



News & Notes

Vol. 27 | No. 2

"Serving all Pennsylvanians"

Spring 2022

A Note from the Director, Marianne Saylor

The Bureau of Workers' Compensation is excited to be holding the 21st Annual Workers' Compensation Conference in person on June 6-7, 2022, at the Hershey Lodge in Hershey, PA. The conference committee and bureau staff have worked hard to create more than 20 sessions covering a variety of workers' compensation topics. Beginner sessions include "Basic Workers' Compensation Law" and "As the Claim Turns." The always-popular "Judges Unplugged" and "Employers Unplugged" will be featured. Additional sessions address telework, ergonomics, avoiding litigation, and WCAIS updates and tips. Face masks are strongly suggested but not required. Please join us! [Click here to register.](#)

Prosecution Blotter

Section 305 of the Pennsylvania Workers' Compensation Act specifies that an employer's failure to ensure its Workers' Compensation liability is a criminal offense. The bureau's Compliance Section is responsible for investigating potential 305 violations and referring cases for potential prosecution. Violations may be classified as either a third-degree misdemeanor or, if intentional, a third-degree felony. Each day the employer is in violation of Section 305 is charged as a separate offense.

Defendants who are first time offenders may be eligible to enter the Accelerated Rehabilitative Disposition (ARD) program. Those who enter the ARD program waive their right to a speedy trial and statute of limitations challenges during the period of their 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.

The violators and locations for the past 6 months are as follows:

Philadelphia County

Shavone Jackson, owner of Elvis Dirt Cheap Movers, was sentenced on April 14, 2022, by Judge Donna Woelpper in Philadelphia County Court of Common Pleas. The defendant was charged with violating Section 305 of the Workers Compensation Act. Mr. Jackson ultimately pled guilty to five misdemeanor counts of the third degree, was sentenced to five years probation, and was ordered to pay restitution directly to the Uninsured Employer Guaranty Fund in the amount of \$107,860.74.

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. Featured is 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 the workers' compensation community.

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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.

- Marianne Saylor, Director – Bureau of Workers' Compensation (BWC)
- Joseph DeRita, Director – Workers' Compensation Office of Adjudication (WCOA)
- Alfonso Frioni Jr., Chairman., Workers' Compensation Appeal Board (WCAB)

▼ **Deadline to Apply 2022 Governor's Award for Safety Excellence**



If you're proud of your safety and prevention program for its impact on reducing employee injuries, please consider applying for the Governor's Award for Safety Excellence. The purpose of the award is to recognize outstanding prevention programs and the superior efforts that make these programs so successful. Companies can nominate themselves or be nominated by a third party.

All nominations must be submitted by June 1 to be considered for the current calendar year.

For more information and to download the nomination form, [visit the GASE webpage](#).

Email nomination forms to ra-li-bwc-safety@pa.gov and include 'GASE Nomination Form' in the subject line. Email GASE Coordinator Barbara White at barbawhite@pa.gov.

▼ **PA Training for Health & Safety (PATHS) Your No-Fee Safety Training Resource**

The Pennsylvania Training for Health and Safety (PATHS) program makes safety resources and training accessible to individuals everywhere. In 2021, PATHS conducted 737 training sessions for more than 37,000 individuals in 48 states and 14 countries. Safety training on 219 topics is available for employers, and most are free of charge. These trainings apply to health & safety concerns within

the workplace, including substance use disorder and opioid abuse-related topics.

Training is aimed at reducing business costs, reducing injuries, and saving lives in Pennsylvania.

Questions? Email PATHS at ra-li-bwc-paths@pa.gov or visit our website at www.dli.pa.gov/PATHS.

▼ **Workplace Safety Committee Certification Nearly \$853 million and counting**

More employers are discovering that safety really does pay! Employers who follow Pennsylvania's workplace safety committee requirements and regulations can apply for state certification and receive annual 5 percent discounts on workers' compensation insurance premiums. Application is made through the Pennsylvania Department of Labor & Industry, Bureau of Workers' Compensation, Health & Safety Division.

