



News & Notes

Vol. 27 | No. 1

"Serving all Pennsylvanians"

Winter 2021-22

A Note from the Director, Marianne Saylor

The Bureau of Workers' Compensation has risen to the challenge of focusing on customer service by creating and implementing improvements for our stakeholders. In October, the bureau went live with an electronic payment portal which allows for fund assessments to be paid without the need for paper checks or the USPS. This easy-to-use system is available 24/7 and can process payments up to \$25,000. Larger amounts can be handled electronically as well with the assistance of bureau staff. Additional improvements are coming as we make significant enhancements to WCAIS with digital transformation and process improvements. Please keep an eye out for stakeholder surveys because we want to hear from you!

Annual Workers' Compensation Conference

The bureau is moving forward with plans to hold the Annual Pennsylvania Workers' Compensation Conference in person on June 6-7, 2022 at the Hershey Lodge and Convention Center. To ensure the safety of our attendees, at this time, attendance will be limited and masking will be required. Please continue watching the bureau's website for further information regarding the conference.



Workers' Compensation Automation
and Integration System

WCAIS Digital Transformation Phase 1.2 will be Released March 4

This phase will include claims summary, EDI, officer and religious exemptions, occupational disease payments and Supersedeas Fund Reimbursement process. Screens and process flows will have a different color scheme, look, and feel, while the content remains the same. Watch alerts and read our email blasts. More information is coming your way!!

How are YOU Paying Workers' Compensation Assessments?



PA Workers' Compensation Assessments can now be paid electronically via ACH or EFT. To initiate the secure ACH/EFT annual assessment payment, visit our [online payment site](#).

Please have your assessment notice available for guidance. For other electronic payment options, please contact LI-BWC-ASSESSMENTS@pa.gov.

Inside This Issue

It's Time to Apply - 2022 Governor's Award for Safety Excellence.....	2
PA Training for Health & Safety (PATHS)	2
Workplace Safety Committee Certification	2
2022 Fee Schedule Available	2
Claims Corner	3
YouthRules!	4
Kids' Chance of PA.....	4
Michelle Matz – Named Chief of Healthcare Services Review Division ...	4
A View from the Bench	5

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 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)

▼ It's Time 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 36,000 individuals in 48 states and 14 countries. Safety training on 218 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 \$843 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 12,800 workplace safety committees already certified in Pennsylvania and representing over 1.6 million employees have accumulated more than \$843 million in total savings just from the 5 percent workers' compensation insurance premium discounts. That is money being re-invested to

expand businesses and implement further safety and prevention efforts.

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.

▼ 2022 Fee Schedule

The 2022 Fee Schedule has been posted and is [available here](#).

▼ Claims Corner

Notification of Suspension or Modification (LIBC-751) Revised

On Dec. 22, 2021, Governor Tom Wolf signed Act 95 (House Bill 1837) into law. This act amended Section 413(c) & (d) of the PA Workers' Compensation Act such that an affidavit is no longer required on the Notification of Suspension or Modification Pursuant to 413(c) & (d) – LIBC 751, effective Feb. 20, 2022.

The Bureau of Workers' Compensation has revised the Notification of Suspension or Modification, LIBC-751, to comply with Act 95. The notification now includes two verification boxes which must be checked before the document is signed. The notification must still be sent to the claimant and the bureau within seven days of the modification or suspension of benefits. Due to the substantive change to the form, the revised form must be used beginning Feb. 20, 2022. After March 2, 2022, prior versions of the form will be marked incomplete.

Please upload completed forms into WCAIS. Filing in WCAIS is available 24/7 and reflects a "filed date" when uploaded. This practice offers cost savings, timely filing to the bureau without the need for a valid US Post Mark and makes the document available for instant viewing by all parties to the claim. Uploading can be done within the Action Tab of a claim, using the "Document Type" "Notification of Suspension or Modification (LIBC-751) in the tab's drop-down list. The form may also be mailed to the bureau for filing. The revised form is [available here](#).

LIBC-90 Now Returned in Your Acknowledgements (ACKs)

After conversations with claim administrators, BWC began returning the LIBC-90 (First Report of Injury) on January 7, 2022, as we do with the four Forms Solution forms (NCP, NTCP, NCD, and Notice Stopping). Our system returns the LIBC-90 PDF in the Acknowledgement (ACK) for all accepted FROI 00, FROI 04, and FROI AU transactions.

