



News & Notes

A Message from Deputy Secretary, Scott G. Weiant

It may be difficult to envision a positive path forward after the historic events that transpired during 2020. From the global pandemic, to the unrest in the nation’s capital, last year was a difficult year for everyone. The workers’ compensation business innovations, ability to change in a rapid manner, and revised avenues of communication are just a few of the positive examples of how the Pennsylvania workers’ compensation system improved in several areas.

Meeting the demands of COVID was difficult, but it was proven that the internal and external stakeholders within the system achieved greater triumphs when they worked together. Staff demonstrated they can be productive in a work from home platform. It has been shown how integral technology can be to business processes and what role WCAIS has played in the

continued operation during these challenging times. Collaboration shifted from in-person mode to various technical platforms. This enabled team members to stay connected and bureau staff to stay connected with stakeholders. No doubt in the years ahead, these additional capabilities will be an added tool utilized to move customer service forward.

I want to thank each of you that has contributed to supporting the workers’ compensation system. Looking at 2021, I feel we are leveraged to improve upon a system that is already viewed by many in the country as one of the finest. The tough choices, and innovations made in 2020, will lead to further enhancements in 2021 and beyond. Thank you all and stay strong, there are better times to come!

A Message from Director, Marianne H. Saylor

2020 was the year of changes – most of which no one anticipated. On a very positive note, we were able to implement the online records request/subpoena request process. It turned out this initiative came just in time. Workers’ Compensation staff was able to seamlessly respond to records requests when they, and much of the rest of the workers’ compensation community, began to work remotely.

I have tremendous gratitude for the determination and grit shown by all the staff at Workers’ Compensation for quickly adapting to remote work, allowing work to

intrude into their personal space, and for providing our stakeholders with the assistance and service they required. It cannot be underestimated how impressive it is that staff have continued to provide excellent customer service, while using their dining room table as a desk, sharing WIFI with their remote-schooling children, and learning more than they ever wanted to know about the limits of bandwidth.

2021 brings hope for a brighter future for good health, happiness, and better teleworking!

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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.

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 H. Saylor, Director – Bureau of Workers’ Compensation (BWC)
- Joseph DeRita, Director – Workers’ Compensation Office of Adjudication (WCOA)

<i>Employer Information Services</i>	<i>Claims Information Services</i>	<i>Hearing Impaired</i>	<i>Email</i>
717-772-3702	toll free inside PA: 800-482-2383 local & outside PA: 717-772-4447	PA Relay 7-1-1	ra-li-bwc-helpline@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 more accessible to employers and employees everywhere. In 2020, PATHS conducted 596 training sessions for more than 48,000 individuals in 48 states and 14 countries.

Safety training on 218 topics are available for employers, most free of charge. These trainings apply to all health & safety concerns within the

workplace, including substance abuse and opioid abuse-related topics. Training is aimed at reducing business costs in Pennsylvania and saving lives.

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

▼ Workplace Safety Committee Certification \$810 million and counting

More and 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 12,700 workplace safety committees already certified in Pennsylvania and representing over 1.5 million employees have accumulated more than \$810 million in total savings just from the 5 percent workers' compensation insurance premium discounts. That's money that is being reinvested in expanding businesses along with implementation

of further safety and prevention efforts - but it's no longer going toward insurance premiums!

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 Health & Safety at ra-li-bwc-safety@pa.gov.

▼ It's Time to Apply 2021 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 1st 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.

▼ 2020 Governor's Award for Safety Excellence Winners

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, as well as innovation and strategic development of safety policy and approaches. The nomination 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 2020 Governor's Award for Safety Excellence winners are:



ABMECH Acquisitions, LLC



Ascensus Specialties Callery LLC



Penn Asian Senior Services

▼ 2021 Statewide Average Weekly Wage

Pursuant to the Workers' Compensation Act, Section 105.1, the Department of Labor & Industry has determined the statewide average weekly wage for injuries occurring on and after Jan. 1, 2021, shall be \$1,130.00 per week. For purposes

of calculating the update to payments for medical treatment rendered on and after Jan. 1, 2021, the percentage increase in the Statewide Average Weekly Wage is 4.6 percent.

▼ 2021 Medical Fee Schedule

The 2021 Medical Fee Schedule Part A is posted and is [available here](#).