The basic committee requirements for certification include that a minimum of two employee representatives and two employer representatives meet monthly and that the committee be in operation and in compliance with requirements for at least six months prior to submitting an initial application.

More than 12,900 workplace safety committees certified in Pennsylvania and representing over 1.6 million employees have accumulated more than \$853 million in total savings from the 5 percent workers' compensation insurance premium.

In addition to the 5 percent workers' compensation insurance premium discount, certified workplace safety committees help reduce the employer's cost of workers' compensation insurance by identifying workplace hazards, reducing injuries, and reducing claims.

In an increasingly competitive business climate, any opportunity to save money is welcomed. A workplace safety committee not only improves the safety of your operations, but also adds to the bottom line and clearly shows employees that management cares about their well-being. When that's the case, everybody wins!

For more information on setting up a workplace safety committee for your business and to learn more about the program and requirements, visit [Workplace Safety Committee Certification Resources](#).

Questions? Email us at ra-li-bwc-safety@pa.gov.

▼ Claims Corner

Preparing the Notification of Suspension or Modification (LIBC-751) in WCAIS keeps getting easier!

Effective July 8, 2022, claims adjusters will be able to prepare the LIBC-751, Notification of Suspension or Modification, in WCAIS in real-time! This form recently underwent a facelift to replace the notarization with the new certification checkboxes. To continue the ease of preparing this form to meet the seven-day regulatory filing requirement, we are enhancing the system to remove the delay involved in batching this form. With this lean enhancement, the form will be available in WCAIS as soon as the adjuster prepares it on the Actions tab of the claim. Adjusters may immediately print, sign, and date the form to mail a copy to the claimant and upload the signed form to WCAIS.

When using a LIBC-751 to suspend or modify benefits, please be sure the form is signed, its service verified by checking both confirmation boxes, and indicate if benefits are being suspended or modified. The form must be filed within seven days of its suspension or modification date, and it cannot be used for claims in a temporary or medical-only status.

Uploading Claim Form Documents – Your help is needed for accuracy.

When uploading a form to a claim, be sure to check the following before you submit a form on a claim's Action Tab:

▼ YouthRules!

The *YouthRules!* initiative promotes positive and safe work experiences for teens by providing information about protections for young workers to youth, parents, employers, and educators. Through the YouthRules! initiative, the U.S. Department of Labor and its partners promote positive and safe work experiences that help prepare young workers in the 21st Century workforce.

From the [YouthRules! website](#) you can quickly access information about federal and [state](#) labor laws that apply to young workers. The website educates teens on the rules, and provides information for parents, educators, and employers.

As part of the *YouthRules!* initiative, the U.S. Department of Labor and its partners develop and distribute informational materials, provide training

Is the completed form for the correct claim ?

Does the form you have selected from the drop-down menu match the form you are uploading?

Beginning in July, you will need to select a specific form type from the drop-down menu. Please choose carefully, and if you do not see the form you are uploading in the Action tab's options list, please upload it to the Documents/Correspondence tab as a miscellaneous document.

Improved Securities for Responses to Requests for Bureau Records

The bureau proudly announces that the records response time now averages 2-5 days. An important part of the process is that our staff uses due diligence to verify the records response they are sending match the request and have the required release authorization. The bureau has enhanced our process to add an additional layer of security. To improve protection of personally identifying information (PII), we have added a system check that verifies the submitted identifier matches that of the records we have selected for a record request's response. If the system cannot make this verification, the user receives an error and cannot move forward until the discrepancy is corrected. This enhancement ensures that our expedited online processing is safe and efficient.

on federal and state rules governing young workers, increase awareness through public service announcements, and develop other tools designed to increase compliance with federal and state laws.

