Six L's Packing Co. and Broadspire Services, Inc. v. WCAB (Williamson), J-21-2012 (Pa.SC. 5/29/12)

Issue: Whether or not a Defendant bears liability for workers' compensation benefits as a statutory employer of an injured truck driver employed by an independent contractor.

Answer: Yes. The plain language of Section 302(a) controls.

Analysis: Pursuant to Section 302(a) of the Act, certain "contractors" bear secondary liability for compensation to injured workers employed by the "subcontractors." See generally McDonald v. Levinson Steel Co., 302 Pa. 287 (1930). Pertinent to this case, Section 302(a) specifies that one who contracts with another to have certain work performed – including work "of a kind which is regular or recurrent part of the business…of such person" – is deemed a "contractor" for purposes of statutory employer status. 77 P.S. § 461. The other party is deemed a "subcontractor."

Appellant, Six L's Packing Co., grows and harvests produce. In 2002, they contracted with F. Garcia & Sons for various services including transportation between warehouses in Pennsylvania and Maryland. Claimant was a driver for Garcia & Sons who suffered injuries from an MVA on this route. Claim Petitions filed against both Six L's and Garcia. During litigation, it was determined that Garcia did not have workers' compensation insurance. This case centered on the claim against Six L's Packing Co. based upon the theory that it was the statutory employer and, accordingly, was secondarily liable for paying comp benefits.

Appellant argued that Section 302(a) of the Act did not apply because the 5 elements of the McDonald test were not met (the injury took place on a highway, not on Six L's premises). Nonetheless, WCJ awarded benefits. WCAB affirmed, but held that McDonald was not met because it did not pertain to statutory employer status under Section 302(a). The WCAB reasoned that Section 302(a), and likewise Section 203, only pertained to on-premises injuries. On further appeal, the Commonwealth Court affirmed.

The Supreme Court determined that the plain language of Section 302(a) is not limited by injuries occurring on the premises or off. Rather, it extends to any scenario in which a "contractor…subcontracts all or any part of a contract."

Conclusion: "Viewing the statutory scheme as a whole…we find it to be plain enough that the Legislature meant to require persons (including entities) contracting with others to perform work which is a regular or recurrent part of their businesses to assure that the employee of those others are covered by workers' compensation insurance, on pain of assuming secondary liability for benefits payment upon a default." Page 17 of Decision.

The broad owner exclusion which has arisen out of the context of 302(b), and discussed in McDonald, does not apply.

Lancaster General Hospital v. WCAB (Weber-Brown), J-31-2011 (Pa.SC. 5/29/12)

Issue: The proper method of calculating an hourly-wage claimant's average weekly wage under Section 309 of the Act, where the specific loss claimant suffers an initial incident, changes employers, and later suffers a work-related injury caused by the initial accident. In other words, does the term "employer" in Section 309 of the Act refer to the employer at the time of injury, or the payor of workers' compensation benefits?

Answer: Employer = employer at time of injury, not the payor, for purposes of Section 309 of the Act.

Analysis: Claimant worked as a nurse for Lancaster General Hospital (LGH). While working on a patient infected with herpes simplex virus (HSV) around 1979, the patient coughed "sputum" into her eye. Two weeks later, her eye swelled and became infected. She believed she contracted HSV but did not miss any work as a result. Claimant earned approximately $8/hr.

Around 1985, Claimant left the employ of LGH. In the years following, Claimant had recurrent infections in her eye, ultimately leading to the loss of vision in May 2007. Due to her blindness, she was unable to return to work with the Heart Group, earning $21/hr.

WCJ ultimately granted Claimant's specific loss claim petition, determining that she suffered a work-related injury on May 16, 2007, the date when the doctor informed her of blindness and inability to return to work. He also determined that this injury stemmed from the incident with the HSV patient 30 years earlier. Applying Section 309 of the Act to determine her average weekly wage, the WCJ calculated her benefits as $389.50 based upon her 2007 wages with Heart Group.

LGH appealed, and the WCAB affirmed. LGH appealed, and again the Commonwealth Court affirmed. The court noted that, in specific loss cases, the date of the injury is the date when the claimant is informed by a doctor of the "loss of use of the member or faculty for 'all practical intents and purposes' and that the job is related in nature." Lancaster General Hospital v. WCAB (Weber-Brown), 987 A.2d 174, 180 (Pa.Cmwlth. 2009).

On appeal to the PA Supreme Court, LGH did not contest liability, nor did it contest the date of injury as May 17, 2007. Rather, it challenged the calculation of benefits under Section 309, which it argued should be based on the 1985 wages, not 2007.

Generally, Section 309 calculates the AWW by examining how the claimant earned his or her wages "at the time of injury." If weekly, subsection (a) applies. If monthly, (b). If annually, (c). If hourly, subsections (d), (d.1), and (d.2) apply. LGH argued that subsection (d.1) applied which holds that if the claimant has not completed three consecutive 13-week periods of employment, AWW calculated by dividing by 13 the total wages earned in any completed 13 week period immediately before the injury. Since

the "employer" refers to the payor of comp benefits, LGH argued that the AWW is calculated using the 1985 wages while in the employ of LGH.

