

Workers often relocate to other states after being awarded Pennsylvania workers' compensation benefits. Frequently, employers try to reduce ongoing comp exposure by proving that the worker has the power to earn income at an alternative job via a Labor Market Survey. A common question is whether the employer needs to conduct the Survey here in Pennsylvania, or instead in the state to which the worker has relocated.

The Pennsylvania Supreme Court just issued a decision on October 22, 2009 in Riddle v. Workers' Compensation Appeal Board (Allegheny City Electric, Inc.), interpreting Section 306(b) of the Act and answering this question. When a claimant resides in Pennsylvania, the Survey must be done in the usual employment area in which the employee lives within the Commonwealth. When a claimant resides outside of the Commonwealth, however, the Act sets forth that the vocational specialist "shall" use the usual employment area where the time-of-injury employer is located as a basis for the earning power assessment. In Riddle, the vocational expert attempted to ascertain the claimant's "true" earning capacity by locating employment near the claimant's residence, which was in West Virginia. The Court found that the Survey was **invalid**, since it failed to comply with the plain language of the Act. In other words, what appears to have been an effort by the employer to locate work that the claimant could have actually secured and performed was rejected in favor of a literal interpretation of the Act.

The Chartwell Law Offices, LLP is happy to answer questions regarding this recent case or other matters arising under the workers' compensation laws of Pennsylvania, New Jersey, Delaware, West Virginia or New York. For further discussion, please contact Alexis Ouseley at 610 - 666 - 8422 or [aouseley@chartwelllaw.com](mailto:aouseley@chartwelllaw.com).