

'Raymour' Decision Benefits Insurers and, Arguably, Claimants

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The Legal Intelligencer

October 7, 2021

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The Pennsylvania Commonwealth Court recently issued a workers' compensation decision favorable to employers and insurance companies which should reduce litigation on issues related to penalty and reinstatement petitions. The decision also eliminates a procedural loophole often relied upon by injured workers' attorneys to convert a claim that was thought to have been denied for wage loss benefits into an accepted and compensable claim.

If you do not regularly practice workers' compensation, you may not be aware that bureau documents, or forms drafted and prescribed by the Department of Labor and Industry (DOL), are the foundation of the workers' compensation system. There are approximately 80 documents to be managed by insurance claims professionals and defense attorneys when litigating a Pennsylvania workers' compensation claim. Generally, it is primarily the responsibility of the claims professional (who often handles hundreds of claims in multiple states, each with different rules, laws and procedures) to issue bureau documents in the Commonwealth of Pennsylvania. There can be costly penalties and unintended wage loss and medical exposure if a claims professional

incorrectly issues, or fails to issue, proper bureau documentation.

On Aug. 16, the Commonwealth Court issued a precedential decision involving an issue of first impression in the case of *Raymour & Flanigan v. Workers' Compensation Appeal Board (Obeid)*, 371 C.D. 2020, which effectively eliminated the submission of unnecessary bureau documents, albeit in a limited situation. To understand the issues presented in the *Raymour* case, it is necessary to first understand how claims can be acknowledged as compensable and the related relevant bureau documents involved in this decision.

Notice of Temporary Compensation Payable

When a worker claims an injury and may be entitled to wage loss and medical benefits, a common practice is to issue a notice of temporary compensation payable. Generally, this bureau document requires the employer, usually through their insurance company, to commence workers' compensation wage loss and medical benefits, without prejudice and without formally accepting or denying liability for the claim. It is often used when there is uncertainty

regarding the compensability or extent of liability because it provides the employer and insurance company 90 days to further investigate the claim. After 90 days, the notice of temporary compensation payable automatically converts by operation of law, if additional bureau documents are not issued, that formally accept or deny the claim—meaning the claim will become compensable for whatever benefits were accepted within the notice of temporary compensation payable.

Before *Raymour*, if an injured worker was receiving wage loss and medical benefits under a notice of temporary compensation payable, but the insurance company decided to contest the injured workers' entitlement to wage loss, generally, the insurance company would: issue a notice stopping temporary compensation payable; issue a notice of workers' compensation denial, and; issue a medical-only notice of compensation payable accepting liability for medical benefits.

When this occurred, claims professionals would always ask: Why do I need to do steps 1 and 2? Why can't I just issue the medical-only notice of compensation payable? Defense attorneys respond: It's trivial and cumbersome, but a best practice.

However, as of Aug. 16, the new response from defense attorneys is: You can skip steps 1 and 2, and simply issue the medical-only notice of compensation payable.

In *Raymour*, the claimant sustained a work injury, and a notice of temporary compensation payable was issued paying medical and wage loss benefits. Within the 90 days, the claims professional issued a medical-only notice of compensation payable without

first issuing a notice stopping temporary compensation payable and notice of workers' compensation denial. The claimant commenced litigation, asserting penalties and seeking a reinstatement of her wage loss benefits on the basis that the notice of temporary compensation payable converted by operation of law because the insurance company did not issue the proper bureau documents to cease making payments under the notice of temporary compensation payable. Essentially, the argument was that the claims professional didn't issue the correct forms so the claim should be deemed fully compensable. This argument was often used successfully in the past.

The *Raymour* court summarized the issue as "whether employer, which had filed a notice of temporary compensation payable paying indemnity benefits, was at the time it filed a medical— only notice of compensation payable in order to stop paying indemnity benefits also required to file a notice stopping temporary compensation payable and a notice of compensation denial." The court analyzed portions of Section 406 of the Pennsylvania Workers' Compensation Act, and Section 121.17 (d) of the bureau regulations.

In pertinent part, Section 406.1(d)(5) states:

"If the employer ceases making payments pursuant to a notice of temporary compensation payable, a notice in the form prescribed by the department shall be sent to the claimant [notice stopping temporary compensation payable] ... this notice shall advise the claimant, that if the employer is ceasing payment of temporary compensation, that the payment ... was not an admission of

liability ... and the employee must file a claim to establish liability ...

In comparison, Section 121.17(d) of the bureau regulations provides that if temporary payments are stopped, an employer must do one of the following: file a notice stopping temporary compensation payable and a notice of workers' compensation denial or; file a notice of compensation payable or; an agreement for compensation.

After reciting Section 121.17(d) of the regulations, the *Raymour* court immediately concluded that the insurance company complied with Section 121.17(d) of the regulations because it issued a notice of compensation payable. The court then analyzed Section 406 of the act and held that Section 406.1 was inapplicable in situations where a medical-only notice of compensation payable is filed after a notice of temporary compensation payable, because the notice requirements of this section—namely, advising that temporary compensation does not constitute an admission and that the claimant must file a claim to establish liability—would be untrue, legally incorrect, and confusing to the claimant since the medical-only notice of compensation payable formally accepts an injury and does not require a claim to be filed to establish liability. The court reasoned that Section 406.1 “serves to notify a claimant of the status of his or her claim and inform the claimant that his or her claim had been denied and that liability must be established by a claim petition.” These notifications would not be applicable when the insurance

company legally accepted medical liability and a right to compensation can be established by a reinstatement petition.

Overall, the court issued a rational decision using a practical and commonsense approach. Injured workers' attorneys may disagree and argue that *Raymour* is not consistent with the intent of the General Assembly. They may also argue that a regulation should not supersede a statute (it did not, the requirements of Section 406 of the Act should still be complied with when a notice of temporary compensation payable is issued but a decision is made, within 90 days, to deny the claim for all benefits). They may further argue that a claimant will not know why his wage loss benefits stopped without receiving the notice stopping temporary compensation Payable and notice of workers' compensation denial. However, all of these concerns were addressed by the *Raymour* court.

From the defense bar perspective, the decision is mutually beneficial to the insurance company and the claimant because it will eliminate unnecessary forms to be issued and should reduce overall confusion for the claimant.



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