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WORKERS' COMPENSATION PRACTICE CASE UPDATE

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THE COMMONWEALTH COURT DECIDES THAT THE IMPACT OF A CLAIMANT RECEIVING SOCIAL SECURITY DISABILITY BENEFITS (IN PART DUE TO A NON-WORK RELATED CONDITION) SUPPORTS THE EMPLOYER'S POSITION THAT THE CLAIMANT HAS REMOVED HERSELF FROM THE WORKFORCE AND, AS SUCH, THE EMPLOYER IS ENTITLED TO SUSPENSION OF BENEFITS

By Harry J. Klucher, Esq.

STATEMENT OF FACTS

In Susan Burks v. WCAB (City of Pittsburgh), the Claimant had a number of medical conditions as a child for which she underwent multiple surgeries including a hip fusion and hip replacement. On April 12, 1984, the Claimant sustained a right knee sprain. She began receiving workers' compensation benefits pursuant to a Notice of Compensation Payable. She underwent multiple right knee surgeries including a right knee replacement that shortened her right femur which, in essence, equalized it with her left leg, due to her prior non-work related surgeries as a child. The Claimant began receiving Social Security Disability benefits and has not worked or looked for work since 1984. In addition, after her work related injury in 1984, the Claimant sustained an injury to her thoracic and lumbar spine in a motor vehicle accident. She also underwent an additional operation on her left hip. In 1990, the Claimant was involved in another motor vehicle accident which caused her left leg symptoms to increase. The Claimant was evaluated by Dr. Jon B. Tucker, an orthopedic surgeon, on April 3, 2008. Dr. Tucker indicated that as far as the Claimant's work related condition to her right knee, she suffered from post traumatic arthritis treated by the knee replacement. Considering the work injury alone, the Claimant was capable of full-time light duty work. Dr. Tucker also opined that taking all of the Claimant's conditions into account, the Claimant would only be able to perform full-time sedentary work. The Employer thereafter filed the Notice of Ability to Return to Work (LIBC-757)

on April 24, 2008 advising the Claimant that she was released to return to a light duty position and had an obligation to look for available employment. The Employer thereafter filed a Suspension Petition alleging that the Claimant was physically capable of performing light duty work, but had voluntarily removed herself from the workforce. While the Claimant presented contrary medical evidence, (i.e., that she was totally disabled), and that her work injury caused the Claimant to use crutches, a wheelchair and develop carpal tunnel syndrome, severe back pain and chronic shoulder pain, the Worker's Compensation Judge (WCJ) believed Dr. Tucker's testimony over the Claimant's medical evidence. The WCJ concluded that considering the work injury, the Claimant could perform light duty work. The WCJ also acknowledged that the Claimant admitted that she had not looked for any work since she received Social Security Disability benefits in 1984. The WCJ concluded that the Claimant had voluntarily withdrawn from the workforce and, thus, suspended her benefits. The Claimant filed an appeal to the Workers' Compensation Appeal Board (WCAB).

REVIEW OF APPELLATE DECISIONS

The WCAB affirmed the WCJ. The Claimant then filed a Petition for Review with the Commonwealth Court. The Commonwealth Court affirmed. However, in doing so, the Court indicated that the WCJ could not rely alone on the Claimant's admission that she had not sought work since 1984 to conclude that she had voluntarily removed herself from the workforce. The Court commented that under the circumstances, the Claimant had no duty to seek work until the Employer met its initial burden to show a voluntary retirement. The Claimant did not receive a pension and, thus, there was no evidence indicating that the claimant had retired and voluntarily removed herself from the workforce. However, the Court indicated that the Claimant's receipt of Social Security Disability benefits based upon her inability to engage in substantial gainful employment, established that the Claimant had voluntarily withdrawn from the workforce. The Court indicated that if the WCJ finds that a Claimant suffers from a work injury and non-work-related medical conditions and that the work injury does not prevent the Claimant from working, then the receipt of Social Security Disability can only mean that the Claimant is unattached to the workforce for reasons unrelated to the work injury. Here the Claimant's non-work related medical conditions allowed her only to work at a sedentary level where her work related conditions allowed her to work at a light duty level. Because of that non-work related limitation, the Court did not feel that the burden was on the Employer to show job availability and, thus, allowed a suspension of benefits. Because the Claimant had removed herself from the workforce, it would be pointless for the Employer to prove available light duty work.

COMMENTS

This was an interesting case to the extent that the Claimant had not worked in 24 years before the Claimant had her IME by Dr. Tucker. The Claimant did have a number of other non-work related conditions which caused her to have significant limitations and since her Social Security Disability was granted in part due to the non-work related conditions, the Court allowed a suspension of benefits because of the Claimant's removal from the workforce, even though she had not accepted old age Social Security or a retirement pension. In part, the Court combined the burdens of proof concerning the Claimant removing herself from the workforce with Claimant's inability to return to work after she received Social Security Disability benefits which were in part caused by her limitations due to non-work related conditions.

If you would like a copy of Susan Burks v. WCAB (City of Pittsburgh), No. 980 C.D. 2011, please do not hesitate to contact us.

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