

April 2009 Case Law Update

Ford Motor/Visteon Sys. v. Workers' Comp. Appeal Bd. (Gerlach), 2009 Pa. Commw. LEXIS 123
- April 1, 2009

Issue: Whether the date of the IRE examination is the proper date of modification.

Claimant sustained an injury during her employment on February 28, 2001. The employer accepted liability under an NCP. The Employer sought to modify claimant's benefits status from total disability to partial disability based on a 19% impairment rating following an examination on August 24, 2006. The WCJ changed claimant's disability status effective August 24, 2006. The Board modified claimant's benefits as of December 30, 2007. The Commonwealth Court held that benefits modified under § 306(b) of the Act, 77 Pa. Stat. Ann. § 512, were modified as of the date that the employer established available work claimant was physically capable of performing, even though § 306(a.2)(5) of the Act, 77 Pa. Stat. Ann. § 511.2(5), provided that total disability would continue until it was adjudicated under § 306(b) of the Act that claimant was no longer entitled to the same. Because § 306(a.2)(5) of the Act also indicated that total disability would continue until it was adjudicated that claimant had an impairment rating less than 50 percent, the effective date of a modification to partial disability was when the impairment rating evaluation (IRE) physician examined claimant. That was consistent with 34 Pa. Code § 123.102, which instructed that benefits would be modified as of the date of the evaluation.

Holding: The Commonwealth Court determined that benefits are modified as of the date of the examination.

Rogele, Inc. v. Workers' Comp. Appeal Bd.(Mattson), 2009 Pa. Commw. LEXIS 124 - April 2, 2009

Issue: Whether a claimant who was incarcerated without bail could be considered to have "voluntarily" removed himself from the workforce.

The claimant sustained an avulsion fracture of the triquetrum dorsally of his right wrist while operating a drill. He received compensation benefits in accordance with the Act until September 30, 2005. The employer petitioned to suspend benefits on the basis that the worker voluntarily withdrew from the workforce after he solicited the murder of his wife. The worker was incarcerated without bail in a county jail on October 13, 2005. The employer stopped paying benefits to the worker after September 30, 2005. The WCJ ordered the employer to pay the worker partial disability benefits from September 30, 2005 until the worker's conviction in July of 2006. The court held there was no authority in § 306(a.1) of the Workers' Compensation Act, 77 Pa. Stat. Ann. § 511.1, or anywhere else in the Act to support the employer's unilateral termination of the workers' compensation benefits prior to his conviction. Because an accused was presumed innocent until proven guilty, pretrial incarceration was entirely irrelevant to the issue of guilt. Thus, it did not necessarily mean, as the employer posited, that pretrial incarceration was the equivalent to "voluntarily" removing oneself from the workforce.

Holding: The Commonwealth Court determined that payment of TTD benefits should continue until there is a conviction.

Issue: Whether Supersedeas Reimbursement is permitted for payment of benefits after denial of Supersedeas for a period of disability prior to a request for Supersedeas which was not paid in violation of the Act.

The claimant was injured on February 19, 2001, which was accepted by an NCP. The claimant returned to work with no wage loss on September 11, 2001 and payment of benefits were unilaterally suspended without Bureau Documentation suspending benefits. The claimant was terminated for cause on September 13, 2001 due to a failed mandatory drug test. The claimant filed a Penalty Petition in March of 2005 asserting that there was no Supplemental Agreement in place and to seek reinstatement of benefits. The insurer also filed a Suspension Petition which was not consolidated with the Penalty Petition. Following the Judge's Denial of Supersedeas on the Suspension Petition but prior to a Decision on the Penalty Petition, the insurer made a retroactive payment of benefits of its own volition. The Judge granted the Penalty Petition and awarded a 50% penalty. This matter was appealed by the Employer. Somehow this matter was remanded to the Judge for the execution of C & R Agreement whereby a Decision was also rendered granting the Suspension Petition asserting that the claimant had been properly terminated for cause. Following the Decision the Defendant sought reimbursement from the Supersedeas Fund. The Supersedeas Fund denied Reimbursement. The Court ultimately concluded that the payment of the retroactive benefits was not attributable to a denial of Supersedeas, but rather to a wrongful cessation of benefits in violation of the Act before litigation commenced.

