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WORKERS' COMPENSATION ONE-LINERS MARCH, 2008

Average weekly wage:

Ballerino v. WCAB (Darby Borough),
938 A.2d 541 (Pa. Commw. Ct. 2007)

Commw. Ct. rejects attempt by volunteer firefighter to “stack” statutorily presumed wages under § 601 with actual earned wages; Court reasons that the volunteer firefighter was not concurrently employed such that Section 309 (e) of the Act had no application to his average weekly wage calculation.

Course and scope:

Clear Channel Broadcasting v. WCAB,
(Perry), 938 A.2d 1150 (Pa. Commw.
Ct. 2007)

Commw. Ct. rules that Judge’s rejection of intoxication defense coupled with the finding that the decedent was provided with a company car to use at his discretion, that he was expected to use that car to attend events, and then drive home supports exception to the “coming and going rule” such that death benefits awarded to the widow of a sales manager who died in a motor vehicle accident after leaving a nightclub were affirmed.

Longshore Act:

McElheney v. WCAB (Kvaerner
Shipyards),
940 A.2d 351 (Pa. 2008)

Pa. Supreme Ct. rules that a “graven dry dock” is land based since it is cut and dug out of the land and is not exclusively on navigable waters such that welder injured while repairing a ship is entitled to benefits under Pa. WCA which in such circumstance has concurrent jurisdiction with LHWCA.

Occupational Disease:

Ingram v. WCAB (Ford Electronics),
940 A.2d 544 (Pa. Commw. Ct. 2007)

Death benefits were unavailable to claimant, decedent’s minor grandson, where claim for lifetime benefits was resolved by Compromise and Release without a finding of compensability and decedent died more than 300 weeks after last date of exposure; these two factors precluded fatal claimant from being able to establish lifetime disability necessary to prevail in fatal claim.

Reinstatement:

Kane v. WCAB (Glenshaw Glass Co.),
940 A.2d 572 (Pa. Commw. 2007).

Commw. Ct. affirms dismissal of claimant’s reinstatement petition where claimant was essentially seeking to establish temporary total disability benefits but “stay” receipt of those benefits as he was already receiving total disability benefits for a different injury in an attempt to avoid running of the 500 week statutory limit; Court ruled a “stay” is unavailable under the WC Act and a suspension of benefits would continue to run.

Specific Loss:

J.G. Furniture Div./Burlington v.
WCAB (Kneller),
938 A.2d 233 (Pa. 2007)

Pa. Supreme Court holds that an amputation constitutes a “separate compensable specific loss injury” such that compensation is based on earnings at the time of amputation where a final receipt had been signed in connection with the original injury; Justices Saylor and Castille dissent urging that “any adjustment to the present scheme” is best left to Legislature.

Statute of Limitations:

Stock v. WCAB (Food Chek Shopping
Bag), 938 A.2d 1187 (Pa. Commw. Ct.
2007)

Where claimant commutes disability benefits and subsequently receives an award for disfigurement secondary to a surgical scar the statute of limitations is not tolled by payment of the specific loss award such that his petition to review to add psychiatric injuries was time barred.

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