CASELAW UPDATES – JULY 2010

Fitzgibbons v. WCAB (City of Philadelphia), No. 2041 C.D. 2008 (Filed July 16, 2010)

Issue: Whether the three year limitation period included in the second paragraph of Section 413 of the Act applied to both the first and second paragraphs of that provision?

Holding: A party seeking to amend the description of injury in a Notice of Compensation Payable must file the Review Petition within three years of the date of the most recent payment of compensation.

Facts: The Claimant sustained an injury on May 4, 1997, while working as a recreation leader, when a tent and stakes fell on her. The injury was recognized via a Notice of Compensation Payable, as epicondylitis of the left elbow. The Claimant's benefits were suspended, effective July 13, 1998, via a Supplemental Agreement, based on her return to work. On August 26, 2002, the Claimant filed a Reinstatement/Review Petition seeking to add "neck, low back, left hip, leg [and] knee" to the NCP. The WCJ dismissed the Petition as untimely filed. The Claimant appealed.

The Claimant argued that she suffered these injuries contemporaneously, not that they subsequently developed from the original injury. The WCAB remanded the Decision to determine whether the additional injuries were sustained at the time of the original injury, without deciding the statute of limitations issue. On remand, the WCJ failed to follow the WCAB's directive, and instead, concluded that the claimant's Petition was time-barred by the statute of limitations. The Claimant again appealed to the WCAB. The WCAB affirmed the WCJ's conclusion that claimant's Petition was not filed timely. The Claimant appealed.

The Court cited the first paragraph of Section 413, which states that at any time, a judge faced with a petition seeking amendment of a Notice of Compensation Payable, may review, modify, or set aside the NCP if it is materially incorrect. The Court noted that the issue would be "whether the WCJ's power under the first paragraph of Section 413 of the Act is constrained where a party does not present or raise such an issue in either a discrete correctional action or in another pending action 'within three years of the most recent payment of compensation made prior to the filing of such petition.'"

The Court noted that in performing analysis of statutory construction, the rule is to "ascertain the intention of the General Assembly." The Court noted that the first paragraph of Section 413 allows the judge to "review and modify or set aside" an NCP, general language with respect to the Judge's power, while the second paragraph discusses specific actions of a Judge, namely a the power to "modify, reinstate, suspend, or terminate" an NCP. The Court noted that this limitation, in the second paragraph, attaches to specific actions a Judge may be otherwise able to take, but for, the untimely filing of a Petition. The Court notes that the General Assembly used the word "review" only in the first paragraph, which includes general language, but not in the second, which includes specific actions the Judge may take. The Court held that "a reasonable interpretation of the limitation period is that it applies to both the first and second paragraph,

since they describe the powers of the Judge, thereby limiting a workers' compensation judge's power to *review* NCPs . . . and to modify and reinstate NCPs."

The Claimant attempted to argue that her Review Petition should not have been dismissed because the first paragraph of Section 413 has the words "at any time," with respect to the Judge's ability to review the nature of the injury in the NCP. However, the Court noted that those words also appear in the second paragraph, which has the specific time limitation. As such, the Court did not find the "at any time" language persuasive or controlling.

The claimant also argued that Section 413 of the Act allows a party to seek amendment of the NCP through a means other than filing a Review Petition, citing the statutory language as reading "[a] workers' compensation Judge may review and modify or set aside a notice of compensation payable . . . upon petition filed by either party . . . or in the course of the proceedings under any petition pending before a workers' compensation judge." The claimant argued that the limitation period would not govern the second option of having the NCP amended during any proceeding in the future of the case. However, the Court was not persuaded that the limitations period did not apply to amending an NCP during any proceeding because the remainder of the language stated that it must be done during "any petition pending." Ultimately, the mechanism in which to amend an NCP is still a Review Petition, subject to the three year statute of limitations, even if filed during termination proceedings, which are being held more than three years after the last payment of compensation.

Thus, the Court affirmed the WCAB and WCJ in their actions to dismiss claimant's Reinstatement/Review Petition as untimely.

Verizon Pennsylvania, Inc. v. WCAB (Guyders), No. 2477 C.D. 2009 (Filed July 19, 2010)

Issue: Whether there is authority for a WCJ to conclude that any job referral made more than six months after an independent medical examination is invalid?

