City of Philadelphia, Petitioner v. Workers' Compensation Appeal Board (Ford-Tilghman), Respondent

No. 1049 C.D. 2009

COMMONWEALTH COURT OF PENNSYLVANIA

2010 Pa. Commw. LEXIS 135

November 6, 2009, Submitted
March 17, 2010, Decided
March 17, 2010, Filed

Facts:

The employee sustained an injury in the course and scope of employment, whereby an NCP was issued that acknowledged certain conditions. However, the claimant received Heart & Lung Act benefits in lieu of Workers Compensation. H & L benefits provide the claimant with their full salary tax free. The employer filed a Termination Petition alleging that the claimant was fully recovered.

The WCJ denied the employer's request and ordered that 20% of the employee's workers compensation indemnity benefits be deducted and paid directly to her counsel as a fee. As a consequence, the claimant continues to receive her full wages tax free without reduction of counsel fees. This results in the payment of full wages under the H & L Act plus the cost of an additional 20% in attorney fees. The general gist of the argument creatively presented by our very own Beth Bowers was that this amounted to an unreasonable contest or a penalty.

The Board and the Commonwealth Court affirmed the WCJ's determination. The fee award of 20 percent was deemed a per se reasonable amount under the Worker Compensation Act.

Holding:

This case reaffirms the established practice that a claimant is permitted to receipt of their full wages under the H & L Act plus the payment of the counsel fees under the workers compensation case.

Impact on current practice:

This case has relatively little impact on future practice as it simply maintained the status quo. Relative to this issue, please take precautions to ensure whether or not a fee agreement is warranted. For example, if the case involves a Review Petition to Amend the Description of Injury to include something they are already paying for, try to resolve the issue before the first hearing.

City of Philadelphia, Petitioner v. Workers' Compensation Appeal Board (Harvey), Respondent

No. 1379 C.D. 2009

COMMONWEALTH COURT OF PENNSYLVANIA
2010 Pa. Commw. LEXIS 137

January 8, 2010, Submitted
March 17, 2010, Decided
March 17, 2010, Filed

Facts:

The instant litigation arose following a Petition to Review filed by claimant after receipt of a Notice of benefit offset. The WCJ concluded that the employer established that it contributed 53.983 percent of the claimant's monthly pension benefits. However, due to procedural issues the Employer was not entitled to an offset for the period prior to August 19, 2005.

The claimant appealed portions of the WCJ's decision. Following a decision from the Board affirming the decision of the WCJ, the claimant subsequently sought a rehearing before the Board. They argued that the WCJ failed to properly consider that at the time of the WCJ's decision, the employer's pension benefit was only $ 2.27 per month. Thus, the employer should only be permitted to reduce his compensation benefits by $ 1.23 per month. This reduction resulted from a provision in the Philadelphia Code Section 22-401(4) that permits a reduction of pension benefits due to the receipt of Workers Compensation benefits.

Following the rehearing, the Board ruled in favor of the claimant. The Commonwealth Court upheld the grant of a rehearing as requested by the claimant, finding that the Board did not abuse its discretion since the original appeal documentation submitted by the claimant raised the issue and the effect of a city pension ordinance.

Holding:

Rehearing before the WCAB is permitted in situations when the interest of justice requires and should be liberally administered to the benefit of the claimant. They should be granted when the Board has misapplied or misapprehended an issue.

The actual appeal was based on whether or not a rehearing was permitted. However, the ancillary finding in this matter that could have an impact on future cases is the reaffirmation that the employer is only entitled to an offset of pension benefits that were actually received.

Impact on future file handling:

This case could potentially provide some incite into the method for calculation of a pension offset. There are specific delineations of the consequences of a reduction in the claimant's receipt of pension benefits. However, please note the interplay between the WC Act and Sections of the Philadelphia code as the provisions in the Philadelphia code created an additional dynamic in this case that would not exist in numerous other jurisdictions.

Charles Christy, Petitioner v. Workers' Compensation Appeal Board (Philadelphia Gear Corporation), Respondent

No. 1276 C.D. 2009

COMMONWEALTH COURT OF PENNSYLVANIA

2010 Pa. Commw. LEXIS 126

December 4, 2009, Submitted
March 12, 2010, Decided
March 12, 2010, Filed

Facts:

On February 25, 1991, the claimant suffered a work-related injury to his left knee, whereby the employer accepted liability for the injury and began paying the claimant total disability benefits at approximately $436 per week. The claimant later returned to work, with restrictions. In time, the claimant's benefits were suspended when he began receiving wages equal to or greater than his pre-injury wages. On August 26, 1996, the claimant suffered another work-related injury to his right knee, which was accepted and resulted in additional receipt of benefits in the amount of approximately $480 per week. The claimant later returned to work with restrictions at no wage loss.

