NUZZO & ROBERTS NEWSLETTER

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WORKERS' COMPENSATION UPDATE: FOURTH QUARTER 2016

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

SUPREME AND APPELLATE COURT DECISIONS

Can a Commissioner's Examination be Required?

In ***Jodlowski v. Stanley Works***, 169 Conn. App. 103 (2016), the Connecticut Appellate Court affirmed the finding of the trial commissioner and Compensation Review Board stating the trial commissioner was not required to order a Commissioner's Examination when presented with conflicting medical evidence.

In this matter, the treating pain management physician, Dr. Kost, referred the claimant to a neurosurgeon, Dr. Wakefield, who concluded a lumbar spine fusion surgery was not an appropriate treatment. Thereafter, the claimant was examined by a second neurosurgeon, Dr. Aferzon, who recommended the lumbar fusion surgery. Dr. Kost also recommended a spinal cord stimulator. The claimant was then examined by Dr. Kaplan at the request of the respondents and the doctor concluded the spinal cord stimulator was not the appropriate treatment.

The trial commissioner decided a Commissioner's Examination was not needed to rule on the necessity of the lumbar fusion surgery or the spinal cord stimulator. In affirming the trial commissioner's decision, the Appellate Court stated that because there is probative evidence to support the trial commissioner's finding, the trial commissioner can choose one of the doctor's opinions in reaching a conclusion and the trial commissioner is not required to order a Commissioner's Examination to resolve the different medical opinions.

Timeliness of Heart and Hypertension Claim.

In ***Holston v. New Haven Police Dept.***, 323 Conn. 607 (2016), the police officer satisfied the requirements of Connecticut General Statutes 7-433c and is entitled to Heart and Hypertension benefits for his heart attack. The officer passed his pre-employment physical examination and filed a heart and hypertension claim following a 2011 heart attack. The Connecticut Supreme Court affirmed the trial commissioner and

Compensation Review Board's decision that the heart attack claim was filed in a timely manner, but the hypertension claim filed was untimely.

In this manner, the claimant was diagnosed with hypertension in 2009 but did not file a claim within one year. Consequently, the hypertension claim was not timely. However, the heart attack claim was timely because even the City's doctor admitted the hypertension and heart attack were separate medical conditions. Therefore, the claim for the heart attack filed within four days of that event was timely and compensable. The Supreme Court stated that "the plain language of the statute demonstrates that the failure to file a timely claim for benefits related to hypertension does not bar a timely claim for heart disease."

When is a Police Officer in the Course of his Employment?

In ***Balloli v. New Haven Police Dept.***, 324 Conn. 14 (2016), the Connecticut Supreme Court reversed the finding of the trial commissioner and Compensation Review regarding whether the claimant police officer had departed his ''place of abode'' when he was injured, thereby entitling him to workers' compensation benefits pursuant to Connecticut General Statutes §31-275(1)(A)(i).

In this matter, the police officer was at home and moved his vehicle into the street with the driver's side facing the street. The police officer reentered his house and completed his preparation for work. The claimant then proceeded to his car and while on the street he dropped his car keys. When he went to pick up the keys he injured his lower back.

A worker's employment usually does not start until he has reached the employer's premises. However, for a police officer or firefighter, he is in the course of employment when he departs from his place of abode. The Court states "a police officer or firefighter must be both engaged in a preliminary act or acts in preparation for work that is not undertaken at the express direction or request of the employer and must be at his or her place of abode in order for the injury to not be compensable."

"In § 31-275 (1) (F), the legislature has provided examples in an effort to help define the term ''place of abode.'' This list indicates that the legislature intended to include areas related to where an individual resides, such as walkways, breezeways, yards, and driveways. Notably, this list does not include public areas that may be adjacent to a person's property, such as sidewalks or streets. Accordingly, we read the term ''place of abode'' in this context to mean those areas that are related to where an individual resides."

"Based on the plain language of § 31-275 (1) (A) (i), ''place of abode'' does not include the public street," and the

officer was in the course of his employment when injured.

REVIEW BOARD DECISIONS

Concurrent Employment.

In ***Gould v. City of Stamford***, 6063 CRB-7-15-12 (November 14, 2016), the claimant was injured while working for the City of Stamford. Mr. Gould alleged that he was entitled to concurrent employment benefits that should include his part-time work for his own limited liability company. The trial commissioner and Compensation Review Board concluded the wages from the part-time work for the limited liability company should not be included in the calculation of the average weekly wage.

Specifically, the claimant was the sole member of a limited liability company and failed to prove he was an employee of the limited liability company. There was no evidence that the claimant received a W-2 form from the limited liability company or withheld pay for income taxes. "When a limited liability company and its principal act as alter egos a trial commissioner may reasonably conclude there is no employer-employee relationship present, and therefore this Commission lacks jurisdiction."

WHEN IN DOUBT, CALL US

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

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