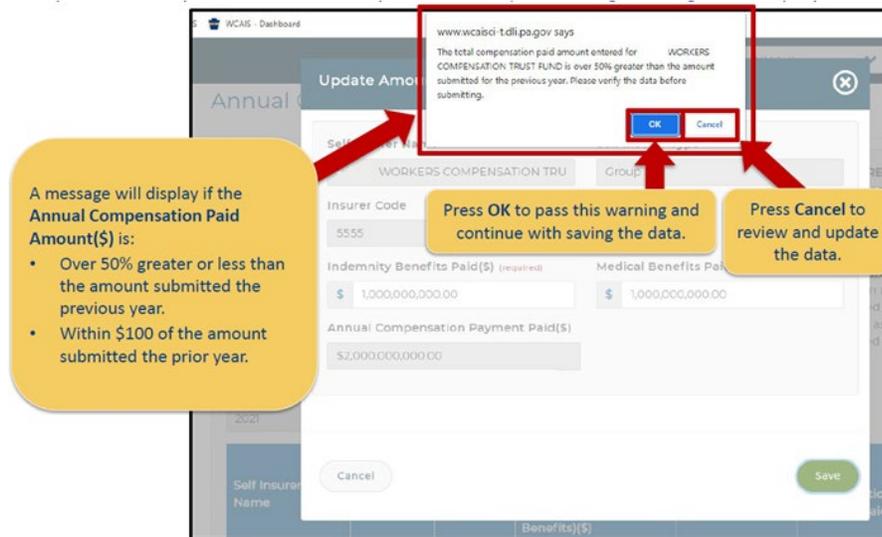
The Wage and Hour Division (WHD) is committed to providing employers with the tools they need to operate in compliance with the variety of labor laws enforced by the division. WHD offers a number of useful compliance resources intended to provide employers with readily accessible, easy-to-understand information relevant to both their rights and to their responsibilities under the law. From our interactive E-laws advisor to a complete library of free, downloadable workplace posters, this site offers employers critical information to guide them toward operating their businesses in full compliance with federal labor regulations. [View available resources for employers.](#)

The Pennsylvania Bureau of Workers' Compensation is pleased to announce that two important WCAIS updates have been made to improve the user experience when reporting Annual Compensation Paid data and using the Affiliate Addendum application.

Annual Compensation Payment Data Warnings

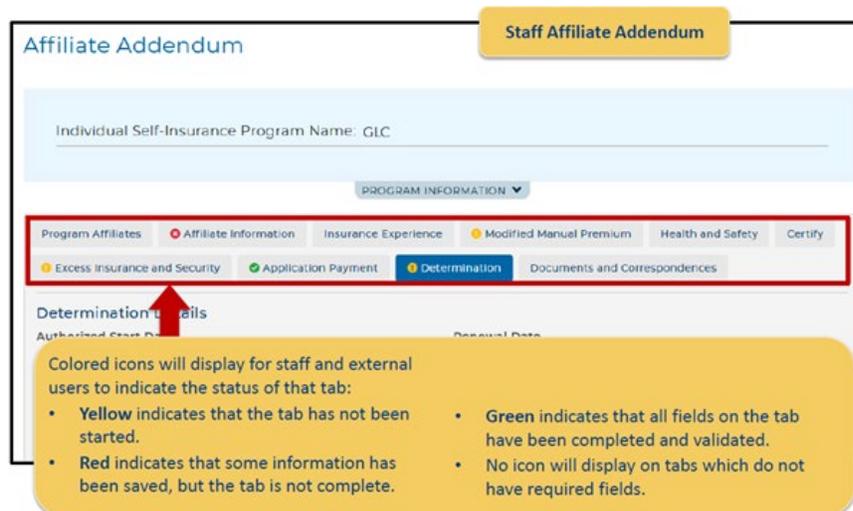
The Annual Report of Compensation Paid in WCAIS will now provide warnings if potentially incorrect data is entered.

If you receive a warning message, please verify the data before submitting.



Submission of Affiliate Addendum

Previously, when submitting an Affiliate Addendum application in WCAIS, users couldn't advance screen to screen. The screen has been updated to allow you to move between tabs / screens by simply clicking-on the tabs at the top of the screen. WCAIS displays green, red, and yellow icons indicating application status.



WCAIS Digital Transformation Phase 1.2 was Released March 4

Claims Summary, EDI, Supersedeas Fund Reimbursement (SFR), Occupational Disease (OD), Compliance, and related screens were transformed to a modern user experience. Screens and process flows have a different color scheme, look, and feel, while the content remains the same.

