

CASE LAW UPDATES
February, 2008

Margaret Coyne v. WCAB (Villanova University and PMA Group) No. 610 C.D. 2007, Commonwealth Court of Pennsylvania, Lexis 86

When a claimant is employed via contract which is not renewed by defendant, is claimant's departure from employment considered a termination or layoff which therefore impacts the parties burden on a Reinstatement Petition?

Although these types of cases are fact specific, the Court in this matter, treating the case as a termination of employment situation, noted that if a claimant's loss of earnings is due to bad faith conduct on the part of the claimant, a claimant is not entitled to indemnity benefits.

On March 23, 1999, claimant sustained an injury returning to work two (2) weeks after the injury at modified duty with no loss of earnings. Claimant's original employment was based on an employment contract. Defendant decided not to renew claimant's employment contract due to her "caustic relationship with co-workers & students". Case is procedurally involved as claimant returned to work with various employers subsequent to the expiration of her employment contract resulting in filing of Claim, Penalty and Reinstatement Petitions. Novel issue in case involves the consequences of the expiration of an employment contract as it relates to a claimant's entitlement to indemnity benefits thereafter, and whether same is akin to a termination or to a layoff. In this case, the Court likened the expiration of the employment contract to a termination as opposed to a layoff. The Commonwealth Court remanded the matter to the WCJ to determine whether claimant's eventual loss of earnings (i.e. from failure to renew the employment contract) was the result of a claimant's bad faith or, in fact, a result of the work injury.

Another issue in case involved WCJ's granting of a termination of claimant's benefits during the underlying Claim Petition litigation. Court upheld notion that WCJ can terminate benefits within context of a Claim Petition even when a Termination Petition was not filed.

An issue also arose regarding claimant's Penalty Petition alleging the employer failed to properly investigate the claim and file a Bureau document. Commonwealth Court noted that §406.1 of the Act outline two (2) separate duties on an employer (1) investigate a claim and (2) issue an appropriate Bureau document. Please note that a claimant must allege each violation if seeking a penalty on both issues. Alleging failure to investigate does not include an allegation of failure to issue a Bureau document entitling claimant to a Penalty.

Jason Jacobi v. WCAB (WAWA, Inc.) No. 1110 C.D. 2007, Commonwealth Court of Pennsylvania, Lexis 87

Can a claimant's testimony alone support a finding of specific loss i.e., a permanent loss of use for all practical intents and purposes?

On the issue of the permanency of the loss of use, of a claimant must present medical evidence to prove loss of use is permanent for all intents and purposes.

Claimant sustained an injury on 9/13/04 in the nature of a crush injury to his right index and middle fingers. Claimant eventually filed a Review Petition seeking a determination that he sustained a specific loss. Claimant testified that he had numerous limitations and problems using his right middle finger. However, medical evidence submitted from both claimant's doctor and the IME doctor did not support a finding of specific loss. Commonwealth Court upheld the Board's decision to reverse the WCJ original finding that claimant's testimony was enough to prove a specific loss. Commonwealth Court noted that whether a loss is permanent for all practical intents and purposes in a question of law.

Land O'Lakes v. WCAB (Todd) No. 1085 C.D. 2007, Commonwealth Court of Pennsylvania, Lexis 84

Is defendant entitled to Supersedeas Fund Reimbursement when ultimately successful in obtaining a suspension of claimant's benefits pursuant to §306(f.1) (8) of the Act? (refusal to undergo reasonable medical treatment)

§443(a) of the Act that allows for Supersedeas Fund Reimbursement does not include reimbursement of benefits paid to the claimant prior to a Forfeiture Order by a WCJ.

Claimant received benefits pursuant to an NTCP for an injury of 1/10/03. Defendant filed a Suspension Petition under §306(f.1) (8) of the Act for claimant's refusal to undergo recommended surgery. In conjunction with the Petition, defendant request supersedeas which was ultimately denied. The WCJ ultimately granted the Suspension Petition and defendant filed an application for supersedeas fund reimbursement for monies paid to the claimant during the period of litigation. The WCJ ultimately determined that the application for fund reimbursement could not be granted, as forfeitures for refusal of reasonable medical services are not eligible for fund reimbursement. The Court concluded, as it has in the past, that a "suspension" and forfeiture of claimant's benefits under §306(f.1) (8) of the Act is not the same as a "typical" suspension of claimant's benefits. With forfeiture "there is no requirement of a change which alters claimant's right to benefits, as it exists with a suspension of benefits."

Colleen Rosenberg v. WCAB (Pike County) No. 17 C.D. 2007, Commonwealth Court of Pennsylvania, Lexis 83

Does a defendant have to prove a lack of available positions for claimant at the pre-injury employer before relying on expert testimony of earning power?

Consistent with the language of §306(b)2) of the Act, the employer must satisfy the burden of showing lack of suitable available work with the employer before relying on expert testimony of earning power. The time period in question starts with the issuance of a NARTW and continues until the filing of a petition.

The claimant suffered an injury in January, 2002 for which she eventually returned to work in a light duty capacity. The employer eventually terminated the claimant's employment, as it could not accommodate a permanent light duty position via letter to the claimant. Claimant was replaced in the light duty position by a newly-hired person. Defendant had a vocational assessment performed which resulted in the filing of a Modification Petition. Defendant relied upon the evidence submitted with regard to the termination letter to show lack of job availability for claimant at the insured. This case was remanded back to the WCJ to determine whether the defendant upheld the burden of proof necessary to succeed on the Modification Petition. Notably, in this case, the claimant presented evidence of the employer hiring an employee to fill the claimant's previously available light duty position which would serve to defeat defendant's burden.