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WORKERS' COMPENSATION ONE-LINERS JULY, 2005

Attorney's fees:

Bates v. WCAB, 934 C.D. 2004 (decided
6/29/05)

Cmwlth. Ct. affirms WCAB and WCJ's refusal to apply a "per se" rule that attorney's fees must be awarded where a violation of the Act is proven; a reasonable contest can be established where the violation is shown not to be egregious, in bad faith, is minor, or where employer successfully limits the penalty from the amount claimed.

Course of employment:

Ortt v. WCAB, 874 A.2d 1264
(Pa. Cmwlth. Ct. 2005)

Where claimant fell in a parking lot which was neither owned, controlled, nor maintained by the employer but where she had the option of parking, her injuries are not considered to have occurred in the course of employment, thus, Cmwlth. Ct. affirms dismissal of the claim petition.

Impairment rating evaluation:

Groller v. WCAB, 873 A.2d 787 (Pa.
Cmwlth. Ct. 2005)

Cmwlth. Ct. reversed WCAB holding claimant's petition to review which challenged timeliness of the employer's IRE request was not barred by doctrine of res judicata as WC Judge's underlying order granting the IRE was "deemed" interlocutory in nature.

Statutory employer:

Kelly v. Thackery Crane Rental, 874 A.2d
649 (Pa. Super. 2005)

Superior Ct. affirmed trial court's order granting summary judgment thereby precluding suit by employee against construction manager; the Court found that the McDonald standard was satisfied and refused to add the additional requirement that statutory employer also prove it held WC insurance to so qualify.

Subrogation:

Monessen Inc. v. WCAB, 875 A.2d 415
(Pa. Cmwlth. Ct. 2005)

Cmwlth. Ct. holds WCAB exceeded its authority in extending the grace period within which employer was recouping its statutory lien by more than six years; Court stressed the employer's right to immediate repayment of its lien is absolute, it found no evidence of record that claimant was under a financial hardship, and found the Board's actions unduly interfered with the parties' right to negotiate and compromise the lien.

Utilization Review:

County of Allegheny v. WCAB, 875 A.2d
1222 (Pa. Cmwlth. Ct. 2005)

Where utilization reviewer rules that treatment at issue is neither reasonable nor necessary as a result of the provider's failure to supply requisite medical records, WC Judge lacks subject matter jurisdiction to adjudicate a petition to review the utilization review determination.

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