Click below to watch the recorded training session or to download the user experience guide.

[Training video](#)

[User experience guide](#)

Internet Explorer is no longer supported by Microsoft. Using a different internet browser will allow for optimal performance of the WCAIS application. Please use one of the following internet browsers when accessing and using WCAIS: Google Chrome, Microsoft Edge, or Mozilla Firefox.



▼ Kids' Chance of Pennsylvania

At Kids' Chance of Pennsylvania, we're dedicated to helping our kids who need it most – those who need assistance for college or vocational education because a parent was killed or injured in a work-related accident. The hardships created by the death or serious disability of a parent often include financial ones, making it difficult for deserving young people to pursue their educational dreams.

Since its inception in 1997, Kids' Chance of PA has awarded over 1,000 scholarship grants to eligible students amounting to more than \$2.5 million in tuition assistance. During the 2021-2022 academic year, we awarded \$120,250 in scholarships to 40 students. Through our involvement with the PHEAA/PATH program, in many cases we have been able to double our awards to qualified students, further relieving their financial burden! Seventeen of our recipients received an additional \$46,250 in PATH grants.

Kids' Chance of Pennsylvania scholarships are made possible by the generous contributions of our scholar sponsors, corporate and community partners, and donors. Donations can be made on-line, by check, by making us your charity of choice

using Amazon Smile or through corporate donation programs like United Way or SECA.

In addition to the donation sources listed above, Kids' Chance of PA holds several fundraising events throughout the year, such as our annual golf outings in Hershey and Plymouth Meeting and our 5K Run/1-Mile Fun Walk in Pittsburgh. We have held both in-person and online silent auctions and are introducing our first Classic & Exotic Car Show this year. Our headline this fall will be our 25th Anniversary Gala, to be held the evening of October 14 at the Lancaster Marriott. We will be celebrating 25 years of providing hope, opportunity, and scholarships to children of injured PA workers. All are invited to join in the celebration and dance the night away!

Everything our organization does is for the students. Kids' Chance of PA is making a significant difference in the lives of these children, helping them to pursue their educational goals. For more information about how you can help support Kids' Chance, please contact us at 215-302-3598 or info@kidschanceofpa.org or visit www.kidschanceofpa.org.

▼ Spring Safety Tips

We hope our spring safety tips give you a good overview of some of the key themes to cover throughout the season to keep you safe. For some super simple spring safety tips, we recommend the following:

- Wear a mask when cleaning dusty areas
- Be careful when walking on wet surfaces
- Be safe while on ladders
- Be careful moving large heavy objects
- Beware of flying objects during a tornado
- Be prepared for a flood

- Be mindful of your nearest dry place when working outdoors
- Wear gloves to protect yourself from skin irritations, cuts, and contaminants
- Watch out for tick bites
- Protect your hearing when operating machinery
- “When thunder roars, go indoors”
- Use insect repellents when working outside
- Familiarize yourself with spring PPE in all weather conditions

▼ A View from the Bench

John Bark v. Sooner Steel, LLC, (Pa. Cmwlth. 2022) decided March 21, 2022

In this case, the court decided whether claimant was in the course and scope of employment when injured in a motor vehicle accident on the way home from working at a jobsite. Claimant was a seasonal laborer for employer installing rebar for in-ground swimming pools. Claimant was injured in a motor vehicle accident coming home from employer’s job site in Rio Grande, NJ, on March 5, 2018. The parties stipulated to the description of claimant’s injuries and disability therefrom, along with the average weekly wage, compensation rate, and litigation costs if claimant was successful on the remaining parts of the claim petition. Claimant testified that on the date of injury, the owner’s son picked him up at his home and drove him to the jobsite, where they worked for about seven hours. The owner’s son was driving claimant home and the next thing he remembers is being carried up a hill to a helicopter. The owner of employer testified he instructed his son to pick up claimant the morning of the motor vehicle accident and drive him to the jobsite as well as drive him home from the jobsite. The owner testified that employees were paid for travel time depending on the distance to the job site, which employer defined as zones. The jobsite where claimant worked on the date of the accident was in a zone where he was paid for travel time. Owner testified that claimant was transported in a company truck on the date of injury. Both claimant’s and owner’s testimony were found to be credible by the judge. The Commonwealth Court held that the coming and going rule did not bar this claim as the employment contract exception to this rule applied to this injury based upon the credible testimony from the owner that claimant was working in a zone on the date of injury whereby he would be paid for travel time. The court also noted

employer controlled the means of the commute because claimant was transported by the owner’s son in a company vehicle at the owner’s direction.

