

Flagg Decision Should Serve as a Reminder to Employers to Carefully Investigate Claims made by Employees

The New Jersey Appellate Court affirmed a Worker's Compensation Judge's decision for failure to provide Notice under New Jersey Statute 34:15-17 in *Flagg v. AD Transport Express*, which should remind employers that it is crucial to investigate circumstances when a claim petition is filed by an employee.

In this matter, the employee was a sales representative, who worked remotely from his New Jersey home covering both New Jersey and Eastern Pennsylvania and his main job duty was making sales calls on existing and potential clients. He was required to provide a calendar of his daily schedule a week in advance and report accurately the results of each appointment. The employee said he was involved in a motor vehicle accident on April 28, 2009, while returning from customer appointments in Pennsylvania. After filing a claim petition, the employer through counsel, filed a motion to dismiss for the employee's failure to comply with the provision of NJSA 34:15-17, the Notice Requirement Statute.

Judge Ingrid French held a full hearing which included testimony of the employee and several witnesses for the employer. In a detailed written decision, Judge French ruled that the employee lacked credibility and found that the employer produced competent objective evidence showing that the employee failed to give timely notice of the alleged accident in violation of the requirements under Section 17 and the Judge dismissed the claim with prejudice.

Judge French found the employer produced several witnesses and multiple documents showing that while the employee testified he gave his employer notice of the alleged car accident, this was not corroborated by any witness or with any documentation. Further, the employee was found through his own admission to have falsified his calendar in an attempt to change his schedule.

The Appellate Court affirmed the dismissal for all the stated reasons given by Judge French and specifically indicated that reviews of workers' compensation cases are limited. The Court will defer to the factual findings unless they are manifestly unsupported by or inconsistent with relevant evidence.

Comment: What employers should take away from this matter is the absolute need for full and complete investigation and follow-up on each and every allegation made by an employee. Here, the employee said he spoke with several individuals through phone calls. Each person denied the conversations with the employee. No phone records were produced and the work documentation required to be submitted by the employee failed to support any of the allegations. Without the exemplary work by the defense team including the employer, carrier/tpa and defense counsel, completely investigating all the employee's contentions the defense of this matter could have been significantly more difficult.

If you have any questions regarding these changes, please contact Robert R. Hanneman Jr. at rhanneman@wglaw.com or 856.779.7010.