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

Corroborated Hearsay Evidence Can Lead to a Suspension of Benefits

In *Alessandro v. WCAB (Precision Metal Crafters, LLC)*, the Court suspended the injured workers' benefits because of circumstantial evidence that the worker was earning income at another job. Carl Alessandro injured his spine in the fall of 2005 and began receiving workers' compensation benefits. In 2007, his Employer claimed Mr. Alessandro was earning income painting cars for Mike's Car Lot but not reporting that income and requested a suspension of benefits. Video surveillance shows Mr. Alessandro examining the exteriors of cars on the lot but not actually painting any. To further complicate matters, no records of payment transactions are available, as Mr. Alessandro was paid in cash. However, hearsay statements, made by the owner of Mike's Car Lot to an investigator gave the impression that Mr. Alessandro was still painting cars. Furthermore, Mr. Alessandro stated in the Affidavit that "I have earned less part-time income performing auto body work subsequent to my work injury than earning prior to my work injury." This admission can be treated as substantive evidence that can corroborate the hearsay evidence. Therefore, the Court affirmed that the Workers' Compensation Judge (WCJ) was correct to suspend benefits.

What does this mean? If there is no objection to hearsay evidence, it can be used to support findings if it is corroborated by additional evidence. However, the injured worker must be actually violating the terms of his or her Workers' Compensation and evidence corroborating the violation must be presented. Benefits cannot be suspended on hearsay alone. Also, if you are receiving Workers' Compensation, you should **not** be moonlighting, as this is illegal.

Employer Must Provide Job Duties and Classification When Providing a Referral to Alternate Positions

In *Taormina v. Williamsons Hospitality Services*, the Workers Compensation Appeals Board (WCAB) reversed the Workers' Compensation Judge's granting of Employer's modification petition. Caterina Taormina suffered a back injury on the job. A year later, the Employer filed a petition to mediate/suspend benefits because the offered a job as a cashier in the cafeteria to Ms. Taormina, which she did not take. Ms. Taormina appealed the WCJ's decision.

The WCAB looked at case law which recognizes the Kachinski standards, based on the case *Kachinski v. WCAB (Vepco Construction Co.)*. Ms. Taormina's case was tested on two prongs of the Kachinski case: under the first prong, the employer who seeks to modify/terminate benefits must produce medical evidence of a change in condition. The Employer in Ms. Taormina's case was able to establish that she would be able to perform sedentary duties. Under the second prong, the employer must produce evidence of referrals to open jobs which fit the occupational category for the injured worker and for which the injured worker has been given medical clearance. It was on this point that the WCAB overturned the WCJ's ruling. The job did not specify whether it was sedentary work, as specified by the medical expert. Therefore, Ms. Taormina had no duty to accept the job.

What does this mean? When an employer provides referrals to an injured worker regarding alternate jobs, it must provide information related to the job duties and classification so the injured worker can make an informed decision as to whether he or she can perform the duties required.

Workers' Comp System Not Functioning for Low Wage Workers

In 2008, The National Employment Law Project conducted a survey of 4,387 workers in low wage industries in Los Angeles, Chicago and New York City. Entitled *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*, the survey revealed the extent of labor law violations for low income workers.

Concerning Workers' Compensation, the survey:

“found that the workers' compensation system is not functioning for workers in the low-wage labor market.

- Of the workers in our sample who experienced a serious injury on the job, only 8 percent filed a workers' compensation claim.
- When workers told their employer about the injury, 50 percent experienced an illegal employer reaction—including firing the worker, calling immigration authorities, or instructing the worker not to file for workers' compensation.
- About half of workers injured on the job had to pay their bills out-of-pocket (33 percent) or use their

health insurance to cover the expenses (22 percent). Workers' compensation insurance paid medical expenses for only 6 percent of the injured workers in our sample.”

The survey also does clarify:

“Not all employers violate the law. We found a range of workplace practices—offering health insurance, providing paid vacation and sick days, and giving raises—that were associated with lower violation rates. This suggests that employers' decisions about whether or not to comply with the law are part of a broader business strategy shaping the workplace.”

The Workers' Compensation Act was passed to protect workers who are injured on the job. If you suffer a legitimate injury while working, you are entitled to medical care and compensation without fear of reprisal. The case of *Shick v. Shiry* affirms that the Pennsylvania Constitution protects you from retaliation if you file a Workers' Compensation case. If you want a copy of the case, please contact us.

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