Henderson v. WP Ventures, Inc. (WCAB), 269 A.3d 1272 (Pa. Cmwlth. Ct. 2022).

In Henderson v. WP Ventures, Inc. (WCAB), 269 A.3d 1272 (Pa. Cmwlth. Ct. 2022), the Commonwealth Court reversed the WCAB and reinstated the WCJ’s order awarding benefits based on the personal comfort doctrine.

Claimant filed a claim petition asserting that he sustained work-related injuries. Claimant worked for the employer performing basic maintenance duties at a community center located in a public park. On the date of the incident, the location was undergoing repair. As such, claimant was unable to perform most of his usual tasks. At about 4:00 p.m., claimant was hungry and decided to take a cigarette break and get a sandwich from a shop just outside the park on a public street. Claimant testified that he would ask for permission if his supervisor was around. If not, it was understood that he could take limited breaks without permission. On this occasion, his supervisor was not around, so he did not seek permission. While on a pathway in the park area, he slipped on ice and hit his head. He did not return to work due to his injuries. The employer did not present any evidence to rebut claimant’s testimony.

The WCJ granted the claim petition and awarded ongoing benefits. The WCJ found that claimant was in the course of employment at the time of the injury, relying on the fact that claimant was taking a cigarette break, which was a minor deviation and would fall under the personal comfort doctrine.

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A View from the Bench

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The WCAB reversed and concluded that claimant was not in the course of employment at the time of the injury. As claimant had been away from his work premises attending to personal needs (a cigarette and a takeout sandwich) and not directly furthering the employer's business, the board found him ineligible for benefits.

The Commonwealth Court reversed the WCAB and reinstated the WCJ's order. The court analyzed several cases involving off-premises injuries during meal breaks, which led to varying fact-bound conclusions. The court found that the relevant precedent suggests that "the personal comfort doctrine may apply when the claimant's time away from the work premises is informal in nature, purely devoted to personal comfort of a physical nature, such as a cigarette break or to procure food, and brief enough that the course of employment is not broken." However, the personal comfort doctrine may not apply "if the worker is on a formalized break or lunch period during which an employee is likely to enjoy a degree of autonomy, however brief, and may engage in other activities in addition to immediate personal needs."

In the instant case, claimant presented un rebutted testimony that if his supervisor was unavailable, employees who have down time were permitted to leave the building without permission for cigarette breaks and to get sandwiches. The employer did not present any evidence to rebut claimant's testimony or to show that claimant was on a formal break during which he was free to spend his time how he chose. Accordingly, the Commonwealth Court concluded claimant established that his actions were covered by the personal comfort doctrine when he left to smoke a cigarette and get a sandwich. Accordingly, the WCJ's award was reinstated.

Arlet v. Workers' Comp. Appeal Bd., 270 A.3d 434 (Pa. 2022)

The Supreme Court held an insurer is not precluded from seeking subrogation against its insured for Jones' Act payments where the insurer paid benefits on a loss they did not cover.

Claimant was employed as a shipwright for the Flagship Niagara League in Erie, PA. A shipwright is a large vessel carpenter with specific duties which include the building of the mast and building and maintenance on all wood of the ship. On the day of injury, March 8, 2011, claimant was injured when he fell on ice while walking from the Niagara League building back to the Brig Niagara. After his

injury, claimant was paid Jones Act benefits of Maintenance and Cure from Acadia Insurance, after participating in an interview. After litigating a claim petition, the WCJ determined that the Jones Act provided the claimant's exclusive remedy for his March 9, 2011, injury. No workers' compensation benefits were ordered.

