

Basic WC Law (Part 2)



2024 Pennsylvania Workers' Compensation Conference

Hon. Gerald Yanity - Workers' Compensation Office of Adjudication

Thomas A. Strohmetz, Esq.- The Chartwell Law Offices

Jeffrey S. Gross, Esq. - Gross & Kenny, LLP

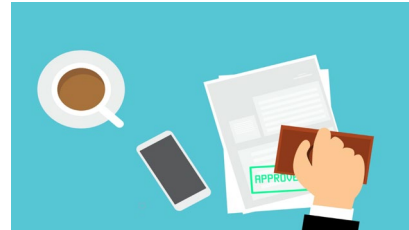
Richard Kucharski - State Workers' Insurance Fund (SWIF)

Approach to Litigation/Claims

A. Initial Interview



B. Claim Petition



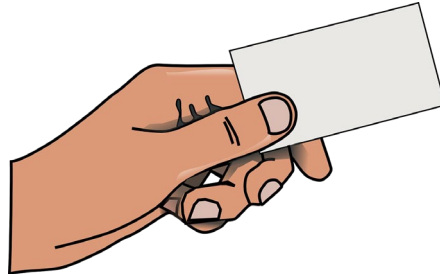
Approach to Litigation/Claims

C. Ongoing Benefits



A. Initial Interview

1. Demographic Information/My Information



Initial Interview (cont.)

2. Mechanism of Injury
3. Prior injury/ Claim History



Initial Interview (cont.)

4. WCAIS Entries/Business Records

a. Forms

b. Statement of Wages



Initial Interview (cont.)

5. Discussion of Procedure/Timeline/Value



Initial Interview (cont.)

Employer/Insurer/Counsel

1. A Work Injury alleged. Is it a Witnessed Event? Does Employer dispute that an Injury occurred?
2. Does the Employee have a pre-existing condition OR Prior Injury?
3. Medical records available? Do they corroborate the employer version?
4. Employer/Insurer has 21 days to Investigate and Accept or Deny an injury claim. Section 406.1.

Employer/Insurer Options for Injury Claim Deny/Accept

Remember - Claimant has the Burden of Proof of all of the elements of a compensable work-related injury claim...

1. Issue a Notice of Denial LIBC-496
Where there is no corroborating witness or medical record.
2. Issue Notice of Temporary Compensation Payable LIBC-501
Appears to be compensable - but you have 90 days to further investigate.
3. Notice of Temporary Compensation Payable LIBC- 495
No dispute - it's work-related and disabling!

Initial Interview (cont.)

6. Strategy



Approach to Litigation Claims

B. Claim Petition

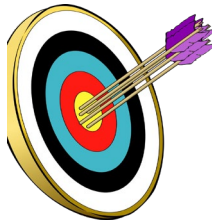


B. Claim Petition

1. Medical Records



2. Accurate Information & Checklist



Claim Petition (cont.)

3. Burdens of Proof

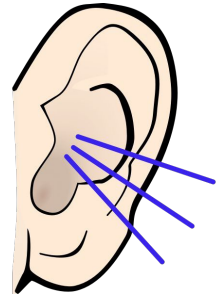
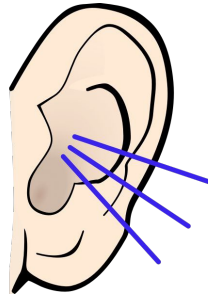


4. Assignment to Judge/Procedure



Claim Petition (cont.)

5. Serial Hearings



Claim Petition (cont.)

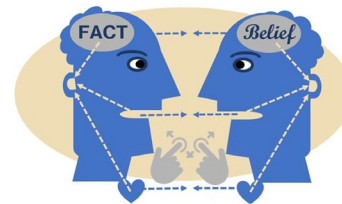
6. Depositions



a. Claimant

b. Medical Experts

c. Fact Witnesses



Claim Petition (cont.)

7. Timeline



Claim Petition (cont.)

Employer/Insurer Issues

8. Worker Compensation compensation liability does not extend to non-work medical and/or disabling conditions.
 - a. In a Claim Petition, the Employee has the burden of proof as to all elements of a compensable injury - including the causal relationship of the medical condition to the employment. *Inglis House V. WCAB (Reedy)* (Pa. 1993).
 - b. The causal relationship must be established by unequivocal, competent, credible, substantial, medical evidence - where the relationship is not obvious.

Claim Petition (cont.)

Employer/ Insurer Issues

An “*Aggravation, Reactivation or Acceleration*” of a pre-existing non-work medical condition - can fall within the Section 301(c)(1) definition of a “work injury”. Palosky

v. WCAB(Latrobe Brewing Co.) (Pa. 1987) (aggravation of asthma).

A “*Recurrence*” of a pre-existing non-work medical condition is not compensable.

A “*Recurrence*” of a prior work-related medical condition is the responsibility of the insurer at time of original injury. Zinc Corp. of America v. WCAB(Byers) (Pa. Cmwlth. 1992).

Approach to Litigation Claims

C. Ongoing Benefits

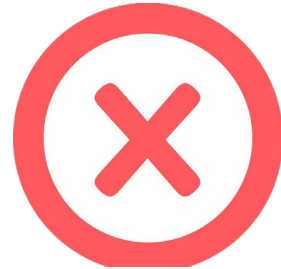
BENEFITS



C. Ongoing Benefits

1. Review Petitions

- a. Incorrect Description of Injury
- b. Incorrect Average Weekly Wage
- c. Burden of Proof



Ongoing Benefits (cont.)

