

Workers' Compensation &
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Recent Cases in Pennsylvania *by John W. Zatkos, Jr., Esq.*

Injured Worker Who Retires While Collecting Workers' Compensation Must Demonstrate He Was Forced Out of the Labor Market

In *County of Allegheny (Dept. of Public Works) v. WCAB (Weis)*, the injured worker sustained a knee injury in 1981 and remained off work for 20 years. The employer claimed he had voluntarily withdrawn from the workforce, and the injured worker concurred that he had not sought work after his retirement. The WCJ found, and the WCAB agreed, that the worker was not able to assume his pre-injury job and the employer had not established any alternate employment which were within his restrictions. Furthermore, the injured worker was able to demonstrate that he was forced into retirement by his injury. Therefore, the Suspension Petition was denied.

What does this mean? If an injured worker voluntarily retires, the employer can apply for a suspension of benefits. However, if the injured worker can demonstrate that he or she was forced into retirement by the injury or is seeking work after retirement, the employer cannot suspend benefits.

Community Service Does Not Make One an Employee of the County

In *W. Mooney v. WCAB (County of Schuylkill)*, the injured worker was performing community service by painting a church when he fell and hurt his arm. Although he received no wages, he argued that he was working under the control of the County coordinator and would receive a mitigation of his sentence upon completion of his service. The Court held that community service was his option,

imposed by the Court of Common Pleas, and not a benefit provided by the County, thus he was ineligible for Workers' Compensation.

What does this mean? Community service does not make an individual an employee of the County and an injury sustained during community service will not be covered.

Workers Compensation Judge (WCJ) Does Not Have the Authority To Hear a Petition to Review Utilization Review Determination

In *County of Allegheny (John J. Kane Center - Ross) and UPMC-Work Partners v. WCAB (Geisler)*, the Court determined that the WCJ does not have jurisdiction to hear a Petition to Review Utilization Review Determination when a provider under review fails to provide the medical records needed for assignment of a reviewer and preparation of a report. The Utilization Review under Act 55 allows employers a process to seek peer review of medical treatment and the provider to defend that treatment and is the exclusive means for challenging medical bills which may not be bypassed, even by stipulation.

What does this mean? For injured workers, this is a potentially devastating decision for those, who through no fault of their own, may not be able to get treatment because his or her doctor failed to provide medical records. The Court confirmed that Act 44 utilization review processes must be followed and a WCJ cannot review the Utilization Review Determination when a provider fails to produce records necessary to follow the procedure established under Act 44.

Injuries Sustained When Pursuing Personal Matters Are Not Eligible for Workers' Compensation Benefits

In *Frank Wright v. WCAB (Larpat Muffler, Inc.)*, the employee was crossing a five lane highway to retrieve personal effects from his car when he was struck by a vehicle. The employer's business was located on this five lane highway and the employee was instructed to park in a lot across the highway. He had already crossed the highway and punched in, but decided to return to his car to get some auto parts he wanted to exchange when the accident happened. The employer denied liability and the worker filed a Claim Petition. The WCJ denied the Claim Petition, the WCAB affirmed, and the worker appealed. The Court upheld the decision, denying benefits.

What does this mean? If the Court recognized that an injury occurs while the worker is on a personal mission and not on one related to his or her employment, the injury will not be compensable.

Changes to the Composition of a Workers' Compensation Panel Must Be Negotiated By the School District

In *Somerset Area Education Ass'n v. Somerset Area School District*, the Pennsylvania Labor Relations Board (PLRB) directed the school district to rescind unilateral changes to the composition of the workers' compensation panel because the Workers Compensation Act did not remove panel composition from mandatory negotiation under PERA.

What does this mean? Individuals comprising a panel determine the employees' entitlement to employer-paid medical treatment, impacting the employees' terms and conditions of employment. The appointment of individuals is not a managerial prerogative because of the possibility that the exercise of that discretion can be influenced by collective bargaining.



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