THE HARTWELL
LAW OFFICES, LLP

JANUARY 2017 CASE LAW UPDATE

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Capaldi v. WCAB (City of Philadelphia), 152 A.3d 1107 (Pa. Cmwlth January 9, 2017)

Issues: Whether the Claimant was entitled to a presumption of compensability under Act 46 of the Act.

Answers: No.

Analysis: The City of Philadelphia (Employer) hired Claimant as a firefighter in 1969. Claimant retired in October 2003 after 34 years of service. In May 2005, Claimant was diagnosed with squamous cell carcinoma of the right vocal cord, which was successfully treated with surgery. Seven years later, in December 2012, Claimant filed a claim petition alleging that his cancer was caused by his workplace exposure to carcinogens. Claimant sought payment of his medical bills.

The WCJ credited the testimony of Claimant on his work history and exposure to Group 1 carcinogens during his career as a firefighter. However, the WCJ rejected Dr. Singer's (claimant's expert) testimony that this exposure caused his type of cancer, and provided a detailed explanation for why. Conversely, the Judge credited the testimony of Defendant's experts and provided reasons.

The WCJ reached several legal conclusions. First, Claimant did not prove that he was unable to work as a result of his cancer; therefore, he was not entitled to use the presumption of causation set forth in Section 301(e) of the Act, 77 P.S. § 413. Second, Claimant did not file his claim petition within 300 weeks of his last date of employment, which precluded his use of the presumption set forth in Section 301(f) of the Act, 77 P.S. § 414. Third, Claimant, who had to prove that his squamous cell carcinoma was an occupational disease without the assistance of a presumption, did not make his case. Accordingly, the WCJ denied the claim petition.

Claimant appealed to the Board, and it affirmed. It upheld the WCJ's factual findings. The Board agreed with the WCJ that Claimant was not entitled to use the statutory presumption under Sections 108(r) and 301(f) of the Act to prove that his cancer was work-related because he did not file his claim petition within 300 weeks of the last day of exposure to the carcinogen at work. Claimant retired on October 30, 2003, and he did not file his claim petition until December 14, 2012, which was 476 weeks after his last day of employment as a firefighter. Accordingly, Claimant did not satisfy the deadline for being able to use the presumption in Section 301(f) of the Act. The Board also agreed with the WCJ that Claimant bore the burden of proving all the elements necessary to prove that his cancer was an occupational disease, and he did not do so because the WCJ did not credit the testimony of Dr. Singer.

The Commonwealth Court reiterated their recent prior precedent asserting that they rejected the presumption construction of Section 108(r) of the Act because it gave no effect to "caused by." The Court held that Section 108(r) requires the firefighter to show that the Group 1 carcinogens, to which he was exposed, have been shown to cause the type of cancer suffered by the claimant. The Court also clarified that only after a firefighter establishes that his cancer is an occupational disease under Section 108(r) of the Act do the rebuttable presumptions in Sections 301(e) and (f) come into play.

The Commonwealth Court held that the timeliness of the claimant's claim petition was irrelevant even if the discovery rule were applicable. This is because the presumption in Section 301(f) of the Act applies only where the firefighter has shown that his cancer is an occupational disease under Section 108(r) of the Act.

The Commonwealth Court ruled that Claimant's medical evidence did not establish that squamous cell carcinoma is a type of cancer caused by Group 1 IARC carcinogens, and this was necessary in order to establish that his cancer is an occupational disease under Section 108(r) of the Act. As a result, the presumption of compensability in Section 301(f) of the Act was unavailable to Claimant.

Conclusion and Practical Advice: After a series of cases, the Commonweatlh Court ruled and again confirmed that the claimant must prove that the type of cancer asserted by the claimant could be caused by the claimant's employment duties as a firefighter.

Duffy V. WCAB (Trola-dyna, Inc.) 152 A.3d 984 (Pa Supreme Court January 19, 2017)

Issues: Whether potential injuries not formally included on the NCP need to be considered in an IRE.

Answer: Yes.

Analysis: The Supreme Court of Pennsylvania determined that a physician conducting an IRE must consider all injuries caused by the accepted injury when determining the extent of a claimant's impairment. The physician may determine that an injury is unrelated to the accepted injury and refuse to factor that into the total impairment. However, the physician may not simply ignore any other injuries arising out of the accepted injury.

The claimant suffered an injury while picking up electrified wires while repairing a machine for his employer. The employer accepted the injury and filed an NCP indicating that "bilateral hands electrical burns" was the injury for which the claimant could receive workers' compensation benefits. The employer began paying the claimant TTD benefits based on the injury noted on the NCP.

The employer paid 104 weeks before requesting an IRE. During his IRE, the claimant informed the physician that he suffered from psychological symptoms in addition to his electrical burns. The IRE physician did not evaluate the psychological symptoms for two reasons: (1) the employer did not mention any psychological disorder as an accepted injury and (2) the physician was not a mental health expert. Using the Sixth Edition of the AMA Guidelines, the IRE physician determined that the claimant suffered impairment to six percent (6%) of his body because of his burn injuries.

The employer modified the claimant's benefits from TTD to TPD because claimant's whole body impairment rating was less than 50%. In response, the claimant filed a review petition asserting the IRE must be invalid because the physician did not consider his psychological symptoms of PTSD and adjustment disorder, which developed because of the electrical burns the claimant sustained. The WCJ agreed with the claimant that the IRE physician should have addressed the psychological disorders and ruled that the IRE was invalid because the physician failed to take those symptoms into account.

The WCAB reversed the decision of the WCJ. The Commonwealth Court, agreed with the WCAB. The claimant appealed to the Supreme Court of Pennsylvania. The Supreme Court reversed the Commonwealth Court and determined that the IRE was not valid because the physician only considered the electrical burns when determining impairment, as opposed to the electrical burns and the PTSD.

The Court found that while the NCP may only accept a specific injury, the IRE physician needed to determine how any injuries stemming from the accepted injury might affect the claimant's total impairment. Here, the psychological symptoms were caused by the accepted injury. Therefore, the IRE needed to address claimant's psychological condition.

Conclusion and Practical Advice: This Opinion highlights the importance of accurately describing a work injury in the first NCP, and continuously reviewing the NCP for accuracy over time. An IRE physician may avoid invalidation by the courts by addressing the accepted injury or injuries and addressing any injuries a claimant reports before or during the IRE. The IRE physician is not required to find that the "new" injuries are related to the accepted injury.