Holding: There is no bright-line test with regard to the timeliness of job offer referrals after an independent medical examination; Rather, the WCJ must assess each job referral, in conjunction with the results of the independent medical examination, within his capacity as the sole judge of credibility and weight of evidence.

Facts: The employee had been collecting disability benefits for her work-related carpal tunnel syndrome since 1994. In 1996, the defendant filed a Suspension/Modification Petition, alleging that work was generally available to the claimant, within her physical capabilities, and that she failed to follow up with the same in good faith.

In support of its Petition, the defendant submitted the 2007 deposition of Dr. Weiss, who had seen the claimant in 2003 for an IME. At that time, he found that the claimant was limited to light duty activities without repetitive use of the hand. He acknowledged that he had not seen the claimant since 2003, or reviewed post-2003 medical records. He, nonetheless, approved 73 jobs.

The defendant also presented the vocational expert, who performed the assessment in 2003, based upon Dr. Weiss's physical findings. From November, 2003 through February, 2006, the vocational expert forwarded claimant 73 job appointments. The claimant failed to attend 32 of the appointments. There was also testimony from the vocational expert that the claimant failed to dress properly when appearing for her appointments.

The claimant put forth vocational testimony from Calvin F. Anderson, a self-employed rehabilitation specialist, who opined that only one position was within the claimant's physical capabilities. Mr. Anderson also testified that medical examinations become outdated within six months because the claimant's physical condition may change.

The WCJ found the claimant's testimony, as well as her vocational expert's testimony, to be credible. As such, he found that Dr. Weiss's medical examination became "stale" after six months, and therefore, only ruled that the jobs referred between October, 2003 and April, 2004 would be considered. As such, the WCJ denied the defendant's Petition. The defendant appealed. The Board affirmed concluding that the defendant had not met its burden of proof. The defendant further appealed.

The Court noted that Kachinski v. WCAB (Vepco Construction Co.), 516 Pa. 240, 532 A.2d 374 (1987) is the governing case. Per Kachinski, the employer's initial burden is to show job available to the claimant, by establishing (1) that the claimant's medical condition allows for a return to work, and (2) that there are jobs within claimant's physical capabilities available. Next, the burden shifts to the claimant to prove that he made a good faith effort to follow up on the job referrals.

In addressing the first issue, whether there is authority for a WCJ to conclude that any job referral made more than six months after an independent medical examination is invalid, the Court noted that the WCJ has exclusive province over the credibility and weight of evidence. Newcomber Products v. WCAB (Irvin), 826 A.2d 69, 74 (Pa. Cmwlth. 2003). The Court also noted that there must be substantial, competent evidence to support any finding.

The Court noted that in this case, the WCJ relied on a vocational expert's opinion of the IME, which was in error. Further, the Court noted that the expert discussed his opinions about updated IMEs every six months only in generalities, rather than tailoring his opinions specifically to the claimant's condition, which was in error. Further, the Court noted that her expert agreed that at the time of the IME, she was employable within Dr. Weiss's restrictions, and that she had reached maximum medical improvement at that time, and therefore, her condition should not deteriorate. Further, the Court noted that Anderson had actually stated that IMEs would become stale within six months to a year, therefore the WCJ's adoption of the six month rule was arbitrary. Ultimately, the Court ruled that Anderson's opinions were no more than speculation and did not constitute substantial evidence to support the WCJ's adopted finding regarding the same. On this issue, the Court remanded the case to the WCJ to make findings of fact with respect to the remaining positions that were not considered.

As a secondary issue, the Court next addressed the issue of whether the claimant writing "disabled" on a job application within a vocational assessment constitutes bad faith. The Court noted that the defendant failed to produce the application, and instead, only submitted their vocational expert's report, which had a notation to this effect. The Court noted that the claimant testified that she always wrote "carpal tunnel – disabled" as the reason for leaving her prior position, but never indicated that she could not perform the duties as the referred job. The Court noted that this was a credibility determination made by the WCJ, which cannot be overturned on appeal.

Six L's Packing Co., et. al. v. WCAB (Williamson), No. 686 C.D. 2009 (Filed July 23, 2010)

Issue: Whether a company who subcontracts their delivery work to another entity, who assumed express liability for their employee's workers' compensation coverage while traveling without a fixed place of employment, can be deemed a statutory employer under Section 302 of the Act?

