

# Basic WC Law (Part 2)



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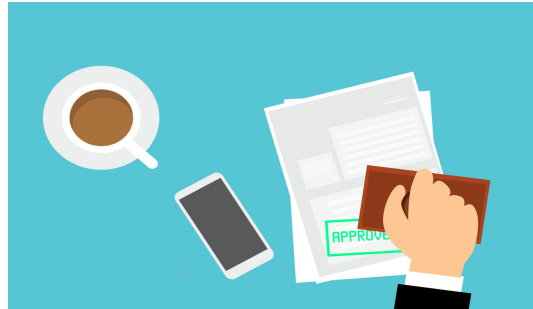
- Hon. Gerald Yanity - Workers' Compensation Office of Adjudication
- Thomas A. Strohmets, Esq.- The Chartwell Law Offices
- Jeffrey S. Gross, Esq. - Gross & Kenny, LLP
- Adrienne Breslin, Esq. - Lackawanna Casualty Insurance Company

# Approach to Litigation/Claims

## A. Initial Interview

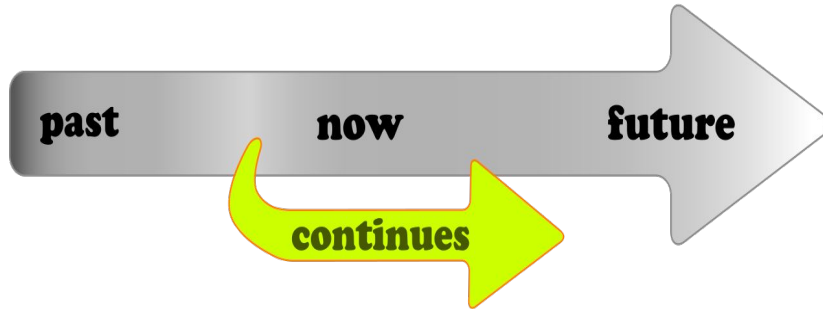


## B. Claim Petition



# Approach to Litigation/Claims

## C. Ongoing Benefits

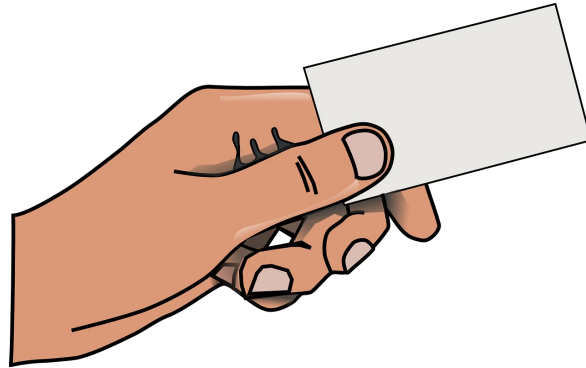


BENEFITS



# Initial Interview

1. Demographic Information/My Information



# Initial Interview (con't)

2. Mechanism of Injury
3. Prior injury/ Claim History



# Initial Interview (con't)

## 4. WCAIS Entries/Business Records

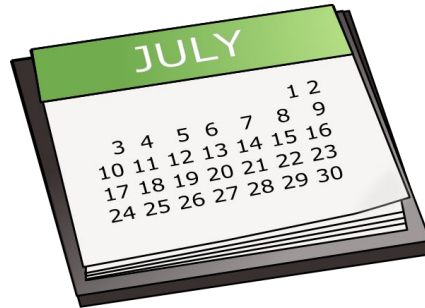
a. Forms

b. Statement of Wages



# Initial Interview (con't)

## 5. Discussion of Procedure/Timeline/Value



# Initial Interview (con't) - Employer/Insurer/Counsel

1. A Work Injury alleged. Is it a Witnessed Event? Does Employer dispute that an Injury occurred?
2. Does the Employee has a pre-existing condition OR Prior Injury?
3. Medical records - Available ? Do they corroborate the employer version?
4. Employer/Insurer have 21 days to Investigate and Accept or Deny an injury claim. Section 406.1.
5. Employer/Insurer Handling Options -



# Employer/Insurer Options for Injury Claim Deny/Accept

Remember - Claimant has the Burden of Proof of all of the elements of a compensable work-related injury claim...

1. Issue a Notice of Denial LIBC-496 -

Where there is no corroborating witness or medical record.

