

WC ALERT

PA SUPREME COURT REVERSES CASO

The Pennsylvania Supreme Court reversed the Commonwealth Court in the matter of Caso v. WCAB (School District of Phila.). The Opinion, authored by Mr. Justice Eakin with Madame Justice Newman concurring, was issued on December 30, 2003; the Court held that a WC Judge may compel a claimant to attend a vocational interview.

The Court determined that the WC Bureau regulation which provided the requisite criteria that a vocational expert must possess to be considered “approved” is not an unreasonable interpretation of the Act 57 requirement. The Court focused on the role the WC Judge must play in ultimately deciding if an expert has met the Bureau criteria. The Supreme Court did not interpret Section 306 (b) (2) to require the Bureau to “pre-approve” specific vocational experts. Instead, in the context of that Section, an expert “approved by the department” is anyone deemed competent under the qualifications criteria enumerated by the Bureau. The Court reasoned a claimant’s recourse if the expert selected by the employer does not comport with the Bureau criteria is possible imposition of penalties.

That the Court ruled in this fashion is not surprising. Recently the Legislature acted to redress the Commonwealth Court’s erroneous interpretation of the Bureau’s obligation. House Bill 88 clarified that there was no statutory duty to promulgate a list of experts. The Supreme Court’s opinion on the heels of this legislative action provides immediate redress of those matters currently “held up” in the system under the Commonwealth Court’s rationale that an employee cannot be compelled to attend a vocational interview where the chosen expert’s name does not appear on a non-existent list.

It is our recommendation that you alert your vocational experts to this decision and to review with them the Bureau regulation setting forth the standard to be utilized in qualifying experts (see Pa. Code Section 123.202) to ensure their compliance. They should once again try to schedule interviews on those matters where a Caso objection had been lodged. On those cases in litigation on a petition to compel, the WC Judge should be asked to rule immediately based on the Supreme Court’s decision.

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While we are pleased with this decision, we are certain that the resistance to petitions for modification based on labor market surveys will continue. The focus has already begun to shift to challenge the employer's contention that they do not have an appropriate job opening. Expect greater scrutiny of the employer's hiring records and practices.

We look forward to discussing this decision with you in light of your own cases.

HAPPY NEW YEAR

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