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## **WORKERS' COMPENSATION ONE-LINERS APRIL, 2004**

### Appeal:

Almeida v. WCAB, 997 C.D. 2003  
(decided 3/15/04)

Commw. Ct. holds claimant lacks standing to appeal a WC Judge's finding of fact that he did not sustain a disc herniation where claimant ultimately prevailed on the pending petitions; a party cannot appeal an individual finding if the tribunal's order is favorable to that party.

### Average weekly wage:

Rebel v. WCAB, 1351 C.D. 2003  
(Decided 3/16/04)

Commw. Ct. rules Section 309 (d) was properly used to calculate average weekly wage and did not violate equal protection clause where claimant was out of work on an unpaid maternity leave for seven months prior to her injury as employment relationship was not severed; the Court believes claimant's reliance on Colpetzer was misplaced.

### Course and Scope:

Fonder v. WCAB, 842 A.2d 512 (Pa.  
Commw. 2004)

Commw. Ct. refuses to find claimant in course and scope of employment when he was involved in a motor vehicle accident caused by self induced exhaustion while driving from fixed place of employment to home even where exhaustion was occasioned by extended work hours.

### IME:

Coleman v. WCAB, 842 A.2d 349 (Pa.  
2004)

Supreme Court holds that an IME, as it is intended as a fact finding procedure, includes diagnostic studies so long as requested studies are necessary, involve minimal risk, and are not unreasonably intrusive; the Court indicates, generally, injections would not be considered unreasonably intrusive.

### Penalty:

Snizaski v. WCAB, 154 C.D. 2003  
(decided 3/19/04).

Commw. Ct. en banc overrules its decision in Hoover and follows Candito, ruling it was an abuse of discretion to penalize an employer for failing to pay an award in 30 days where it timely requested supersedeas as Board regulations contemplate payment obligation is stayed while supersedeas request is being process.

*Jane Lombard   Chuck Katz   Steve Harlen   Paul Pauciulo  
Sheilah Tone   Debra Matherne   Sharon McGrail Szabo*