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PA WORKERS' COMPENSATION CASE LAW UPDATES
May 2018

Fee Review

The Commonwealth Court vacated the Decision of the Fee Review Officer on the basis that the Fee Review Officer did not have jurisdiction to decide whether Durable Medical Equipment (DME) may be prescribed by a Chiropractor. The issue of liability for DME prescribed by a Chiropractor must be decided by a WCJ. Scomed Supply, v. Bureau of WC Fee Review Hearing Office (Lackawanna American Insurance Company), (Pa. Cmwlth. 2018) (unreported) (May 24, 2018).

Claim Petition

The causal connection between the Claimant's alleged cumulative trauma injury and employment was not "obvious", requiring the Claimant to establish the causation by credible medical evidence. Nigro v. WCAB (Aetna, Inc.), (Pa. Cmwlth. 2018) (unreported) May 22, 2018.

The Claimant failed to establish that he had an ongoing disability as a result of his contact dermatitis and the credited testimony established that Claimant's condition had resolved. Accordingly, the Court found that the WCJ did not err in Terminating the Claimant's workers' compensation benefits. DiCarlantonio v. WCAB (Oldcastle Precast, Inc.) (Pa. Cmwlth. 2018) (unreported) May 11, 2018.

Specific Loss Benefits

Because the Claimant remained eligible for total disability benefits (whether or not subject to offset), he was not entitled to receive specific loss payments. Specific loss benefit payments may not begin until after payment of total disability ends. Cook v. WCAB (DOT), (Pa. Cmwlth. 2018) (unreported) May 18, 2018.

Course of Employment

The Court held that the fact that a job has a discrete and limited duration does not make the employee who holds it a travelling employee. The Claimant was injured on his way to work and was not a travelling employee or on a "special mission". Accordingly, the Claimant was injured outside of the course of employment, rendering his injuries not compensable. Kush v. WCAB (Power Contracting Company), Pa. Cmwlth. 2018 (May 17, 2018).

Intoxication Defense

In order to successfully defend against a work injury based upon the defense that the Claimant was intoxicated, the Employer must 1) establish that the Claimant was intoxicated, and 2) prove that "but for" the Claimant's intoxication, the Claimant would not have sustained his or her injuries. Coley v. WCAB (Illusionz of Greenville LLC and Greenville, LLC and Uninsured Employers' Guarantee Fund), (Pa. Cmwlth. 2018) (unreported) May 3, 2018.

Notice

The Claimant stopped working for Employer on April 24, 2015 and the WCJ found that the Claimant did not provide Notice to her employer of her alleged work injuries. As the Claimant's Claim Petition was filed outside of 120 days following her last date of employment, the Claimant's Claim Petition was barred by the Notice provisions of the Act. Magro v. WCAB (Polar LLC), (Pa. Cmwlth. 2018) (unreported) (May 2, 2018).