

**Case Name and Citation:** Selective Insurance Company of America v. Bureau of Workers' Compensation Fee Review Hearing Office (The Physical Therapy Institute), No. 613 C.D. 2013

**Issue:** Whether a fee review application is the proper forum for a dispute as to whether medical bills can be denied on the basis that the billing entity was not the medical provider?

**Answer:** No

**Analysis:** Claimant sustained a recognized injury. The insurer denied payment of invoices from The Physical Therapy Institute with the following explanation: "The Physical Therapy Institute is not the entity which provided the P/T services represented on the submitted bill and therefore is not entitled to payment under the medical cost containment provision of the Act". Consequently, The Physical Therapy Institute filed a fee review application. The Medical Fee Review Section determined that the amount billed was correct and directed payment.

Insurer then filed a Request for Hearing to Contest Fee Review Determination which was assigned to the Bureau for a hearing. The Bureau dismissed the insurer's petition, concluding that jurisdiction was limited to disputes over the amount and timeliness of payment. It concluded that the issue of whether the entity was the "provider" should be litigated in a penalty proceeding.

Insurer then petitioned the Commonwealth Court. Section 306(f.1)(5) of the Act allows a *provider* who...disputes the *amount or timeliness* of payment from the employer or insurer to file an application for fee review". The Physical Therapy Institute contended that the issue of whether it was the provider of claimant's physical therapy is a complex matter beyond the scope of a fee review. The Commonwealth Court agreed. It reasoned that the fee review process has a narrow scope. The fee review process assumes that person seeking a fee review has been established as a valid medical provider and assumes liability.

**Conclusion and Practical Advice:** A Fee Review Hearing is not the proper forum to challenge the issue of whether the billing entity actually provided treatment to claimant. My recommendation would be to withhold payment and force claimant to file a penalty petition. The only issues that can be asserted during the Fee Review process is whether the bill was paid (1) timely and (2) at the right amount. Significantly the Commonwealth Court dismissed the Fee Review Determination because the issue of liability of payment is not proper before the Fee Review officer. This is an issue that must be litigated before the WCJ.

**Case Name and Citation:** Pennsylvania Uninsured Employers Guaranty Fund v. WCAB (Bonner and Fitzgerald)

**Issue:** Whether medical expert testimony that claimant is disabled from work as of his last date of treatment is sufficient to support an award of ongoing TTD benefits?

**Answer:** Yes. (In combination with credible claimant testimony)

**Analysis:** Claimant filed a Claim Petition against an uninsured employer and the UEGF (aka Fund). The WCJ granted the petition and directed the Fund to pay TTD benefits.

The Fund appealed to the Board, arguing that the WCJ's findings concerning AWW and ongoing disability were not supported by the evidence. The Board concluded that the claimant's uncontested testimony constituted substantial evidence to support the WCJ's findings that claimant earned \$400 per week. The Board also noted that it found claimant's doctor to be credible and persuasive and supported the findings for payment of TTD benefits. It affirmed.

The Fund appealed to the Commonwealth Court arguing that because the medical expert, Dr. Collins, could not comment on claimant's status after November 25, 2009 (his last date of treatment because claimant did not return for additional schedule appointments), his testimony did not constitute substantial evidence of ongoing disability. Dr. Collins's final diagnosis was that claimant had sustained a moderate traumatic brain injury as a result of the work incident and that he was unable to return to work as of his last examination. The Commonwealth Court affirmed the Decision. It reasoned that the WCJ's fact-finding includes the authority to draw reasonable inferences from the evidence. In this case, the WCJ rejected the opinion of the Fund's medical expert and accepted the opinion of claimant and Dr. Collins. Claimant credibly testified that his ongoing disability prevented him from returning to work. The Commonwealth Court determined that the accepted testimony of claimant and Dr. Collins provided substantial evidence to support the Decision.

**Conclusion and Practical Advice:** In a situation such as this, make sure to ask the defense medical expert to render an opinion about claimant's prognosis as of his visit with the treating physician.

