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Monday, July 25, 2011

SPECIAL PENNSYLVANIA WORKERS' COMPENSATION ALERTS

Important Pennsylvania Supreme Court Workers' Compensation Decisions

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The Supreme Court Holds That an Insurer Is Entitled to Supersedeas Fund Reimbursement for Payment of a Medical Bill Made After a Request for Supersedeas Was Denied, Even Though the Bill Was for Medical Treatment Received Before the Supersedeas Request Was Made.

Department of Labor and Industry, Bureau of Workers' Compensation v. W.C.A.B. (Crawford & Company); 102 MAP 2009; decided July 19, 2011; by Mr. Justice Eakin

The claimant, who was receiving benefits for a July 1995 work injury, was seen for an IME on March 16, 2004. On June 1st of that year, surgery was performed on the claimant, which the claimant maintained was related to his work injury. On July 19, 2004, the employer filed a Petition to Terminate the claimant's benefits based on the results of the March 2004 IME. The employer also requested supersedeas in connection with the Termination Petition. The supersedeas request was denied.

In October of 2004, the bill for the June 2004 surgery was submitted to the insurer. The insured made payment in January 2005. In June 2005, the employer's Termination Petition was granted by the Workers' Compensation Judge (WCJ). The Workers' Compensation Appeal Board (W.C.A.B.) affirmed.

The insurer then requested reimbursement from the Supersedeas Fund for the surgery bill, which was over $35,000. However, the Bureau challenged the request, taking the position that because the claimant's surgery occurred before the supersedeas request was made, the insurer was not entitled to reimbursement. The WCJ, however, awarded

reimbursement, and the W.C.A.B. affirmed, as did the Commonwealth Court.

The Supreme Court affirmed the decisions below, holding that the insurer was entitled to reimbursement from the Supersedeas Fund for the bill for surgery performed prior to the supersedeas request being made, but submitted after the request was denied. According to the Court, the insurer had the obligation to cover the bill pending the final determination and that obligation was the direct and singular result of the denial of supersedeas. In the Court's view, to make reimbursement dependent on the date of the event giving rise to the bill would insert an additional element into the Act. The Court also noted that the insurer was not asking for payments made before the supersedeas filing date, much less the date of granting supersedeas.

The Pennsylvania Supreme Court Addresses What Is Sufficient Notice of a Work Injury.

Gentex Corporation v. W.C.A.B. (Morack); No. 33 MAP 2010; filed July 20, 2011; by Madame Justice Todd

The claimant, a 45-year employee who worked as an Air Force helmet inspector, left work complaining of intolerable pain in her hands, but she did not report her condition as work-related. She submitted an application for short-term disability benefits, indicating she did not believe that her condition was work-related and attributed it to pre-existing fibromyalgia and high blood pressure. Two months after leaving work, the claimant was diagnosed with work-related tendonitis, bilateral carpal tunnel syndrome and a cartilage tear. She then left voice messages with the human resource manager, at least one of which was that she had unspecified "work-related problems." No medical documentation was submitted to the employer identifying the conditions as work-related.

The Workers' Compensation Judge found that the claimant gave timely notice of her injury under section 311 of the Act and sufficiently described it pursuant to section 312, and the Workers' Compensation Appeal Board agreed. The Commonwealth Court reversed as to the sufficiency of the description of the notice under section 312, finding that the short-term disability application and voice message did not adequately describe a work-related injury.

The Supreme Court, in holding that the claimant provided sufficient notice of a work injury, held that a precise description of the work injury is not necessary and that the notice requirement under section 312 is met when it is conveyed in ordinary language, takes into consideration the context and setting of the injury, and may be provided over a period of time or a series of communications if the exact nature of the injury and its work-relatedness is not immediately known by the claimant. While the Court acknowledged that the claimant's notice in this case was not "letter perfect," it nonetheless stressed that the humanitarian purpose of the Act directs that "a meritorious claim ought not, if possible, be defeated for technical reasons and technicalities." The Court stated that what constitutes sufficient notice is a fact-intensive inquiry, taking into consideration the totality of the circumstances.

The *Gentex* decision is disconcerting to employers and insurers as it can be viewed as promoting a low threshold for claimants to satisfy the notice requirement of section 312, as well as seemingly shifting the burden to the employer to identify the occurrence of a work injury where an employee does not specify or offer medical evidence that a medical condition or injury is work-related, and, indeed, provides information to the contrary that the problem is due to a pre-existing condition. Of concern is the Court's suggestion that the mere mention of a "work-related problem" is sufficient to trigger an employer's duty to investigate the circumstances to determine if compensation is due, or face sanctions.