

Workers' Compensation Newsletter

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

Injury a Brief Departure From Work Activity But Still Within Course of Job

The Commonwealth Court determined in *The Baby's Room v. WCAB (Ryan and Kathleen Stairs)* that a delivery man who slipped after jumping up to touch a basketball rim on the property where he was delivering furniture and subsequently suffered traumatic brain injury, was entitled to Workers' Compensation. The Court affirmed that the action was "an inconsequential departure from delivering furniture" and the worker was in the course and scope of his employment at the time of injury.

What does this mean? An injury sustained during a short cessation from work duties but within the course and scope of employment, may still be eligible for Workers' Compensation benefits.

Modified Benefits Unacceptable For At-Home Job That Would Disrupt Family

In *Allegheny Power v. WCAB (Barry)*, an injured worker was offered a telecommunications job working from home. Because his spouse did not want him on the phone when she was home, he would only be able to work 32.5 hours per week. The Court refused to modify the benefits based on a 32.5 hour work week because the wife is entitled, as co-owner of the home, to enjoy a peaceful home environment and the Employer had not raised the issue of the employee working part-time, at home.

What does this mean? A job is not considered available under *Kachinski* for purposes of modifying benefits when the employee would be using the home as a work site but the proffered job would disrupt the family.

Violations of Positive Work Orders

When a tree trimmer who was not tied off made a claim, the Employer tried to argue that, because he violated a positive work order that one should never leave the ground without being tied off, he should not be compensated. In *Asplundh Tree Expert Co. v. WCAB (Humphrey)*, the Court held that "(a) violation of these rules by one whose duty it is to perform the function which they affect is not a violation under (the Act)." This stance was first held by the Supreme Court in the 1929 case, *Dickey v. P&LE RR Co.*

What does this mean? If you are injured performing a duty that is part of your job, but in violation of a positive work order, your injury is still compensable. However, if you are injured performing a duty that is not part of your job in violation of a rule, your injuries will NOT be compensable. In this case, the tree trimmer could be compensated because he was expected to be in trees. However, if an office clerk from the same company fell without being tied off, he or she would not be compensated because he or she should not have been in a tree in the first place.

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Workers' Comp Legislative News

State Legislature To Vote To Change Workers' Compensation Law

On November 8, 2004, the House Labor Committee reported out Bill HB 2301, which would overturn the Gardner decision. The Gardner decision requires the first IRE to be done within the 60 day window after 104 weeks of total disability. The proposed bill would eliminate the 60 day language and substitute "at any time." Two items of interest to note: 1) the case on which this statute is based is pending before the Supreme Court and the outcome is uncertain and 2) The Legislative Budget and Finance Committee

is conducting a comprehensive study on Pennsylvania's Workers' Compensation system. The appropriate course would be to delay any amendments to the Workers' Compensation Act until the study is complete.

Workers' Compensation Pay Is Rising

Effective January 1, 2005, Workers' Compensation benefits will increase \$26 to \$716 per week for injured workers. The announcement was made by Secretary of Labor and Industry Stephen Schmerin. Said Mr. Schmerin, "Pennsylvania's workers have been hit hard by recent economic stresses, and the increases will provide needed assistance to those who deserve it."

Educate Your Members on Workers' Compensation and Social Security Disability

Our attorneys regularly conduct presentations on Workers' Compensation and Social Security Disability. We are more than happy to make a presentation at the beginning of your union meetings on issues that concern your members. Likewise, we can arrange to have an hour-long seminar for either your stewards or your members in our office in the Grant Building, Downtown Pittsburgh. As always, we will go anywhere, anytime, as long as it's not snowing!

We feel this information is of great value to your members. Please call our Director of Marketing, Anne Parys, at 412-338-1193 or e-mail her at amparys@rothmangordon.com if you would like to schedule a speaker.



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