

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

Pennsylvania Workers' Compensation Act Sets No Time Limit on Employer's Liability for Medical Benefits

In *Keystone Coal Mining Corp. v. WCAB (Fink)*, a former coal miner who suffered a work place injury in 1987 is entitled to medical benefits even after his Employer's liability for payment of partial disability had ceased and partial disability payments have been exhausted. The Commonwealth Court affirmed a decision of the Workers' Compensation Judge (WCJ) in favor of the worker. It rejected the Employer's argument that the worker's benefits are in "termination status" because he is no longer entitled to partial or total disability benefits. Clearly the Employer and its attorneys engaged in an unreasonable contest and forced an injured worker to go through litigation in order to obtain medical coverage for an injury the Employer clearly knew was ongoing and required ongoing medical treatment.

What does this mean? Simply because the injured worker no longer receives compensation benefits, due to cash benefits being exhausted, does not eliminate the worker's right to ongoing medical treatment.

Voluntary Termination Slashes an Injured Worker's Compensation

In *Davis v. Keystone Printed Specialties*, the Board determined that an injured worker's claim for compensation benefits was denied due to his walking off the modified position he was offered by the Employer. In the eyes of the Board, this was a voluntary resignation of employment and revoked any right of compensation.

What does this mean? If an injured worker suffers a legitimate injury and is working at modified or light duty and voluntarily resigns or quits, there are no benefits available.

However, there is still the issue of whether the position remained available and whether the resignation was caused by the bad faith of the Employer in offering this position to induce resignation. As counsel, we walk our clients through the proper method for returning to the job on either modified or full-duty basis in order to avoid pitfalls, such as the one suffered by this injured worker. If you do resign, but it is due to ongoing difficulty due to the work injury, there are instances when benefits can be reinstated.

Employment At Will Exception is Expanded by the Pennsylvania Supreme Court

In *Shick v. Shiry*, the Pennsylvania Supreme Court determined an exception to at-will employment when an worker is terminated for filing a workers' compensation claim. Further, the Court found that an Employer may not treaten a supervisor with termination to make him persuade the injured worker not to file a claim. This decision further supports the opinion in *Theodore C. Rothrock and Douglass Rothrock v. Rothrock Motor Sales*. In that case, the Employer fired Doug, the injured worker who filed for workers' compensation and Theodore, who was Doug's supervisor and father, for failing to convince Doug NOT to file. *Shick v. Shiry* holds, that even absent the paternal relationship, no supervisor can be terminated for failing to convince an injured worker to drop his or her workers' compensation claim.

What does this mean? An Employer who seeks to force a supervisor, under threat of his or her own firing, to thwart an injured worker's unquestioned right to seek workers' compensation benefits, can be made to answer in civil damages for wrongful termination.

WCAB Denies Injured Worker's Claim Petition that WCJ's Rejection of Medical Evidence Violates Reasoned Decision

Robert Dorsey filed for workers' compensation due to knee pain. He had a history of knee problems and was told by his physician in 2000 that he would need bilateral knee replacements. He began working for the Employer in 2001. Mr. Dorsey's physician testified that the physically demanding job had placed strain on his knees and aggravated the problem. The Employer's physician agreed that the injured worker could not perform his job, but contended that previous surgeries had predisposed him to osteoarthritis, not the demands of the job and therefore the claim was denied. In *Dorsey v. WCAB (Crossing Construction Company)*, Mr. Dorsey argued that the Employer's physician's testimony violated the reasoned decision requirements of the Workers' Compensation Act. However, the Court rejected his argument and the denial of benefits was upheld.

What does this mean? It is very important to understand what kind of medical care you are entitled to and how you should receive it when you suffer a work injury. Even though your personal physician may know you well, he or she may not be familiar with the Workers' Compensation Act and could unintentionally harm your case. It is vital to keep your attorney informed about your medical visits so your case is not unintentionally damaged.

Reminder to older employees currently collecting compensation benefits: If you elect your disability retirement pension or retirement pension, you can lose your rights to ongoing compensation. Please consult our firm before making this election, as we usually can settle your case and allow you to apply for the pension, putting a greater amount of benefits in your pocket.

As indicated in the Winter 2006 Newsletter the Courts recently decided that applying and collecting for pension whether based on disability or age related can result in the loss of your compensation benefits. See the case discussion in *Hepler v. WCAB (Penn Champ/Bissel)* and *County of Allegheny v. WCAB (Weis)*.

Rothman Gordon's Workers' Compensation/Social Security Disability Department is beginning its spring and summer seminar schedule. If you are interested in scheduling a seminar, please contact our office at 412-338-1193 or e-mail amparys@rothmangordon.com. Seminars are booked on a first-come, first served basis and the schedule fills quickly - call today. There is no charge and the presentation can be tailored for your local.

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