The Centers for Medicare and Medicaid Services delayed publication of the final rule updates and policy changes under the Physician Fee Schedule and other Part B issues. The delay has postponed the American Medical Association's publication of the Healthcare Common Procedure Coding System Level II code set until Jan. 29, 2021. This extends the anticipated date of the bureau's Part B fee schedule publication to Feb. 15, 2021.

Although the courtesy copy of the Part B fee schedule will not be available on the bureau's website until February, reimbursement of Part B services and supplies provided on or after Jan. 1, 2021, are subject to the updates, policy changes, and fees associated with the 2021 adjustments.

Questions should be sent to ra-li-bwc-hcsrd.pa.gov or you can call (717) 772-1900.

▼ WCAIS Online Records Request Dashboard

Throughout 2020, the bureau created and enhanced a one-stop shop for the request of bureau records online in WCAIS. All records can be requested here except for requests using a non-WCJ-issued subpoena. This process eliminates the use of fax and mailing almost entirely.

The Records Request Dashboard should be utilized for all eligible requests. It can be accessed via a quick link on the WCAIS dashboard itself. Once on the Records Request Dashboard, you can request records, see pending requests, and access request responses to view, print or save them for 90 days.

Making a request requires only three steps: select if you are requesting records via a Regular Request (with or without a signed authorization) or a Subpoena Request (with a WC Judge's subpoena), entering the claimant's first and last name, and then uploading a PDF of your request documents

(cover letter, authorization, subpoena and/or any other documentation you would normally fax or mail to the bureau). Upon submitting a request, you will receive an email including a confirmation number and the request will appear in your dashboard's pending grid. Once your request is completed, you will receive an email alert and your response information will show in your Available Responses grid.

This improved way of requesting and receiving PA Workers Compensation records has been called easy, lean, and intuitive. So, if you request records from the bureau and aren't already using it, the time is now! To get started, you just need to be a registered user in WCAIS.

[Details on registration and the Records Request Dashboard are available here.](#)

▼ Kids' Chance of Pennsylvania Hope, Opportunity and Scholarships for Kids of Injured Workers

The mission of Kids' Chance of Pennsylvania (KCPA) is to provide scholarship grants for college and vocational education to children of Pennsylvania workers who have been killed or seriously 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.

We are proud to announce that for the 2020-21 school year, we have awarded \$153,750 in scholarship grants to 54 deserving students!

The scholarships were made possible due to the

generous contributions made by our scholar sponsors, corporate and community partners, and donors. Donations can be made online, by check, or through United Way.

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.

▼ 16th Annual Kids' Chance of PA Golf Outing

With the on-site cancellation of the PA Annual Workers' Compensation Conference this year, Kid's Chance of PA will not be holding their golf outing at the Hershey Country Club.

The Kids' Chance of PA Golf Committee is working on plans for a statewide golf outing, with sectional outings being held at exclusive golf clubs around the state, in conjunction with the virtual conference.

With your support, we can make this as successful as previous years.

For updates visit:
<https://www.kidschanceofpa.org>.

For more information email Lloyd Brown at info@kidschanceofpa.org

Thank you for your support of children of PA workers!



Every year, millions of teens work in part-time or summer jobs that provide great opportunities for learning important life skills and acquiring hands-on experience. Federal and state rules regarding young workers strike a balance between ensuring sufficient time for educational opportunities and allowing appropriate work experiences.

