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WORKERS' COMPENSATION ONE-LINERS MAY, 2007

IRE:

Dowhower v. WCAB (Kepco Contracting),
919 A.2d 913 (Pa. 2007)

On employer's Application for Reconsideration, the Pa. Supreme Ct. affirms that for an impairment rating to be considered timely it must be requested within 60 days **AFTER** claimant receives 104 weeks of temporary total disability benefits; a request for designation of an IRE doctor made prior to the expiration of 104 weeks, even if the exam takes place later, voids the impairment rating determination. An employer may still obtain a second IRE, however, in order to effectuate a status change there must be either an agreement or a Judge's order.

Termination:

Lewis v. WCAB (Giles & Ransome, Inc.),
919 A.2d 922 (Pa. 2007)

Pa. Supreme Ct. reverses the Commw. Ct. and overrules their own prior decision in King v. WCAB (K-Mart) holding, rather curiously, that the employer must adhere to the Kachinski test in bringing a successive petition for termination; that is, where employer has not been successful in terminating claimant's benefits in prior litigation it must show an actual change in physical condition since the prior attempt, a later date is no longer sufficient.

Utilization Review:

William Miller v. WCAB (Pavex, Inc.),
918 A.2d 809 (Pa. Commw. Ct. 2007)

WC Judge denied claimant's petition to review utilization review determination where the provider under review failed to supply his records (prior to Gazzola), however, Judge in following the Giesler ruling editorialized that claimant's due process rights had been violated; claimant pursued a due process argument to the Commw. Ct. where, relying on the Sullivan rationale, the Commw. Ct. reiterated that the claimant does not have a property interest in medical treatment which is not established to be reasonable nor necessary as such a due process challenge cannot be sustained.

Vocational Interview:

Bradley v. WCAB (County of Delaware),
919 A.2d 293 (Pa. Commw. Ct. 2007)

Commw. Ct. rules that claimant's appeal of the Judge's order which directed him to submit to a vocational interview does not act as an automatic stay nor serve as a reasonable excuse for not attending a subsequently scheduled interview; accordingly Commw. Ct. rules that the Judge's order suspending claimant's benefits for failure to attend the interview was proper.

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