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## **WORKERS' COMPENSATION ONE-LINERS DECEMBER, 2007**

Average weekly wage:

Borough of Heidelberg v. WCAB (Silva),  
928 A.2d 1006 (Pa. 2007)

Pa. Supreme Ct. rules that claimant who worked as a volunteer EMT was entitled to presumption of wages at least equal to statewide average weekly wage where she had no actual wages for the past 32 years; legislative intent behind Section 601 was to compensate volunteers in the emergency services without regard for their actual earnings or employment status.

IRE:

Westmantle v. WCAB (Lucent Technologies),  
926 A.2d 1236 (Pa. Commw. 2007)

Since employer has no control over when a claimant will reach receipt of 104 weeks of temporary total disability benefits thereby triggering an IRE request, employer's petition for termination is not precluded where after the filing of that petition based on a full recovery opinion it secures an IRE rating of 10 percent and files a status change notice; the inquiries relevant to a termination and permanent impairment are sufficiently distinct.

Medical Bills

Boleratz v. WCAB (Air Gas, Inc.),  
932 A.2d 1014 (Pa. Commw. 2007)

An employer is not liable for payment of charges from a massage therapist who is not licensed, authorized by the Commonwealth or supervised by a licensed health care provider despite the services being provided pursuant to a prescription from a licensed health care provider.

Modification Petition:

CRST v. WCAB (Boyle),  
929 A.2d 703 (Pa. Commw. 2007)

Commw. Ct. holds an employer may proceed on a petition for modification based on a labor market survey after the claimant returned to work on his own following receipt of LIBC 757; the Court reiterates that the Kachinski criteria does not apply in Act 57 cases based on earing power assessments.

NCD/UR:

Armstrong v. WCAB (Haines and Kibblehouse),  
931 A.2d 827 (Pa. Commw. 2007)

Where employer sought utilization review during the pendency of a claim petition the Commonwealth Ct. ruled that because the employer had previously issued a Temporary Notice of Compensation Payable, Notice Stopping Temporary Compensation Payable, and Notice of Denial which had recognized the occurrence of a work related injury albeit disputing extent of disability and the documents adequately described the injury, a utilization review of the medical bills was appropriate.

Offsets/credits:

Maxim Crane Works v. WCAB (Solano),  
931 A.2d 816 (Pa. Commw. 2007)

Emphasizing that the employer has an obligation under the Regulations to notify the claimant of his duty to report receipt of benefits including Social Security retirement benefits and to provide appropriate forms to the claimant before claimant has any obligation to disclose receipt of benefits, Commw. Ct. ruled that the doctrine of laches limits employer's credit under Section 204 from the date it provided the LIBC 756 form to the claimant.

Allegheny Ludlum Corp. V. WCAB (Carney),  
928 A.2d 1138 (Pa. Commw. 2007)

An employer is not permitted an offset for pension benefits paid to the employee's widow against workers' compensation death benefits; Section 204 provides offset only against workers' compensation benefits an employee receives and is limited to wage loss paid under Section 108 and Section 306 of the Act.

Penalty:

Hough v. WCAB (AC & T Companies),  
928 A.2d 1173 (Pa. Commw. 2007)

Commw. Ct. reverses WCAB ruling employer is liable for penalties for failure to timely pay medical bills rejecting employer's contention that the fee review application process must be exhausted before WC Judge has jurisdiction to hear a penalty petition; Bureau files an amicus brief in support of claimant's position.

Mercer Lime and Sone v. WCAB (McGallis),  
923 A.2d 1251 (Pa. Commw. 2007)

Where employer intentionally delayed payment of funds following approval of Compromise and Release Agreement in order to secure a signed resignation, Commw. Ct. affirms assessment of penalties further noting that there is no "30 day grace period" applicable to the payment obligation, assessment of penalties and whether Act has been violated is dependent on facts.

Physical Exam Petition:

David v. WCAB (Woolworth Corp.),  
928 A.2d 429 (Pa. Commw. 2007)

Commw. Ct. Affirms WCAB holding "passage of time" is a sufficient reason to grant an employer's petition to compel physical examination; in this case employer had not had an exam for seven years, a footnote references the "6 month rule of thumb" for securing an IME.

Vocational Interview:

Vaneman v. WCAB (Apollo Moving),  
931 A.2d 749 (Pa. Commw. 2007)

Claimant contested employer's request for a vocational interview where he had returned to work, Court rules the interview request need not be incidental to the filing of a Petition, request must just be reasonable, stressing the interview is a tool for assessing earning power.

*Happy Holidays!*

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Sharon McGrail-Szabo    Debra Matherne    Thomas Ollason    Bill Conwell