

Swartz Campbell LLC
Two Liberty-28th Floor
50 South 16th Street
Philadelphia PA 19102

voice (215) 299-4278
facsimile (215) 299-4301
jlombard@swartzcampbell.com
www.swartzcampbell.com

Jane A. Lombard
Attorney at Law

WORKERS' COMPENSATION ONE-LINERS JANUARY, 2008

Credit:

Kelly v. WCAB (US Airways),
935 A.2d 68 (Pa. Commw. Ct.
2007)

Commw. Ct. reversed WCAB's ruling which had granted the employer credit for "furlough" benefits paid to employee reasoning these benefits were different than a "severance" under Section 204 (a) as they were not paid for a permanent separation from employment; Court was unwilling to pursue the legislative intent of precluding a double recovery.

Employer/Employee:

Schafer v. WCAB (Martin
Schafer, Jr., Inc.),
935 A.2d 890 (Pa. Commw. Ct.
2007)

Dismissal of Fatal Claim Petition is affirmed where claimant fails to satisfy her burden of proving an employer/employee relationship where substantial competent evidence supports finding that decedent, a corporate officer, elected to waive coverage under the WC Act.

Penalty:

Seven Stars Farm, Inc. v. WCAB
(Griffiths),
935 A.2d 921 (Pa. Commw. Ct.
2007)

Commw. Ct. affirmed assessment of 50 percent penalty on insurer for failure to pay medical bills despite claimant's failure to submit billing on proper forms; "clean bill" defense fails where employer has all information necessary to process payment and had made payment without requirement of "clean bills" in the past.

Personal Animus:

Ledonne v. WCAB (Graciano
Corp.),
936 A.2d 124 (Pa. Commw. Ct.
2007)

Third party's conviction for murdering decedent, decedent's wife's guilty plea in connection with the murder, and WC Judge's ability to infer an affair from circumstantial fact testimony constituted substantial competent evidence on which to find employee was killed for reasons unrelated to his work thereby supporting dismissal of the Fatal Claim Petition.

Reinstatement:

Prosick v. WCAB (Hershey
Chocolate USA),
936 A.2d 177 (Pa. Commw. Ct.
2007)
and
Stehr v. WCAB (Alcoa),
936 A.2d 570 (Pa. Commw. Ct.
2007)

Commw. Ct. reviews and discusses time limitations applicable to petitions for reinstatement where benefits have been suspended; in both cases Court affirmed dismissal of the Petitions as they were not filed within 500 week limitation period. Court stresses that three years from expiration of the 500 weeks is applicable only where partial disability benefits are being paid when 500 week period ends.

Utilization Review:

Ryndycz v. WCAB (White
Engineering),
936 A.2d 146 (Pa. Commw. Ct.
2007)

Where procedural posture supports a Termination proceeding rather than an original Claim Petition proceeding because employer acknowledged a work injury, referred claimant for treatment, and modified his job duties, employer is not given 30 days after the Judge's decision to file a Utilization Review; instead employer may only review those charges which occurred over the past 30 days.

Jane Lombard Chuck Katz Steve Harlen Paul Pauciulo Sheilah Tone
Sharon McGrail-Szabo Debra Matherne Thomas Ollason Bill Conwell