

PENNSYLVANIA WORKERS' COMPENSATION

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The claimant was not entitled to benefits in Pennsylvania for an extra-territorial injury because his employment was not principally localized in Pennsylvania and the claimant signed a written agreement that his employment would be principally localized in Alabama.

William Watt v. WCAB (Boyd Brothers Transportation); No. 53 C.D. 2015; filed September 15, 2015; by Judge Simpson

The claimant, an interstate truck driver for the employer, alleged that he sustained an injury to his low back in New Jersey while untarping a cargo load. He filed a claim petition, seeking benefits under the Pennsylvania Workers' Compensation Act. The claimant was receiving benefits through Alabama's workers' compensation system.

In support of his petition, the claimant testified that he was a Pennsylvania resident and had completed an online application for the employer on his personal computer in Pennsylvania. The claimant attended an orientation in Ohio and, at that time, was provided by the employer with a packet of documents, which included one called "Workers' Compensation Agreement" (WC Agreement), which he read and signed. The WC Agreement stated that all workers' compensation claims shall be exclusively governed by the workers' compensation laws of the state of Alabama and that, for purposes of workers' compensation, the claimant's employment was principally localized within the state of Alabama and that the company's principal place of business is Clayton, Alabama.

The Workers' Compensation Judge found that the claimant sustained a work injury in the course of his employment with the employer in New Jersey and that the claimant worked for the employer under a contract of hire entered into in Ohio. However, because of the WC Agreement, the judge found that the claimant's employment was principally localized in the

state of Alabama; therefore, he dismissed the claim petition. The claimant appealed to the Appeal Board, which affirmed.

On appeal to the Commonwealth Court, the claimant argued that he spent more time working in Pennsylvania for the employer than any other state and, therefore, was entitled to Pennsylvania benefits since his employment was principally localized in Pennsylvania. The claimant maintained that he kept his truck in Pennsylvania and that the employer would occasionally dispatch him from his home in Pennsylvania. Additionally, daily trip logs showed that he drove more and worked more hours in Pennsylvania than in any other individual state where he worked.

The court, though, found that the evidence did not support a finding that the claimant spent a substantial part of his working time in Pennsylvania. In the court's view, the percentages of time and miles driven by the claimant in other states exceeded the time he worked in Pennsylvania; therefore, they found that the judge did not err in concluding that the claimant's employment was not principally localized in Pennsylvania. Moreover, the court held that the WC Agreement the claimant signed at the time he was hired by the employer, agreeing that the state of Alabama's workers' compensation law would govern workers' compensation claims, did not violate public policy or the claimant's rights under the Act, and, thus, the judge did not err in finding the claimant's employment was principally localized in Alabama. ■■

A divided Commonwealth Court holds that use of the 5th and 6th Editions of the AMA Guides to the Evaluation of Permanent Impairment under the Pennsylvania Workers' Compensation Act is unconstitutional and, therefore, IREs performed under Section 306(a.2) of the Act must use the 4th Edition of the AMA Guides.

Protz v. WCAB (Derry Area School District); No. 1024 C.D. 2014; (Pa. Cmwlth. September 18, 2015)

The claimant sustained a work-related injury to her right knee in April of 2007. The employer paid workers' compensation benefits until she returned to work, at which time benefits were suspended. Later, due to a recurrence of disability, the claimant's benefits were reinstated per a Supplemental Agreement.

The employer then requested an Impairment Rating Evaluation (IRE), which was performed in October of 2011. The physician performing the IRE used the 6th Edition of the AMA Guides to the Evaluation of Permanent Impairment (Guides), the most recent version at the time. The employer then filed a modification petition, seeking to convert the claimant to partial disability status.

The Workers' Compensation Judge granted the employer's petition, finding that the claimant was less than 50 percent impaired under the 6th Edition of the Guides. The claimant appealed to the Appeal Board, arguing that §306(a.2) was an "unconstitutional delegation of authority by the state legislator." The Board affirmed the judge's decision, essentially finding that the issue of the constitutionality of the provision had already been decided by the Commonwealth Court.

On appeal to the Commonwealth Court, the claimant argued that §306(a.2) of the Act was unconstitutional because it gave the AMA, rather than the General Assembly, authority to establish criteria under which a claimant is adjudicated partially or totally disabled. The claimant pointed out that, since IREs started being performed, the Guides have undergone two revisions and the current edition provided substantially different standards than those in the 4th Edition, thereby causing some claimants who would have been considered more than 50 percent impaired under the 4th Edition to be less than 50 percent impaired under the 6th Edition. The employer argued that the issue of the constitutionality of

§306(a.2) had already been decided.

The court agreed with the claimant and granted the appeal. In doing so, the court said that the mere requirement under §306(a.2) that the most recent version of the AMA Guides be used to determine a claimant's impairment rating was, under this basis alone, enough to find §306(a.2) unconstitutional. The court further found that the Act lacked a mechanism requiring governmental review of the Guides by the promulgation of regulations. In the court's view, the General Assembly adopted as its own the methodology enumerated by the AMA at the time it enacted §306(a.2), the methodology contained in the 4th Edition of the Guides. The General Assembly has not reviewed and readopted the methodology contained in subsequent editions. The court noted that this lack of review of subsequent editions of the Guides left "unchecked discretion" completely in the hands of a private entity and gave the AMA "carte blanche authority" to implement its own policies and standards. The court concluded that §306(a.2) was an unconstitutional delegation of legislative authority because it proactively approved versions of the AMA Guides beyond the 4th Edition without review. The court vacated the Board's decision and remanded the matter to the Workers' Compensation Judge to apply the 4th Edition of the AMA Guides.

It must be emphasized that the court's focus in this opinion was on the part of §306(a.2) that states, "If such a determination results in an impairment rating of less than 50 percent impairment *under the most recent edition* of the AMA 'Guides to the Evaluation of Permanent Impairment,' the employee shall then receive partial disability benefits" The remand by the court to the judge to allow a decision to be made based on the 4th Edition of the Guides seems to indicate that IREs can be performed, provided that the 4th Edition of the Guides is used. ||

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Ross Carrozza and **Jennifer Callahan** (Scranton, PA) are speaking on behalf of Sterling Education Services at the November 4, 2015 seminar, "Advanced Workers' Compensation." According to the U.S. Department of Labor, millions of full time private industry employees report nonfatal workplace injuries or illnesses on a yearly basis. Each of those millions of cases is a potential minefield to be navigated, and without the most up-to-date information on workers' compensation legislation and practices, the results can be devastating. Ross and Jennifer will provide an insightful analysis of the most significant recent developments in this complex and dynamic area of the law. For more information, [click here](#). Enter discount code FLD50 to receive \$50 off the registration fee.

Kacey Wiedt and **Shannon Fellin** (Harrisburg, PA) are presenting at the 2015 Fall Conference hosted by the Human Resource Professionals of Central Pennsylvania on October 27, 2015. Their presentation, "Back on the Job! Returning Injured Workers To Gainful Employment," will provide practical tips and actionable information to expedite the return of injured employees to gainful employment, while avoiding litigation under the Workers' Compensation Act. For more information about the conference and register, [click here](#). ||