After appeal, the WCAB determined that claimant was not a seaman, but was a land-based employee, and the Jones Act did not provide claimant's exclusive remedy. On remand, claimant was awarded benefits from March 8, 2011, to Aug. 9, 2011, with a full recovery as of Aug. 19, 2011. The uninsured employer, Flagship Niagara League, was responsible for payment of the difference between Workers' Compensation benefits and Maintenance and Cure benefits claimant was already paid. No subrogation was awarded to Acadia. Further appeals resulted in the WCAB concluding that Section 319 of the Act precluded insurer from seeking subrogation, and it affirmed the WCJ. The Commonwealth Court affirmed.

As a matter of first impression, the Supreme Court concluded that the "no-coverage exception" to the general equitable rule precluding an insurer from pursuing subrogation against its insured comports with the purposes and public policy supporting the rule and adopted it as the law of this commonwealth. Applying the exception, the Supreme Court, reversing, has allowed a carrier's subrogation out of the claimant's workers' compensation award finding that the carrier for the Jones' Act benefits had in effect mistakenly paid compensation award finding that the carrier for the Jones' Act benefits had in effect mistakenly paid such benefits since claimant was, in the end, determined judicially to have been a conventional employee entitled to benefits under the Workers' Compensation Act.

Hughes v. Wawa, Inc., No. 333 C.D. 2021, 2021 WL5872950, ___ A.3d___, filed 12.13.2021 (Pa. Cmwlth. 2021)

On Feb. 28, 2022, the Commonwealth Court reported the previously unreported case of *Hughes v. Wawa, Inc.*, filed on Dec. 13, 2021. In *Hughes*, the Commonwealth Court affirmed the board and the WCJ in holding that the employer met its burden of proof on two utilization review petitions filed by the claimant showing that claimant's longtime, ongoing chronic pain treatment was not reasonable and necessary.

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A View from the Bench

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Claimant sustained an injury on April 1, 2000, described as a low back herniation. In 2011, the parties entered into a compromise and release agreement. Per the agreement, the claimant's medical treatment remained open for reasonable and necessary treatment related to herniated discs at L4-5 and L5-S1, adjustment reaction with mixed anxiety and depressed mood, and pain disorder. The claimant's treatment regimen included daily, multiple doses of opioids prescribed by his primary care physician, who is board-certified in pain management and family medicine, as well as his primary care physician's partner. The employer sought review of the treatment prescribed by both treating physicians. The peer reviewers for each UR request issued determinations finding the claimant's opioid treatment to be unreasonable and unnecessary in part, stating that the dosages of opioid medications exceeded the guidelines set forth by the Centers for Disease Control and Prevention (CDC). The claimant then filed two petitions for review of the utilization review determinations. The claimant additionally filed a penalty petition. The WCJ appointed an impartial physician who opined that the opioids were excessive but were well-managed by the treaters under review. The WCJ ultimately found that the employer met its burden of proof on the two utilization review petitions and denied the penalty petition. The board affirmed. The claimant then sought review from the Commonwealth Court arguing a number of alleged errors, which were ultimately rejected by the court, including (1) that the utilization review peers were required to establish a precise treatment plan to wean the claimant off of daily opioids; (2) that the utilization review peers' reports were deficient because they did not have all of the background treatment records; (3) that the utilization review peers were required to practice in the same sub-specialty as the treating physician under review; (4) that the peer reviewers offered improper advisory opinions because they did not state with certainty what dosage of opioids would be proper, or how to achieve a lower dosage, or what treatment would be appropriate if achieving a lower dosage was unsuccessful; (5) that the WCJ failed to issue a reasoned decision; (6) that the board erred by denying a petition for rehearing for after-discovered evidence i.e., the updated CDC guidelines; and (7) that his constitutional right to due process was violated. These arguments were all rejected by the Commonwealth Court, and the orders of the board were affirmed.

Lee v. Fresh Grocer Holdings, LLC, 2021 WL 6058728 (No. 1051 C.D. 2020; filed Dec. 22, 2021).