Maintaining Claims in WCAIS

BWC has been working jointly with claim administrators on a large project to make sure their claim records match WCAIS. Many claim administrators have responded to our clean-up efforts, requesting their lists, reviewing the claims, and submitting the applicable EDI transactions to update claims. Any filers who aren't familiar with this project or have yet to request your list of eligible claims, please reach out to get started today by sending an email to RA-CMDEDI@pa.gov. It's crucial to have accurate claim details in WCAIS. If you are handling a claim involving any of the

following, you are required to submit EDI to report a change to the claim :

- an Agreement form (LIBC-336, LIBC-337, LIBC-338, LIBC-339, LIBC-340)
- a Notification of Suspension or Modification (LIBC-751)
- litigation has concluded, and the decision has changed the claim status

Any required form(s) must still be sent to the claimant and the bureau for any events modifying or suspending a claim, except litigation. Remember, if you're keeping up with all required EDI as they occur, you shouldn't have any claims on your pending list!

Uploading Documents to WCAIS

One of the goals in developing WCAIS was to be "Greener." Please help us with this effort. Documents that once needed to be mailed to the bureau can now be uploaded directly onto the claim. Frequently used claim forms can be selected from the Upload Documents link's drop-down options on the Actions tab of any claim. Don't see what you are looking for there? Click on the Documents and Correspondence Tab, where you can upload any document not listed on the other tab.

Records requests can also be uploaded directly into WCAIS and returned the same way via our Records Request Dashboard. This easy one-stop shop, just like the document uploading, saves on mailing costs, allows for faster turnaround of review/processing, easy access (for up to 90 days for record responses!), instant viewing by parties, and the processes are eco-friendly.

If you aren't taking advantage of both options, we urge you to get started today!

2022 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 January 1, 2022, shall be \$1,205.00 per week. For purposes of calculating the update to payments for medical treatment rendered on and after Jan. 1, 2022, the percentage increase in the statewide average weekly wage is 6.6 percent.

The notice was published in the Dec. 11, 2021's *Pennsylvania Bulletin*, and the complete wage table is [available here](#).

▼ Claims Corner (Cont'd.)

Records Request Dashboard

In our continued efforts to make the online records process more appealing for use, we added a "Done" column for users to quickly identify incomplete records in their Available Records Requests Grid of

the Records Request Dashboard. When you have finished with any response, mark the box to indicate that the response has been addressed. Please note that utilizing this column will not affect your records' access or availability dates in any way, and the box can simply be unchecked if clicked in error. To easily group all incomplete requests, simply click the column header.

▼ 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

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.](#)

▼ Kid's Chance of Pennsylvania

Kids' Chance of Pennsylvania is dedicated to helping the 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 scholarships to more than 900 students amounting to more than \$2.2 million in scholarship assistance. During the 2020-2021 academic year,

54 scholarships were awarded to students, totaling more than \$153,750.

The scholarships were made possible due to the generous contributions made by scholar sponsors, corporate and community partners, and donors. Donations can be made online, by check or through the United Way.

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.

▼ Michelle Matz Named Chief of Healthcare Services Review Division



Michelle Matz is a registered nurse who came to the bureau in August 2021 as the Medical Fee Review Examiner RE Supervisor. She has been with the Commonwealth for 14 years. Prior to L&I, she was the Chief Nursing Officer for the Bureau of Veterans' Homes with the Department of Military & Veterans' Affairs. Most of her nursing career has been spent in long-term care, but she also has experience in acute care, home health, and public health. Michelle spends most of her time with her three adult children, four grandchildren, two kittens, and a dog. She loves nature, the outdoors, and trying something new. Congratulations Michelle!

▼ A View from the Bench

Dilaqua v. WCAB (City of Philadelphia), No. 1262 C.D. 2020, 2021 WL 0607766, decided Dec. 23, 2021. In August of 2018, claimant filed a claim petition for reactive airways disease due to his occupation as a firefighter since 2003. The claim was “medical only” because claimant was out of work due to an elbow injury, not the pulmonary injury. The workers’ compensation judge granted the claim for occupational disease for medical benefits finding that claimant’s occupation as a firefighter caused his pulmonary condition. Employer appealed to the WCAB arguing that

because claimant did not show disability, the presumption could not be applied, and claimant’s medical did not support that claimant’s pulmonary condition was work-related. The WCAB reversed the ruling of the workers’ compensation judge. The claimant appealed to the Commonwealth Court.

Section 108(o) of the act provides: diseases of the heart and lungs, resulting in either temporary, permanent total, partial disability, or death, after four years or more of service in fire fighting for the benefit or safety of the public, caused by extreme over-exertion in times of stress or danger or by exposure to heat, smoke, fumes or gasses, arising directly out of the employment of any such firemen.