Holding: The Court held that if an entity is deemed a statutory employer under Section 302(a) of the Act, then an analysis under Section 302(b), and the McDonald factors, is unnecessary and the issue of a fixed-place of employment and control over the same is irrelevant.

Facts: Six L owned fields where tomatoes were grown, in addition to processing centers. Garcia & Sons contracted with Six L to harvest and haul their tomatoes. The claimant worked for Garcia & Sons as a truck driver and on August 22, 2002, he was in a work-related motor vehicle accident. The claimant filed two Claim Petitions, one against each entity. Six L filed a timely Answer, while Garcia & Sons failed to do so.

Prior to the accident, the claimant had a conversation with the owner of Garcia & Sons about being placed on a workers' compensation insurance policy, to which, Garcia stated he would be insured through Six L. After the accident, Garcia admitted that he failed to follow through with the claimant's request to have him insured through Six L.

During litigation, the claimant submitted a contract between Six L and Garcia & Sons, which stated that Garcia & Sons would be responsible for workers' compensation insurance for its employees. It also stated that Six L would process payroll and take care of the deductions for the workers' compensation insurance, among other standard deductions, such as taxes. This contract was executed by a representative of Garcia & Sons prior to claimant's accident.

Per the contents of the contract, Six L made a Motion to Dismiss, which was denied by the WCJ. He concluded that the claimant was an employee of Garcia & Sons, however, that Six L was claimant's statutory employer under Section 203 of the Act, and as such, was liable for benefits due to the claimant. The WCJ relied upon McDonald v. Levinson Steel Co., 302 Pa. 287,, 153 A.2d 424 (1930), which held that "to qualify as a statutory employer, (1) the employer must be working under a contract with the premises owner; (2) the premises must be occupied or under the control of the employer; (3) the employer has contracted with a subcontractor to do work; (4) part of the employer's regular work is entrusted to the subcontractor; and (5) the injured person is the subcontractor's employee. The WCJ found all factors satisfied.

Subsequent caselaw was written, which prompted Six L to argue that the WCJ had to revisit the issue and the appropriate analysis in determining liability would be that of a "borrowed employee" analysis, rather than a "statutory employer" analysis.

Six L presented David Garcia, an employee of Six L, who testified that Six L obtained workers' compensation insurance for Garcia & Sons pursuant to their contract, and that it was limited to employees working onsite for harvesting only. He testified that Garcia & Sons was solely responsible for coverage for their truck drivers. Claimant was specifically not on the list from Garcia & Sons to Six L with the names of employees to be covered.

The WCJ granted both Claims Petitions, finding the claimant credible, and David Garcia only credible to the extent that he testified that Six L covered employees of Garcia & Sons. He rejected David Garcia's testimony that the claimant was not covered under Six L's policy. The WCJ concluded that Six L was claimant's statutory employer. He directed Six L to pay ongoing total disability benefits, but ruled that it was entitled to be indemnified by Garcia & Sons.

The WCAB affirmed on appeal, concluding that Garcia & Sons failed to provide workers' compensation insurance to the claimant and that Six L was claimant's statutory employer. The WCAB further elaborated that the McDonald test, relied upon by the WCJ, was incorrect, because it required a fix work-site location under Section 302(b). Rather, the WCAB relied upon Delich v. WCAB (Lyons), 661 A.2d 936 (Pa. Cmwlth. 1995), concluding that a contractor was excluded from the requirement that it occupy the premises where the injury occurred, therefore, the WCAB still concluded that Six L was a statutory employer under Section 302(a), which does not have that fixed location language. Six L further appealed.

The Court noted that it was claimant's burden of proof to prove that Six L was his statutory employer, a principle governed by Sections 302(a) and 302(b) of the Act. Six L argued that the only testimony that Garcia & Sons failed to carry workers' compensation policies on its employees was the claimants' conversation with Garcia, which was inadmissible hearsay. The Court noted that the rules of evidence were relaxed. The Court further noted that there was circumstantial evidence in the record to prove Garcia & Sons failed to carry the insurance: the list of employees submitted, which were covered by Six L, did not have claimant's name upon the same, Garcia admitted that he failed to follow through with the claimant's request to have him covered by Six L, the remaining contract provisions do not make a distinction between harvesting employees and hauling employees. The Court further held that both Section 302(d) of the Act and the contract at issue in this case, required Six L to verify that Garcia & Sons had workers' compensation insurance, which Six L failed to do.