On March 4, 2022, the Commonwealth Court ordered the publication of its previous decision in *Lee v. Fresh Grocer Holdings*. The workers' compensation judge ("judge") was presented with a penalty petition arguing that employer failed to properly and promptly reimburse claimant's physicians and hospitals over \$410,000 for the acute care she received at a Level I trauma center and Level II trauma and burn center. Previously, a medical fee review hearing officer ("MFRHO") had dismissed the applications for fee review filed by the Professional Receivables Network, LLC ("PRN") on behalf of the trauma centers believing that he did not have jurisdiction to decide the issue whether PRN is a "provider" under the Workers' Compensation Act ("Act") and therefore permitted to file the applications for fee review in the first instance. No appeal was filed from the MFRHO's decision. While the penalty petition was pending, the Commonwealth Court issued its decision in *Armour Pharmacy v. Bureau of Workers' Compensation Fee Review Hearing Office (Wegman's Food Markets, Inc.)*, 206 A.3d 660 (2019), which held that a MFRHO or judge can determine the status of a provider under the act. The judge in *Lee* held that although he could now decide the issue of provider status, only a MFRHO (not a judge) can decide the issue of proper medical bill amounts due and owing, and therefore, that judicial economy mandated that he dismiss the penalty petition and direct claimant and her health care providers to seek relief before a MFRHO. The Workers' Compensation Appeal Board ("WCAB") affirmed the judge's decision.

The court likewise agreed with the WCJ's decision to dismiss the penalty petition. While acknowledging that MFRHOs and judges can determine provider status, the court declared only a MFRHO, and not a judge, can "decide *all* the relevant issues in the instant matter, i.e., the determination of whether PRN is a provider *and* the amount of payment due and owing" (Emphasis in original). The court also stated that there was no merit to claimant's contention that her constitutional rights were violated as she has not been denied access to justice. Rather, the judge merely decided that judicial efficiency was best served by having the issue of who is a provider, along with the amounts due, decided in one – not two – forums.

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A View from the Bench

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Sadler v. Philadelphia Coca-Cola, 269 A.3d 690 (Pa. Cmwlth. 2022)

The Commonwealth Court held that employer's taking of an automatic 50% offset for Social Security old age benefits pursuant to Section 204(a) of the Workers' Compensation Act did not violate claimant's right to equal protection under state or federal constitutions.

The court further held that the workers' compensation judge properly declined to consider claimant's post-injury felony conviction as part of claimant's residual productive skill in determining whether a position identified in employer's labor market survey was appropriate, open, and/or available, as required to modify claimant's workers' compensation benefits under Section 306(b)(2) of the Act.

Regarding the first issue, the court noted it had previously held that Section 204(a) did not violate equal protection rights in Caputo v. WCAB (Commonwealth of PA), 34 A.2d 908 (Pa. Cmwlth. 2012). In Caputo, the court held that the statute was reasonably related to legitimate governmental interests of reducing employer's workers' compensation costs. The court was not persuaded by claimant's argument in the instant case that

offsets for pension and severance benefits are treated differently, in that those offsets are based solely upon contributions made by the injured worker's employer. The court reasoned that the legislature used the 50% offset for Social Security old age benefits to achieve fairness for all Pennsylvania employers by acknowledging there may be situations where an employer would benefit from the offset and some where it would not, depending upon the length of employment relationship.

Regarding the second issue, the court found it determinative that the claimed limitations to claimant's employment prospects were not causally related to claimant's work-related injuries, but to claimant's own after-the-fact conduct. The court reviewed prior cases where distinctions were drawn between conditions that pre-existed the work-injury and conditions that arose after the work-injury. The court read the phrase "residual productive skill" as used in Section 306(b)(2) as the productive skill that remains or is leftover because of a claimant's work-related injury and without consideration of any non-work-related factors that arose after the work injury. To hold otherwise, reasoned the court, would be inconsistent with the caselaw and the act's intent.

*News & Notes is published quarterly by the Bureau of Workers' Compensation
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