2. Termination Petitions

a. Expert vs. Expert



b. Burden of Proof



c. Supersedeas

Ongoing Benefits (cont.)

Termination Petition Considerations

Employer and Insurer Termination Petition Issues

Description of Injury -

1. Has injury been modified by WCJ decision or Agreement?
2. Does the IME Expert address each element of the work-related injury?
3. Is there an unequivocal opinion of a full recovery ? (not just a return to work)

Subsequent Termination Petition -

1. Does the 2nd IME show a change in physical condition since the preceding disability determination? *Lewis v. WCAB (Giles & Ransome Inc.) (Pa. 2007)*.

Ongoing Benefits (cont.)

3. Modification Petitions

a. Job Offers vs. Labor Specific Market Surveys

i. Attempting position vs.
out of work letters

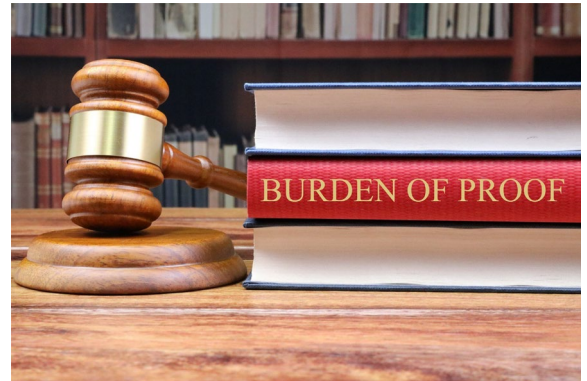


Ongoing Benefits (cont.)

3. Modification Petitions (cont.)

b. Burden of Proof

c. Supersedeas



Ongoing Benefits (cont.)

3. Modification Petitions (cont.) - Employer/Insurer Considerations

d. Supplemental Agreement LIBC-336 - May be utilized to change compensation status. (Total to Partial and Partial to Total).

Must have Employee sign to change benefit status - it's not automatic. Present Agreement for signature upon return to work.

- If represented by legal counsel - must direct Agreement to counsel.

Ongoing Benefits (cont.)

4. Challenge Petitions

- a. Burden of Proof
- b. Supersedeas

CHALLENGE ACCEPTED



Ongoing Benefits (cont.)

4. Challenge Petitions - Employer/Insurer Considerations

c. Notification of Suspension/Modification Pursuant to Section 413 (c)&(d)

LIBC-751.

- must be filed within 7 days of suspension/modification of compensation,
- Right to suspend/modify compensation - only during period of actual work,
- The only issue in an “Employee Challenge” Petition - is the Employee currently working? If not, compensation must be reinstated.
- Employer/Insurer must file a Petition to Suspend with a supersedeas request.
See: U. S. Airways v. WCAB (Rumbaugh) (Pa. 2004).

Ongoing Benefits (cont.)

Employee Reporting Obligations - Section 204 (c)

1. Employee Report of Wages LIBC-750.
2. Employee's Report of Benefits for Offset LIBC-756.
3. Employee Verification of Employment, Self-Employment or Change in Physical Condition LIBC-760.
 - a. If LIBC-760 is not signed and returned within 30 days, the insurer has the right to suspend compensation until it is received.
 - b. Insurer must issue an LIBC-762 Notice of Suspension for Failure to Return Form LIBC-760. See: Regulation 123.502.

Ongoing Benefits (cont.)

5. Settlements



a. Valuation/Demands



Ongoing Benefits (cont.)

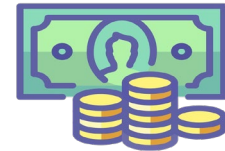
5. Settlements (cont.)



b. Medicare/Social Security Issues

i. Language

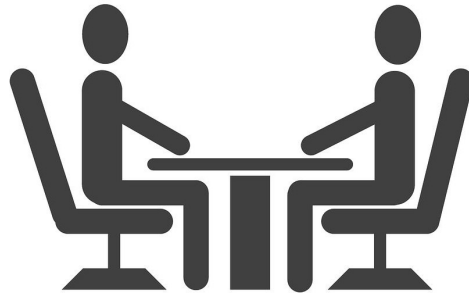
ii. Conditional Payments



Ongoing Benefits (cont.)

5. Settlements (cont.)

c. Mediations



Ongoing Benefits (cont.)

5. Settlements (cont.)

d. Compromise & Release Agreements

i. Social Security Language (para.13)

ii. Description of Injury (para. 14) iii.

Indemnity Only Settlements



Ongoing Benefits (cont.)

6. Penalties (cont.)



b. NCD following NTCP on 90th Day

i. Failure to properly investigate



Ongoing Benefits (cont.)

6. Penalties (cont.)

c. Other Timing Issues

d. Burdens and Resolutions



Ongoing Benefits (cont.)

Defense to Penalty Demand

Employer/Insurer Defenses to Penalty Assessment Demands

1. The imposition of penalties and the amount of penalties are within the discretion of the WCJ. A finding of a violation of the Act does not mandate the imposition of a penalty. See: *City of Philadelphia v WCAB (Andrews)* (Pa. Cmwlth. 2008).
2. Where a timely settlement compensation check was sent to a wrong address, it was an error for the WCJ to impose a penalty in the absence of a finding that employee provided notice of a change of address. *Allegis v. WCAB (Coughenaur)* (Pa. Cmwlth. 2010).
3. Many Penalty Petitions are filed for benefit payment errors. It is recommended that Employer/Insurer present a document-based factual defense, where available.