Six L next argued that the WCAB incorrectly concluded that the McDonald test was not applicable to both Section 302(a) and 302(b) of the Act. The Court noted that the intent of the statutory employer concept is "to hold a general contractor secondarily liable for injuries to the employees of a subcontractor where the subcontractor primarily liable does not have workers' compensation insurance." Traditionally, these issues arise in construction cases.

The Court noted that the relevant language of Section 302(a) of the Act states:

> For purposes of this subsection, a person who contracts with another (1) to have work performed consisting of . . . removal and drilling of minerals or timber . . . or (2) to have work performed of a kind which is a regular or recurrent part of the business, occupation, profession, or trade of such person shall be deemed a contractor, and such other person a subcontractor.

The Court held that if an entity is deemed a statutory employer under Section 302(a) of the Act, then an analysis under Section 302(b), and the McDonald factors is unnecessary. The Court concluded that Six L was a company that farms, packs, and distributes tomatoes. It found that the produce is grown in Pennsylvania and processed in Maryland. As such, it held that "the transport of tomatoes from one location to another is a regular and recurrent part of its business." As such, Six L is the contractor, and Garcia & Sons, who provides the transportation, is the subcontractor. It was found that Garcia & Sons failed to provide workers' compensation coverage for the claimant. As such, Six L was the statutory employer.

Accordingly, the Court affirmed the Decision of the WCAB and WCJ granting claimant's two Claim Petitions.

Commonwealth of Pennsylvania, Department of Labor & Industry, Bureau of Workers' Compensation v. WCAB (Old Republic Insurance Co.), No. 1762 C.D. 2009 (Filed July 28, 2010)

Issue: Whether fees paid under Section 319 of the Act for third party recovery, made during a period in which it is found that claimant was not entitled to compensation benefits, are reimburseable from the Supersedeas Fund under Section 443(a) of the Act?

Holding: Fees paid pursuant to Section 319 of the Act in order to obtain a thirty party recovery are considered reimbursable compensation payments, if made within a period of time, where it is ultimately opined that the claimant was not entitled to compensation.

Facts: The claimant sustained a compensable work-related injury. On December 2, 2005, the defendant filed a Termination Petition, alleging that she was fully recovered as of September 23, 2005. Within the Petition, it requested supersedeas. The Termination Petition was granted on January 3, 2007.

During the litigation, the claimant received a thirty party settlement for her work-related injury in the amount of $175,000.00. The employer asserted a lien of $68,849.36. The employer recovered its pro rata share for the amount of its net lien totaling $39,329.06. The employer also applied for supersedeas fund reimbursement. The Bureau denied reimbursement, finding that the employer had already received full satisfaction of its lien. The employer appealed.

The WCJ concluded that the employer was entitled to supersedeas fund reimbursement in the amount equal to the percentage of benefits paid after supersedeas was denied. The WCJ reasoned that after supersedeas was denied, the employer continued to pay out $22,271.91 in benefits, which represented thirty-two percent of benefits paid during the lifetime of the claim. The WCJ therefore concluded that thirty-two percent of the benefits that the claimant received, were paid during the eligible period of supersedeas fund reimbursement, and that the amount should be deducted from the total amount paid in order to determine the net amount the employer would be eligible to recover from the Supersedeas Fund. The WCAB affirmed. The Bureau appealed.

The Bureau argued that the employer is not seeking supersedeas fund reimbursement for benefits paid, but rather, is attempting to recover its portion of costs in obtaining the third party recovery. The Court noted that Section 443(a) of the Act and Section 319 of the Act are both implicated. Section 443(a) notes that in any case where supersedeas is denied, and payments for compensation are made, and upon the final outcome of the proceeding, it is determined that payments should not have been made, the payments shall be reimbursed. Section 319 of the Act states that when an injury is caused by a thirty party, the employer shall be subrogated to the right of the employee, and the cost of recovery shall be prorated between the two.

The Court noted that the purpose of the Supersedeas Fund is to protect employers who make compensation payments to employees, who ultimately were not entitled to those payments.

