

Gentex Corporation and Gallagher Bassett Services v. WCAB (Morack), J- 95- 2010,
Argued November 30, 2010

Issue:

Whether claimant provided sufficient notice under the totality of the circumstances

Answer:

Yes, all claimant's communications taken together do satisfy the notice requirement.

Analysis:

Claimant worked as an assembler for many years. She began noticing that her fingers and hands were not operating as they used to, such as instances where her fingers would become stuck in certain positions. According to claimant, she informed her supervisor of these complaints. They did not discuss what could be causing these problems. Finally on January 17, 2005, claimant saw a doctor who removed her from work.

Claimant told employer that the doctor diagnosed her with fatigue and that she could not use her hands for awhile. Claimant applied for short term disability and indicated on the application that the injury was not work-related. On the application she also indicated that her diagnoses include high blood pressure and knee and ankle injuries, which are not work-related. Claimant was referred to an orthopedic surgeon in February, and at this time she learned that her condition was work-related. Claimant left the human resources person voicemails saying she had "work-related problems."

Employer submitted the testimony of a fact witness, Ms. Montefor, also an employee, who was responsible for processing work injuries. All employees are directed to inform Ms. Montefor of any work incidents. In fact, claimant had informed Ms. Montefor of injuries in the past. However, on this occasion, Ms. Montefor did not learn of claimant's alleged injury until the claim petition was filed on September 19, 2006.

The Workers' Compensation Judge granted claimant's claim petition. The judge held that claimant did not have notice of the injury until February 2005 when she treated with the orthopedic surgeon. Regarding notice, the judge found that claimant provided notice by leaving a voicemail for Ms. Montefor.

Employer appealed to the Workers Compensation Appeal Board but the decision was affirmed. The Board held that credibility determinations are the sole province of the WCJ.

Employer's argument on appeal to the Commonwealth Court was that claimant presented insufficient evidence to find claimant provided timely notice of injury. Employer does not dispute the judge's credibility determination accepting claimant's testimony over Ms. Montefor's. Rather, employer argues that the claimant did not carry her burden because there is no indication in the decision as to *when* she left the voicemail. In addition, employer argued that claimant's message stating she had "work-related problems" is too vague to meet the notice requirement of the Act.

The Commonwealth Court reversed the decisions of the Board and the WCJ. The court agreed that claimant's testimony did not include any mention of the date she left the voicemail. Therefore, it is not entirely clear she provided notice within 120 days of the diagnosis as required by the Act. However, the court rejects employer's argument that notice was not timely, because employer provided no evidence that the message was received 120 days after the diagnosis. In addition, a review of claimant's testimony does not provide a basis to find there was a substantial delay between her diagnosis and her leaving the voicemail.

However, the court does find that claimant's message was too vague to provide notice. She did not provide any description of the injury whatsoever. On her short term disability application, claimant indicated that her injuries were not work-related. She also included diagnoses that are completely unrelated, such as high blood pressure. Therefore, employer's review of the application could not shed light on the relatedness of injury.

Claimant then appealed to the Supreme Court.

Conclusion and Practical Advice:

The Supreme Court reversed the Commonwealth Court decision, finding that notice was sufficient under the Act. Determining whether adequate notice was provided requires analyzing the totality of the circumstances. In this case, the Commonwealth Court failed to acknowledge the importance of claimant leaving work after informing her supervisor that her hands hurt. This dialogue provided employer with a description of the time and place of the injury, since it occurred while she was working. Claimant also indicated to her supervisor that her hands and fingers were hurting, thereby providing a description of the injury. However, it is true that there was no indication as to whether the injury was work-related.

Claimant remedied this shortfall subsequently in her voicemail to human resources. She informed employer in the message that she had a "work-related problem." Therefore, when taking into account all the circumstances, claimant satisfied the notice requirement by describing the time and place of injury, the injured body part, and that the injury was work-related. The court also reiterates the point that "a meritorious claim ought not be defeated for technical reasons." Katz 485 Pa. 541.

This decision shows just how little is required to satisfy the notice requirement. Although notice is claimant's burden, in reality it will fall to the defense to show that claimant failed to provide a description of injury, time and place of injury, and/or relatedness of the injury.

**JANET LITTLE V. WORKERS' COMPENSATION APPEAL BOARD (B&L
FORD/CHEVROLET), 1857 CD 2010**

Issue:

Whether an employer is liable for a fatal injury that occurs after an employee is notified that the employment relationship was terminated.

Answer:

No, because the employment relationship was ended prior to the injury.

