

NUZZO & ROBERTS

NEWSLETTER

July 2020

WORKERS' COMPENSATION UPDATE: SECOND QUARTER 2020

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

COMPENSATION REVIEW BOARD DECISIONS

Can Temporary Partial Disability Benefits be Owed When the Claimant has Been Dismissed From Employment for Cause?

In *Gfeller v. Big Y Foods*, 6322 CRB-2-19-5 (April 8, 2020), the Compensation Review Board affirmed the trial commissioner's conclusion that the claimant was entitled to temporary partial disability benefits despite being previously terminated for cause.

In this matter, the claimant suffered compensable injuries and performed work within light duty restrictions for about five months. The claimant was then terminated for cause and did not receive or allege an entitlement to indemnity benefits for the next month. However, at the end of the one-month period the claimant underwent authorized right shoulder surgery. Thereafter, the claimant was paid

temporary total disability benefits for two months and then released to light duty. A Form 36 was approved for light duty and the respondents argued the claimant was not entitled to temporary partial disability benefits "because the employer would have accommodated the claimant's restrictions had she not been terminated for cause."

Once she was released to light duty work, the claimant performed online job searches and within 10 weeks she obtained new employment. She requested full temporary partial disability benefits for the period she performed job searches and wage differential benefits since finding a new job.

In concluding the claimant was entitled to temporary partial disability benefits after her surgery, the trial commissioner concluded the claimant demonstrated a credible willingness to work, specifically because she was hired for a new job.

In affirming the trial commissioner, the Compensation Review Board cited to *Levey v. Farrel Corp.*, 3649 CRB-4-97-7 (July 30, 1998) for the following proposition:

Where a claimant is terminated for cause, the trier has the discretion to consider such a dismissal from employment tantamount to a refusal to perform a suitable light duty position

for the purposes of §31-308(a). If not for his own actions, the claimant in this case would have been able to earn the same salary he was earning before his injury and would not have been entitled to temporary partial disability benefits.

The key to this statement is the trial commissioner has the discretion to consider these factors and therefore is not obligated to categorically deny benefits in these situations. In this matter, “the impediment to the claimant’s return to light duty with the employer was not an inability to accommodate her work restrictions, but, rather, an internal corporate policy which prohibited the rehiring of employees who have terminated for cause.”

Finally, although the trial commissioner could have ruled the claimant was not entitled to temporary partial benefits, to overturn the decision to award benefits would have arguably suggested a “respondent employer may preemptively inoculate itself against future liability under §31-308(a) (or §31-308a) by simply firing an injured employer, or by creating additional barriers which the employee must surmount before returning to work.”

Cancellation of a Workers’ Compensation Policy

In *Bellerive v. The Grotto, Inc.*, 6335 CRB-5-19-6 (June 10, 2020), the trial commissioner concluded a workers’ compensation policy was not properly cancelled because the notice of cancellation was not sent to the employer by certified mail

and the communications from the workers’ compensation insurer (Liberty Mutual) supported the employer’s allegation the policy was still in force on the date of injury.

However, the Compensation Review Board has concluded they are bound by precedent (*Yelunin v. Royal Ride Transportation*, 121 Conn. App. 144 [2010]) to overturn the trial commissioner’s ruling.

In this matter, the employer complied with the “rules of the Commission” and notified NCCI and its electronic reporting system of the cancellation of the insurance policy. Therefore, certified notice to the employer of the cancellation was not needed.

Furthermore, the notice of cancellation was clear and “absent some evidence that Liberty Mutual agreed to rescind its cancellation prior to the expiration of the fifteen-day window, [the CRB] would be compelled to hold that the policy was effectively cancelled.” In this matter, although some documents sent to the employer after the fifteen-day window were confusing, nothing contradicting cancellation was sent within the fifteen-day window, stating:

The sole question before the commissioner was whether the policy’s coverage remained in force after the November 2015 cancellation. Given the substantially limited powers of this forum, a conclusion by the commissioner that coverage continued would require competent evidence that Liberty Mutual *intended* the coverage to continue. While some of the letters Liberty Mutual sent said only that the policy “may” be cancelled, others expressly stated the policy had been cancelled in November 2015.

Furthermore, the insurer had no obligation to refund the unused portion of the premium prior to completion of their audits.

FORMAL HEARING AND CRB ORAL ARGUMENT UPDATE

On July 10, 2020, Workers' Compensation Commission Chairman Stephen M. Morelli issued a memorandum that as of August 1, 2020, a limited number of in-person formal hearings and Compensation Review Hearings will be held. Specifically, it is within a trial commissioner's discretion to decide a formal hearing cannot be properly completed through Microsoft Teams, and an in-person formal hearing is needed. Additionally, Compensation Review Board hearings can be in-person if so ordered by the Chairman.

All the social distancing rules including wearing face coverings and remaining six feet apart will be followed. There will only be one in-person formal hearing and Compensation Review Board hearing per office, per day.

SIXTH DISTRICT UPDATE

Effective June 29, 2020, the Sixth District Workers' Compensation office has moved to 24 Washington Street, New Britain, Connecticut 06051. The telephone number (860-827-7180) and facsimile number (860-827-7913) remain the same.

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, Michael Randall at mrandall@nuzzo-roberts.com or Evan Dorney at edorney@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