MARSHALL DENNEHEY
WARNER COLEMAN & GOGGIN

VOLUME 22 | NO. 6 | JUNE 2018

What's Hot in Workers' Comp

Pennsylvania Workers' Compensation

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Francis X. Wickersham

An electrician's motor vehicle accident en route to work was not in the course and scope of employment because he was not a traveling employee.

Kush v. WCAB (Power Contracting Company); 1688 C.D. 2017; filed May 17, 2018; Judge McCullough

The claimant worked as an electrician and suffered serious injuries in a motor vehicle accident while driving to work. After the accident, he filed a claim petition, alleging that at the time of the injury, he was a traveling employee for the employer or was on a special mission for the employer.

The claimant testified that he worked as a union electrical worker for both the employer and V Corporation for the past three years. He also moved from one job to the other, sometimes working at different job sites on the same day. V Corporation provided the claimant with a company truck that he used to travel to jobs for both V Corporation and the employer. Typically, he drove directly from his home to an assigned job site. On the date of the accident, he left his home at about 4:30 A.M. On the way to the job, he struck a patch of ice and crashed into a guardrail. At the time of the accident, he worked almost exclusively for the employer and almost exclusively at a Shaler job site. The claimant did not receive compensation for travel time unless he needed to pick up a piece of equipment on his way to a job or was traveling from the job of one employer to another.

The Workers' Compensation Judge dismissed the claim petition, finding no exception to the "coming and going." The judge concluded that the claimant had a fixed job location. The Workers' Compensation Appeal Board affirmed.

On appeal to the Commonwealth Court, the claimant argued that he had no fixed place of work and was a traveling employee. Additionally, he said that his employment agreement included the time spent for transportation to and/or from work.

The Commonwealth Court affirmed the decisions of the Workers' Compensation Judge and the Appeal Board below. The court concluded that the "fixed place of work" exception to the "coming and going" rule did not apply. The court noted that the claimant said that he moved equipment to the Shaler job site when it began, anticipated working only at the Shaler job site on the date of the accident, and worked exclusively at the Shaler job site for several weeks before the accident. According to the court, the fact that a job has a discrete and limited duration does not make the employee who holds it a traveling employee. The court also held that travel was not included in the claimant's employment contract with the employer. ||

Florida Workers' Compensation

By Linda W. Farrell, Esquire (904.358.4224 or lwfarrell@mdwcg.com)

Linda W. Farrell

Federal Tax Cuts prompt a 1.8% reduction in Florida Workers' Compensation Rates

The Florida Office of Insurance Regulation has approved a 1.8% rate decrease, which took effect on June 1, 2018. "NCCI has demonstrated through its rate filing that this decrease is an actuarially-sound response to the savings workers' compensation insurers have realized as a result of recent federal legislation," said Florida Insurance Commissioner David Altmaier. "The data indicates that passing the savings along to businesses through a rate decrease is an appropriate response at this time." ||

Authorization Denied for a Trial of Medical Marijuana

Judge of Compensation Claims Lazzara in Tallahassee denied authorization of a trial of medical marijuana for a 47-year-old patrol officer who stepped into a hole while dusting a window for fingerprints and injured his left ankle. The claimant's condition worsened after undergoing surgery. Eventually, his left foot started to change color, loose hair and became very sensitive to touch. He was diagnosed with complex regional pain syndrome (CRPS).

The petition for benefits sought authorization of a "trial of medical marijuana as recommended by Dr. Mark Hofmann." Dr. Hofmann's note of March 15, 2017, stated that he recommended "a trial of medical marijuana, since he has exhausted all other medication treatment options." At the final hearing, the Judge of Compensation Claims noted that the claimant's counsel attempted to revise the request from an award of medical marijuana, as clearly stated, to an evaluation by a qualified physician in order to follow up on Dr. Hofmann's recommendation for medical marijuana. The judge pointed out that the petition did not ask for an evaluation but specifically requested authorization of a "trial of medical marijuana." The judge also pointed out that Dr. Hofmann's note itself did not refer to an evaluation, but only stated a trial of medical marijuana to determine whether it would be beneficial.

Judge Lazzara also wrote that the request had to be denied because: (1) Dr. Hofmann is not a qualified physician eligible to prescribe medical marijuana under Section 381.986(3); (2) Dr. Hofmann's medical report does not constitute a prescription; and (3) there is no evidence that the claimant has a qualifying medical condition making him eligible for medical marijuana.

It is interesting to note that there is no mention or reference to Section 386.981(15), which states, in part: "Marijuana, as defined in this section, is not reimbursable under Chapter 440." ||

News from Marshall Dennehey

MDWCG is proud to sponsor the WCCP's Claims Management Conference. The Conference will be held from June 10th through the 13th in Bonita Springs, Florida. For more information or to register, click here.

Niki Ingram, **Lori Strauss** and **Raphael Duran** (Philadelphia, PA) have been selected to the 2018 edition of *Pennsylvania Super Lawyers* magazine. A Thomson Reuters business, Super Lawyers is a rating service of lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. Each year, no more than five percent of the lawyers in the state are selected for this honor. The selection process is multi-phased and includes independent research, peer nominations and peer evaluations. A description of the selection methodology can be found at http://www.superlawyers.com/about/selection_process.html.

Tony Natale (Philadelphia, PA) defended a New England-based research and management firm in the litigation of a penalty petition that involved issues of quasi-first impression in the Commonwealth of Pennsylvania. The case arose in the form of a penalty petition filed by the aggrieved medical provider who alleged a large sum of medical billings remained unpaid after the underlying litigation of a serious and permanent workers' compensation injury had been settled 12 years earlier. The judge held oral argument on the issues of constitutionality, laches and legal standing regarding the petition. The parties formulated an evidentiary record and prepared briefs on the issues involved. The judge ruled that laches applies to a Pennsylvania workers' compensation claim and that the inactivity of the aggrieved provider for 12 years after the settlement of the case prevented a finding of a reasonable cause of action for alleged non-payment of medical bills.

Tony Natale (Philadelphia, PA) successfully defended a mushroom farm in Berks County, Pennsylvania on a claim petition alleging disc herniations in the lumbar spine, which allegedly resulted in the claimant's permanent incapacity. The preponderance of the evidence revealed the claimant originally alleged a leg injury, as opposed to a low back injury, and worked for five full months after the alleged injury without a problem. Moreover, the claimant's expert was unfamiliar with the claimant's job duties, knew nothing of his post-injury activities at work or otherwise, and offered no basis for his causation opinions. When the claimant was made the subject of cross examination, the Workers' Compensation Judge noted that the claimant misrepresented his condition and the facts of the alleged injury to the employer's expert, his own expert, and the panel doctor. The judge rejected the claimant's and his expert's testimony as not credible and dismissed the claim petition in its entirety. ||