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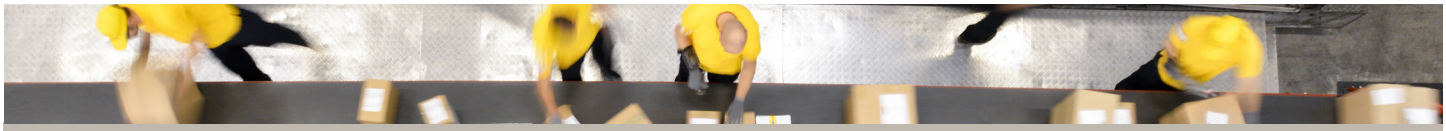

JUNE LEGAL UPDATES: WORKERS' COMPENSATION

VAN LEER V. WCAB (HUDSON), NO. 1127 C.D. 2018, 2019 WL 938923 (PA. CMWLTH. FEB. 27, 2019)

Matter

Claimant filed a Claimant Petition alleging that she sustained injuries in the course and scope of her employment as a caretaker for a woman who suffered from mild dementia. Alleged injuries included a broken nose, damaged teeth, lacerations on her face, hands, legs, aggravation of pre-existing arthritis, and a concussion. Defendant/Employer filed an Answer denying the material averments of the Petition, and alleged that Claimant was precluded from the receipt of Workers' Compensation benefits under the Act's Domestic Service Exception.

Resolution

The WCJ denied the Claim Petition, concluding that Claimant was engaged entirely in domestic service. The WCAB affirmed the WCJ's decision.

Claimant argued that her duties as the patient's caretaker did not fall under the Domestic Service Exception, which states, in relevant part, as follows:

> Nothing contained in this [A]ct shall apply to or in any way affect:
>
> > (1) Any person who at the time of injury is engaged in domestic service: Provided, however, that in cases where the employer of any such person shall have, prior to such injury, by application to the [D]epartment of [Labor and Industry (Department)] and approved by the [D]epartment, elected to come within the provisions of the [A]ct, such exemption shall not apply.
> >
> > 77 P.S. §676.

Claimant testified that her position entailed making sure that the needs of the woman with dementia were met, and included making sure the woman was ready for bed, took her medicine, and that she went to sleep. Claimant additionally indicated that she watched the woman if she awoke in the middle of the night to come downstairs. Claimant also sometimes let the woman's dogs outside. She acknowledged that, other than making sure the woman took her medicine, she did not provide any type of medical care.

Claimant argued that the Commonwealth Court should have rejected the WCAB's test, which requires an in-home employee to have and use professional expertise in his or her work to be compensated under the Act. The Commonwealth disagreed and, upon review of relevant case law, analogized Claimant's duties to those of a babysitter, which have been determined to be exempt under the Domestic Service Exemption. Therefore, the Court affirmed the Decision of the WCAB, holding that Claimant's duties as a caretaker for a woman suffering from mild dementia fell within the Domestic Service Exemption.

Take Away

Even if a person is providing someone with medication, the administering of the medication is not medical care to the extent that the person is using professional expertise in his or her own work. However, the Court does appear to leave room for case-by-case analysis. Therefore, the issue of what a caregiver's specific skills and/or professional qualifications consists of could lead to a different result under similar circumstances in the future.

ERIE INSURANCE COMPANY V. WCAB, NO. 20 C.D. 2018, 2019 WL 759010 (PA. CMWLTH. FEB. 20, 2019)

Matter

Erie Insurance Company and Powell Mechanical, Inc. ("Defendant/Employer") appealed an order of the WCAB reversing the order of WCJ Eric Jones, which granted Defendant/Employer's Application for Supersedeas Fund Reimbursement. The Claimant in this case was injured in a vehicular accident while allegedly on his way home from delivering equipment from Defendant/Employer. Defendant/Employer accepted liability for the work-related injury via Notice of Temporary Compensation Payable, which subsequently converted to a Notice of Compensation Payable ("NCP") by operation of law. However, Defendant/Employer unilaterally stopped paying for Claimant's medical expenses after Defendant/Employer became aware that Claimant delivered the equipment, went to a bar, and drank a number of beers before being involved in the vehicular accident. Claimant was charged with driving under the influence as a result of the accident.

Resolution

In addition to stopping the payment of medical expenses, Defendant/Employer also filed Review and Termination Petitions. Supersedeas was requested in the Petitions. Claimant subsequently filed a Penalty Petitions for the failure to pay his medical expenses. An Interlocutory Order was issued by WCJ Charles Lawton, granting the Supersedeas request. Thereafter, WCJ Lawton granted Defendant/Employer's Review and Termination Petitions, concluding that Claimant was not within the course and scope of his employment at the time of the injury.

With regard to Claimant's Penalty Petition, WCJ Lawton found that Defendant/Employer improperly withheld payments for medical expenses and ordered Defendant/Employer to pay Claimant's unpaid medical bills from the date of the NCP through the date of the Decision. Claimant and Defendant/Employer both appealed the Decision, which was affirmed by the WCAB.

