

Workers' Compensation Newsletter

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

Residency Requirement Makes Modified Position Unacceptable

In Housing Authority of the City of Pittsburgh v. WCAB (Redmond), the Court affirmed a WCAB's ruling upholding a Workers' Compensation Judge's decision to deny an employer's modification petition because it failed to meet its burden that work was "available" to the claimant because he did not meet the residency requirement.

The injured worker had declared bankruptcy and his Pittsburgh home was foreclosed on. The modified position offered by his employer required Pittsburgh residency, but at the time the position was offered, the injured worker had moved in with his daughter in Mount Lebanon. The Court found that the modified position was not actually available because it was offered after foreclosure proceedings on his home had begun.

What does this mean? You must be actually be within Pittsburgh or an area where the job offer is located. This goes to the issue of bad faith by the employer in offering work which it knows the injured employee cannot accept, or presents an undue hardship to the worker.

Worker Loses Job and Benefits with Unsatisfactory Performance Appraisals

In Virgo v. WCAB (County of Lehigh-Cedarbrook), the Court affirmed an order of the WCAB upholding a Workers' Compensation Judge's decision denying an injured worker's reinstatement petition and granting the employer's suspension petition based on a finding that any loss of earning power was the result of the employee's discharge from employment due to "bad faith" in carrying out her job responsibilities. The injured worker, a certified nursing assistant, sustained injuries when lifting a patient in December 2001. She was subsequently placed on light-duty and never stopped working for the employer at any time. In January 2003, the worker was fired, having received two unsatisfactory annual performance appraisals. She filed a petition to reinstate her benefits because she had not fully recovered from the injury. The employer argued she should not receive any benefits because she was terminated for poor performance, not due to her injury.

What does this mean? This case reveals the pitfalls when an injured worker neglects to consult with an attorney to protect his/her rights upon returning to work and receive advice on how to avoid pitfalls.

Workers Compensation Case on Financial Disclosure of Medical Practice

A Workers' Compensation Judge ruled that 1099s and W-2s are discoverable for medical practice on whose letterhead examining physician used to write defense medical evaluation.

What does this mean? A company or insurance company which hires a physician to examine an injured worker must, if requested, release the above information so as to see if the physician is biased since he or she may receive a large sum of wages or income as the result of solely performing these insurance examinations. Is this physician a "hired gun" is the question posed to the Court.

Disability Retirement Can Affect Benefits

In County of Allegheny (Department of Public Works) v. WCAB (Weis), the Commonwealth Court's holding allows an employer to file against a claimant a rule to show cause why the claimant's benefits should not be suspended. This happens when a claimant takes a disability retirement pension. If a physician has released the claimant to any level of work, the employer can file a rule on the claimant to show cause why the claimant's benefits should not be suspended. The employer files a petition alleging the claimant has voluntarily removed himself or herself from the workforce.

In E. Hepler v. WCAB (Penn Champ/Bissel, Inc.), the claimant was forced into retirement by the work injury and suspension was denied, but the WCB reversed based on the *Weis* case above. The Commonwealth Court affirmed, finding the *Weis* case controls and stated it is the claimant's burden in this case to show the claimant has not voluntarily withdrawn from the entire labor market and is open to employment within the claimant's physical capabilities.

What does this mean? This is an important decision for those injured workers who are thinking about applying for disability retirement or retirement pension while on workers compensation. **Do not apply without consulting your attorney!**

Choice of Medical Care Provider for Injured Workers Impacts Worker Outcomes as Well as Costs

The choice of medical care providers to treat injured workers by either workers or their employer not only impacts medical costs but also a variety of outcomes for injured workers, according to a new study by the Workers Compensation Research Institute and the Public Policy Institute of California.

These outcomes include the duration of time out of work, return to work, the workers' perception of the degree of recovery from the work injury, and their overall satisfaction with the health care received.

The study, *The Impact of Provider Choice on Workers' Compensation Costs and Outcomes*, also found that costs and outcomes differ when workers chose providers who previously treated them and when workers choose new providers. The findings come from the employee interviews conducted in 2002 and 2003 in four states—California, Texas, Massachusetts and Pennsylvania.

The study found that when workers chose their provider, costs were generally higher, perceived recovery of health outcomes were not better, and return-to-work outcomes were often poorer than when employers chose the provider. But workers reported much higher satisfaction with care.

A pre-existing relationship with a provider may be very important. When workers selected providers who had treated them previously, costs and worker outcomes were not dramatically different from when employers selected the providers. However, when workers selected new providers, costs were higher and return-to-work outcomes poorer.

This evidence suggests that state laws that grant employers greater influence

over the choice of provider may lead to lower costs and better return-to-work outcomes than laws that allow workers to select providers where they do not have a pre-existing relationship with a primary care provider.

The study noted that the higher level of satisfaction for workers who selected new providers was surprising, given that costs and return-to-work outcomes appeared to be worse. After examining the data on satisfaction further, the authors speculate that the greater satisfaction may be related to empowerment, trust in the employee-selected provider, or the process of care that leaves workers more satisfied with the new-provider choices—but not likely to be related to better physical or economic outcomes.

The study observed that workers and their advocates believe that the choice of treating doctor or provider should be left to the worker to ensure they are treated by someone they trust and whose interests align with the workers' interests. In contrast, employer advocates say the choice of provider should be made by the employer to ensure that incentives exist for keeping costs or care reasonable and appropriate.

While the study found evidence to support both sides of the argument, it concluded that it appears possible to improve the design of provider choice laws to lower costs and improve return-to-work outcomes without adversely affecting physical recovery from workplace injuries.

What does this mean? You should consult with an attorney the day you are injured because, as this article notes, medical care and support of your ongoing disability have become very complex.



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