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SPECIAL PENNSYLVANIA WORKERS' COMPENSATION ALERT

THE COMMONWEALTH COURT DENIES A CLAIM FOR A WORK-RELATED PSYCHIATRIC INJURY SUSTAINED BY A LIQUOR STORE CLERK WHO WAS ROBBED AT GUNPOINT ON THE BASIS THAT IT WAS THE RESULT OF NORMAL WORKING CONDITIONS.

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Recently, the Commonwealth Court issued a decision in a psychic injury case that is causing a stir in the workers' compensation community on a national level. In *PA Liquor Control Board v. WCAB (Kochanowicz)*; 760 C.D., 2010; filed September 20, 2011; by Judge Pellegrini, the court held that a liquor store clerk who was robbed at gunpoint, as well as tied to a chair with duct tape, was not entitled to benefits for a psychic injury. The reason? According to the court, given the frequency of liquor store robberies and the proximity of recent incidents, the claimant, a career retail liquor store clerk, was not exposed to abnormal working conditions by virtue of the armed robbery.

In concluding that this particular claimant was not subjected to abnormal working conditions and that he did not meet the burden of proof for his claim,

the court was persuaded by evidence presented by the employer that the claimant received considerable training on workplace violence. The claimant was also provided with pamphlets and educational tools on how to handle a robbery. Moreover, the employer presented evidence that since 2002, there were approximately 15 robberies per year of retail liquor stores in southeast Pennsylvania and that four robberies occurred in close proximity to the claimant's store within weeks of the incident involving the claimant. In light of this evidence, the court concluded that robberies of liquor stores are a normal condition in today's society.

It must be pointed out that a strong dissenting opinion was authored by Judge Cohn Jubelirer. In her view, the majority of the court went too far because

they focused on evidence that was largely discredited by the workers' compensation judge and because she felt that the court exceeded their role by making their own factual findings in reaching their conclusion. Judge Cohn Jubelirer pointed out that, although the claimant was provided with training on handling a robbery, one of the employer's own pamphlets specifically stated that robberies occur very infrequently. The dissenting opinion also pointed out that the workers' compensation judge did not credit the statistical evidence presented by the employer regarding the frequency of liquor store robberies. In short, Judge Cohn Jubelirer and the judges that joined in the dissent (Judges McGinley and Butler) countered that

the majority of the court appeared to be equating "foreseeability" with "normalcy." In other words, nearly anything is foreseeable, and just because events like robberies occur, that does not make those events "normal."

The court's opinion is one that undoubtedly has the potential to shock the conscience of many in the workers' compensation community. Considering the profile of this case, and considering the disagreement of the judges on the panel, it is anticipated that the Supreme Court of Pennsylvania will be heard from on this groundbreaking and controversial decision.

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