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Undocumented Workers Revisited

In a recent Commonwealth Court case, an injured worker was awarded ongoing wage loss and medical benefits after sustaining a head injury despite the employer's argument that he was an undocumented alien with no legal right to work in the United States. The employer argued on appeal that the Claimant was not entitled to benefits as the injured worker failed to establish that he was working in the USA under a valid work visa. The Court rejected this argument and held that the injured worker had no burden to prove legal work status. He need only prove an injury at work causing disability to be entitled to workers' compensation disability benefits. The Court noted that the injured worker's citizenship and legal eligibility to work in the United States is not relevant in establishing a claim; citing the prior Pennsylvania Supreme Court Decision in *Cruz v. WCAB (Kennett Square Specialties)*, 99 A.3d 397 (Pa. 2014).

The employer next argued under *Cruz* that if disability benefits were awarded then they should be suspended because the injured worker was able to do restricted work but could not be legally employed due to his immigration status. The Court held that the employer did not meet its burden to prove the injured worker's immigration status when the employer's president testified that the injured worker's H-2B visa had expired, but he did not know what the immigration status was after the injury. There was simply no evidence of record to establish what the immigrant work status was when the employer sought to suspend disability benefits. The Court also noted that the credited medical evidence did not establish the ability to perform restricted duty work.

The Court affirmed the Workers' Compensation Judge award of quantum meruit attorney fees against the employer, finding its contest unreasonable on the immigration status issues until an IME provided an opinion of partial work capabilities. The Court also granted the injured worker's request for counsel fees from the employer for the cost of defending the employer's appeal because the Court considered the employer's appeal frivolous. It presented no issues of law upon which the employer could prevail and it amounted to no more than a challenge to the credibility findings of the Workers' Compensation Judge.

Comment: Employers need to know the precise burdens of proof in potential undocumented worker situations and whether admissible evidence exists to meet those burdens in order to establish a reasonable contest, avoid awards of attorney fees and potentially prevail in litigation. Proof of undocumented alien status can be quite difficult without cooperation from the immigration authorities. While a Claimant may admit illegal status in testimony, an employer should not count on that as the injured workers can always refuse to answer those questions under the Fifth Amendment on the grounds that they might incriminate themselves. The employer might then be left with no evidence to meet its burden of proof if it has no independent evidence of the injured worker's immigration status.

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