TIPS for Achieving and Maintaining Compliance with Youth Employment Laws*

Train Employees	Identify Violations	Promote Compliance	Share Accountability
<ul style="list-style-type: none"> + Obtain compliance-assistance materials (posters, fact sheets, employer's guides and forklift stickers) from www.youthrules.dol.gov or request training from your local Wage and Hour Office. + Incorporate youth employment laws and company policies regarding the employment of youth into training and orientation seminars for managers and teens. + Provide a worksheet for youth to sign as part of initial training to test and verify their awareness of what Equipment is off limits to them and what hours they can work . + Attach a monthly youth safety reminder to a paycheck or time card. + Conduct refresher training for all levels of management at regular staff meetings or special training sessions. 	<ul style="list-style-type: none"> + Designate a youth employment compliance director whose responsibility is to monitor compliance. + Conduct unannounced inspections of your establishment or branch location. + Make checking for compliance a regular part of any routine quality or store inspection. + Monitor the hours and times worked by youth under the age of 18 at the time payroll data is collected, and track and transcribe any violations. + Establish a hotline for employees/parents/ the public to report potential problems or concerns. + Take time to Interview youth at some regular interval to question them on the types of equipment they are operating. 	<ul style="list-style-type: none"> + Create a "buffer zone" to prevent employees from being scheduled up to the latest time or longest shift that could be worked. + Prepare two separate schedules: one for employees under age 18 and one for employees aged 18 and over. Only permit shift swapping among employees on the same schedule. + Require a manager's signature on the schedule for all shift swaps. + Verify the ages of all youth by requiring legally-acceptable proof of age at the time of hiring. + Post the hours that youth can work next to the time clock. + Color-code time cards, badges and/or uniforms so that youth can be easily identified. + Post a warning sticker or a stop sign on hazardous equipment. 	<ul style="list-style-type: none"> + Encourage youth to say "no" to a manager who is asking them to work too late or to operate hazardous equipment. + Add "monitoring to maintain compliance" to job descriptions of managers . + Include "compliance with youth employment laws" as a performance factor in managers' reviews and recognize those who successfully maintain compliance on their shifts, in their departments or at their branch locations. + Test youth about their understanding of policies and safety procedures before they start work. + Send a letter to the parents of newly-hired teens informing them of the youth employment laws and who to contact to report any concerns.

Information about YouthRules! can be found at www.youthrules.dol.gov. For information about the laws administered by the Wage and Hour Division, log on to www.dol.gov/whd/regs/compliance/whdfs43.pdf, or call the Department of Labor's toll-free helpline at 866-4USWAGE.

Different rules apply to farms, and state laws may have stricter rules.

Workers' Compensation Appeal Board Schedule of Hearings for 2021



WORKERS' COMPENSATION APPEAL BOARD SCHEDULE OF HEARINGS FOR 2021

Please note that the WCAB may add hearing dates for electronic Hearings (telephonic and/or video) to the dates specified below.

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
PHILA		2, 3, 4		6,7,8		8, 9, 10		3, 4, 5		13, 14, 15	30	1, 2
PITTS	20, 21		2, 3		5, 6		7, 8		14, 15		9, 10	
HBG	5, 6		16, 17		19, 20		21, 22		28, 29		17, 18	
SCRN		17, 18		20, 21		23, 24			1, 2	26, 27		15, 16
ERIE					4		6				8	

ALFONSO FRIONI, JR, ESQ., CHAIRMAN

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James A. Zurick, Esq. David H. Wilderman, Esq.

Secretary Steven Loux, Esq.

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A View from the Bench

***Stahl v. East Hempfield Township* (Pa. Commw. No.1575 C.D. 2019, filed August 14, 2020), ___A.3d___, 2020 WL 4723100 (Pa. Commw. 2020)**

On Oct. 26, 2020, the Commonwealth Court granted an Application to Publish *Stahl v. East Hempfield Township*, (*Stahl II*)

In *Stahl II*, the Commonwealth Court affirmed the decision of the Workers' Compensation Judge and Appeal Board, which denied the claimant's claim petition for failure to provide timely notice under Section 311 of the Act.

By way of background, as set forth in *East Hempfield Township v. Workers' Compensation Appeal Board (Stahl)*, 189 A.3d 1114 (Pa. Cmwlth. 2018) (*Stahl I*), the claimant began working as a volunteer firefighter for East Hempfield Township in 2002. Prior to that, he worked as a volunteer firefighter for other departments since 1974. In 2006, claimant was diagnosed with stomach cancer. He was unable to work while undergoing treatment for approximately six weeks. Thereafter, he returned to work as a fire police officer and no longer assumed the duties of a firefighter. He retired effective Oct. 29, 2008. On Nov. 10, 2014, he filed a claim petition, alleging that he sustained stomach cancer due to exposure to carcinogens during his tenure as a volunteer firefighter for employer. He sought payment of medical bills and full disability benefits from April 1 to June 1, 2006.

