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PA Workers' Compensation Case Law Updates

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Fee Review:

The Commonwealth Court issued a reported[1] decision on December 12, 2019 in Keystone RX v. Bureau of WC, 1369 C.D. 2008, in which Judge Leadbetter indicated that pharmacies and providers of medical supplies must be afforded notice and an opportunity to intervene in regards to Utilization Review Requests even though they are not considered health care providers. In this case, a pharmacy dispensed medications, including compound creams. A Utilization Review Determination found that those compound creams were unreasonable and unnecessary. The Claimant and Employer subsequently resolved the WC case by way of a Compromise and Release and the pharmacy thereafter filed a Fee Review alleging that they were not paid in excess of $3,600.00 for compound creams. The Fee Review Officer and subsequently the Commonwealth Court held that the pharmacy lacked standing in regards to the Fee Review because of a prior Utilization Review Determination which found the medications in question unreasonable. The Commonwealth Court cautioned, however, that although they were affirming the decision of the Fee Review Officer in favor of the insurance company, they were simultaneously directing that whenever an Employer, Employee or Insurer requests a Utilization Review, any provider that is not a health care provider, such as a pharmacy or testing facility, must be afforded notice and opportunity to establish a right to intervene in such actions.

Joinder Petition:

In the decision concerning the effectiveness of Joinder Petitions as it relates to a Claim Petition, the Commonwealth Court decided in Sota Construction Services v. WCAB (Czarneki), 87 C.D. 2019, in a December 20, 2019 reported decision authored by Judge Covey, that a Joinder Petition against the Uninsured Employer Guarantee Fund (UEGF) was viable even though it was filed more than three years after the Claimant's date of injury. In this case, the Claimant alleged an injury occurring in October of 2009 and filed a Claim Petition in August 2012. Within 20 days of the first hearing, the UEGF filed a Joinder Petition against a general contractor but this Joinder Petition was not filed until 3 years had elapsed since the date of the alleged work injury. Both the Board and the Commonwealth Court reversed the decision of a WCJ who found that the Joinder Petition was untimely. In its Opinion, the Commonwealth Court held that as long as one of the parties files a Claim Petition within 3 years of the date of the injury, a subsequent Joinder Petition would be permissible as long as it was filed within 20 days of the first hearing at which time evidence was received regarding the reason for the sought Joinder. Here, the underlying Claim Petition was filed in a timely manner and the UEGF subsequently filed its Joinder Petition in a timely manner and, thus, the Joinder Petition was considered to have been timely filed. The Court indicated that should any other interpretation of these time limitations exist, this would permit a Claimant to file a Claim Petition against one party on the very last day of the 3 year statute of limitations and thereby unjustly preclude the Joinder of any other party as an additional Defendant.

[1]NOTE: Reported opinions are binding legal precedent. Unreported opinions are not binding precedent, but may be cited for persuasive value.

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Litigation Costs:

In a case discussing reimbursement of improperly paid costs of litigation, the Commonwealth Court decided on January 30, 2020 in Crocker v. WCAB (Georgia Pacific, LLC.) 41 C.D. 2019 (reported), that an Employer cannot obtain reimbursement from a Claimant or the Supersedeas Fund of costs that ultimately were determined not to be payable to the Claimant. In this case, Claimant filed a Claim Petition which the Judge decided in the Claimant's favor and the award included payment of costs of litigation. The Employer appealed to the Board but the Board denied Supersedeas in all regards and as a result the Employer was required to pay the aforementioned costs. Thereafter the Board reversed the Judge's award and the Commonwealth Court affirmed that decision and no further appeals were taken. The Employer then asked for reimbursement of the costs of litigation through a Review Petition filed against the Claimant. Although a Judge and the Board agreed that reimbursement was appropriate, the Commonwealth Court reversed and indicated that the Supreme Court recently decided in County of Allegheny v. WCAB (Parker), 177 A.3d 864 (Pa. 2018), that unreasonable contest attorneys' fees were not reimbursable from the Claimant and, in this case, therefore, the Crocker Court indicated that costs of litigation, as well, would not be reimbursable from the Claimant indicating that there was no authority in the Act to allow the return of the same.

This case is important because as the case law now stands, once unreasonable contest attorneys' fees, and now costs, are paid to the Claimant, they can never be reimbursed from the Claimant even if a decision subsequently reverses the award of the same. This will make it more important for defense counsel when appealing to the Board and the Commonwealth Court to emphasize in their Request for Supersedeas that if a Judge's award is ultimately overturned as it relates to costs and unreasonable contest attorneys' fees, those fees can never be reimbursed from either the Claimant nor the Supersedeas Fund.

Specific Loss-Injuries "separate and apart":

In a recent unreported Commonwealth Court decision of Norton v. WCAB (Northern Tier Solid Waste Authority), 411 C.D 2019, decided on February 20, 2020 and written by Judge Brobson, the Court held that in addition to a claimant proving an injury separate and apart, the claimant must also prove an ongoing disability related to the separate and apart injury in order for the claimant to receive both a specific loss award and ongoing total disability benefits. In Norton, claimant suffered an injury to his left leg. Litigation ensued and a Workers' Compensation Judge (WCJ) found that, in fact, that claimant had, for all practical intents and purposes, lost the use of his left leg. However, the WCJ also found that the claimant failed to establish that an injury separate and apart from the left leg injury resulted in any disability. As such, the WCJ awarded the Employer a credit against the specific loss award for all disability previously paid and denied claimant's request for an award of ongoing disability. The

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Commonwealth Court held that even though the claimant proved an injury separate and apart in the nature of a mental injury related to the subject work injury, the claimant failed to meet his burden of proof that he suffered from a disability, that is, a loss of earning power, related to his separate and apart injury, the mental injury. Specifically, claimant's medical expert acknowledged during the course of the litigation in front of the WCJ that he had never placed any work-related restrictions on the claimant related to his depression.