2. Issue Notice of Temporary Compensation Payable LIBC-501 -

Appears to be compensable - but you have 90 days to further investigate.

3. Notice of Temporary Compensation Payable LIBC- 495 - No dispute - it's work-related and disabling!

# **Approach to Litigation Claims**

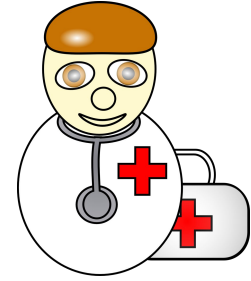
## 2. Claim Petition

# Initial Interview (con't)

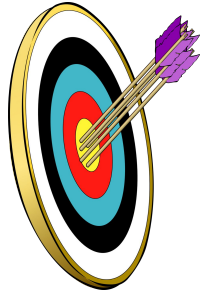
## 6. Strategy



# 1. Medical Records

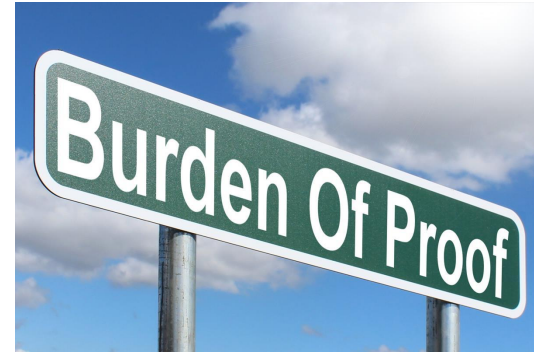


# 2. Accurate Information & Checklist



# Claim Petition (con't)

3. Burdens of Proof

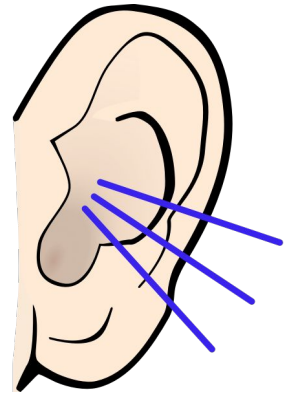
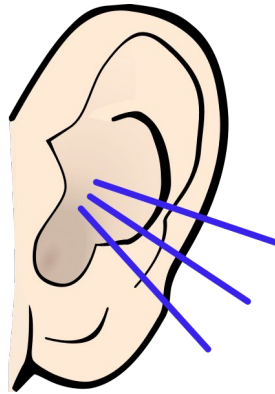


4. Assignment to Judge/Procedure



# Claim Petition (con't)

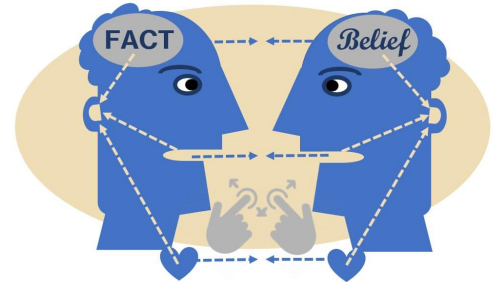
## 5. Serial Hearings



# Claim Petition (con't)

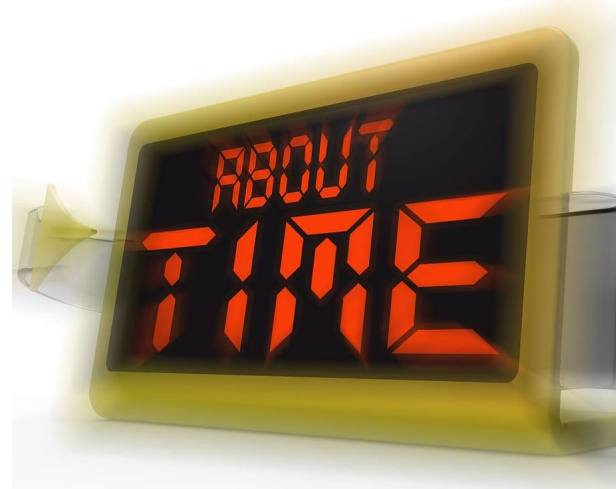
## 6. Depositions

- a. Claimant
- b. Medical Experts
- c. Fact Witnesses



# Claim Petition (con't)

## 7. Timeline





# Claim Petition (con't) Employer/Insurer Issues

8. Worker Compensation compensation liability does not extend to non-work medical and/or disabling conditions.
  - a. In a Claim Petition, the Employee has the burden of proof as to all elements of a compensable injury - including the causal relationship of the medical condition to the employment. *Inglis House V. WCAB (Reedy)* (Pa. 1993).
  - b. The causal relationship must be established by unequivocal, competent, credible, substantial, medical evidence - where the relationship is not obvious.

