WORKERS' COMPENSATION CLIENT ALERT by David G. Greene

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Summarized below are several recent decisions that will surely be of interest to workers' compensation professionals and practitioners.

Soppick v Borough of West Conshohocken (10/8/10 Comm Ct). This is a Heart and Lung Act case. Claimant was injured while working as a volunteer fire fighter for the George Clay Fire Company, which was responsible for servicing the Borough of West Conshohocken. Claimant received workers' compensation benefits but then filed a complaint for Heart and Lung benefits, arguing that he was a Borough employee. The Borough of West Conshohocken sought summary judgment and lost and the Commonwealth Court permitted this appeal. The Comm Ct ultimately reversed the trial court's denial of summary judgment, since claimant was not an employee of the Borough and, as such, was not entitled to Heart and Lung benefits.

Allegis Group v WCAB (Coughenaur) (10/20/10 Comm Ct). WCJ granted a 35% penalty when C+R payment was issued 60 days after Judge's decision. WCAB affirmed. Adjuster had sent check to wrong address. Only evidence of record that adjuster knew of correct address was that claimant had filed a Review Petition with the new address on the petition. During litigation, the adjuster admitted that she did not realize the new address. Comm Ct ultimately remanded the case to the WCJ to determine whether the adjuster acted with "reasonable diligence". The Court said that if she did, then there would be no penalty so the case was remanded for a determination of whether there should be a penalty and if so for how much. Practically, the defense attorney or the WCJ should always confirm claimant's present address at the time of the C+R hearing and if claimant has moved, then the new address should be brought to the attention of the person issuing the settlement checks.

Day v WCAB (City of Pittsburgh) (10/18/10 Comm Ct). This is a retirement case which reaffirms that once the employer shows that claimant has retired based on the "totality of the circumstances" (arguably a newly defined standard), a presumption exists that claimant has removed himself from the workforce resulting in a suspension of benefits, unless claimant can show that he is either (1) still looking for work or (2) that he was forced to withdraw from the workforce because of the work injury. In this case, claimant had an injury in 1992, returned to work in approximately 1993 was ultimately placed on light duty around 1995, and was laid off in 2000. He received UC benefits and looked for work, unsuccessfully. When the UC ran out, claimant began receiving TTD, SS retirement benefits, and a pension from the employer. Claimant admitted that once the UC ran out, that he did not look for work. This was the crucial element that sealed claimant's fate in this case and warranted the suspension of benefits since claimant was unable to rebut the above presumption. In all cases where the claimant is of retirement age, and is either collecting a pension, SS Old Age, or both, a petition for suspension should be considered based on the allegation that claimant has voluntarily removed himself from the workforce. In those cases, you need to make sure to send claimant the Notice of Ability to RTW with a medical release attached, as a prerequisite to obtaining suspension relief under this line of cases.

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