Analysis:

Petitioner (surviving spouse) petitioned for review of a WCAB Order affirming the WCJ's Order denying claimant's fatal claim petition. The Commonwealth Court affirms.

Decedent sustained a shoulder injury at work. He worked light duty for about three months before returning to full duty. However, upon receiving a letter from decedent's attorney stating decedent could not return to work, employer directed decedent to go home and seek a doctor's report clearing him to return to work. Shortly thereafter, decedent spoke to employer on the phone and was informed that he would be receiving a letter. As it turns out, the letter was a termination letter. In the week following decedent's receipt of the termination letter, decedent was unable to eat or sleep, and he incessantly read and reread the letter. Decedent called petitioner at work on January 30, 2006 and petitioner returned home to find decedent sitting at the table reading the letter over and over. Decedent then collapsed to the floor and ultimately died.

The Workers' Compensation Judge did not address the testimony of any medical experts based on his ultimate legal conclusion that decedent was not in the course of his employment when he died, therefore the testimony was not pertinent to the issues presented. The WCJ granted the claim petition for the shoulder injury and awarded total temporary disability benefits for the period from the date of injury until the date of decedent's death, but denied the fatal claim petition.

Conclusion and Practical Advice: When an injury occurs off-premises, the relationship between an injury and employment activities must be more clear. Where a work injury appears to bear no relationship to events associated with employment activities, but rather relates to a final act which serves only to alter the employment relationship (i.e. terminating the employee) an injury caused by that final act does not arise in the course of employment. The Act does not impose liability on employers for injuries resulting from terminating an employee. Employer ended the employment relationship prior to the fatal injury, therefore claimant could not prove that decedent sustained a compensable fatal heart attack.

The circumstances present in this case are unique and not likely to repeat with great frequency. However, the practical point to take from the case is that an employer is not liable, under the Workers' Compensation Act, for death stemming from an action

severing the employment relationship. It follows that an employer may also not be liable for any psychological injury caused by terminating the employment relationship, which is a much more likely scenario.

City of Philadelphia v. WCAB (Butler), 1245 C.D. 2009

ISSUE:

Whether benefits can be terminated or suspended retroactive to a date that predates the issuance of a Notice of Compensation Payable (NCP).

ANSWER:

Yes. The date of a Notice of Compensation Payable does not preclude an earlier date of termination, suspension, or modification of benefits.

ANALYSIS:

Claimant was injured on September 28, 1995. A Notice of Compensation Payable was issued on November 7, 1995. Defendant's medical expert issued a full recovery opinion on October 19, 1995. In light of the full recovery opinion, defendant filed a termination petition in December of the same year, requesting alternative relief of a suspension of benefits. The Workers' Compensation Judge granted termination effective October 19, 1995, the date of the independent medical examination.

The Workers Compensation Appeals Board reversed, relying on the precedent in Beissel v. WCAB (John Wanamaker, Inc.), 502 Pa. 178 (1983). According to Beissel, the employer must prove that claimant's injury was resolved sometime *after* issuance of the NCP. However, the holding in Beissel was based on the notion that an employer is bound by its own NCP. An employer cannot repudiate the existence of an NCP by obtaining a termination prior to its issuance. However, the facts of Beissel were very different. In Beissel, The claimant withdrew her claim *in reliance on employer's representation* that it would accept liability so that she could undergo surgery. By terminating prior to the date of the NCP, employer essentially escaped its obligation to pay for the surgery through a loophole. This amounted to a misrepresentation that employer could not be allowed to benefit from.

Pending before the Commonwealth Court in this case was the employer's Petition to Review the WCAB order denying its suspension petition even though the Workers' Compensation Judge found claimant fully recovered. The WCAB held that benefits can never be terminated or suspended as of a date predating the issuance of an NCP. The Commonwealth Court vacated the decision in holding that benefits may be terminated or otherwise modified where the evidence proves that the claimant's disability resolved before the issuance of an NCP. Accordingly, the court reinstated the WCJ's suspension with an amendment to the effective date of suspension.

Claimant then filed a petition for reconsideration, noting that in her appeal to the Board, the fact that the suspension cannot take effect before the issuance of the NCP was dispositive. Commonwealth Court granted reconsideration and holds that the Board must address the merits of the suspension.

CONCLUSION:

The date of an NCP does not preclude the termination, suspension or modification of benefits as of a date predating the NCP. To hold otherwise puts form over substance and discourages employers from issuing NCP's in the first place.

