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

#### **Parties can only look to the last Supplemental Agreement**

In *Sharon Tube Company v. WCAB (Buzard)*, the Commonwealth Court affirmed that neither party can look past the last Supplemental Agreement when requesting relief from the Workers Compensation Judge (WCJ). In this case, the injured worker returned to work, but then had to stop again, causing his Employer to issue a Supplemental Agreement reinstating temporary total benefits. The Agreement did not contain a reservation of the Employer's right to file a modification petition. When the employer later filed a modification petition, it was granted by the WCJ in spite of the injured worker's motion to dismiss the petition based on the admission of total disability in the Supplemental Agreement. The WCAB reversed the WCJ's decision and the Court affirmed the Board's decision, agreeing with the injured worker. Because the employer did not produce evidence of a medical release and available work after the date on the Supplemental Agreement, no modification could be made.

**What does this mean?** Only the last agreement of the injured worker and the employer can be reviewed. It is imperative to work closely with your attorney when crafting a Supplemental Agreement so you do not forfeit any of your rights.

#### **No petitions for modification or reinstatement allowable more than three years after last payment**

*R. Seekford v. WCAB (R.P.M. Erectors)* covered a case where an injured worker filed a claim six years after receiving the last compensation payment of a commuted sum. Normally, an injury that results from surgery for the accepted injury is considered an injury

that arose out of the accepted injury and the three year statute of limitations applies. In this case, the injured worker argued that he only discovered the specific loss when his doctor rendered his opinion less than two years prior to the date of filing (four years after receiving the last compensation payment). Because the worker testified he had known there was a severe problem immediately after the original surgery, the Court found for the Employer.

**What does this mean?** An injured worker who commutes his or her benefits risks passing the stature of limitations if and when his or her injury worsens. If you delay filing a claim, you may miss your window of opportunity.

#### **A WCJ has the authority to order an injured worker to release prior medical records under the Pennsylvania Workers' Compensation Act.**

In *Central Dauphin School District, et al. v. WCAB (Siler)*, the Commonwealth Court reversed a decision by the WCJ and the WCAB who had respectively found and affirmed that a claimant cannot be ordered to release medical records as a part of an Independent Medical Examination (IME).

The injured worker fell at work and, despite treatment, began to suffer from "work related fibromyalgia, neurological problems, musculoskeletal problems involving the lumbar region, right hip, right leg and right arm." The WCJ granted her claim petition.

The Employer requested the injured worker attend two IMEs - one by a neurosurgeon and one by a psychiatrist, which the worker did. When the worker told the psychiatrist that she had previously been treated for psychiatric problems, the psychiatrist said she needed to view the previous medical

records. The worker refused to release the records. The WCJ found that because the injured worker established a work-related psychological injury in her claim, the Employer should have sought the records when the claim was being litigated and that under the Pennsylvania Workers' Compensation Act, the WCJ did not have the authority to order the worker to release her records. The Board affirmed this decision.

The Court had to decide if the WCJ truly lacked the authority to order the worker to release her records. It held that "a claimant's prior medical records fall within the meaning of 'physical examination' ...accordingly, a WCJ may order the release of these records when refused by a claimant."

**What does this mean?** Be aware, this does not mean that the injured worker will lose her claim - this particular matter was remanded for further proceedings. It **does** establish that the WCJ has the authority to order an injured worker to release prior medical records under the Pennsylvania Workers' Compensation Act.

### **Workers' Compensation bill signed by Governor Rendell**

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In our Summer issue, we reported that the Pennsylvania House of

Representatives passed House Bill 2738, meant to provide reform to the state's Workers' Compensation system without restricting the rights of injured workers. This legislation was signed by Governor Rendell on November 9, 2006. The changes in the Bill include:

- Establishing an Uninsured Employers Guaranty Fund to compensate injured workers whose employers failed to maintain workers' compensation coverage.
- Requiring workers' compensation judges to develop a mandatory trial schedule to be attended by all parties to help prevent delays and higher litigation costs.
- Requiring mandatory mediation in effort to avoid costly litigation.
- The minimum amount an injured worker will be eligible to receive for total disability or death will be increased \$100 per month.
- The Department of Labor will not be permitted to assign more than 75% of petitions from a county to one workers' compensation judge. Counsel fees will not be permitted to exceed 20% of the amount awarded or settled upon.

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