Section 301(e) the “presumption” section provides: if it be shown that the employe, at or immediately before the date of disability, was employed in any occupation or industry in which the occupational disease is a hazard, it shall be presumed that the employe’s occupational disease arose out of and in the course of his employment, but this presumption shall not be conclusive.

The Commonwealth Court held that the WCAB erred by ruling claimant had to prove disability/earnings loss before the workers’ compensation judge could apply the presumption in this case. Rather, for the presumption to apply to this medical-only claim, claimant only needs to prove that he suffered from an occupational disease. The court acknowledged prior holdings stating disability is a condition precedent to applying the presumption, but noted no cases held that a claimant suffering from an occupational disease was not entitled to payment of medical expenses. The court found such a holding would be contrary to the act, 306(f.1) (1) and other settled doctrines of the court. The court found the Section 301(e) requirement to prove disability “illogical” since the presumption only relieves claimant of proving that the occupational disease arose in the course of employment. The Commonwealth Court cited two occupational disease cases that provide medical treatment should be paid despite no wage

loss. The Commonwealth Court then reviewed the evidence as found by the workers’ compensation judge and remanded the case back to the board and workers’ compensation judge to apply the correct legal principles.

Carbon Lehigh Intermediate Unit #21 v. Waardal (W.C.A.B.), No. 750 C.D. 2021, filed Jan. 3, 2022, 2022 WL 15825, ___ A.3d ___ (Pa. Cmwlth. 2021).

In Carbon Lehigh Intermediate Unit #21 v. Waardal (W.C.A.B.), the Commonwealth Court held that an employer is not entitled to an unemployment compensation (UC) credit relative to monies the claimant received under the Federal Pandemic Unemployment Compensation program established by the CARES Act. The claimant, Waardal, was successful in obtaining a reinstatement of workers’ compensation benefits. Claimant had received both UC and CARES Act compensation, and the employer sought credit for the CARES Act benefits pursuant to Section 204(a) of the act. Section 204(a) provides that, where an employee receiving workers’ compensation benefits is also receiving UC benefits, the employer paying workers’ compensation benefits is entitled to a credit in the amount of UC benefits received. Employer argued Section 204(a) makes no distinction as to the funding source of the UC benefits. In rejecting the employer’s argument, the Commonwealth Court applied, by analogy, its precedent holding that an employer was not entitled to a credit under Section 204(a) relative to trade readjustment allowance monies a worker receives under the Trade Act of 1974. See Dietrich Indus. v. WCAB (Shank), 725 A.2d 252 (Pa. Cmwlth. 1999) (TRA benefits were “distinct from the types of benefits contemplated” under Section 204(a)). The court noted that Pandemic Compensation is available to individuals who are not otherwise eligible to receive “regular” UC benefits, and the CARES Act provides for federal reimbursement of the amounts paid by a state for Pandemic Compensation. Furthermore, Pandemic Compensation is referenced separately from “regular compensation” throughout the CARES Act. The court noted the legislative intent behind Section 204(a) is to prevent an employer from having to pay duplicate benefits for the same loss of earnings, and the legislature had not amended Section 204(a) in the two decades following its decision in Shank. As such, reasoned the court, “Disallowing a credit for Pandemic Compensation benefits wholly paid for by another entity does no disservice to the overall purpose of Section 204(a), nor does it place employer in the position of paying duplicate benefits for the same loss of earnings.”

Cont’d. on Page 6

A View from the Bench

Cont'd. from Page 5

In a highly anticipated decision, the Pennsylvania Supreme Court held in ***Keystone Rx LLC v. Bureau of Workers' Compensation Fee Review Hearing Office***, (No. 27 EAP 2020; 2021 WL 6057884) that the Commonwealth Court erred by prospectively requiring that, as a matter of due process, non-treating providers like pharmacies and durable medical equipment companies be given notice and an opportunity to intervene in utilization review ("UR") proceedings. The Supreme Court reasoned that non-treating providers do not have a constitutionally protected property interest in receiving payment for the goods or services they provide under a physician's orders at the time of UR proceedings. Instead, non-treating providers have only an expectation of payment that is not realized *until* there is a determination that the goods or services provided are reasonable and necessary. Since expectations as compared to property interests are at play, due process protections are not triggered requiring that notice and an opportunity to intervene in UR proceedings be afforded non-treating providers. In his concurring opinion, Justice Wecht aptly observed: "Non-treating providers are free to recalibrate their businesses to adjust to the legislature's decision to impose upon them the risk of non-payment for treatment that is later determined not to be reasonable or necessary. But [the court is] not free to recalibrate the statutory law."

