

**PENNSYLVANIA SUPREME COURT HOLDS THAT A WORKERS'
COMPENSATION JUDGE HAS THE AUTHORITY TO REJECT
UNCONTRADICTED TESTIMONY GIVEN BY A MEDICAL WITNESS WHO
PERFORMED AN IMPAIRMENT RATING EXAMINATION**

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IA Construction Corporation and Liberty Mutual Insurance Co. v. WCAB (Rhodes); 18 WAP 2015; filed May 25, 2016; by Chief Justice Saylor.

The Supreme Court of Pennsylvania recently reversed a decision of the Commonwealth Court concerning testimony given by a medical witness who performed an Impairment Rating Examination (IRE) on a claimant. The claimant sustained multiple injuries in a 2005 work-related motor vehicle accident. In a 2007 decision, a Workers' Compensation Judge (WCJ) granted a Claim Petition and enumerated the injuries suffered by the claimant, which included traumatic brain injury. Years later, the employer had the claimant seen for an IRE. Because the IRE had been requested outside of the time period specified under the Act to obtain automatic relief, the employer filed a Petition to Modify the claimant's benefits. In connection with that petition, the employer took the deposition of the IRE physician. The claimant presented no evidence on his behalf.

Although the employer was the only party to present evidence, the WCJ nevertheless rejected the sufficiency of the IRE and denied the Petition. Primarily, the WCJ was not persuaded by the impairment rating performed for the claimant's cognitive issues. The IRE physician's specialty was in physical medicine and pain management, not neurology. The Workers' Compensation Appeal Board (Board) affirmed but the Commonwealth Court reversed, holding that the WCJ lacked the authority to reject the physician's testimony on the basis that cognitive impairment was outside the area of the IRE physician's specialization. The court found that a

WCJ's opinion as to the insufficiency of an IRE could not stand without support in the evidentiary record.

The Pennsylvania Supreme Court, however, reversed the Commonwealth Court. The Supreme Court said that to the extent the Commonwealth Court fashioned an uncontradicted medical evidence rule, they disapproved of its decision. Although the court acknowledged that two of the three explanations supporting the WCJ's rejection of the impairment opinion were unconvincing, it concurred with the WCJ's concern over an out of specialty opinion from the IRE physician relative to a traumatic brain injury. The court therefore declined to deem the WCJ's concerns with the IRE physician's opinion as "unreasoned."

A significant portion of the opinion was devoted to discussing the difficulties with the impairment rating system that have developed over time. The court openly called for legislative review for the purpose of clarifying and improving the statute and enhancing fairness.

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