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WORKERS' COMP ALERT

Kramer v. WCAB (Rite Aide Corporation) (Pa. Decision September 28, 2005)

On September 28, 2005 the Pennsylvania Supreme Court reversed the Commonwealth Court in the case of Kramer v. WCAB (Rite Aide Corporation). The Court held that Section 204 (a) which authorizes credit against workers' compensation benefits for severance benefits paid to a claimant applies to both self insured employers and privately insured employers. The Court also rejected claimant's argument that the credit authorized by the Legislature violated the Equal Protection Clause of the Constitution.

The Kramer case involved a claimant who was paid a severance benefit pursuant to her collective bargaining agreement when she was laid-off from her job with Rite Aide Corporation. As she was working a modified duty job at the time of her lay-off her workers' compensation benefits were reinstated. The insurance carrier issued a Notice of Benefits offset apprising the claimant that it would take credit against her compensation for the severance payment she received from the employer. Claimant filed a Petition to Review the Benefit Offset. Both the WC Judge and the WCAB found the credit taken by the insurer was proper; however, the Commonwealth Court reversed the decision.

In an opinion authored by Judge Friedman the Commonwealth Court held that the credit was not available to privately insured employers as that insurer was not "directly liable" for the payment of compensation. Justice Castille authored the majority opinion for the Supreme Court. The majority held that the statutory language in Section 204 (a) was ambiguous in its use of the term "employer directly liable." It then reasoned that for the purpose of application of Section 204 (a) both employers and insurers are indistinguishable.

The Court found no merit in the constitutional challenge claimant made to Section 204 (a). The claimant had argued that that section violated the Equal Protection Clause of the 14th Amendment to the United States Constitution insofar as it treated injured and non-injured workers differently insofar as only non-injured employees could collect severance benefits. Claimant argued a fundamental property right was at issue warranting a strict scrutiny analysis of the subject legislation. Contrary to claimant's argument she was not deprived of a severance benefit, thus there was no disparate treatment of injured and non-injured workers. Claimant received full severance benefits; it was her workers' compensation benefits which were in fact

reduced. Thus, the appropriate level of review to apply to the challenge was not the strict scrutiny test, but the rational basis analysis as neither a fundamental right nor a sufficient important right was implicated. Upon applying the rational basis analysis the Court determined that the test was satisfied as the objective of Section 204 (a) was to reduce workers' compensation costs and the effect of the credit against compensation for severance benefits can reduce workers' compensation exposure to employer.

It is appropriate now for all insurers, third-party administrators, and, of course, self-administered/self-insured employers to issue the LIBC 756 form (Employee's Report of Benefits For Offsets) where compensation benefits are being paid following a lay-off to determine if a severance benefit was received by the claimant. The credit against compensation provided in Section 204 (a) is now available to all Pennsylvania employers. If there are any questions concerning this decision or its application please do not hesitate to contact us.

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