Holding: Supersedeas Reimbursement is not permitted for payments rendered after the denial of Supersedeas for a period of time prior to the request for Supersedeas when the failure to make payment was in violation of the Act.

Practice Note: Be cautious as it looks like the parties to this case executed a C & R Agreement with the expectation of recovering money from the Supersedeas Fund.

Issue: Whether proof of earning power and job availability was required for an IRE requested outside of the 104 week plus 60 day window.

The appellate court held that the reference in § 306(a.2)(5) (77 Pa. Stat. Ann. §511.2(5)) of the Pennsylvania Workers' Compensation Act (Act), 77 Pa. Stat. Ann. §§ 1-1041.4, 2501-2708, to § 306(b) (77 Pa. Stat. Ann. § 512) of the Act, which governed an IRE proceeding, was merely a reference. Earning power was inapplicable in IRE proceedings. Under the Act, an employer seeking to change a workers' compensation claimant's benefit status using results of an IRE requested outside the 60-day window had to obtain an agreement from the claimant or an adjudication that the claimant's condition improved to an impairment rating less than 50 percent. Proof of earning power and job availability was not required. The workers' compensation judge concluded that the employer met its burden of proving, pursuant to the IRE doctor's opinion, that the claimant had an impairment rating of 28 percent. The employer's evidence in the § 306(a.2)(5) proceeding did not have to address jobs available to the claimant. Therefore, the employer was entitled to a modification of the claimant's benefit status from total to partial as of the date of the IRE.

Holding: No burden of showing job availability is required.

Lisanti Painting Co. v. Workers' Comp. Appeal Bd. (Starinchak), 2009 Pa. Commw. LEXIS 187 – May 5, 2009

Issue: Whether a Judge may award a future credit for a period where the claimant refused to undergo reasonable medical treatment.

The employee sustained a work-related injury which was accepted by an NCP. He received temporary total disability benefits. On October 27, 2006, the employer petitioned to suspend benefits as of March 13, 2006 on the basis that the employee refused to undergo necessary shoulder surgery which had been advocated by at least three surgeons in connection with the prior work injury. The employee eventually underwent surgery on December 14, 2006. The WCJ found in favor of the employer that benefits should have been suspended and that they were entitled to a prospective credit for the 39 ½ weeks. The claimant appealed to the Board which reversed the WCJ as it found, inter alia, that the employer delayed its request to suspend payments. The Commonwealth Court held that considering there was no mention in 77 Pa. Stat. Ann. § 531(8) of a future credit, it was certainly not evident that the employer was entitled to a credit against the employee's future earnings. The statute did not allow for recovery based on unjust enrichment. The employer argued that a WCJ had the authority to change the status of an employee's disability upon the filing of a petition under § 531(8). The Commonwealth Court disagreed.

Holding: An award of future credits for a period of time that the claimant did not secure proper medical treatment is not permissible under the Act.

Dep't of Labor & Indus. v. Workers' Comp. Appeal Bd. (Ethan Allen) , 2009 Pa. Commw. LEXIS 186 – May 6, 2009

Issue: Whether Supersedeas Reimbursement is permitted following a C & R Agreement.

A worker's compensation claimant sustained an injury during the course of her employment with the employer. The employer filed a Suspension petition and a petition to terminate benefits. The employer and claimant executed a compromise and release agreement (C&R). They settled any workers' compensation claim but left open the question of whether the employer was entitled to a suspension of benefits for a set period of time. The WCJ approved the C&R and granted the employer's Suspension petition. The WCJ granted the employer's application for reimbursement of benefits it paid. The Commonwealth Court held that the C&R did not render the employer's reimbursement application moot. The lump-sum in the C&R covered future benefits. The employer was not seeking reimbursement for that lump-sum but was only seeking payment for a closed period of time, for the workers' compensation benefits that it had paid during the pendency of the action following the denial of its supersedeas request. The Board did not err in granting reimbursement. The five elements for obtaining reimbursement under § 443 of the Workers' Compensation Act, 77 Pa. Stat. Ann. § 999, were satisfied.

Holding: Supersedeas Reimbursement is permissible following the execution of a C & R Agreement so long as the language of the Agreement resolved only future issues.