On February 28, 1999, the claimant retired at the suggestion of his treating physician. He subsequently filed two reinstatement petitions. The WCJ ultimately awarded benefits and directed payment at the compensation rate for the 1996 injury. Subsequent to the litigation, the employer filed an offset petition, which ultimately was granted. The court upheld the offsets granted to the employer, noting that the claimant suffered pre- and post-Act 57 injuries. Since the later-in-time injury directed what the compensation should be based upon, that injury determined the benefit rate of all related matters, such as offsets.

Holding:

Post Act 57 changes apply to individuals whose rate is relying upon an injury that occurred post Act.

Impact on future file handling:

This has limited applicability because of the factually specific need to have a pre and post Act 57 injury and a receipt of benefits under the post Act 57 rate. However, the holding in this matter may be extrapolated to other changes in the law post Act 57 such as IREs.

Struthers Wells, Petitioner v. Workers' Compensation Appeal Board (Skinner), Respondent

No. 1136 C.D. 2009

COMMONWEALTH COURT OF PENNSYLVANIA

2010 Pa. Commw. LEXIS 130

October 23, 2009, Submitted
March 12, 2010, Decided
March 12, 2010, Filed

Facts:

The employee sustained a back injury in the course and scope of his employment in 1989 and was receiving benefits under the Workers Compensation Act. The claimant subsequently sustained significant non work related heart and diabetic conditions precipitating and inability to return to work. In 2004, the employer filed its modification/suspension petition, alleging that the employee was released to sedentary work with respect to the injury. The employer presented two arguments. The first was that the claimant was totally and permanently disabled as a result of the non-work related conditions and that he was released to sedentary work for the low back condition. Under this argument no job offer is necessary. Second, the Employer argued alternatively, that the claimant's benefits should be suspended due to a lack of good faith in returning to the offered positions. The claimant was offered jobs under a Kachinski vocational assessment.

The WCJ ruled in favor of the employer. On appeal, the Board reversed that decision, finding that suspension of benefits was not warranted. The Commonwealth Court affirmed this reversal. The Court justified this opinion by limiting the Supreme's Court prior Decision in Schneider, Inc. v. WCAB (Bey), 560 Pa. 608, 747 A.2d 845 (2000). The court noted that the employee was severely limited by his non-work related conditions, including his heart problems, poor circulation, and diabetes, but was not one of the "unusual" circumstances that was described in the Schneider case. By determining that this fact pattern did not rise to the level of an unusual circumstance, there was a need to show job availability. As such, this matter had to follow the typical approach consistent with a Kachinski style vocational assessment. The Court subsequently affirmed the reversal of the suspension because the defendant never provided the LIBC 757 Notice of Ability to Return to Work as this is necessary under the Kachinski style vocational assessment.

Holding:

This case limits the prior Decision in Schneider and essentially provides an extra burden under that situation to show not only that the claimant is totally and permanently disabled, but that there is absolutely no hope of ever being able to return to the work force for the non-work related conditions.

This case also reiterates that it is the Defendant's burden to provide the LIBC 757. Additionally, this case even asserts that the claimant had no obligation to raise the issue until

after the party was aggrieved by the WCJ decision. As such, it appears that they are eliminating any potential waiver argument before the WCAB.

Impact on future file handling:

MAKE SURE THE LIBC 757 HAS BEEN SENT. Even if you sneak it by the Judge, they can raise it for the first time before the WCAB.

This would also have an adverse impact on any argument under the Schneider line of cases as there truly needs to be an "unusual" circumstance.

Thora Y. Stancell, Petitioner v. Workers' Compensation Appeal Board (LKI Group, LLC), Respondent

No. 1901 C.D. 2009

COMMONWEALTH COURT OF PENNSYLVANIA

2010 Pa. Commw. LEXIS 125

February 5, 2010, Submitted
March 10, 2010, Decided
March 10, 2010, Filed

Facts:

The worker sustained an injury at work when she fell down steps. The employer acknowledged the injury under an NCP with a description of injury of low back, right hand and right low arm contusion. The employer filed a termination petition. The employer presented expert testimony of a board-certified orthopedic surgeon who examined the claimant. He secured a history from the claimant at that time, which consisted of back pain, pain in shoulders and pain in her right fourth finger and right hand. He opined that she had fully recovered from her work injury. However, he did not specifically examine the arm. He did opine during his testimony that she fully recovered from the arm as well.

The WCJ granted the termination petition finding the expert credible. The Court determined that there was substantial evidence of record to conclude that the claimant had fully recovered which included the claimant failing to testify about any arm pain, the claimant failing to inform the IME physician about arm pain and a failure of the treating physician to state that she had arm pain.

Holding:

The IME physician does not specifically need to examine a particular area of the body to determine that a claimant has fully recovered.

Impact on future file handling:

At first glance from a brief review of the holding in this case it sounds like it may be very beneficial. However, please note that the facts of this case are extremely favorable to this particular defendant. It is relatively clear that the arm was not an aspect of this litigation and only used as an attempt to overturn the Decision. There was no evidence from any party pertaining to the arm except for the fact that the claimant stated she did not have arm pain. Use caution if relying upon this case as it could easily be distinguished.