 A.2d 1150 (Pa. Cmwlth. 2006).
 - Claimant found to have removed himself from workforce by moving to New Zealand.
- Mendes v. WCAB (Lisbon Contractors, Inc.), 981 A.2d 334 (Pa. Cmwlth. 2009).
 - Claimant found to have removed himself from workforce by moving to Portugal.

Course and Scope of Employment



Pipeline Sys. v. Workers' Comp. Appeal Bd. (Pounds), 120 A.3d 397 (Pa. Cmwlth. 2015)

- Claimant was within course and scope when he injured himself while responding to a call for help and going to aid of another who had fallen into a pit.
- Supreme Court granted allocatur to address:
 - "Did the Commonwealth Court err because § 601(a)(10), 77 P.S. §1031 unambiguously provides that the employee must be within the course and scope of his employment at the time he provides aid and is injured, not merely be in the course and scope of his employment *at the time the emergency arose* as the Commonwealth Court held?"

Reichert v. WCAB (Foxdale Village), 126 A.3d 358 (Pa. Cmwlth. 2015)

- Employee sustains an injury during a return to work Functional Capacity Examination (FCE) for a non-work related condition.
- Employer had paid for the FCE which the claimant's doctor had ordered to determine restrictions.
- Court determined employee was not in course of employment.
- Distinguished from Berro v. WCAB (Terminix Int'l), 645 A.2d 342 (Pa. Cmwlth. 1994) – Claimant injured in car accident while en route to his physical therapy session for treatment for an *earlier work-related injury* was considered compensable.

Quality Bicycle Products v. WCAB
(Shaw), 1570 C.D. 2015 (Pa. Cmwlth.
April 25, 2016)

- Claimant injured knee running across employer's parking lot as he was leaving work to go to a non-work-related family emergency.
- Court determined he was not in course and scope because he failed to prove the condition of the parking lot caused or contributed to his injury.

O'Rourke v. WCAB (Gartland), 125 A.3d
1184 (Pa. 2015)

- Claimant provided attendant care to son through state funded program and was attacked by son while sleeping but not officially on duty.
- Commonwealth Ct. originally found Claimant was within course and scope applying "bunkhouse rule."
- Supreme Court reversed and concluded Claimant was not within course and scope by applying the Slaughenaupt test, specifically the prong that she was not required to be on premises at time of injury.

Paolucci v. UCBR, 118 A.3d 1233 (Pa.
Cmwlth. 2015)

- Claimant was fired after failing to directly communicate with employer about a return to work on advice of workers' comp attorney.
- Court found she was eligible for UC benefits as her actions in following the standards on the Workers' Compensation Act were not considered willful misconduct.
- Supreme Court granted allocatur to address:

* (1) Does the Commonwealth Court's opinion conflict with this Court's precedent in Bertz v. WCAB, [546 Pa. 77, 683 A.2d 259 (1996)], which recognized the distinct conduct standards in workers' compensation and unemployment compensation adjudications?
* (2) Does the Commonwealth Court's opinion conflict with this Court's precedent in Harkness v. Unemployment Comp. Bd. of Review [593 Pa. 543, 920 A.2d 162 (2007)], which emphasized the prompt and informal nature of unemployment compensation proceedings and, therefore, presents a question of such substantial public importance as to require this Court's definitive resolution?

New PA Supreme Court Appeals



Saladworks, LLC v. WCAB (Gaudio), 124 A.3d 790 (Pa. Cmwlth. 2015)

- The court determined that Saladworks, as a franchisor, is in the business of selling franchises as opposed to the underlying restaurant business and not considered a statutory employer under the Act.
- Supreme Court granted allocatur to address:

"Whether a franchisor may be subject to liability as a statutory employer under Section 302(a) of the Workers' Compensation Act?"

Lightning Round