He testified that as early as 2006 or 2007, he suspected that there might be a connection between his firefighting duties and his cancer. He obtained legal counsel in August of 2012, to discuss the connection between his employment and his cancer diagnosis. He testified that the first time he received any indication from a doctor that his service as a firefighter caused his cancer was Sept. 16, 2014. Thereafter he filed a claim petition.

By decision and order dated Aug. 31, 2015, the worker's compensation judge granted the claim petition. Employer appealed to the board. By opinion and order dated July 20, 2016, the board opined that the judge erred in applying an inapplicable presumption and remanded the matter to the judge to issue a decision without applying the presumption. On remand, the judge again granted the claim petition. The judge found that the claimant had provided timely notice of his cancer within 120 days, applying a "discovery rule" that the 120-day notice period did not begin to run until the claimant knew or, by the exercise of reasonable diligence, had reason to know of the injury and its possible relationship to his employment. Employer again appealed to the board. By opinion and order dated July 6, 2017, the board affirmed the workers' compensation judge's decision. On the issue of notice, the board found no error in the judge's determination that the notice period did not begin to run until claimant received his doctor's report on Sept. 16, 2014, informing him of the causal link between his cancer and firefighting.

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Employer filed an appeal to the Commonwealth Court arguing that the board erred by concluding that claimant provided adequate notice of his cancer, because the board failed to analyze whether the claimant exercised reasonable diligence to discover the origins of his cancer. By opinion and order dated June 1, 2018, the court held that the board failed to properly analyze whether the claimant provided timely notice pursuant to Section 311, and remanded the matter to the board with instructions to remand to the judge for the issuance of a new decision. The judge then issued a decision and order on Nov. 20, 2018, denying the claim petition for failure to provide notice pursuant to Section 311 of the Act. The crux of the issue was not when the claimant actually knew of the work-relatedness of his diagnosis, but when, through the exercise of reasonable diligence, he should have known of the work-relatedness of his injury. The workers' compensation judge found that to do nothing for a period of 19 ½ months could not be construed as an exercise of reasonable diligence. Claimant appealed the decision, which was affirmed by the board. Claimant then petitioned the Commonwealth Court for review.

In *Stahl II*, the court stated that the determination of whether a claimant has satisfied the notice requirement of Section 311 of the Act is fact specific and no one fact, including the date on which a claimant obtains a medical report establishing causation, is dispositive. The court noted that the inquiry is not simply whether the claimant knew or should have known that his firefighting caused his stomach cancer, but whether claimant could have discovered the work-relatedness through the exercise of reasonable diligence. Thus, the court considered whether there was substantial evidence of record to support the judge's finding that the claimant failed to exercise reasonable diligence in ascertaining a causal relationship between his cancer and his work activities. The court noted that the workers' compensation judge found the record was devoid of any action of the claimant between retaining counsel in August of 2012, and obtaining a medical report in September of 2014, which it held constituted substantial evidence to support the judge's findings. Thus, the Commonwealth Court found that the board did not commit an error of law by affirming the workers' compensation judge's conclusion that the claimant failed to provide timely notice pursuant to Section 311 of the Act.

The claimant has filed a petition for allowance of appeal to the Supreme Court.

Gabriel v. WCAB (Procter and Gamble Products Co.), ___ A.3d ___, WL 5491931 (Pa. Cmwlth., filed September 11, 2020).

In *Gabriel v. WCAB (Procter and Gamble Products Co.)*, the Commonwealth Court, reversing the WCJ and Appeal Board, held that the employer's dispute over a medical-only claim did not constitute a reasonable contest and remanded the case for calculation of attorney fees.

The claimant sustained a puncture wound of the left upper arm but did not miss any time from work. The employer had notice of the injury and promptly paid medical bills but did not issue a Notice of Compensation Payable (NCP) or Notice of Compensation Denial (NCD) within 21 days as required by the Act. Claimant filed a claim petition alleging an injury consisting of a "puncture wound to the left elbow, causing permanent numbness in the left elbow region." Employer filed an answer denying every allegation. After several hearings before the WCJ, the claimant ultimately produced a medical report establishing he had sustained a puncture wound with permanent numbness. When the claimant declined to resolve the claim by stipulation, the employer unilaterally issued a Medical-Only NCP for a "punctured left upper arm." The WCJ's decision granted the claim petition consistent with the claimant's medical evidence but declined to assess a penalty or award attorney fees, and the Appeal Board affirmed.

