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WORKERS' COMPENSATION ONE LINERS FEBRUARY-MARCH 2003

AVERAGE WEEKLY WAGE:

Erb vs. WCAB,
812 A.2d 773

Comm. Ct. reverses WCAB holding calculation of pre-injury average weekly wage under Section 309 (d .2) must include overtime where terms of employment agreement contemplate claimant would work overtime.

Scott vs. WCAB,
814 A.2d 298

Unexercised stock options are excludable as income for calculation of average weekly wage as they have no ascertainable value until exercised.

INCARCERATION:

Moore vs. WCAB,
811 A.2d 631

Refusing to narrowly define "incarceration" Comm.Ct. precludes receipt of benefits where claimant is under house arrest, albeit with work release, as he is still in constructive custody.

REINSTATEMENT:

LE Smith Glass Co. vs. WCAB,
813 A.2d 634

Supreme Court reverses Comm.Ct. holding claimant cannot collect concurrent TTD for two separate and independently disabling injuries, distinguishing Franklin Steel where a combination of injuries were totally disabling, stacking of benefits is prohibited as to permit same would compensate claimant twice for loss of the same position.

STATUTORY EMPLOYER:

Liebensperger vs. WCAB,
813 A.2d

Using McDonald criteria Comm. Ct. holds owner of a contracting firm was not a statutory employer as evidence failed to support actual control over construction site was exercised.

Peck vs. DE Ctn.Board of Prison, 814
A.2d 185

Plurality opinion of Supreme Court holds, in the context of privatization of a service once a public function, statutory employer immunity does not apply as defendant fails to meet stringently applied five prong McDonald test where there is no evidence of an actual contract between owner and purported statutory employer.

SUBROGATION:

Martino vs. WCAB,
813A.2d 945

Comm. Ct. determines entire third-party settlement subject to subrogation where there was no adjudication or determination of the amount to be apportioned to loss of consortium as arbitrator merely speculated what would have been awarded after case closed.

SUSPENSION:

Mitchell vs. WCAB,
Slip Opinion 1/23/03 17 Pa.
WCLR 2066

Pa. Supreme Court determines employer is not entitled to suspension of benefits based on incarcerated claimant's failure to apply for jobs referred to him in prison as same is inconsistent with employer's good faith obligation under Kachinski; suspension is applicable for a period of incarceration alone.

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