SEPTA v. WCAB (Cunningham) - 2045 C.D. 2011

Issue(s):

(1) ***Whether an employer has to establish job availability in order to obtain a suspension of benefits when claimant is totally disabled as a result of a non-work-related condition?***

Answer:

(1) The Employer is not required to establish job availability in order to obtain a suspension of benefits when the claimant is totally disabled as a result of a non-work-related condition.

Analysis:

(1) The Commonwealth Court relied on Schneider, Inc. v. WCAB (Bey), 747 A.2d 845 (2000) and explained that requiring an employer to show that sedentary or light duty work is available in this situation would be "an exercise in futility" by virtue of the claimant's physical condition. Id. at 850. The Court explained that its decision was not inconsistent with that issued in Struthers Wells v. WCAB (Skinner), 990 A.2d 176 (Pa. Cmwlth. 2010). In Struthers Wells, the court determined that a claimant had to be totally and permanently disabled to absolve defendant of the obligation to show that work was available. Additionally, the court declined to extend the holding in Schneider to excuse the employer from providing a Notice of Ability to Return to Work. The Court in SEPTA concluded that because Struthers Wells was decided based on lack of notice, its holding was not applicable. The SEPTA court acknowledged that the injuries sustained by the claimant were less serious than the permanently and totally disabling non-work-related injuries sustained by the claimant in Schneider, but it reasoned that the defendant did not have to prove job availability because the claimant in SEPTA was "incapable of all possible work."

Conclusion and Practical Advice:

Whenever you have a claimant who is totally disabled from non-work-related conditions or injuries, you should obtain an IME in the hopes that he will be released to any level of work for the work-related injury, so that you can seek a suspension of benefits without having to prove job availability. The SEPTA Decision also establishes that it is unnecessary to prove that the claimant is permanently disabled from the non-work-related condition, instead, it must merely be shown that the claimant is incapable of all possible work.

J. Whitesell v. WCAB (Staples, Inc.) - 205 C.D. 2013

Issue(s):

(1) ***For purposes of a Fatal Claim Petition, does an employee's death occur within the 300 week time limitation prescribed in Section 301(c)(1) of the Act if the death arose from an "additional" injury that was accepted pursuant to a WCJ's Decision on a Review Petition?***

Answer:

(1) An employee's death is not within the 300 week time limitation if the death arose out of an "additional" injury that was accepted pursuant to a WCJ's Decision on a Review Petition.

Analysis:

Claimant argued that the Fatal Claim Petition should not be barred by section 301(c)(1) of the Act because the death occurred within 300 weeks of the granting of a Review Petition. The Commonwealth Court agreed with the Board that the 300 week period of section 301(c)(1) applies because the decedent sustained a work injury as opposed to an occupational injury. Claimant argued that this case was distinguishable from Shoemaker v. Workmen's Compensation Appeal Board (Jenmar Corporation), 604 A.2d 1145 (Pa. Cmwlth), *appeal denied*, 618 A.2d 403, 404 (1992) which found that even in the case of a consequential injury, the 300-week period is calculated from the beginning of the original work injury. Claimant argued that Shoemaker was distinguishable because decedent succeeded on a Review Petition in the current matter whereas no Review Petition was filed in Shoemaker. The Commonwealth Court found that the WCAB properly rejected this argument because the Shoemaker Decision was based solely on the fact that the Fatal Claim Petition was not filed within 300 weeks of the original date of injury and not on whether the additional injuries were accepted via a Review Petition. Additionally, the Commonwealth Court rejected the claimant's attempts to characterize the injuries accepted via the Review Petition as "insidious" and therefore different than a "standard" work injury. The Commonwealth Court explained that the decedent's death in this matter from mixed drug toxicity was no more insidious than the decedent's death from AIDS in Shoemaker. The Commonwealth Court viewed claimant's arguments as an attempt to create a new classification for the decedent's work injury and found that neither the Act nor Shoemaker allowed the claimant to do so.

Conclusion and Practical Advice:

Whenever a claimant files a Fatal Claim Petition related to an injury that is not classified as an occupational disease, you should analyze the file to determine whether the death occurred within 300 weeks of the *initial* date of injury. You should not calculate the 300 weeks from the date of any subsequent expansion of the description of injury. If the death did not fall within 300 weeks of the initial date of injury, you should defend against the Fatal Claim Petition by arguing that it is barred by section 301(c)(1) of the Act. If a claimant attempts to get around the 300 week requirement by trying to establish that a decedent's death from a non-occupational disease is something other than a "standard" injury, defendant should cite to Shoemaker to argue that such a designation is not allowable.