In its reversal, the court relied upon its prior cases, *Waldameer Park, Inc v. WCAB (Morrison)*, 819 A.2d 164 (Pa. Cmwlth. 2003) and *Lemansky v. WCAB (Hagan Ice Cream Co.)*, 738 A.2d 498 (Pa. Cmwlth. 1999). The court noted the employer committed a clear violation of the Act when it failed to issue a NCP. As a result, the claimant was forced to hire an attorney to file a claim petition to obtain recognition of the claim and secure his future rights. The court found it significant the employer initially denied all allegations, forcing claimant to produce factual and medical evidence of an injury of which employer had notice from the beginning. The court distinguished the case relied upon by the employer, *Brutico v. WCAB (USAirways, Inc.)*, 866 A.2d 1152 (Pa. Cmwlth. 2004) where, in the claim petition litigation, the claimant alleged more extensive injuries than that which the employer already had knowledge and for which it had paid. Here, it was evident employer's administrator acknowledged the injury and paid the medical bills. Significantly, at the initial hearing, the employer's counsel informed the WCJ it did not deny the claimant had

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sustained a puncture wound and did not anticipate having him examined if he was attempting to establish the injuries alleged in his claim petition.

The court observed that the purpose of the statute permitting an award of attorney's fees for an unreasonably contested award of compensation is to deter unreasonable contests by employers and to ensure that a successful claimant receives compensation undiminished by necessary costs of litigation. Significant to the instant matter, where the claimant did not miss time from work and the medical bills were already paid, it further shows a legislative intent of protecting claimants against unreasonable contests where a monetary award is not possible.

Burk v. WCAB (School Dist. of Phila.), No. 491 C.D. 2020, filed December 22, 2020, 2020 WL 7587151 (unreported, Pa. Commw. 2020)

WHITFIELD PRECEDENT UPHELD

Commonwealth Court affirmed the May 7, 2020 order of the WCAB finding that claimant was entitled to reinstatement of his total disability status as of the date his reinstatement petition was filed. In the appeal to the Commonwealth Court, claimant presented two issues for the Commonwealth Court to review:

1. whether the board misapplied *Whitfield v. Workers' Compensation Appeal Board (Tenet Health System Hahnemann LLC)*, 188 A.3d 599 (Pa. Cmwlth. 2018) (en banc), by limiting claimant's reinstatement of total disability benefits to the date he filed the reinstatement petition pursuant to *Protz v. Workers' Compensation Appeal Board (Derry Area School District)*, 161 A.3d 827 (Pa. 2017) (*Protz II*); and

2. alternatively, to the extent *Whitfield* limited claimant's reinstatement of disability status to the date the reinstatement petition was filed, whether such a limitation is consistent with the letter and spirit of the Pennsylvania Supreme Court's holding in *Protz II*.

The facts and timeline are not in dispute. Claimant injured his knee in 2002 and was paid benefits voluntarily. After he received 104 weeks of TTD, employer received an IRE finding that claimant was less than 50% impaired. On March 20, 2014, employer filed a petition to modify compensation benefits from total to partial disability effective Sept. 23, 2013, based on the IRE.

On April 17, 2015, the WCJ granted employer's modification petition. Claimant did not appeal.

On Sept. 18, 2015, the Commonwealth Court decided *Protz I*, finding that former Section 306(a.2) of the Workers' Compensation Act was an unconstitutional delegation of legislative authority because it proactively approved the Impairment Guides' editions beyond the Fourth Edition without review. On June 20, 2017, the Supreme Court issued *Protz II*, striking down Section 306(a.2) of the Act on the basis that the IRE provisions violated the Pennsylvania Constitution's non-delegation doctrine by prospectively approving the Impairment Guides' editions beyond the Fourth Edition without review.

On July 18, 2017, before the 500 weeks of his partial disability expired, claimant filed a reinstatement petition seeking to nullify the modification of his benefits and to reinstate his total disability status because *Protz II* rendered the IRE unconstitutional. On June 5, 2018, the WCJ partially granted the reinstatement petition, awarding claimant total disability benefits as of June 20, 2017, the day *Protz II* was issued. Employer's had also filed a termination petition that was denied. Both parties appealed.

