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

A Worker Forced Into Retirement May Still be Eligible for Benefits

In *City of Pittsburgh and UPMC Benefit Management Services, Inc. v. WCAB (Robinson)*, the Court affirmed that the employer failed to show that the injured worker was retired and therefore denied the employer's Petition to Suspend Compensation Benefits. Dorothy Robinson injured her neck and shoulder while on duty in 1997. She returned to work in a light-duty capacity. In October 2001, she was reinjured in an automobile accident while en route for treatment for her injury. The injuries were accepted under a Notice of Compensation Payable. While Ms. Robinson was out, the Employer discontinued her modified duty position. An independent medical exam (IME) released Ms. Robinson to return to light duty work. However, she had no position to return to. Her employer then filed a Suspension Petition.

The Workers' Compensation Judge (WCJ) found that when an employer eliminates a claimant's modified duty position, the employer must place the injured worker on disability benefits. If the employer suspends those benefits, it must show availability of suitable work, which the employer had not done in the case. Also, the WCJ found that Ms. Robinson had also been looking for work. The Workers' Compensation Appeals Board (WCAB) confirmed these findings. The Commonwealth Court looked at *SEPTA v. WCAB (Henderson)*. *Henderson* established that an injured worker may continue to receive workers comp benefits despite being retired if he or she was forced into retirement by the work-related injury. The Court felt that the employer did not present enough evidence to prove that Ms. Robinson intended to retire. In fact the WCJ found that she was actively looking for work. Therefore, the Court

also concurred, finding "as fact that Claimant would be working if Employer had not eliminated Claimant's modified-duty position. Therefore, Employer failed to carry its burden under *Henderson* to show that Claimant had retired."

What does this mean? Under normal circumstances, retirement means the end of Workers' Comp benefits. However there are exceptions. There is a responsibility on the part of the employer to provide suitable continuing employment and on the part of the claimant to continue to look for work. Cases such as this can be very difficult and it is best to seek an attorney for guidance.

Untimely Notice May Result in Claim Denial

In *Allegheny Ludlum Corp. v. WCAB (Holmes)*, the Court reversed the WCJ's decision to grant the injured worker's claim petition. Norma Holmes developed Morton's Neuroma of the left foot and had numerous surgeries between 1994 and 2005 to treat it. Some of the doctors suggested the injury could be caused by the metatarsal boots she was required to wear and the uneven surfaces she walked on. After a surgery on June 11, 2003, Ms. Holmes did not return to work but she did not give notice to her employer until February 17, 2004. The WCJ found that she gave notice within 120 days of when she could have reasonably known her foot condition was caused by her job. However, the Court found the 120 days began when she left work on June 10, 2003, so she missed the deadline to report the injury. Her claim was denied.

What does this mean? The notice period for filing a claim is triggered when the claimant has knowledge of the injury. If it is an occupational disease or injury, where they may not be an occurrence to report, it is imperative to report the

disease or injury to the employer as soon as the worker suspects the ailment may be work related.

Credible Medical Evidence is Needed when a Causal Relationship is Not Obvious

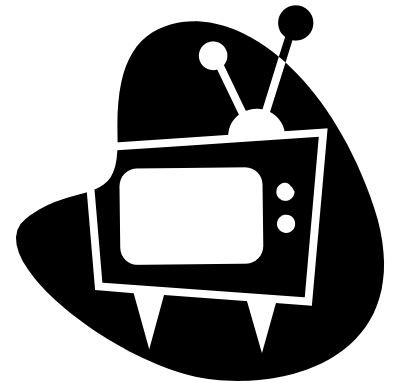
In *Shoemaker v. Geisinger Health System*, the Board affirmed in part and denied in part the WCJ's granting of a claim petition. Marcia Shoemaker tripped on some cords at work, injuring her head, neck and knee in February 2007. As a result of those injuries, she stopped working in April 2007 and filed a claim petition, which the WCJ granted. Her employer filed an appeal, arguing the WCJ did not reconcile the injuries with Ms. Shoemaker's pre-existing symptoms of multiple sclerosis and a previous non-work related neck injury. Ms. Shoemaker's doctors testified as to her head injury and disc protrusion, but did not present testimony relating to her knee. The Board looked at previous cases. *Jeanette District Memorial Hospital v. ACAB (Mesich)* says where a causal relationship between a claimant's work incident and the disability is not obvious, unequivocal medial evidence is necessary to establish it. The Board also looked at *Tobias v. WCAB (Nature's Way Nursery, Inc.)*, which says the causal relationship is said to be obvious when an untrained layman can make the connection. Because there was no medical testimony about the injured worker's knee, the Board determined that Ms. Shoemaker's testimony, while credible, was not enough to establish the

causal relationship. They did, however, uphold the WCJ's ruling in regard to her head injury.

What does this mean? Even if an injured worker's testimony is credible, if the relationship between a work injury and a disability is not obvious, credible medical evidence is needed.

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