

I am pleased to report that the PA Supreme Court decided Diehl yesterday and has now confirmed that employers and insurers do not need to establish earning power in any IRE context. This is an extremely important decision and we are pleased that our firm could assist in achieving this result.

By way of brief history, the WCJ found that if an IRE was requested outside of the 60 day window post 104 weeks of TTD, then the employer had to establish earning power to change the status from total to partial. The WCAB reversed but the Commonwealth Court reversed the WCAB and reinstated the WCJ's decision. So, and as those who were handling PA comp a few years ago remember, we were faced with the situation that if the IRE was requested outside of the 60 day window, we needed to establish earning power to obtain a change of status from total to partial.

Our firm got involved and we were successful in having the Comm Ct list the case for reargument. Ultimately, the Comm Ct reversed itself and we have been obtaining relief based on IREs whether requested inside or outside of the 60 day window ever since. Looming in the background, however, was the Supreme Court's granting of Allocatur and at least the possibility that the Supreme Court could find that we were only entitled to use IREs of < 50%, in and of themselves, if they were requested within the narrow 60 day window.

Per the attached, the Supreme Court has affirmed and now we know that: (1) If IRE is <50% and is requested within the 60 day window, we can utilize the unilateral change of status form to effectuate the change in status from total to partial; and (2) If the IRE is < 50% but is requested outside of the 60 day window, we do not need to establish earning power, but we need to file a Petition for Modification and meet our burden of proof with the IRE doctor's testimony or report, subject to any cross examination or arguments to the contrary from claimant.

This is a great decision and ends the above debate.