On June 6, 2018, Commonwealth Court issued the *Whitfield* decision, ruling that a claimant is entitled to reinstatement based on *Protz II* as of the date the reinstatement petition was filed if he remains disabled. On Feb. 28, 2019, the WCAB remanded *Burk* to the WCJ to re-open the record and permit the parties to seek appropriate remedies in accordance with the changes in the law following *Protz II*. On Oct. 11, 2019, having concluded that claimant remained disabled due to his work injury, the WCJ again partially granted the reinstatement petition but, pursuant to *Whitfield*, changed the effective reinstatement date to July 18, 2017, the day claimant filed the reinstatement petition. Claimant appealed to the board, asserting that *Whitfield* had been improperly decided, and that his reinstatement should date back to the IRE of Sept. 23, 2013. On May 7, 2020, the board affirmed the WCJ's decision. Claimant appealed to the Commonwealth Court with arguments noted above.

The Commonwealth Court determined that in this case, as in *White v. WCAB (City of Philadelphia)*, 237 A.3d 1225 (Pa. Commw.2020) claimant had his workers' compensation benefits modified from total

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to partial disability based on a 2013 IRE, did not appeal from that decision, and did not file his reinstatement petition challenging his IRE until after *Protz II* was decided. *White* was decided within the letter and spirit of *Protz II* and is binding precedent. Accordingly, the board properly determined that claimant, Burk, is entitled to reinstatement of his total disability status as of the date his reinstatement petition was filed.

***Holy Redeemer Hosp. Systems v. WCAB (Figueroa)*, Pa. Commw. No. 372 C.D. 2020, filed Dec. 31, 2020, ___ A.3d ___, 2020 WL 7778193 (Pa. Commw. 2020)**

In *Holy Redeemer Hosp. Systems v. WCAB (Figueroa)*, the Commonwealth Court, affirming the Appeal Board, held that a claimant provided timely notice of her injury on the 121st day after her injury, as the 120th day fell on a Sunday.

The claimant was employed as a nurse at Holy Redeemer Hospital. On July 25, 2015, she developed pain in her leg. She did not provide notice until Monday, Nov. 23, 2015, or 121 days after the injury. The employer issued a Notice of Temporary Compensation Payable, but then timely revoked it. Nine months later, claimant filed a claim petition. The Workers' Compensation Judge credited the claimant's medical proof, but dismissed the case under Section 311, 77 P.S. § 631 (notice required within 120 days of injury).

The Appeal Board reversed, awarding benefits, and the court affirmed. As the 120th day fell on a Sunday, the obligation to give notice fell on the following Monday. Thus, notice was timely even though effected on day 121. The Statutory Construction Act provides, relevantly, "Whenever the last day of any such period shall fall on Saturday or Sunday,...such day shall be omitted from the computation." Section 1908 of the Statutory Construction Act, 1 Pa. C.S. § 1908. This law applied to "any period of time...referred to in any statute."

The court rejected the employer's argument that, because the hospital was a 24/7 operation, claimant could have provided notice on Sunday. The court stated, "Equally problematic is the lack of any language in Section 311 to support employer's position that the 120-day notice period is determined by the type of business in which the employer is engaged."

***Omni Pharmacy Services, LLC v. Bureau of Workers' Compensation Fee Review Hearing Office (American Interstate Insurance Company)*, 241 A.3d 1273 (Pa. Commw. Ct., filed Oct. 30, 2020, Leavitt, P.J.).**

Commonwealth Court, in October 2020, held that the insurance carrier, as a condition precedent to challenging lack of causal connection in the face of a provider's fee review application, must first have filed for utilization review of the treatment in question. The court, in so holding, reaffirmed the holding of *Workers' First Pharmacy Services, LLC v. Bureau of Workers' Compensation Fee Review Hearing Office (Gallagher Bassett Services)*, 225 A.3d 613 (Pa. Commw. 2020). The insurance carrier has sought review by the Pennsylvania Supreme Court.