## Claim Petition (con't) Employer/ Insurer Issues

An “*Aggravation, Reactivation or Acceleration*” of a pre-existing non-work medical condition - can fall within the Section 301(c)(1) definition of a “work injury”. Palosky v. WCAB(Latrobe Brewing Co.) (Pa. 1987) (aggravation of asthma).

A “*Recurrence*” of a pre-existing non-work medical condition is not compensable.

A “*Recurrence*” of a prior work-related medical condition is the responsibility of the insurer at time of original injury. Zinc Corp. of America v. WCAB(Byers) (Pa. Cmwlth. 1992).

# Ongoing Benefits

## 1. Review Petitions

- a. Incorrect Description of Injury
- b. Incorrect Average Weekly Wage
- c. Burden of Proof



# Ongoing Benefits (con't)

## 2. Termination Petitions

a. Expert vs. Expert

b. Burden of Proof

c. Supersedeas



# Ongoing Benefits - Termination Petition Considerations

Employer and Insurer Termination Petition Issues -

Description of Injury -

1. Has injury been modified by WCJ decision or Agreement?
2. Does the IME Expert address each element of the work-related injury?
3. Is there an unequivocal opinion of a full recovery ? (not just a return to work)

Subsequent Termination Petition -

1. Does the 2nd IME show a change in physical condition since the preceding disability determination? *Lewis v. WCAB (Giles & Ransome Inc.)* (Pa. 2007).

# Ongoing Benefits (con't)

## 3. Modification Petitions

a. Job Offers vs. Labor Specific Market Surveys

i. Attempting position vs.  
out of work letters

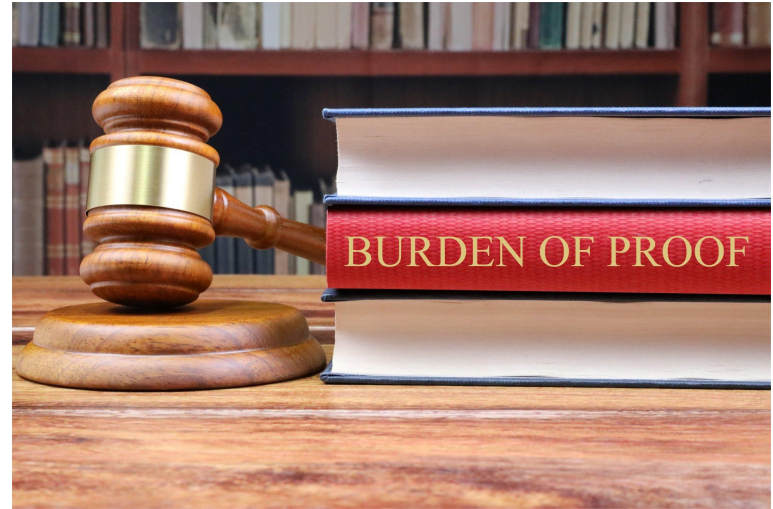


# Ongoing Benefits (con't)

## 3. Modification Petitions (con't)

b. Burden of Proof

C. Supersedeas



# Ongoing Benefits (con't)

## 3. Modification Petitions (con't) - Employer/Insurer Considerations

d. Supplemental Agreement LIBC-336 - May be utilized to change compensation status. (Total to Partial and Partial to Total).

Must have Employee sign to change benefit status - it's not automatic.

Present Agreement for signature upon return to work.

- If represented by legal counsel - must direct Agreement to counsel.

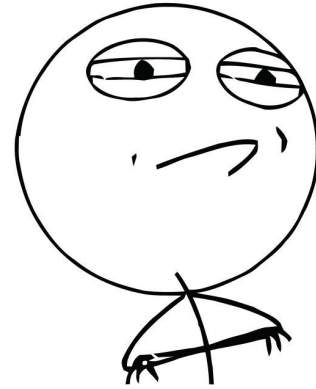


# Ongoing Benefits (con't)

## 4. Challenge Petitions

- a. Burden of Proof
- b. Supersedeas

**CHALLENGE ACCEPTED**



# Ongoing Benefits (con't)

## 4. Challenge Petitions - Employer/Insurer Considerations

### c. Notification of Suspension/Modification Pursuant to Section 413 (c)&(d)

LIBC-751.

