NUZZO & ROBERTS NEWSLETTER

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WORKERS' COMPENSATION UPDATE: FOURTH QUARTER 2017

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

COMPENSATION REVIEW BOARD DECISIONS

Temporary Partial Disability and the Need to Look for Work

In ***Katsovich v. Herrick & Cowell Company, Inc.***, 6148 CRB-3-16-11 (October 4, 2017), the Compensation Review Board affirmed the trial commissioner's decision that the claimant was entitled to Connecticut General Statutes §31-308(a) temporary partial disability benefits.

Although the claimant failed to perform job searches, the trial commissioner concluded Mr. Katsovich did not need to produce job searches to receive temporary partial disability benefits. In affirming the trial commissioner's conclusion, the Compensation Review Board stated "it is a factual determination as to whether the claimant was ready, willing and able to work within his restrictions. We do not believe, after reviewing the records, that as a matter of law, the trial commissioner could not have awarded General Statutes §31-308(a) benefits to the claimant."

"It has been a long-standing precedent that it is not an absolute requirement for a claimant to perform job searches in order to receive temporary partial disability benefits. Instead, when a claimant seeks temporary partial disability benefits without having performed a job search, a trial commissioner must conduct a factual determination of the individual situation to determine whether the claimant was unable to obtain work within his restrictions." In this matter the Compensation Review Board noted that a "commissioner may find that although a claimant has a theoretical light duty capacity, other factors and restriction may render an employment search futile."

Does a Misstatement of the Date of Injury or the Name of the Employer Make a Claim Untimely?

In ***Watley v. New Haven***, 6158 CRB-3-16-12 (November 15, 2017), the claimant suffered an injury on April 15, 2013. On April 22, 2013, the First Report of Injury mistakenly identified April 17,

2013 as the date of injury. On April 26, 2013, the respondents filed a Form 43 denying the claim. When the clamant filed her Form 30c in July 2013 she again identified April 17, 2013 as the date of injury. The respondents filed a second 43 in response to the Form 30c.

At her deposition on October 29, 2013, the claimant testified April 15, 2013 was the date of injury and explained why she had previously mistakenly identified April 17, 2013 as the date of injury.

At the April 4, 2015, formal hearing the claimant again attempted to correct the date of injury as April 15, 2013. The respondents argued it was too late to amend the date of injury as it was more than one year past the date of injury and therefore notice was too late.

The Compensation Review Board affirmed the trial commissioner's conclusion that despite the use of the wrong date of injury, the Form 30c "substantially complied with proper notice and permitted the employer to investigate this claim in a timely manner. The employer was not ignorant to the facts concerning the claimant's injury, nor were they prejudiced by the two-day discrepancy in the Form 30c. Therefore, the respondent's motion to dismiss is denied."

However, in ***Davila v. Mimi Dragone, Inc. et.al.***, 6152 CRB-4-16-11 (November 28, 2017), the Compensation Review Board affirmed the trial commissioner's finding that the claimant failed to provide notice to his actual employer within one year and the case was dismissed.

The claimant filed a Form 30c against Mimi Dragone, Inc. D/B/A Dragone's Upholstery and sent the notice to 1812 Main Street, Bridgeport, Connecticut, which is not the business address of the firm. The correct employer was Thomas Dragone or Dragone, L.L.C.

Although there were legitimate reasons for confusion regarding the correct employer, Mimi Dragone filed a timely Form 43 clearly stating she was not the employer. Additionally, claimant's counsel never tried to depose Thomas Dragone and a hearing was held within one year with the wrong respondent. Furthermore, neither Thomas Dragone nor Dragone and Sons, L.L.C. paid any medical bills within one year of the date of injury.

The trial commissioner pointed out that the employer had no actual notice of the workers' compensation claim and no way of knowing they were the proper defendants until more than a year after the date of injury. Furthermore, the naming of Mimi Dragone, Inc. D/B/A Dragone's Upholstery as the employer is not a mere misnomer and the dismissal of the claim for failing to be within one year of the date of injury against the proper employer was affirmed.

When is a Traveling Employee Not in the Course of Employment

In ***Rauser v. Pitney Bowes, Inc.***, 6163 CRB-3-16-12 (October 20, 2017), the Compensation Review Board affirmed the trial commissioner's dismissal of the case because the claimant, while socializing on a business trip was not in the course of his employment and not entitled to workers' compensation benefits.

The claimant was on a business trip to Spokane, Washington. While there, a higher-ranking employee authorized the claimant and some co-workers to go out for dinner and drinks. They were also directed to keep the restaurant tab open until 8:00 p.m. Sometime after 8:00 p.m. the claimant and co-workers went to another establishment and drank until after midnight. Upon leaving the second establishment the claimant was assaulted and suffered severe injuries.

The trial commissioner ruled the employer could only have been liable for the activities up until 8:00 p.m. Thereafter, the claimant's activities were a deviation from his employment and any injuries suffered after 8:00 p.m. could not be compensable under the Workers' Compensation Act.

WHEN IN DOUBT, CALL US

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

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