THE CHARTWELL
LAW OFFICES, LLP

APRIL 2016 CASE LAW UPDATE

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Zuber v. Boscov's, 2016 WL 1392263 (E.D. PA April 8, 2016) (please note this is an unreported determination)

Issues: Whether the execution of a Compromise and Release Agreement resolves potential employment actions.

Answer: It Depends. The court determined that the language of the C & R could determine whether the C & R Agreement effectively resolves potential employment actions.

Analysis: The claimant sustained an alleged work related injury to his eye. After a short period of time the claimant returned to work but was terminated from employment due to an alleged security breach. The claimant settled out the WC claim approximately 8 months after the work injury for $10,000.00. The claimant also filed a civil suit in federal court asserting an interference of his FMLA rights and wrongful termination.

Included in the C & R Agreement was language that stated it was a "full and final resolution of all aspects of the alleged work related injury and its sequala whether known or unknown at this time."

The Court concluded that the language in the C & R Agreement was sufficiently broad to include the FMLA and Retaliatory claims.

Conclusion and Practical Advise: The instant case asserts that if the language of the C & R Agreement is broad enough it could be deemed to serve as a waiver of Employment law actions. However, it should be noted that this may not be applicable to all actions as there are specific requirements of such claims such as a seven or twenty-one day waiting period. There has been a long standing dispute in the WC field as to whether or not you need separate consideration for a General Release. This case does not address that issue. Best practices would be to secure a separate General Release and pay a small consideration.

Quality Bicycle Products, Inc. v. W.C.A.B (Shaw), 2016 WL 1619465 (Pa. Cmwlth April 25, 2016) (please note this is an unreported determination).

Issues: Whether or not the claimant was within the Course of Employment while running through parking lot.

Answer: No. (Very fact specific situation).

Analysis: Claimant was working in Employer's warehouse when he received a telephone call from his fiancée who was hysterical and told Claimant that he needed to come home because their nine-year-old daughter was missing from school. Claimant told his manager that he had to leave due to a family emergency. Claimant ran to his locker and got his coat and keys. Claimant attempted to clock out, but the manager told Claimant that he would clock him out. Claimant left the building.

As Claimant was hurrying to his vehicle and was about 10–12 feet into the parking lot, he felt a pop in his knee and excruciating pain. Claimant fell to the ground, unable to bear any weight on his leg. Claimant's manager and a coworker followed Claimant into the parking lot, helped him, and called an ambulance. Claimant underwent surgery shortly thereafter.

Claimant was injured in the parking lot where he has always parked for work, where all of Claimant's coworkers park for work, and where Employer told Claimant to park for work. The Employer is the only tenant in the building where he works, but there are other buildings adjacent to Employer's building. Claimant testified that people park in front of the buildings that they work in. Claimant agreed that there was no specific condition or abnormality in the parking lot that caused his fall.

Although the Court in the facts focused on the dramatic personal matter that was the precipitant nature for the claimant being in the parking, this was really not a determining factor in the Decision. The focus of this Decision was on the condition of the Employer's premises. Namely, the focus was on the fact that there was no abutment, gate, grate, crack, curb, or other aspect of the parking lot that caused the claimant's injury. The claimant was running through a flat parking lot and sustained the injury. There was no condition of the premises that caused the injury. As such, this was not compensable. Please note that this case differs from many parking lot cases in that it was stipulated that the parking lot was considered the employer's premises.

Conclusion and Practical Advise: The Commonwealth Court determined that the claimant was not within the course and scope of employment. This case could give further justification to deny a claim where the claimant was not injured by the condition of the premises. Please note that this rationale only applies where the claimant is not furthering the business of the employer but may be on the employer's premises.

Bailey v. W.C.A.B. (Com./SCI Camp Hill), 2016 WL 1688002 (Pa. Cmwlth April 27, 2016) (please note this is an unreported determination).

Issues: Whether the principle of estoppel applies to Supplemental Agreements.

Answer: No.

Analysis: Claimant worked for the Department of Corrections (DOC) and was issued an NCP dated September 12, 2008, recognizing a right-knee injury that occurred on March 24, 2007. Claimant was diagnosed with a knee sprain and allowed to return to work with restrictions. In April 2007, Claimant underwent an MRI that revealed a meniscus tear and, subsequently, surgery was performed to repair his meniscus. Claimant returned to full-duty employment but subsequently suffered additional injuries, the cause of which is disputed, and underwent a total knee replacement in January 2010.

On March 4, 2010, Claimant filed a petition to reinstate compensation benefits seeking to reinstate benefits for the 2007 work injury. Employer filed an answer, denying the material allegations of Claimant's petition. On April 18, 2010, Employer executed an agreement with Claimant (Supplemental Agreement), which described Claimant's injury as a right-knee sprain and provided that:

> Claimant's disability recurred 1/14/2010. Accordingly, TTD is reinstated from 1/14/2010 to 4/17/2010. All causally related medical treatment regarding claimant's total knee replacement surgery will be paid. Claimant returned to work with no loss in earnings 4/18/2010. Benefits are suspended effective 4/18/2010.

Claimant returned to full-duty employment following his knee replacement, but began experiencing additional problems with his right knee in November 2010 and underwent arthroscopic surgery, wherein a surgeon removed components that had been inserted into Claimant's knee when it was replaced, cleaned them, and cleaned the knee joint itself. Claimant retired from the DOC in February 2011 because of problems he was having with his knee. He was hired for full-time employment as a security officer in April 2012 with no work restrictions.

In April 2013, Claimant was diagnosed with another infection and underwent arthroscopic surgery to clean the parts that had been inserted into his knee when it was replaced. Claimant subsequently returned to full-time employment. On July 16, 2013, Claimant filed a second petition to reinstate compensation benefits, alleging a worsening of condition. The WCJ ruled in the Defendant's favor and denied the Petition asserting that the knee replacement was not causally related to the original injury. The WCAB affirmed the WCJ Decision.

Before the Commonwealth Court, the Claimant again argued that the Supplemental Agreement settled the issue of causation and that Employer is estopped from contesting the causal relationship between Claimant's 2007 work injury and his 2010 total knee replacement. Claimant argues that the Employer acknowledged via the Supplemental Agreement that Claimant's disability had recurred and agreed to pay for all medical treatment causally related to the total knee replacement and that Employer cannot now modify its agreement. Claimant

essentially argues that once Employer agreed to pay for his total knee replacement and all causally related treatment by way of the Supplemental Agreement, Employer is precluded from denying that Claimant's current disability is work related.

The Commonwealth Court relying upon past cases stated that a voluntary agreement to pay medical bills does not constitute an admission of liability. They stated that the Court has declined to extend the principle of estoppel to supplemental agreements. Therefore, the burden remained with Claimant to prove that the 2007 work injury caused his current disability, which he failed to do. Thus, the Board did not err when it determined that Employer was not prohibited from contesting the causal relationship between Claimant's 2007 work injury and the 2010 knee replacement.

Conclusion and Practical Advise: The Court determined that the payment of the period of disability and the medical related to the total knee replacement was not specifically an acknowledged injury since the description of injury remained to be that of a right knee sprain in the Supplemental Agreement. As such, the disability stemming from the subsequent knee replacement repair was still on the claimant to prove a causal relationship. This is a good case to keep in mind when evaluating whether there is a basis for the denial of medical treatment years after the fact.