The Court also noted that Department of Labor and Industry v. WCAB (Excelsior Ins.), 987 A.2d 855 (Pa. Cmwlth. 2010) is controlling in this case. In Excelsior Ins., the Court stated that "[w]e discern no clear indication from Section 319 that an insurer is required, in the context of Supersedeas Fund reimbursement, to assume the costs of recovering a thirty party settlement for periods in which there has been a determination that compensation was not, in fact, payable." Id. at 862. The Court noted further that "[a]lthough the *amounts* for which insurer is seeking reimbursement correlate to what is designated as recovery costs under Section 319 . . . Section 319 does not 'convert[] the compensation paid for [workers' compensation benefits] into something else for the purposes of Section 443(a)." Id. at 863. The payments in Excelsior Ins., were considered compensation payments.

The Court held in this case that the insurer incurred recovery fees in the third party action under Section 319, which under Section 443(a) are actually compensation, therefore, it held that the Supersedeas Fund is required to reimburse the employer for those fees.

Gaughan v. WCAB (Pennsylvania State Police), No. 2472 C.D. 2009 (Filed July 28, 2010)

Issue: Whether that portion of the Pennsylvania State Police's pension obligations attributable to contributions from the Motor License Fund should be considered "funded by the employer" for purposes of calculating the offset under Section 204(a)?

Holding: Whether or not pension money comes from a liaison entity does not control whether the pension fund is employer-funded; Rather, the employer is entitled to an offset credit for pension benefits received by a claimant to the extent that the original money is funded by the employer directly liable for the payment of workers' compensation.

Facts: On August 17, 2005, the Claimant sustained a compensable injury in his capacity as a State Trooper when attacked by juveniles. The injury was accepted, via a Notice of Compensation Payable, as a right shoulder, cervical, and lumbar contusion. In July, 2006, the claimant took regular retirement based on his twenty-five years of service through the State Employees' Retirement System, which is a defined benefit plan. On November 2, 2006, a Notice of Benefit Offset was issued, asserting a weekly credit for claimant's pension. The Claimant filed a Petition to Review Benefit Offset, alleging that although he took regular retirement and not disability retirement, the reason he could not continue working was his work-related injuries.

Testimony from Bruce Edwards, the president of the Pennsylvania State Troopers Association, testified that 73-75% of the pension budget is funded by special funds from the Motor License Fund. The defense offered two witnesses in rebuttal. The WCJ concluded that the pension offset was properly asserted by the defendant according to the actuarial principles. The WCAB affirmed. The Claimant appealed.

The Court noted that the Employer bears the burden of proof with respect to pension offsets. The Court asserted that actuarial evidence is sufficient to meet this burden. The Claimant argued that the amount of offset should have been reduced by 75% to reflect the amount generated by the Motor License Fund. He relied on the Court's Decision in Township of Lower Merion v. WCAB (Tansey), 783 A.2d 878 (Pa. Cmwlth. 2001), which held that funds contributed to police officer's pensions from the Commonwealth, rather than the Township for whom they worked, constituted a third-party contribution, made by an entity other than the employer, and not subject to offset. The defendant argued that because the money is given to the Township, to allocate as it sees fit, it is transformed as employer-provided money. The Court rejected that argument.

The Court applied the Tansey Decision to this case, as the claimant contended that the Motor License Fund is a pass-through entity, and the PSP has no discretion as to its allocation. The Claimant cites the Retirement code as well as the Pennsylvania State Constitution, which sets the Motor Fund apart for activities such as road repair and maintenance, attempting to characterize it as a thirty-party entity. The PSP argues that regardless of which fund the money comes from within the Commonwealth, it all comes originally from the State Treasury, the employer in this particular case, therefore, all monies paid into claimant's retirement pension is employer-funded.

The WCAB agreed with the employer in this situation. First, it noted that the identity of the pension is the Commonwealth, and it is directly responsible for the payment of claimant's workers' compensation benefits in this case. It noted that no matter the fund where the pension money comes from, all revenues are collected by the Commonwealth, and thereby distributed. As such, it held that the Commonwealth in the present case is both the entity funding the employer's share of the pension fund and the one directly liable for paying workers' compensation benefits. The Court also noted that even though the Fund is earmarked for Trooper's pensions, it is still the Commonwealth that provides the original monies to the Fund itself. As such, the Court affirmed the WCAB's and WCJ's Decisions to deny his Review Petition.

Williams v. WCAB (Pohl Transportation), No. 2422 C.D. 2009 (Filed July 29, 2010)

Issue: Whether a claimant living in Pennsylvania, but working for an Ohio company as a truck-driver and doing approximately 38% of his driving in Pennsylvania, can meet the burden of proof with respect to jurisdiction in the Pennsylvania Courts under the Act?