There, the claimant sustained a work-related left ankle fracture in September 2017 and had received compensation. In 2018, the treating provider prescribed pain-killing compound creams, for which the carrier denied payment. Consequently, the provider (the pharmacy which had dispensed the compound creams) filed fee review applications. The Medical Fee Review Section issued determinations in the provider's favor, and directed the carrier to satisfy the outstanding charges. The carrier appealed to the Fee Review Hearing Office, which vacated the determinations on the basis that there existed a dispute as to causal relationship, thereby divesting the Hearing Office of jurisdiction. The provider appealed to the Commonwealth Court, which has now reversed.

In ordering payment, the court noted that the employer had – fatally – *not* first requested utilization review. Though the employer had sought to distinguish the precedent *Workers' First Pharmacy* as applying only to matters where a compromise and release was involved, the court rejected that argument. The court stated, "How an employer's liability is established is irrelevant... What is relevant is that, here, employer accepted liability for claimant's work injury. As in *Workers' First Pharmacy*, employer is challenging whether the compound cream prescribed to claimant constituted reasonable and necessary treatment for the accepted work injury." The court declared, "Simply, 'if the compound cream was prescribed for a non-work-related injury of [the claimant], *a fortiori* it is not reasonable or necessary for treatment of [the] accepted work injury.'"

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To reiterate, the insurance carrier, as a condition precedent to challenging lack of causal connection in the face of a provider's fee review application, must first have filed for utilization review of the treatment in question.

Harrisburg Area Comm. College v. Penna. Human Relations Commission, ___ A.3d ___ (Pa. Cmwlth., filed October 29, 2020).

In Harrisburg Area Comm. College v. Penna. Human Relations Commission, the Commonwealth Court held that Harrisburg Area Community College was not required to accommodate a nursing program student who lawfully used medical-marijuana in accordance with the Pennsylvania Medical Marijuana Act (MMA).

The student was enrolled in a college nursing program that involved both classwork and clinical training. The college required all students to submit to a urine screening test for the presence of drugs. The student requested permission to be excused from testing for marijuana, alleging she suffered from disabilities for which her doctor prescribed medical marijuana pursuant to the MMA. The college refused, and the student filed a complaint with the Pennsylvania Human Relations Commission (PHRC) alleging violations of the Pennsylvania Human Relations Act (PHRA) and the Pennsylvania Fair Educational Opportunities Act (PFEOA). The college filed a motion to dismiss the complaint, arguing neither law required the accommodation for medical marijuana. The PHRC denied the motion, and the Commonwealth Court granted the college's permissive appeal.

The court recognized that both the PHRA and the PFEOA require employers, public accommodations, and schools to make reasonable accommodations for qualified individuals with disabilities; however, neither law requires accommodations of current users of illegal drugs. The court held that nothing in the MMA changes the critical analysis.

The PHRC argued on behalf of the student that her marijuana use was lawful because she used the drug in compliance with the MMA. The court noted the student's marijuana use was unlawful under both the PHRA and the PFEOA. The two laws referenced the Federal Controlled Substances Act (CSA), not the MMA. The Federal Act still lists marijuana as a Schedule I controlled substance with no medically acceptable use. The Pennsylvania legislature did not change or delete the reference to the CSA in the two laws when it enacted the MMA. The court determined the legislature's failure to amend the laws when it enacted the MMA evidenced a legislative intent to prohibit disability discrimination claims under the two laws relating to the use of medical marijuana. Further, the MMA does not address postsecondary education, and nothing in the MMA's employment discrimination provisions changed the outcome.

In a concurring opinion, Judge Covey urged the Pennsylvania legislature to amend the PHRA and the PFEOA to ensure individuals with disabilities are afforded the benefits created in the MMA.

The court's decision suggests that an employee cannot sue his or her employer under the PHRA for failing to accommodate medical marijuana usage. On a broader scale, perhaps relevant to injured workers, the MMA does prohibit employers from taking adverse actions against employees due to their status as a certified medical marijuana user, with prescribed limitations. Specifically, the MMA does not limit an employer's right to discipline an employee for being under the influence of medical marijuana in the workplace or for conduct falling below standards of normal care while under the influence of medical marijuana. Further, the MMA does not require an employer to commit any act which would put it in violation of Federal law. Lastly, the MMA allows employers to prohibit users from performing duties which could result in a public health or safety risk while under the influence of medical marijuana.

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