Thereafter, Defendant/Employer filed an Application for Supersedeas Fund Reimbursement for an overpayment of wage loss and medical benefits. WCJ Eric Jones granted Defendant/Employer's Application, reasoning that although Defendant/Employer failed to make wage loss and medical expense payments while the NCP was in effect, denying the Application "only compounds the error that it never should have been liable for wage-loss and medical benefits, since the [NCP] was set aside." The Bureau of Workers' Compensation appealed WCJ Jones' Decision with respect to the reimbursement of medical expenses. The WCAB concluded that that WCJ Lawton had no authority to grant Supersedeas for medical expenses and, therefore, his Supersedeas order effectively denied Supersedeas with respect to the payment of medical expenses. Additionally, the WCAB reasoned that Defendant/Employer's payment of medical

expenses following WCJ Lawton's Decision was not due to a denial of Supersedeas, but rather because it was ordered to do so by WCJ Lawton's order granting Claimant's Penalty Petition.

On appeal to the Commonwealth Court, Defendant/Employer argued that WCJ Lawton's ruling on the Penalty Petition did not create a legal obligation for Defendant/Employer to pay for Claimant's medical expenses in light of the denial of Supersedeas. The Bureau argued the opposite. However, the Commonwealth Court determined that regardless of the reason for the payment of the medical expenses, Defendant/Employer's cessation of the payment of medical expenses in violation of the Act was the dispositive issue in this matter. The Court noted that an employer may only lawfully stop paying benefits when one of the following conditions is met:

> (1) a supplemental agreement is submitted pursuant to Section 408 of the Act (77 P.S. § 732);
>
> (2) a final receipt is submitted, signed by the claimant pursuant to Section 434 of the Act (77 P.S. § 1001;
>
> (3) an interlocutory order is secured from a WCJ granting discretionary Supersedeas pursuant to Section 413(a.1) and 413(a.2) of the Act (77 P.S. § 774);
>
> (4) a petition to suspend compensation is filed with an accompanying affidavit from the insurer that the claimant has returned to work at wages greater than or equal to his pre-injury wage pursuant to Section 413(c) of the Act (77 P.S. § 774.2); or
>
> (5) a final order is secured from a WCJ terminating a claimant's benefits.

Take Away

The Commonwealth Court held that, in this case, Defendant/Employer unilaterally withheld payment of medical expenses in violation of the Act. Therefore, it was ineligible for reimbursement for those payments from the Supersedeas Reimbursement Fund, regardless of the fact that it prevailed on the Termination Petition. In so holding, the Court reiterated that prior violations of the Act may not be excused.

TONG DONG V. WCAB (EAGLE'S CORNER), NO. 784 C.D. 2018, 2019 WL 856248 (PA. CMWLTH. FEB. 22, 2019)

Please note that this is an unreported panel decision.

Matter

Claimant filed a Claim Petition seeking total disability benefits for injuries sustained after he was attacked while sleeping on the second floor above Defendant/Employer's business. Defendant/Employer argued that Claimant was not within the course and scope of his employment at the time of the attack.

Resolution

The WCJ concluded that Claimant's alleged injuries were not sustained in the course and scope of his employment, and dismissed the Claim Petition. Claimant appealed to the WCAB, which affirmed the WCJ's Decision.

On appeal, the Commonwealth Court noted that under the "Bunkhouse Rule," the Act allows compensation for injuries that an employee sustains "in their leisure time while occupying a bunkhouse or sleeping quarters provided by the employer if the nature of the employee's work mandates that the employee reside on the employer's premises." Claimant argued that he was in the course and scope of his employment when he was attacked on the second floor of the business at 5:00 AM because he had informed the Defendant/Employer that he would only accept the position offered if Defendant/Employer provided him lodging. Claimant further alleged that because his employment was contingent on said request, lodging was part of the employment contract and he was entitled to workers' compensation benefits.

The Commonwealth Court noted that Claimant testified before the WCJ that Defendant/Employer did not require him to live above the business. Additionally, the Defendant/Employer testified that he never told Claimant he was required to live above the business. Defendant/Employer admitted that he would save money without Claimant living above the business. The Court also noted that it was not reasonably necessary for Claimant to live above the business in order to perform the tasks required as a cook for the Defendant/Employer. Therefore, the Court held that the Bunkhouse Rule did not apply, and that Claimant was not entitled to the receipt of workers' compensation benefits.

Take Away

This case is informative with respect to how the Commonwealth Court may evaluate the "Bunkhouse Rule" in the future. First, the Commonwealth Court did not entertain the argument that the Claimant's employment arrangement was contingent upon Claimant sleeping on the premises of the employer. Rather, the Commonwealth Court focused on the fact that the Claimant was not required to sleep on the Employer's premises. Further, it is important to note that the Commonwealth Court was also willing to assess whether it was necessary for the Claimant to sleep on the employer's premises. Overall, the case exemplifies how employer's testimony and a practical evaluation of the nature of the job at issue, is important when dealing with the "Bunkhouse Rule."