Holding: When the factor concerning domicile is added to the question of jurisdiction, the claimant is no longer required to show that he regularly works at or from a facility in Pennsylvania, but rather, he is only required to show that a substantial part of his work time is spent within Pennsylvania.

Facts: The Claimant filed a Claim Petition alleging that he sustained an injury to his right leg on June 1, 2007. He also filed a Penalty Petition alleging a violation of the Act. The Claimant also filed a Claim Petition for Benefits from the Uninsured Guaranty Fund and Uninsured Employer. All Petitions were consolidated.

The Claimant was a truck-driver, and as such, drove across state lines frequently. Claimant testified that throughout his employment period of driving 42,000 miles, he logged nearly 35,000 of those miles in Ohio. The Claimant agreed that he was injured in Vermont on June 1, 2007. The Claimant admitted that he was receiving workers' compensation benefits in Ohio, but has since ceased receiving Ohio-based benefits.

The Employer testified that the Claimant was required to come to Ohio for orientation, drug testing, and a physical, but was not paid for these hours. The Employer testified that dispatches come from Ohio. The Employer also testified that the Employer does not maintain facilities in Pennsylvania, although clients of theirs do have drop-off points in Pennsylvania. The WCJ, via interlocutory order, found that the Claimant's employment was "principally localized" in Pennsylvania because he was permitted to begin and end trips in Pennsylvania, his home, he logged over one-third of his miles in Pennsylvania, and he did not regularly work from an Ohio terminal. Subsequently, the WCJ entered a final Decision based upon a Stipulation of Facts, that included an averment that the parties retained the right to Appeal the issue of jurisdiction. The Claimant's medical bills were the responsibility of the Employer, however, no responsibility would ensue unless Claimant's benefits in Ohio were modified for some reason. The Penalty Petition was withdrawn. The WCJ also granted the Claim petition against the Fund, as secondarily liable for the payments of Claimant's benefits in Pennsylvania.

On Appeal, the WCAB reversed the WCJ's Decision that jurisdiction was within Pennsylvania, finding that the Employer was located in Ohio and Claimant's assignments came from Ohio. It concluded that the Claimant did not primarily work in Pennsylvania. The Claimant appealed.

The Court noted that jurisdiction can be invoked for out-of-state injuries through the extraterritorial provisions in section 205.2 of the Act, which states generally that an employee working outside of Pennsyvlania, who suffers an injury that would normally be compensable in Pennsylvania, shall be entitled to compensation in Pennsylvania if his employment is principally localized in the State, or he is operating under a contract of hire made in Pennsylvania where the

employment is not principally localized in any state. The Court went on to note that "principally localized" means the employer has a place of business in the state and the employee regularly works at the same, or having worked at the place of business in the State, his duties called him outside Pennsylvania for over a year, or if the first two are not implicated, the employee is domiciled and spends a substantial part of his working time in Pennsylvania.

The Court noted that the Claimant has the burden of proof with respect to jurisdictional matters and that the focus of this Section of the Act is on the claimant's employment, not the employer.

The Court also noted that there are three ways to meet the burden of proof, as noted in the Act. The first two would be whether his employment is principally localized in Pennsylvania, which requires an analysis of whether the claimant worked in Pennsylvania as a rule, or as an exception. The Court noted that if the first two provisions of the Act have not been met, an analysis of the third way to meet jurisdiction would require an analysis as to whether the claimant is domiciled in Pennsylvania and spends a substantial part of his working time in Pennsylvania. This analysis is fact-intensive and involves credibility determinations to be made by the WCJ.

Here, the Court noted that neither provision one or provision two of Section 305 was implicated because the Employer did not have a place of business in Pennsylvania. Therefore, the Court noted that the Claimant had the burden of proof to prove that he was domiciled in Pennsylvania and that he spends a substantial amount of his working time in Pennsylvania. There was no dispute as to Claimant having been domiciled in Pennsylvania. The Court noted that statutory construction requires the word "substantial" to mean its common meaning of "considerable in quantity." The evidence of record revealed that of claimant's 110,751 miles driven, 42,000 were in Pennsylvania. As such, 38% of his work was done in Pennsylvania. The Court also noted that 32% of his work was done in Ohio and 30% was done in other states. The Court noted that he spend the largest time in Pennsylvania in comparison to the other states.