

WORKERS' COMPENSATION

CLIENT ALERT by David G. Greene

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Summarized below are several recent decisions that will surely be of interest to workers' compensation professionals and practitioners.

The Road Toad, Inc. v WCAB (McLean) (8/12/10 but designated reported opinion on 11/1/10). This was a catastrophic injury UR case. In 1996, employer paid 8hrs per day/5 days per week of unskilled home care. In 2002, claimant filed a prospective UR, asserting that she needed 12 hrs per day/7 days per week. Employer voluntarily paid 8 hours per day/7 days per week. The UR Reviewer agreed with claimant and increased her care to 12 hours per day. Employer filed a Petition to Review UR and obtained a medical opinion that only 8 hours was reasonable. The WCJ agreed with the employer's expert. The WCAB reversed, citing to Luczki (employer risks unreasonable contest if it files a Petition to Review UR without medical documentation in support of its claim), and concluding that employer could not rely on an expert that was retained after it filed its Petition to Review UR. The Comm. Ct. reversed and confirmed that the employer need not obtain its expert opinion before the UR. Road Toad does not overturn Luczki, but instead deals with a unique situation where the medical expert could review records and assess care retroactively. An employer still risks unreasonable contest attorneys fees if it files a Petition for Review of UR without a medical report that supports its burden of proof.

Commonwealth of PA Dept of Corrections v WCAB (Wagner-Stover)(10/1/2010). In this important case dealing with the effect of non workers' compensation administrative determinations, the claimant, who worked at a prison, suffered a psychiatric injury, received TTD benefits and full salary, but ultimately the Secretary of Corrections, after hearing evidence from both parties, concluded that she was fully recovered from her work injury. Thereafter, employer filed a petition to terminate her workers' compensation benefits. It only presented evidence of the administrative determination. The WCJ denied the termination petition and awarded unreasonable contest attorneys fees, stating that the employer could not satisfy its burden by merely submitting the Dept of Corrections administrative determination. The WCAB reversed on the attorneys fee issue, but affirmed the denial of the termination petition. The Comm. Ct. reversed and determined that the Dept of Corrections administrative determination had the effect of precluding claimant from arguing that she had not fully recovered from the injury (collateral estoppel). This is a good case for employers to use when the issue in another administrative proceeding is identical to the issue in the workers' compensation proceeding and the case has a very good discussion of the interplay between workers' compensation and other administrative determinations.

Payes v WCAB (Commonwealth of PA/State Police)(10/6/10). In this bizarre case, a woman, who was either mentally disturbed or committing suicide, ran in front of Officer Payes' vehicle. He struck her, immediately tried to resuscitate her, but the victim died. Claimant sought benefits for post traumatic stress disorder (PTSD). The WCJ granted benefits but the WCAB reversed. The Comm Ct affirmed the WCAB and concluded that these facts, although bizarre, were not objectively abnormal work conditions for the police office as he was trained for this situation and responded just like he would in any other death related situation. It is very important to remember that the question of whether someone has a compensable mental/mental claim is dependent on both the facts of the case, but also the profession of the claimant. It is extraordinarily difficult for a police officer to succeed on a mental/mental claim because of the inherent stressful nature of the job.



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