Termination Petition:

On February 21, 2020, the Commonwealth Court rendered an unreported decision, authored by Judge Leadbetter, of Yurasits v. WCAB (Exelon Nuclear Generation), 395 C.D. 2019, in which the Court discussed the burden of proof on the Employer in regards to a Termination Petition. There, the claimant suffered an injury in 2011 which was recognized and described by NCP as an injury to the claimant's right shoulder, right trapezius and cervical spine. During litigation commencing in 2016, a Workers' Compensation Judge (WCJ) denied the defendant's Termination Petition finding that the claimant continued to suffer from the accepted work injury and described the work injury in his decision as "cervical spine, right shoulder, ring and small fingers on the right hand…related to the work injury". Thereafter in 2017, the Employer filed a second Termination Petition which the WCJ granted in the Employer's favor. The claimant appealed to the Board which affirmed, then the Commonwealth Court reversed the decision of the WCJ granting the Termination Petition because the Employer's IME doctor only identified claimant as being recovered from the injuries listed in the original NCP, that is, injuries to the claimant's shoulder, trapezius and cervical spine and failed to render any opinion in regards to the claimant being recovered from the ring and small finger injuries to the right hand which were discussed by the WCJ in the initial decision of 2016 denying the first Termination Petition. The Commonwealth Court further held that the Employer had the burden of presenting evidence to address all of the injuries including the expanded component of the work injury, that is, the right ring and small fingers. This was so even though the claimant never filed a Review Petition to expand the description of the injury because here, the first WCJ clearly found that the claimant suffered more than injuries to his right shoulder, trapezius and cervical spine, that is, he listed in his decision that the claimant also suffered injuries to his fingers of his right hand related to the work injury. Thus, the Court concluded that even in the absence of the filing of a formal Review Petition, the initial WCJ decision implicitly modified the description of the injury.

Subrogation:

In an unreported decision authored by Judge Ceisler, discussing the rights of the Employer/Insurance Company to obtain a subrogation recovery, the Commonwealth Court decided in Vottero v. WCAB (Softboss), 612 C.D. 2019, on January 9, 2020, that the rights of the Employer to subrogation against monies that a claimant received from an uninsured motorist policy paid for by the Employer would be governed by Pennsylvania law allowing subrogation.

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In this case, the claimant suffered an injury in a work-related motor-vehicle accident in Pennsylvania and the Employer voluntarily issued a Notice of Compensation Payable and paid the claimant indemnity benefits. The workers' compensation claim was subsequently settled and the language of the Compromise and Release Agreement indicated that the Employer was retaining its right to subrogation against any recovery that the claimant may receive from another source related to the subject work injury. Thereafter, the claimant recovered $325,000.00 as it relates to the uninsured motorist coverage paid for by the Employer. The claimant disputed that the Employer was entitled to subrogation, citing the fact that the uninsured motorist coverage was related to the policy issued in and under the control of the State of Delaware which specifically prohibits an Employer from seeking subrogation against an employee's recovery of uninsured motorist benefits. In rejecting that argument, the Commonwealth Court concluded that Pennsylvania's law governed as Pennsylvania paid workers' compensation benefits to the claimant and Pennsylvania's workers' compensation law clearly provides that an Employer is entitled to subrogation not only against a third party recovery but also against uninsured motorist benefits paid for by the Employer's motor-vehicle insurance carrier.

WCAIS Tips-EDI:

The Bureau of Workers' Compensation issued the following recommendations when submitting FROI 02 and SROI 02 transactions via WCAIS.

FROI 02- A FROI 02 can come in with a different CTC while the claim is still in FROI status or FROI-Cancelled status. However, if the claim has entered a SROI status or a SROI has been submitted on the claim then the FROI 02 may never again come in with a different CTC than the prior transaction as per the Population Restriction in the Edit Matrix. This is because, at that time, changes to the claim type mean changes to the benefits so we're expecting a SROI transaction to come in to reflect the benefit changes so that either the appropriate form is generated or so that the SROI transaction is submitted to match a filed form.

SROI 02- A SROI 02 should not be used to amend the claim if another MTC is more appropriate. We recommend against changing the Claim Type in the claim until you are ready to make a payment because all SROI transactions reporting indemnity is being paid must include benefit information. In the case, for example, where you are moving from a medical only claim to an indemnity claim, a SROI IP is expected and not the SROI 02 so, at that time, the SROI 02 without benefit information where you are only reporting a change to the Claim Type code, will reject because it is not the correct transaction at that time. If you have a medical only claim where you'd previously paid indemnity under a temporary and now you are reinstating indemnity, a SROI RB is the appropriate code and, therefore, a SROI 02 without benefits would be considered not statutorily valid to report a reinstatement/ change to Claim Type code 'I'. In other words, we don't consider the SROI 02 without benefits a statutorily valid transaction when changing from medical to indemnity because the national standard requires adjusters to submit either an IP/AP/EP for the first indemnity reporting or a SROI RB to reinstate indemnity.