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WORKERS' COMPENSATION PRACTICE CASE UPDATE

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**THE COMMONWEALTH COURT *EN BANC* OVERRULES A PRIOR
DECISION AND ALLOWS SUPERSEDEAS FUND REIMBURSEMENT ON A
PETITION TO REVIEW, REQUESTING THE ORIGINAL NOTICE OF COMPENSATION
PAYABLE TO BE SET ASIDE BECAUSE OF A MATERIAL MISTAKE OF FACT**

By Harry J. Klucher, Esq.

STATEMENT OF FACTS

In Comcast Corporation v. WCAB (Jones), the Claimant was injured on June 23, 2005 and began receiving workers' compensation benefits. On July 7, 2005, the Employer, through its claims administrator, issued a Notice of Compensation Payable (NCP) and the Claimant began receiving temporary total disability benefits. Subsequently on February 26, 2007, the Employer filed a Petition to Review/Set Aside the NCP (Review Petition) alleging that after discovering that the Claimant had made material misrepresentations of fact to the Employer, that the Employer had issued the NCP in error. The Employer requested a supersedeas which was not acted upon by the Workers' Compensation Judge (WCJ) and, in essence, denied. In addition, the Employer filed a Termination Petition on December 11, 2007 alleging alternatively that the Claimant had fully recovered from his work related injuries as of November 21, 2007. The Employer again sought a supersedeas based upon the Termination Petition which was not acted upon and, therefore, was denied. On January 10, 2008, the parties entered in to a Compromise and Release Agreement (Agreement) in which the Claimant was paid \$20,000.00. However, the Agreement reserved the parties right to have the WCJ issue a decision on the underlying Review and Termination Petitions. The Compromise and Release Agreement was approved. On September 4, 2008, the WCJ granted the Review Petition finding that the Claimant had concealed relevant medical information which tainted the NCP and legitimately called in to question whether or not the Claimant's disability was, in fact, work related. Because the

WCJ granted the Review Petition, she did not issue a decision on the underlying Termination Petition. After receiving the decision, the Employer filed an Application for Supersedeas Fund Reimbursement in the amount of \$35,366.22, which amounts were paid prior to the Compromise and Release Agreement. The Supersedeas Fund objected to the Application and the matter was heard by another WCJ. The second WCJ issued a decision on October 21, 2009 finding that the Employer was not entitled to Supersedeas Fund Reimbursement based upon the Review Petition, but alternatively did grant, in part, the Application for Supersedeas Fund Reimbursement, finding that based upon the Termination Petition, the Employer was entitled to supersedeas from the date the Termination Petition was filed. This was for a lesser amount of \$15,549.23. The Employer filed an appeal with the Workers' Compensation Appeal Board (WCAB).

REVIEW OF APPELLATE DECISIONS

The WCAB affirmed the WCJ, finding that a prior case issued by the Commonwealth Court, i.e., Home Insurance Companies v. WCAB (Bureau of Workers' Compensation and Denny's, Inc.\C.B.R. Construction), 510 A.2d 1280 (Pa. Cmwlth. 1986), was binding precedent and that the facts were very similar to this case where supersedeas was denied on a Review Petition. The Home Insurance Companies case held that a NCP remained in effect until set aside by the WCJ and thus there was no right to Supersedeas Fund Reimbursement. The Employer filed a Petition for Review with the Commonwealth Court. The Employer argued that the Commonwealth Court should, in essence, revisit its prior precedent in the Home Insurance case since its Application for Supersedeas Fund Reimbursement satisfied all of the criteria for Supersedeas Fund Reimbursement as set forth in Section 443(a) of the Act. The Commonwealth Court reversed the WCJ and WCAB and found that although Pennsylvania law follows the doctrine *stare decisis*, the Pennsylvania Supreme Court has also cautioned jurists not to adhere blindly to precedent where doing so would perpetrate an error. Thus, in this case, the Employer was entitled to Supersedeas Fund Reimbursement at the higher amount based upon the WCJ setting aside the NCP. To rule otherwise would only serve to perpetrate an error where the clear and unambiguous language in Section 443(a) of the Act indicates that the Employer is entitled to reimbursement from the Fund from the date it filed its Review Petition until September 4, 2008, the date the WCJ granted the Review Petition, setting aside the NCP.

COMMENTS

In this case it appears that the WCJ who heard the Supersedeas Fund Application was attempting to issue a Solomon-like decision. While not granting the Employer its entire request for supersedeas reimbursement of \$35,366.22, the WCJ did grant an amount of \$15,549.23 based upon the filing of the Termination Petition. However, the original WCJ never even issued a decision on the Termination Petition. It would seem inequitable (as decided in the Home Insurance case which was precedent for 15 years) to preclude the Employer from seeking Supersedeas Fund Reimbursement where the Employer voluntarily issued the NCP based upon the facts available to it at the time. Later on when the Employer learned that the facts were not accurate or correct, the Employer filed a Review Petition to set aside that document. The Court recognized its error in the Home Insurance decision issued in 1986 and corrected that error by this decision. This is very atypical.

If you would like a copy of Comcast Corporation v. WCAB (Jones), No. 2208 C.D. 2010, please do not hesitate to contact us.

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