NUZZO & ROBERTS NEWSLETTER

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WORKERS' COMPENSATION UPDATE: FIRST QUARTER 2018

In recent months, the courts and the Compensation Review Board have issued several important decisions regarding workers' compensation law.

SUPREME COURT AND APPELLATE COURT DECISIONS

Was the Claimant an Employee?

In ***Melendez v. Fresh Start General Remodeling & Contracting, LLC***, 180 Conn. App. 355 (2018), the Connecticut Appellate Court affirmed the trial commissioner and Compensation Review Board ruling that the claimant was an employee and entitled to workers' compensation benefits.

Mr. Melendez was a self-employed laborer who was hired to assist the respondent moving out of an old house and into a new house. Following the move, the claimant continued to work for the respondent at the new house for 11 weeks. The respondent paid the claimant an hourly rate and transported the claimant to and from work each day.

The claimant was injured in a motor vehicle accident while being driven by the respondent's girlfriend to the respondent's house for work.

The respondent argued the claimant was not a regular employee because he did not work over 26 hours a week pursuant to Connecticut General Statutes §31-275(9)(B)(iv). This portion of the Workers' Compensation Act states an individual is not an employee if "engaged in any type of service in or about a private dwelling provided he is not 'regularly employed' by the owner or occupier over twenty-six hours per week; and the claimant was a casual laborer excluded from compensation by §31-275(9)(B)(ii)."

However, in this matter the trial commissioner correctly found that during the 11 weeks of work the claimant had a consistent schedule. He worked 4 to 5 days a week for between 6 to 10 hours a day and averaged 38.5 hours a week. The respondent argued the full 52 weeks prior to the date of injury should be used to calculate the average number of hours worked. The Connecticut Appellate Court held that the trial commissioner should only use the number of hours in the weeks the claimant worked.

Furthermore, casual employment means "the occasional or accident employment, the employment which comes without regularity. Ordinarily . . . where one is employed to do a particular part of a service recurring somewhat regularly with the fair expectation of continuing for a reasonable time, the employment is not casual."

Therefore, the claimant was an employee pursuant to the Workers' Compensation Act and entitled to benefits.

Attorney's Fees

In ***Frantzen v. Davenport Electric, et. al.***, 179 Conn. App. 846 (2018), the Connecticut Appellate Court affirmed the trial commissioner and Compensation Review Board's ruling regarding a fee dispute between the attorneys who represented the claimant at different times during the pendency of a case.

The Connecticut Appellate Court stated that pursuant to Connecticut General Statutes §31-327(b), the trial commissioner had clear subject matter jurisdiction to resolve the attorney's fee dispute between successive counsel.

Furthermore, there is no right to a jury trial on issues before the Workers' Compensation Commission.

REVIEW BOARD DECISIONS

Travel in the Course of Employment

In ***Dias v. Webster Financial Corporation***, 6153 CRB-4-16-11 (February 15, 2018), the Compensation Review Board affirmed the trial commissioner's conclusion that the claimant suffered a compensable injury while traveling between bank branches at the direction of the employer.

The claimant was a "floating" customer service representative. On the date of injury, she reported to a branch in Shelton for the full day. However, during the morning her supervisor told her to take an early lunch and finish the day at the Ansonia branch to replace a sick co-worker. As she only had 30 minutes to travel between branches and get lunch, en route to the Ansonia branch she went to the drive-thru window at McDonalds. While waiting in line her vehicle was hit by another car causing her to suffer injuries.

The employer argued the claimant was on an unpaid lunch break when she was injured. However, one of her supervisors testified the claimant was on the clock while traveling between branches. Therefore, the commissioner concluded the claimant was on the clock, and she was using her unpaid lunch time to facilitate her responsibilities as a floating employee. The claimant's actions while getting her lunch were a mutual benefit to

her and the employer, making her injuries compensable.

Moratorium Against Future Benefits

In ***Dabbo v. Beckman Coulter, Inc.***, 6174 CRB-2-17-1 (March 6, 2018), the Compensation Review Board affirmed the trial commissioner's ruling that the $86,252.37 moratorium from a third-party settlement had not been completely exhausted.

After the moratorium was established the claimant underwent compensable left-shoulder surgery. The original bill for this treatment was $61,962.66, but the claimant's health insurer only paid $19,010 and the claimant's church paid the $500 co-pay. For additional medical treatment, the claimant accumulated bills totaling $14,353.90. The health insurer paid $4,471.73 and the claimant paid $1,518.86. The rest of the bills were written off by the medical provider. The claimant also received indemnity benefits totaling $34,179.71.

The trial commissioner concluded the moratorium should be reduced to $50,553.80. The reduction included the out of pocket payments and indemnity benefits. However, any payments issued by the health insurer or the claimant's church were not included in the reduction of the moratorium. Finally, the trial commissioner concluded health insurance premiums paid by the claimant should also not reduce the moratorium.

In affirming the trial commissioner's ruling, the Compensation Review Board cited to precedent in [***Bilodeau v. Bristol Assn. for Retarded Citizens***, 4245 CRB-6-00-5 (May 29, 2001), *appeal dismissed*, A.C. 22031 (February 22, 2002)] where it was decided insurance company payments cannot be used to reduce the moratorium. Furthermore, the decision in ***Gallagher v. John A. Dudley, D.M.D.***, 5067 CRB-4-06-3 (March 20, 2007) supports the ruling that group health insurance premiums should not be used to reduce the moratorium.

WHEN IN DOUBT, CALL US

We are only a phone call away. If you have any questions, call us!!

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