In Pennsylvania Physical Therapy Association v. Honorable W. Gerard Oleksiak, Secretary of Labor and Industry, (No. 2 M.D. 2020; filed Oct. 14, 2021), the Commonwealth Court sitting *en banc*, reversed the secretary's adjudication that the Center for Medicare and Medicaid Services' ("CMS's") 2017 HCPCS code changes for outpatient physical therapy ("PT") evaluations and re-evaluations constituted "new codes" under 34 Pa. Code Section 127.153(c) (rather than adjustments or modifications to existing service codes under 34 Pa. Code Section 127.153(b)). The secretary's adjudication would have permitted the introduction of a new, lower rate for PT evaluations using the rates allowed under the Medicare fee schedule on the effective date of the "new" codes.

By way of background, CMS had deleted the code for PT evaluation – 97001 – and replaced it with 3 new codes – 97161, 97162 and 97163; likewise, CMS deleted the code for PT re-evaluation – 97002 – and replaced it with code 97164. Before a hearing officer appointed under the General Rules of Administrative Practice and Procedure, the

Pennsylvania PT Association argued that the CMS changes were not new because the provider doing a PT evaluation is doing the same work as before 2017, and the introduction of codes 97161-97163 simply allow the provider to specify the complexity of the patient's condition, resulting in better tracking of the patient's progress. The PT Association also noted that the description for code 97164 is virtually identical to code 97002. The hearing officer issued a proposed adjudication, finding that any change of description to the codes did not identify a new *service* for which a new rate could be imposed. The Bureau of Workers' Compensation ("bureau") filed exceptions to the hearing officer's proposed adjudication, which the secretary sustained.

In reversing the secretary, the Commonwealth Court noted that the length or extent of changes to a code description is irrelevant, and the bureau presented no evidence that more work is required for a PT evaluation under the 2017 codes than before. In fact, a contrary suggestion is "illogical" since the department reduced the payment rates for the PT evaluations. The court stated: "The term 'new code', as used in 34 Pa. Code Section 127.153(c) is synonymous with 'new service.'" The court remanded the case back to the secretary for a recalculation of the allowable fees for PT evaluations and re-evaluations pursuant to 34 Pa. Code Section 153(b). Hence, the 2017 code changes are to be incorporated into the department's fee schedule using the statewide average weekly wage to update the 2016 fees.

Lorino v. W.C.A.B. (Commonwealth of Pennsylvania), No. 8 EAP 2021, filed Dec. 22, 2021, 2021 WL 6058030, ___ A.3d ___ (Pa. 2021)

In *Lorino v. W.C.A.B. (Commonwealth of Pennsylvania)*, the Supreme Court held that the Workers' Compensation Act does not preclude an award of attorney fees to a claimant when an employer establishes a reasonable basis for seeking a termination of benefits. In so ruling, the court determined that the Commonwealth Court's long-standing interpretation of Section 440 as a *per se* disqualification of an award of attorney's fees where the employer has established a reasonable basis for its contest is contrary to the plain language of the statute. Section 440(a) of the act provides, "In any contested case where the insurer has contested liability in whole or in part, including contested cases involving petitions to terminate ...,"

Cont'd. on Page 7

A View from the Bench

Cont'd. from Page 6

the employee ... in whose favor the matter at issue has been finally determined in whole or in part shall be awarded, in addition to the award for compensation, a reasonable sum for costs incurred for attorney's fees, witnesses, necessary medical examination, and the value of unreimbursed time to attend the proceedings: provided, that cost for attorney fees may be excluded when a reasonable basis for the contest has been established by the employer or the insurer" (emphasis added). In its decision below, the Commonwealth Court affirmed the board's order holding that the claimant was not entitled to attorney's fees, stating it has always interpreted Section 440 to mean that attorney's fees shall be awarded unless a reasonable basis for the employer's contest has been established; or otherwise expressed, the award of attorney's fees is the rule and their exclusion is the exception to be applied in cases where the record establishes that the employer's contest is reasonably based. Applying principles of statutory construction and the statute's plain language, the Supreme Court concluded the Commonwealth Court had disregarded the established meaning of the terms "shall" and "may," and failed to recognize the discretion afforded to the workers' compensation judge to award attorney's fees even when they find a reasonable basis for an employer's contest. The Supreme Court made clear it was not suggesting that an award of attorney's fees is mandatory under such circumstances, stating in a footnote it was "confident judges will apply their discretion based on the humanitarian and remedial purposes which underlie the WCA."

In ***Peters v. WCAB (Cintas Corp.)***, 263 A.3d 275 (Pa. 2021), the Supreme Court of Pennsylvania held that the workers' compensation judge, WCAB, and Commonwealth Court erred in concluding that claimant, a traveling employee, was not in the course of employment on his trip home following an employer-sponsored social event at a pub.