- must be filed within 7 days of suspension/modification of compensation,
- Right to suspend/modify compensation - only during period of actual work,
- The only issue in an “Employee Challenge” Petition - is the Employee currently working? If not, compensation must be reinstated.
- Employer/Insurer must file a Petition to Suspend with a supersedeas request. See: U. S. Airways v. WCAB (Rumbaugh) (Pa. 2004).

# Ongoing Benefits (con't)

## Employee Reporting Obligations - Section 204 (c)

1. Employee Report of Wages LIBC-750.
2. Employee's Report of Benefits for Offset LIBC-756.
3. Employee Verification of Employment, Self-Employment or Change in Physical Condition LIBC-760.
  - a. If LIBC-760 is not signed and returned within 30 days, the insurer has the right to suspend compensation until it is received.
  - b. Insurer must issue an LIBC-762 Notice of Suspension for Failure to Return Form LIBC-760. See: Regulation 123.502.

# Ongoing Benefits (con't)

## 5. Settlements

### a. Valuation/Demands



# Ongoing Benefits (con't)

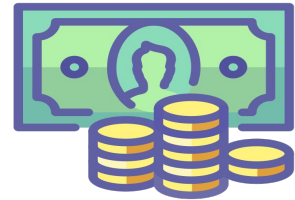
## 5. Settlements (con't)

### b. Medicare/Social Security Issues

#### i. Language



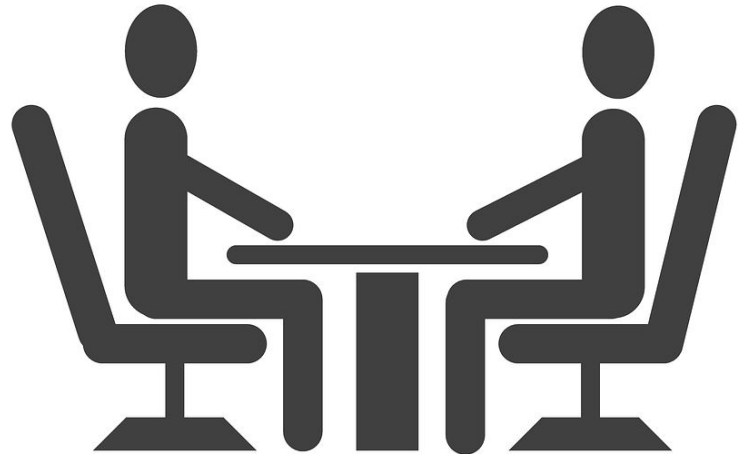
#### ii. Conditional Payments



# Ongoing Benefits (con't)

## 5. Settlements (con't)

### c. Mediations



# Ongoing Benefits (con't)

## 5. Settlements (con't)

### d. Compromise & Release Agreements

i. Social Security Language (para.13)

ii. Description of Injury (para. 14)

iii. Indemnity Only Settlements



# Ongoing Benefits (con't)

## 6. Penalties

### a. Falling off of Repetitive Pay

#### i. Direct Deposit





# Ongoing Benefits (con't)

## 6. Penalties (con't)

b. NCD following NTCP on 90th Day



i. Failure to properly investigate



# Ongoing Benefits (con't)

## 6. Penalties (con't)

c. Other Timing Issues

d. Burdens and Resolutions



# Ongoing Benefits (con't) Defense to Penalty Demand

## Employer/Insurer Defenses to Penalty Assessment Demands

1. The imposition of penalties and the amount of penalties are within the discretion of the WCJ. A finding of a violation of the Act does not mandate the imposition of a penalty. See: *City of Philadelphia v WCAB (Andrews)* (Pa. Cmwlth. 2008).
2. Where a timely settlement compensation check was sent to a wrong address, it was an error for the WCJ to impose a penalty in the absence of a finding that employee provided notice of a change of address. *Allegis v. WCAB (Coughenaur)* (Pa. Cmwlth. 2010).
3. Many Penalty Petitions are filed for benefit payment errors. It is recommended that Employer/Insurer present a document-based factual defense, where available.