The practical advice based on this case is that an employer may terminate, suspend or modify retroactive to a date prior to issuance of an NCP. However, the caveat is that there is precedent, in limited circumstances, for the court to disallow termination, suspension or modification. Those limited circumstances exist when a claimant withdraws a petition based on employer's representation that liability for medical expenses is accepted, but employer then terminates benefits prior to the NCP date to avoid actually paying for any treatment.

Dept. of Labor and Industry, Bureau of Workers' Compensation v. WCAB (Crawford & Company), J-35-2010

Issue:

Whether the Supersedeas Fund may deny reimbursement for treatment rendered before an insurer requested supersedeas, when the bill was not submitted to the insurer until after supersedeas was requested?

Answer:

The payment obligation arises when the bill is submitted to the insurer; therefore the insurer should be reimbursed for payment of medical bills submitted to insurer after a supersedeas request was filed regardless of the date of treatment.

Analysis:

Claimant underwent surgery on June 1, 2004. Employer filed a termination petition with a request for supersedeas on July 19, 2004. Insurer received the surgery bill on October 11, 2004 and paid this bill on January 25, 2005.

The Workers' Compensation Judge granted the termination petition on June 28, 2005. Subsequently, the insurer requested a Supersedeas Fund reimbursement. The Bureau challenged the request because the surgery predated the supersedeas request.

Conclusion and Practical Advice:

The Workers' Compensation Judge found that, while the service date creates potential for a claim, no obligation to pay arose until the bill was submitted to insurer in October, therefore reimbursement was appropriate. The Workers' Compensation Appeal Board affirmed the judge's decision, and the Commonwealth Court also affirms.

The court held that the bill, received post-denial of supersedeas, is what caused money to "leave the coffers of the insurer". The surgery date is basically irrelevant because if supersedeas had been granted, the insurer would not have paid for the surgery when it received the bill in October.

In accordance with this ruling, insurers and defense counsel should always request supersedeas reimbursement for medical bills paid during the reimbursable period, regardless of the date of service.

Flexible Staffing Solutions v. WCAB (Johnson), 21 C.D. 2011

Issue:

Whether a claimant is precluded from receiving workers' compensation benefits under the Ride Share Act when the carpool arrangement was controlled by employer

Answer:

No, the Ride Share Act does not apply thus the claim is not precluded.

Analysis:

Claimant was injured while riding in a van with coworkers from the designated "pick-up site" to a job site. Employer denied liability under The Ride Share Act which precludes employees from receiving workers' compensation benefits when injured during the commute to or from work. Essentially, it applies to carpool situations. The RSA contains a provision stating that workers' compensation shall not be available to persons involved in ride-sharing between their place of residence and place of employment.

The Workers' Compensation Judge found that the claimant was not within the RSA provision, therefore he is eligible to receive workers' compensation benefits; i.e. like the holding in Right Care Resources v. WCAB (Davis). Accordingly, the claim petition was granted.

Employer on appeal argued that the precedent set in Bensing v. WCAB (James D. Morrissey, Inc.) should apply. Therefore, on appeal the primary issue was determining which precedent was applicable to the situation – Right Care or Bensing.

In Right Care, the employees were instructed to gather at a designated location to be picked up and taken to the job site for the day. Although participation in the transportation was voluntary, it was inevitable that employees would participate; employees had to assemble at this location to get their assignments, and there was no reason not to accept the free ride. The claimant in this case was injured during the ride, and the Commonwealth Court upheld the decision of the WCJ and the Workers' Compensation Appeals Board granting benefits because the RSA did not apply.

Bensing was a very different situation. In this case, employer did not provide any transportation. Rather, employer would alert the employees the night before a job as to where they should report. The employees chose to carpool in order to save money; employer derived no benefit from this arrangement. Employer's involvement in the carpooling was limited to alerting employees of other employees who lived in the same geographic area so that employees could arrange a carpool if desired. In this case, the court held that claimant was precluded from receiving workers' compensation benefits by the RSA because this was a typical ridesharing arrangement meant to be governed by the RSA.

Conclusion and Practical Advice:

In affirming the decision, the court held in accordance with its holding in Right Care. It is not ridesharing when an employer is “marshalling” its employees at a destination to distribute the employees to various locations. The employer is benefitting from this arrangement because employees were not paid for the ride, yet they were essentially at work.

When assessing cases such as this, it is important to take into account the nature of employer’s involvement in the arrangement. If the employer has control over the employees and/or benefits from the arrangement in any way, the claim is probably not precluded. The RSA will usually only apply in cases where a claimant takes it upon herself to carpool from her residence to her job site.