

Workers' Compensation &
Social Security Disability Dept.

Shelley W. Elovitz 412.338.1114
Sandra R. Kushner 412. 338.1120
Anthony G. Mistretta 412.338.1130
John W. Zatkos, Jr. 412.338.1132

Rothman Gordon P.C.
Attorneys At Law
Third Floor, Grant Building
Pittsburgh, PA 15219
412.338.1100
412.281.7304
www.rothmangordon.com

The Workers' Compensation Newsletter is a periodic publication of Rothman Gordon, P.C. and should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only, and should not be relied upon as a substitute for obtaining legal advice applicable to your situation.

Recent Cases in Pennsylvania *by John W. Zatkos, Jr., Esq.*

Employer Permitted An Offset for Gross Amount of Injured Worker's Severance

The Commonwealth Court recently determined in *Steinmetz v. WCAB (Cooper Power Systems)* that an Employer is permitted an offset for the gross amount of an injured employee's severance benefits as opposed to the net amount after withheld taxes. The Court referenced Section 204(a) of the Workers' Compensation Act and stated that it "makes no provision for the offset of the net amount of severance benefits received." The Court ruled that the Act "only provides for an offset for the amount received by the claimant and he received the gross amount."

What does this mean? Employers are permitted to offset for the gross amount of severance benefits.

The Commonwealth Court Sides With Employee Who Suffered A Work Injury

The Court determined in *Volkswagen of America, Inc. v. WCAB (Bennett)* that the injured worker cannot have his benefits terminated by the Employer based on an expert's opinion challenging the **cause of the work injury** when a Workers' Compensation Judge previously determined the injury was work-related.

What does this mean? This is a clear indication from the Commonwealth Court that an Employer cannot simply relitigate this issue when it was already decided by the Court. Clearly, an injured worker must be careful in that the Employer will attempt to do this when there is no medical evidence that will ever prove a full recovery from a work injury. This is commonly the case with work injuries which result in maximum medical improvement with no chance of recovery.

A Major Victory For Injured Workers

In *T. Brenner v. WCAB (Drexel Industries)*, the Court determined that the Employer violated the Pennsylvania Workers' Compensation Act when it unilaterally ended a prescription card program. In this case, the injured employee was unable to obtain medications through the prescription card program because the prescription card program was cancelled by the Employer without prior notice. As a result, the injured employee was forced to go without medications. The Court determined that the Employer committed a clear violation of the Pennsylvania Workers' Compensation Act. The Court made immediate reference to its prior decision in *McLaughlin v. Workers' Compensation Appeal Board (St. Francis Country House)* in which the Employer violated the Act when it failed to follow mandated procedures pursuant to the Act and its corresponding regulations when it refused to pay for the injured employee's medical treatment.

What does this mean? This is a major victory for injured employees who find themselves at the mercy of the Employer and its Insurance Carrier who discontinue a prescription card program and act in such a way as to prevent medical treatment or care.

Prefer E-mail?

To receive this newsletter electronically, please e-mail amparys@rothmangordon.com. You are welcome to distribute this newsletter to your members but any articles appearing in Workers' Compensation Newsletter may not be reproduced without the permission of the author and Rothman Gordon.

Commonwealth Court and Supreme Court Rule In Favor of Injured Employees In Cumulative Trauma Cases

The Commonwealth Court recently ruled in favor of an injured employee in a cumulative trauma case. In *Leslie Fay Companies, et al v. WCAB (Macaluso, et al)*, the Court determined that the date of injury in a cumulative trauma case was the last day of work. The Court found in favor of the injured employee based on the credible medical evidence of the injured employee's treating physician, who stated that the injured employee aggravated his work-related impairment each day he worked. The medical evidence proved extremely important to this case.

The Pennsylvania Supreme Court also made the same determination on *City of Philadelphia v. WCAB (Williams)*. The Supreme Court determined that in a cumulative trauma case, the date of the work injury was the last date of work since the medical expert was able to credibly determine that each day was an aggravation of the cumulative trauma, reiterating the importance of medical evidence and experts in a workers' compensation case.

What does this mean? Medical evidence can support an injured employee's claim that the date of injury is the last day worked in the case of cumulative injury cases and prevent the Employer from alleging that the statute of limitations defined in response to a petition by an injured employee has past.

What You Should Know About Your Workers' Compensation Case Now Available On-line

Rothman Gordon is pleased to announce that our Workers' Compensation Handbook, *What You Should Know About Your Workers' Compensation Case: Procedures, Pitfalls and Practical Points* is now available in electronic format on our website. *What You Should Know About Your Workers' Compensation Case* is a thirty page guide to understanding what to do - and what not to do - when you are pursuing a workers' compensation claim. While the guide should not be construed as legal advice, its question and answer format provides a basic overview of the process that is extremely helpful for anyone who may have a claim and is unsure of his or her rights. Examples of questions addressed include:

- What is the difference between temporary total disability (TTD) and Permanent Partial Disability (PPD)?
- What happens after a claim petition is filed?
- Do I have to have medical treatment that I do not want?
- What if I belong to a union?

Visit our website at www.rothmangordon.com to download your copy today.



Rothman Gordon P.C.
Third Floor, Grant Building
Pittsburgh, PA 15219