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Does a Supplemental Agreement Executed During a Period of Temporary Compensation Act as an Admission of Liability?

In *LifeQuest Nursing Center v. WCAB (Tisdale)*, No. 1250 C.D. 2017, filed July 19, 2018, the Commonwealth Court held that Supplemental Agreements modifying disability benefits based upon a return to available suitable work during a period of temporary compensation, did not constitute an admission of liability concerning the compensability of the injury, and the injury described therein. The revocation of the Notice of Temporary Compensation Payable (NTCP) by the timely filing of a Notice of Temporary Compensation (NSTCP) and a Notice of Compensation Denial (NCD) preserved all of the Employer's rights regarding the subject claim, despite the Supplemental Agreements.

In prior decisions from the Commonwealth Court we know that once employer issues a NTCP, it cannot unilaterally reduce a worker's benefit rate due to a return to work without any bureau documentation of same. In fact, the court has held that such a unilateral reduction is a violation of the Act subjecting the employer to penalties. This was the situation in *Gereyes v. WCAB (New Knight, Inc.)*, No. 1250 C.D. 2002 (Pa. Cmwlth. 2002). Therein the employer paid claimant wage loss benefits under a NTCP until it issued a NSTCP and a NCD within the 90 day window. The revocation was properly documented, thus there was no admission of liability by the employer. However, the employer had reduced claimant's benefits unilaterally upon claimant's return to work during the 90 day period. The court held that this unilateral reduction of benefits constituted a violation of the Act subjecting employer to penalties. In response, the Bureau Regulation Section 121.7a(c) which permits the employer to file an Amended NTCP in order to modify benefit rates during the 90 day period for temporary compensation benefits to be paid. The regulation requires that the amended NTCP be clearly identified as "Amended" and that only the insurer's signature is required.

In *Tisdale* the employer issued a NTCP and then filed two Supplemental Agreements reducing disability benefits to a level that would allow the injured worker to return to work (on two separate dates) during the 90 day window. The injured worker then went out of work and employer issued a NCD before the expiration of the 90 day window. The Workers' Compensation Judge (WCJ) granted limited benefits on the claim petition, terminated all benefits on the employer's evidence of full recovery, and denied a penalty petition alleging that the Supplemental Agreements were not properly documented. The Appeal Board reversed the termination of benefits and remanded to determine a penalty.

On appeal to the Commonwealth Court, the issue raised by the employer was whether the Supplemental Agreements constituted an admission of liability thus nullifying the attempt by employer to revoke the NTCP thereafter, and an admission of the injury described in the Supplemental Agreements. The Commonwealth Court determined that the Supplemental Agreements did not act as an admission of liability for ongoing benefits, and were merely a method for employer to document a modification of claimant's benefits during the 90 day window for payment of temporary compensation benefits under a NTCP. Therefore, the revocation preserved all of employer's defenses regarding the subject claim. The Court also upheld the WCJ termination of benefits based upon evidence of full recovery from the injury described by the Judge, a lumbar strain. The Employer did not have to prove recovery from a sacroiliac strain as described in the Supplemental Agreements as they did not constitute an admission of those conditions.

Comment: The use of Supplemental Agreements to reduce or modify claimant's benefits being paid under a NTCP is not the easiest way to accomplish a reduction of benefits so as to avoid a violation of the Act as occurred in *Gereyes*. An employer must sign a Supplemental Agreement in order for it to be effective. However, the "Amended" NTCP as permitted by Bureau Regulation Section 121.7a(c) can be filed unilaterally using only the employer's signature. There is no need to chase an injured worker's signature if an Amended NTCP is utilized. Furthermore, the reasoning of *Tisdale* suggests that it would also be acceptable to file a Notification of Suspension or Modification to alter benefits during the period of temporary compensation if there is a return to work. However, an employer must not forget to file a NSTCP and an NCD within the 90 day period of temporary compensation to preserve defenses and avoid a conversion of temporary compensation to an admission of liability.

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