NUZZO & ROBERTS NEWSLETTER

November 2017

WORKERS' COMPENSATION UPDATE: THIRD QUARTER 2017

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

COMPENSATION REVIEW BOARD DECISIONS

What is the Test for Establishing Causation of an Occupational Disease?

In ***Pederzoli v. United Technologies-Pratt & Whitney***, 6129 CRB-8-16-9 (July 18, 2017), the Compensation Review Board concluded the trial commissioner applied an erroneous standard in determining if Mr. Pederzoli developed mesothelioma after exposure to asbestos during his employment. The case was remanded to the trial commissioner to review his findings based on the proper standard.

The claimant presented evidence that during his 40 years of employment with Pratt & Whitney, he was frequently in areas where asbestos remediation was occurring. In his finding, the trial commissioner concluded the claimant had presented sufficient evidence to show asbestos was present in places where he worked. However, the commissioner then stated the claimant "failed to provide persuasive evidence that he was injuriously exposed to asbestos while working there."

However, the proper test in establishing causation is not whether the claimant was injuriously exposed to asbestos, but whether the exposure to asbestos was a substantial factor in causing the alleged occupational disease. Therefore, the Board remanded the case to have the trial commissioner determine "whether the claimant's exposure to asbestos while employed at Pratt was a substantial contributing factor in the development of the claimant's mesothelioma."

Exception to "Coming and Going" Rule

In ***Solis v. City of Middletown***, 6043 CRB-8-15-10 (August 9, 2017), the claimant was a public works employee who was called into work to handle a snow and ice emergency. On the way home from handling the emergency the claimant suffered injuries resulting from a motor vehicle accident. The Compensation Review Board affirmed the trial commissioner's ruling that the

injuries suffered while traveling home were compensable.

The city contested the compensability of the injuries by arguing the claimant was done working and was merely traveling home when injured. Therefore, the injuries were not compensable under the "coming and going" rule.

In finding the injuries to be compensable, both the trial commissioner and Compensation Review Board noted the claimant was called in for an emergency related to a snowstorm and he was asked to work outside of his normal work hours. The obligation to work during snow emergencies was part of his employment contract. The trial commissioner found "the snow emergency was still ongoing at the time of the claimant's injury, and although the claimant was 'off the clock' when he was hurt, the weather conditions precipitating his trip to work were a significant factor in the injury."

Claimant was not in the Course of Employment When Injured

In ***Ouellette v. Lane Bryant, Inc.***, 612 CRB-6-16-8 (July 7, 2017), the claimant was injured while walking to her car located in a parking lot at the mall where she worked. The trial commissioner ruled the claimant's use of a shopping mall parking lot did not confer a mutual benefit on both the claimant and her employer. Therefore, the slip and fall was not incidental to her employment.

In this matter the claimant had clocked out for the day and she slipped and fell in the parking lot that was neither owned nor maintained by her employer. The Board affirmed the commissioner's ruling and stated the factual record, as stipulated by the parties, did not make the circumstance of the injury so clearly compensable that the trial commissioner was compelled as a matter of law to find the injury incidental to the claimant's employment.

Failure to Provide Sufficient Evidence at a Formal Hearing

In ***Johnson v. State/Judicial Dept./Juvenile Detention Center***, 6132 CRB-4-16-9 (August 21, 2017), the claimant's request for shoulder surgery was denied pursuant to a Utilization Review as authorized by Connecticut General Statutes § 31-279(c) and § 31-279(d). The claimant challenged the Utilization Review decision at a formal hearing, but neither party submitted the Utilization Review decision for the commissioner's review. Therefore, the trial commissioner dismissed the claim.

On appeal, the Compensation Review Board affirmed the dismissal of the need for surgery because "the trial commissioner was not provided with a record from the underlying proceeding that would have enabled her to determine whether the denial of the medical treatment was 'unreasonable, arbitrary or capricious' as per Admin. Reg. § 31-279-10(f)." As the burden is on the claimant and the formal hearing record did not present a *prima facie* case that the

claimant was in violation of the statute, "the trial commissioner had no choice but to dismiss this claim."

Please note Utilization Review can only be used where the employer has a medical care plan authorized and approved pursuant to the Workers' Compensation Act and corresponding regulations.

WHEN IN DOUBT, CALL US

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

Contact David Weil at dweil@nuzzo-roberts.com, Jane Carlozzi at jcarlozzi@nuzzo-roberts.com, Jason Matthews at jmatthews@nuzzo-roberts.com, James Henke at jhenke@nuzzo-roberts.com, Kristin Mullins at kmullins@nuzzo-roberts.com, Laura Kritzman at lkritzman@nuzzo-roberts.com or Michael Randall at mrandall@nuzzo-roberts.com.

NUZZO & ROBERTS, L.L.C.
P.O. Box 747
One Town Center
Cheshire, CT 06410
Phone: (203) 250-2000
Fax: (203) 250-3131
or
www.nuzzo-roberts.com