Claimant was employed by Cintas Corporation as a uniform sales representative. In this position, he would travel to meet with, and present products, to potential customers. On Feb. 27, 2015, claimant was engaged in sales appointments off the employer's premises. Following his last sales appointment, claimant attended an employer-sponsored event at a pub, the Tilted Kilt. After leaving this event, claimant was injured in a motor vehicle accident.

Claimant filed a claim petition, which was denied by the workers' compensation judge, finding that

claimant was not in the course of employment at the time of the accident. The WCAB affirmed.

The Commonwealth Court affirmed and concluded that claimant's homeward trip ended when he passed the highway exit to his home, in traveling to the Tilted Kilt. The Commonwealth Court rejected claimant's argument that because the event was employer-sponsored, he remained in the course of his employment. Accordingly, the court concluded that claimant was not in the course of employment and affirmed the denial of the claim petition.

The Supreme Court of Pennsylvania reversed and remanded. The court, having never specifically addressed the traveling employee doctrine, adopted the doctrine as set forth in Roman v. WCAB (Dept. of Env'tl. Res.), 616 A.2d 128 (Pa. Cmwlth. 1992). The doctrine provides that when a traveling employee is injured after setting out on the business of their employer, it is presumed that they were furthering the employer's business at the time of the injury. The employer bears the burden of rebutting the presumption by proving that the claimant's actions were so foreign and removed from his usual employment that they constitute abandonment.

In the present case, the court held that claimant established the elements to give rise to the presumption that he was in the course of employment, as a traveling employee. The court rejected employer's argument that because the event was not mandatory nor work-related, that claimant abandoned his employment when he passed the highway exit to his home and proceeded to the pub. The court found that claimant did not abandon his employment by attending the employer-sponsored social event, which were routinely held after sales blitzes. The voluntary and social nature of the event did not preclude a finding that the event was work-related. The event was employer hosted and sponsored. Even if work was not discussed, the event furthered employer's interests by fostering relationships and improving morale.

Although the court concluded that claimant did not abandon his employment by attending the Tilted Kilt event, there was an unresolved issue of whether claimant abandoned his employment sometime thereafter. The court remanded to the workers' compensation judge to resolve the conflicting evidence and determine whether

Cont'd. on Page 8

A View from the Bench

Cont'd. from Page 7

claimant's actions following the event at the Tilted Kilt constituted an abandonment of his employment.

On Sept. 28, 2021, the Commonwealth Court ordered that the previously non-reported decision of **City of Philadelphia v. WCAB (Thompson), 2021 WL 4448722** (originally filed May 26, 2021) be published.

In *Thompson*, a widow filed a fatal claim petition alleging that her late husband, a career firefighter for the municipality, had died of work-related lymphoma. The workers' compensation judge granted the fatal claim petition. On appeal, the WCAB denied supersedeas. Despite the supersedeas denial, the employer failed to pay on the award. The matter was ultimately remanded to the workers' compensation judge, and, in the meantime, the widow filed a penalty petition.

On remand, the employer argued that the widow had failed to establish her late husband's last day of work and time-of-injury wages, making it impossible to calculate a benefit rate. The employer further argued that in the original award

the workers' compensation judge had directed 50% of the annual weekly wage to be paid, as opposed to the statutory amount of 51%, making it further impossible to comply with the order.

The workers' compensation judge, board, and Commonwealth Court all awarded penalties.

The court held that the workers' compensation judge had not abused her discretion in awarding penalties. The workers' compensation judge noted that the wage data and employment information was within the employer's control, hence its defense that it could not comply without the widow providing this information was without merit. In regard to the employer's argument that it could not comply because of a flaw in the workers' compensation judge's decision, the court stated, "the act does not give the employer the right to self-help, i.e., the right to ignore the requirements of the act and unilaterally refuse to pay benefits without following the prescribed statutory remedies and obtaining supersedeas." Thus, a supersedeas order cannot be ignored.

*News & Notes is published quarterly by the Bureau of Workers' Compensation
Forward questions or comments about this newsletter to the Bureau of Workers' Compensation,
Attn: Margaret T. Day, Editor, 1171 South Cameron Street | Harrisburg, PA | 17104-2501*

*Secretary of Labor & Industry..... Jennifer Berrier
Deputy Secretary for Compensation & Insurance..... Scott Weiant
Director, Bureau of WC..... Marianne Saylor
Director, WC Office of Adjudication..... Joseph DeRita
Chairman, WC Appeal Board..... Alfonso Frioni, Jr.*

WC Web Information
www.dli.pa.gov