Claimant contends that Section 309(a) applies which states, "if at the time of the injury the wages are fixed by the week, the amount so fixed shall be the average weekly wage." 77 P.S. § 582(a). She argued that these wages are fixed at the time of injury, which is not in dispute: May 17, 2007. Further, she argued that 309(d.1) does not apply because there is no 13-week period "immediately" prior to the work injury. "Immediately" should not cover a 20 year gap.

The primary focus of the Supreme Court concerns to which "employer" Section 309 refers. In other words, does "employer" mean employer at the time of injury or the payor of benefits?

Conclusion: Relying on principles of statutory construction, the Court concluded that the most logical interpretation of "employer" in Section 309 means the employer at the time of the work-related injury. This is based on the explicit language of Section 309 which states "if at the time of the injury, the wages are fixed by…" This is more consistent with the goal of providing specific loss benefits using her actual lost wages at the time of injury, not 20 years prior. Finally, the Court concluded that Section 309 is more concerned with providing full compensation to claimants, "rather than ultimate equity to employers."

Miller v. WCAB (Wal-Mart), 1741 C.D. 2011 (Pa.Cmwlth. 2012)

Issue: Did the WCJ misstate the legal standard for specific loss of an arm, and did he err by not awarding benefits?

Answer: Yes, he misstated the legal standard when he found that claimant had not lost the use of both her upper and lower arm. However, his findings and determinations support the conclusion that claimant had not lost the use of her arm for all practical intents and purposes.

Analysis: Claimant sustained an injury to her left arm and fracture of the left clavicle on December 20, 2005, which was accepted via NCP dated December 30, 2005. By stipulation in 2009, the parties agreed that the work-related injury is a "left spiral humeral fracture post-operative, left shoulder adhesive capsulitis and weakness, and radial nerve palsy."

Claimant filed a specific loss claim petition in 2008 alleging loss of use of her left arm. The WCJ denied benefits on the grounds that Claimant failed to prove specific loss or that the loss was permanent. "A specific loss is either (1) the loss of a body part by amputation or (2) the permanent loss of use of an injured body part for all practical intents and purposes." Jacobi v. WCAB (Wawa, Inc.), 942 A.2d 263 (Pa.Cmwlth. 2008). However, the law is unclear as to what evidence is sufficient to meet this burden.

The Commonwealth Court concluded, as the Claimant argued, that the WCJ did misstate the legal standard for specific loss of an arm. The WCJ stated that the claimant must suffer loss of the hand and forearm. This is wrong. Rather, the correct standard is the loss of use of the arm for all practical intents and purposes. This does not necessarily mean a 100% loss of function.

The case law indicates that there is no bright-line test to apply for specific loss. The legal determination will hinge on the specific fact findings of each case, including findings regarding credibility, the degree of injury, and the degree of the claimant's ability to use the injured body part.

Conclusion: While the WCJ did misstate the legal standard, his findings are based upon substantial evidence. These findings support the conclusion that Claimant has retained meaningful use of her arm. The Court held that she did not suffer a specific loss.

Sladisky v. WCAB (Allegheny Ludlum Corp.), 67 C.D. 2011 (Pa.Cmwlth. 2012)

Issue: Did the WCAB err is refusing to reinstate claimant's benefits upon exhaustion of receipt of 500 weeks of partial disability benefits?

Answer: No. The general rule still applies. When a claimant exhausts 500 weeks of TPD, he must prove a worsening of condition which renders him incapable of light-duty work in order to have his benefits reinstated.

Analysis: Claimant broke his right leg and left ankle in March 1994, accepted via NCP. Initially, claimant received TTD benefits until he returned to work with the employer on a light-duty basis in 1998. On May 16, 2001, Employer reinstated TTD, when the injury again rendered him disabled.

Claimant retired on August 1, 2003. Employer referred to vocational experts to find a light duty job. On August 8, 2005, Claimant was placed in a full-time, light-duty job with Easter Seals Society. Claimant's benefits were modified to a partial disability status. Claimant did not challenge the modification. Claimant was laid off from Easter Seals on November 26, 2008. At this point, he had received 500 weeks of TPD, the max under Section 306(b)(1). Claimant filed a reinstatement petition seeking TTD benefits.

The layoff from Easter Seals was for economic reasons and but for the layoff, Claimant would have continued working there. WCJ granted reinstatement. A claimant seeking reinstatement of TTD after exhaustion of 500 weeks of TPD must prove that he can no longer physically do the job. The WCJ agreed that Claimant could not meet this burden. However, he applied a different standard: when a claimant has not exhausted 500 weeks of TPD, reinstatement is automatic when the light-duty job ceases to be available.

