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PA WORKERS' COMPENSATION CASE LAW UPDATES **January-February 2020**

Fee Review:

Where a claim has been accepted and the Employer wishes to challenge the compensability of compound cream medications, the Employer must either a) file a Modification/Review Petition to change the scope of the accepted work injury or b) place the treatment under utilization review. In discussing the need for the Employer to pursue a Utilization Review of compound creams for accepted claims, the Opinion states, "Claimant may be under treatment for an array of medical problems, only some of which relate to the work injury. It is for the Utilization Review Organization (URO) to sort this out." . Workers' First Pharmacy, LLC v. Bureau of Workers' Compensation Fee Review Hearing Office, (Pa. Cmwlth. 2020) January 16, 2020.

The Bureau regulations and prior case law have limited the issues on Utilization Review to only the reasonableness and necessity of the medical treatment.

Reinstatement Petition:

As the Claimant was found to have wrongly refused a prior modified duty job offer leading to a suspension of benefits, the Claimant has the burden to demonstrate through the pendency of the subsequently filed reinstatement petition a change in condition such that the Claimant could no longer perform the modified duty job that had been offered. Accordingly, the Court suspended the Claimant's benefits as of October 24, 2016 (date of release to return to work by non-testifying treating physician) as opposed to August 8, 2017 (date of Employer's IME). Claimant's medical expert was found incredible. Tyson Shared Services, Inc. v. WCAB (Perez), (Pa. Cmwlth. 2020). February 3, 2020.

Litigation Costs:

The Commonwealth Court held that an employer cannot recoup litigation costs under section 440 from a claimant's counsel in the situation where the employer is denied supersedeas and it is later determined that the award of litigation costs was made in error. The Court relied upon the PA Supreme Court's Opinion in County of Allegheny v. WCAB (Parker), 177 A.3d 864 (Pa. 2018), which held that attorney fees could not be recouped from Claimant's counsel if it is determined on appeal that

attorney fees were not, in fact, payable. Crocker v. WCAB (Georgia Pacific LLC), (Pa. Cmwlth. 2020). January 30, 2020.

AWW-Seasonal Employee:

The Court determined that the Claimant was not a seasonal employee where the Claimant received a *yearly* salary and had obligations under his employment contract that were not confined to the regular football season. The Court instructed that when determining whether a Claimant is a “seasonal employee” for purposes of calculating the AWW, the specific Claimant’s employment obligations must be analyzed as opposed to the claimant’s occupation. Pittsburgh Steelers Sports, Inc. v. WCAB (Trucks), (Pa. Cmwlth. 2020) January 3, 2020.

Firefighter Cancer Case:

The Court found that the Claimant established that he was entitled to the statutory presumption that his lung cancer was caused by the occupation of firefighting and that the Employer failed to rebut the statutory presumption with substantial competent evidence that Claimant’s cancer was caused by something other than his workplace exposure to carcinogens linked to lung cancer. The Court found that the Employer’s expert opinion that the lung cancer was “most likely” caused by his significant personal risk factors, including his personal smoking history, was not sufficient to rebut the statutory presumption that the Claimant’s lung cancer was caused by exposure to carcinogens as a firefighter. Deloatch v. WCAB (City of Philadelphia), (Pa. Cmwlth. 2020) January 3, 2020.