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

Earning Power Assessment Must Focus on Place Where Injury Occurred

In *Riddle v. WCAB (Allegheny City Electric)*, the Pennsylvania Supreme Court clarified that when conducting an earning power assessment, the Employer must focus on where the injury occurred. Harry Riddle suffered a work injury to his right shoulder. Mr. Riddle worked in Pittsburgh but lived in West Virginia, so the vocational expert conducted a three-part earnings assessment based on a labor survey of West Virginia and Ohio. Pittsburgh was not included in the survey. The Workers Compensation Judge (WCJ) granted the Employer's modification petition and the Appeals Board and Commonwealth Court affirmed his decision. However, when the case reached the Pennsylvania Supreme Court, the Court found that the statute clearly states, "[I]f the employee does not live in the Commonwealth, then the usual employment area where the injury occurred shall apply." The Court found the word "shall" is mandatory and does not grant leeway to chose a geographical area.

What does this mean? When an Employer develops an earning power assessment for an employee who resides out of state, the focus on job availability must be in the area where the injury occurred.

At-Will Language Does Not Invalidate Modified Job Offer

In *Presby Homes and Services v. WCAB (Quiah)*, the Commonwealth Court tackled the question of at-will

employment language in a modified duty job offer. Rachel Quiah suffered a lumbar sprain/strain on the job on June 4, 2007. The Employer offered a modified duty position and asked Ms. Quiah to return to work on August 29, 2007. The job description included the provisions:

I acknowledge and understand that...receipt of the job description does not imply nor create a promise of employment, nor an employment contract of any kind, and that my employment is at-will.

[J]ob duties, tasks, work hours and work requirements may be changed at any time.

The injured worker did not report for work because she claimed this was not a valid job offer due to the at-will language.

The Commonwealth Court affirmed the WCJ's grant of the claim petition, but limited the period from June 5, 2007 through August 28, 2007, the day before the injured worker was instructed to report for modified duty. The Court found that the Employer acted in good faith with the job offer and that because Pennsylvania is an at-will state, the language was acceptable. Furthermore, the Court felt it was implicit that any modification of essential duties must fit the injured worker's limitations, so the language regarding changing duties, tasks, etc. did not negate the offer.

What does this mean? Because Pennsylvania is an at-will state, at-will language is acceptable in a modified duty job offer in a non-union context.

U.S. Veterans May Be Eligible for Special Pension with Aid and Attendance

By Shelley W. Elovitz, Esq.

The Veteran's Administration offers an Aid and Attendance Pension which allows for Veterans and surviving spouses who require the regular attendance of another person to assist in eating, bathing, dressing, undressing or taking care of the needs of nature to receive additional monetary benefits. It also includes individuals who are blind or a patient in a nursing home because of mental or physical incapacity and those receiving assisted care in an assisted living facility.

This most important benefit is overlooked by many families with Veterans or surviving spouses who need additional monies to help care for ailing parents or loved ones. This is a "pension benefit" and is not dependent upon service-related injuries for compensation. Most Veterans who are in need of assistance qualify for this pension, which may defray the cost of care.

While the payments may vary, depending on whether the applicant is in a residential facility or at home and whether there are any dependents, the monthly ben-

efits can range from \$808.00 per month to \$1,949.00 per month (with an adjustment for inflation each year).

Generally, the eligibility requirements are as follows:

- 90 or more consecutive days of active military service, including at least one day during official war time.
- A discharge other than "dishonorable."
- Permanent and total disability, meaning the inability to hold substantially gainful employment. Said disability must not be the result of the claimant's willful misconduct.
- A need for such care as that provided by non-medical homecare or an assisted living facility.
- Net worth below \$80,000 (excluding exempt items such as the primary home and first vehicle).
- Annual family net income below a limit set by law.

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