

NUZZO & ROBERTS

NEWSLETTER

July 2017

WORKERS' COMPENSATION UPDATE: SECOND QUARTER 2017

In recent months the Connecticut Legislature has enacted new statutes and the Connecticut courts and the Compensation Review Board have issued several important decisions regarding workers' compensation law.

LEGISLATIVE UPDATE

The Connecticut legislative recently enacted two statutes that may affect workers' compensation claims.

Notice of Withholding for Child Support Liens

In Public Act 17-27, Connecticut General Statutes § 52-362 has been repealed and replaced to expand the employer's duty to notify parties regarding a child support obligation. Specifically, when filing a First Report of Injury the employer is obligated to include any withholding order related to a child support obligation and to withhold funds pursuant to the order.

Where to Send a Form 30c Notice of Claim

In Substitute House Bill 7132, effective October 1, 2017, a private-sector employer has the option of providing the Workers' Compensation Commission with the address where claims against the employer can be sent and asking the Workers' Compensation Commission to post the address on its website. The employer will continue to be responsible for posting the address at the work site. The employer is also required to verify the same address is posted on the Workers' Compensation Commission website. The employer will continue to have 28 days to respond to the notice of claim.

SUPREME AND APPELLATE COURT DECISIONS

Was the Case Properly Dismissed?

In *Teixeira v. Home Depot, Inc.*, 173 Conn App. 594 (2017), the Connecticut Appellate Court affirmed the trial commissioner's dismissal of the case denying the claimant's request for a continuance of the rescheduled formal hearing. The trial commissioner had previously continued the matter because the claimant discharged his attorney on

the date of the first formal hearing. Furthermore, the claimant had not met his burden of proof that his discharge from employment by the defendant, was in retaliation for filing a workers' compensation claim and in violation of Connecticut General Statutes § 31-290a.

COMPENSATION REVIEW BOARD DECISIONS

Was the Claimant's Injury Compensable When It Occurred on a Public Sidewalk?

In *DeForest v. Yale New Haven Hospital*, 6075 CRB-3-16-2 (April 6, 2017), the claimant was injured on a public sidewalk during a lunch break, but the trial commissioner concluded the injury arose from the claimant's employment. The Compensation Review Board has affirmed the trial commissioner's finding.

In ruling the claimant's injuries were incidental to her employment, the trial commissioner noted that although Ms. DeForest was on a public street when injured, she was going to her car during a lunch break and the car was in a parking garage the employer required the claimant use. The use of the parking garage included an electronic access card issued by the employer.

On the date of injury, the claimant had completed her lunch and was retrieving change from her car to buy coffee later in the day. The trial commissioner

concluded the parking garage was an extension of the employers' premises and the employer had directed the claimant to use that parking lot. Furthermore, the employer had acquiesced to the employee leaving the hospital campus during lunch breaks and consequently, crossing public sidewalks proximate to the worksite was incidental to the employment.

The Claimant was Injured in the Course of Employment

In *Magistri v. New England Fitness Distributors*, 6089 CRB-2-16-4 (May 10, 2017), the claimant was driving a company vehicle to the office after performing paperwork for his job at home. The employer had authorized the claimant to perform the work at home, but the motor vehicle accident was likely caused by the claimant's sleep apnea.

Nevertheless, the trial commissioner found that because the claimant was providing a service for the employer when the motor vehicle accident occurred, and the claimant was being paid for those services, his injuries were compensable. In affirming the trial commissioner's finding, the Compensation Review Board concluded it was reasonable to determine the sleep apnea would not have led to Mr. Magistri's injuries if he had not been operating the company vehicle at that time.

A City can be Liable as a Principal Employer

In *Barker v. All Roofs by Dominic*, 6116 CRB-3-16-7 (May 23, 2017), the Compensation Review Board affirmed the trial commissioner's conclusion that pursuant to Connecticut General Statutes §31-291, a city can be liable as the principal employer for injuries sustained by a subcontractor's employee in a city owned building.

In this matter the City of Bridgeport hired All Roofs to repair a roof and All Roofs subcontracted work to Howie's Roofing. Neither roofing company had workers' compensation insurance.

In finding the city could be liable as a principal employer, the Compensation Review Board concluded that maintenance work was "part or process" of the city's trade or business. That the city is a noncommercial entity did not preclude it from being a principal employer pursuant to Connecticut General Statutes §31-291.

The Claimant was not Given the Proper Opportunity to Depose the Commissioner's Examiner

In *Wilson v. Capitol Garage, Inc.*, 6109 CRB-2-16-6 (May 16, 2017), the respondents were precluded from contesting the case because they failed to deny the claim in a timely manner. The trial commissioner ordered a Commissioner's Examination and then based on the Commissioner's Examiner's

conclusion decided Mr. Wilson was not entitled to benefits.

The claimant alleged exposure to isocyanates in car paint caused occupational lung disease. The Commissioner's Examiner concluded the claimant's lung disease was primarily the result of COPD from a heavy history of smoking cigarettes.

The Compensation Review Board held that, although respondents could not present a defense due to preclusion, the trial commissioner had the right to order a Commissioner's Examination to test whether the claimant had a *prima facie* case. However, the Compensation Review Board has remanded the case to the trial commissioner to give the claimant an opportunity to depose the Commissioner's Examiner.

Specifically, the Compensation Review Board stated the "murkiness" of the state of the Motion to Preclude law and "fundamental fairness" require the remand for additional proceedings. Furthermore, the trial commissioner may have inadvertently made "representations to the parties that would lead them to believe he had already reached a decision inconsistent with the ultimate outcome in this case."

MEDICARE UPDATE

On July 10, 2017, CMS published new guidelines for re-review of approved Medicare Set-Asides. Under the updated guidelines, CMS will not re-review a

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Medicare Set-Aside unless at least one year has elapsed since the original review, but no more than four years since the original approval of the Medicare Set-Aside. Additionally, only one re-review is allowed and there must be at least a 10% or \$10,000 change (whichever is greater) from the originally approved Medicare Set-Aside amount.

WHEN IN DOUBT, CALL US

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

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