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PA WORKERS' COMPENSATION CASE LAW UPDATES **June and July 2018**

Bureau Documents

The issuance of a Supplemental Agreement during a period in which the employer pays benefits pursuant to a Notice of Temporary Compensation Payable does not act as an admission of liability for the alleged work injury and the Notice of Temporary Compensation Payable may be revoked in accordance with the Act. The Court advised that an Amended Notice of Temporary Compensation Payable should be issued when a claimant's benefits status changes while the employer is paying benefits pursuant to a Notice of Temporary Compensation Payable. LifeQuest Nursing Center v. WCAB (Tisdale), (Pa. Cmwlth. 2018) July 19, 2018.

Termination Petition

Despite the WCJ finding the Claimant's testimony credible that he continues to experience pain resulting from the work injury, the Employer met its burden of proof on the Termination Petition based upon the medical expert's credible testimony that the Claimant had fully recovered from the work injury. Hernandez v. WCAB (F&P Holding Co.), (Pa. Cmwlth. 2018) July 19, 2018.

Subrogation

Where the Claimant receives a recovery from a third party legal action, the Employer is not entitled to seek reimbursement for future medical expenses from the employee's balance of recovery in satisfaction of its subrogation lien. The Court further explained that no credit can be applied to future medical bills because under Section 319 such credit only applies to "future installments of compensation", meaning indemnity benefits. Whitmoyer v. WCAB (Mountain County Meats), (Pa. 2018) June 19, 2018.

IRE

Because the Claimant filed her Reinstatement Petition within three years of the date of her last payment of compensation, she was entitled to seek modification of her disability status based upon the Protz Opinion, which found the IRE provisions of the Act unconstitutional. Whitfield v. WCAB (Tenet Health System Hahnemann LLC), (Pa. Cmwlth. 2018) June 6, 2018.

Notice

A Claimant does not “know” of the possible relationship between a disease and work until she is so informed by a medical expert. Because the Claimant gave notice to the Employer within 21 days of when she “knew” her cancer was work-related, she is entitled to benefits as of the date of disability. City of Pittsburgh and UPMC Benefit Management Services, Inc. v. WCAB (Flaherty), (Pa. Cmwlth. 2018) June 1, 2018.

In deciding whether the Claimant met the 120 day Notice requirement of the Act, the Court remanded the case to the WCJ to determine whether through the exercise of reasonable diligence, the Claimant should have known the work-relatedness of his injury. The Court emphasized that the Claimant must make a “reasonable effort” to discover the cause of his injury. East Hempfield Township v. WCAB (Stahl), (Pa. Cmwlth. 2018-unreported) June 1, 2018.

Subrogation

The Supreme Court held that where a public employee is receiving Workers’ Compensation Benefits and Heart and Lung Benefits concurrently, all of the benefits are treated as Heart and Lung Benefits for purposes of subrogation and in accordance with the MVFRL (Motor Vehicle Financial Responsibility Law), the employer does not have a right of subrogation for Heart and Lung Benefits paid to the claimant against claimant’s third party settlement recovery. PSP v. WCAB (Bushta), (Pa. 2018).

Borrowed Servant Doctrine

In deciding whether the injured employee was a “borrowed servant” of the named defendant, thereby shielding the defendant from tort liability under the exclusivity provisions of the Workers’ Compensation Act, the Court remanded the matter for trial to determine whether the defendant had sufficient control of the injured employee for the employee to be deemed a “borrowed servant”. Gardner v. MIA Products, (Pa. Sup. 2018).