

To our friends in the Pennsylvania Workers' Compensation Defense Community:

Please be advised that Thursday (August 20, 2009) the Independent Regulatory Review Commission (IRRC) approved the Bureau's final-form regulations on Chapters 111 and 131, concerning administrative procedure in workers' compensation matters. These regulations will take effect on publication in the Pennsylvania Bulletin, which will be in a few weeks. We will advise as to the publication date.

While the rule changes are for the most part benign, there are two sections which could be troubling:

First, the rules provide as follows:

"In a challenge proceeding, issues are limited to determining whether Claimant stopped working or is earning the wages set forth in the notification [§ 131.50(c)]. If Defendant filed a separate petition requesting a supersedeas, the WCJ may receive evidence and issue a separate ruling if it is determined that the Claimant will not be prejudiced by the introduction of such supersedeas evidence at the time of the challenge proceeding [§ 131.50a(d)]. The WCJ must issue an order on the challenge within 14 days of the hearing or, if the Judge fails to hold a hearing within 21 days or fails to issue an order approving suspension or modification, the insurer shall reinstate compensation at the rate prior to the suspension/modification notification [§ 131.50a(e)(f)]."

Our concern is if the WCJ fails to hold a hearing within 21 days, we must reinstate without any due process considerations. Failure to reinstate automatically could result in a penalty. Hence, matters will have to be kept on tight diaries to reinstate. No longer can we wait for a hearing and an order compelling reinstatement.

Next, the rules provide that in the context of mandatory mediation:

The adjudicating judge shall possess authority to impose sanctions for the failure of the parties to comply with the mediation provisions of sections 401 and 401.1 of the act (77 PS. §§ 701 and 710) and may consider sections 435(b) and 435(d) of the act (77 PS. §§ 991(b) and 991(d)), as well as circumstances and sanctions set forth in §§ 131.13(j) and 131.13(m) (relating to continuances and postponement of hearings).

This means that defendants are subject to penalties under the Act if, for example, the person with authority to settle the case fails to attend the mediation in person or by teleconference; or fails to have requisite authority to accept, modify or reject settlement proposals offered at a mediation, either at the mediation or within a reasonable time period after the mediation as established by the workers' compensation judge.

Hence, agreeing to a mandatory mediation becomes an even trickier proposition.

If you have any questions or need anything further, please contact Mr. Lee Fiederer. Thank you.

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