Employer appealed, and the WCAB reversed. Claimant appealed to the Commonwealth Court arguing that an exception to the general rule should be granted. He argued that even though 500 weeks of TPD was exhausted, when the job is a position funded by the employer, reinstatement should be automatic when it no longer becomes available. Employer disagreed.

Conclusion: Ultimately, the Commonwealth Court agreed with the WCAB and refused to grant this exception to the general rule. "To grant such an exception would mean that Claimant would receive a benefit that claimants working a light-duty job with their own employer would not receive."

BJ's Wholesale Club v. WCAB (Pearson), 2010 C.D. 2011 (Pa.Cmwlth. 2012)

Issue: Whether an award of disability benefits is in error where the Claimant's loss of earnings is caused by her termination for reporting to work under the influence of alcohol.

Answer: Yes, it is an error. When an employer acts in good faith by providing modified work within a claimant's restrictions, and when the claimant is terminated for bad faith misconduct, claimant is not entitled to disability benefits.

Analysis: Claimant began work for Employer on June 1, 2008, employed on a part-time basis. On June 20, 2008, she sustained a work-related injury when a customer ran over her left foot with a shopping car. She was diagnosed with a foot and toe contusion and released to return to work with a restriction stating that she should be sitting 95% of the time. Employer provided sedentary work, paperwork and shelving books from a motorized cart, at the same rate of pay.

Employer had a substance abuse policy that prohibited drinking or drunkenness on the job. Reprimand and/or termination was a possible recourse. Claimant knew of this policy. Yet, she admitted that she drank a lot of alcohol prior to working. She submitted to a blood alcohol test and it revealed a blood alcohol level of .108. She was terminated on July 3, 2008, for being under the influence of alcohol at work.

Claimant filed a Claim Petition seeking TTD from the date of her termination. The WCJ concluded that Claimant was able to perform the light duty job Employer provided her. He also concluded that she was under the influence of alcohol while working. Nonetheless, he awarded TTD.

Where the claimant's loss of earnings is a result of a termination for misconduct unrelated to the injury, the requirement of a causal connection to the work-related injury cannot be satisfied and claimant is not entitled to disability benefits for that loss.

Conclusion: The Court concluded that the employer acted in good faith by providing work within her restrictions at no loss of pay. Further, employer demonstrated that

Claimant was terminated for conduct evidencing bad faith. Thus, she is not entitled to disability benefits.

Walker v. WCAB (Health Consultants), 492 C.D. 2011 (Pa.Cmwlth. 2012)

Issue: Did the WCAB err by overturning a WCJ's finding that claimant suffered a disfigurement injury, and also by failing to amend the NCP to include a back injury?

Answer: No.

Analysis: Claimant was employed as a meter reader. On May 8, 2007, she fractured her nose when she fell down a flight of stairs, for which she had surgery. Employer issued an NCP describing the injury as a nasal fracture and paid TTD benefits as of June 26, 2007. Benefits were suspended August 6, 2007, when the claimant was released to full duty work. Claimant returned August 6, but immediately tendered her resignation effective August 10, 2007. Claimant underwent a second nasal surgery on October 23, 2007.

Claimant filed a reinstatement petition alleging TTD as of August 10, 2007, which she later amended to seek disfigurement of her nose. Further, during litigation, she also alleged injuries to her neck, back and left shoulder.

When she testified, Claimant admitted that she did not ask Employer for accommodations. Moreover, she did not inform Employer that her resignation was due to her work injury. Indeed, the letter stated that she was moving to NY.

Based upon the IME and medical records, the WCJ denied Claimant's request to amend the NCP and to reinstate TTD. However, he did find that Claimant's nose injury had caused permanent and unsightly disfigurement.

Both parties appealed. The WCAB reversed the disfigurement award, but affirmed the WCJ Decision in all other respects.

Claimant appealed to the Commonwealth Court arguing that the WCAB erred in overturning the disfigurement award, and erred by not amending the NCP to add a back injury.

To establish entitlement for disfigurement, "there must be affirmative findings that the disfigurement be (1) serious and permanent, (2) of such character as to produce an unsightly appearance, and (3) such as is not usually incident to employment." Davis v. WCAB (H.M. Stauffer & Sons, Inc.), 760 A.2d 889, 903-04 (Pa.Cmwlth. 2000).

Since the WCAB actually viewed the Claimant, as proscribed by relevant case law, they had the opportunity to gauge the "unsightliness" of the nose. They concluded that her nose had a slight crookedness that was "not noticeably disfiguring." As such, the Board did not err in concluding that Claimant failed her burden of proof.

Regarding her alleged back injury, the evidence of Record simply did not sustain a finding that claimant suffered a compensable back injury.

Conclusion: This seems like a good example of the greedy claimant. This woman got a full duty release, and immediately quit. When she quit, she gave no indication that it was due to her work injury. Most likely, after she lawyered up, she filed a claim petition and tried to get all the money she could. It looks like the Commonwealth Court saw right through her and denied her benefits.