

You've won some, you've lost some. New Appellate Decision Highlights Importance of Filing an Appeal Even When Trial Court's Decision is Mostly Favorable.

The Appellate Division has just issued a decision regarding the importance of parties preserving their rights on appeal, even when there has been a partially favorable outcome at the Trial Court level. In an unpublished opinion in *Robinson v. First Energy Corporation* (A-1953-15T3), the Court addressed the issue of whether an employer could move to reopen a claim wherein a Dismissal Order had been entered more than 45 days before the filing of the appeal.

The underlying facts of the case are straightforward. However, the procedural history is complicated. Employee filed a claim alleging emotional injury following an encounter with two co-employees. The claim was denied by the employer. Thereafter, the employee filed a motion for medical and temporary disability benefits. The motion was tried and the Workers' Compensation Judge ("WCJ") found the claim compensable. Employer was ordered to provide treatment and pay temporary disability benefits. Employer filed a motion seeking leave to appeal and stay the Order. That motion was denied.

The employee was treated for several years. Six years after the first WCJ ordered the employer to pay benefits, a trial was held before a different WCJ to determine the nature and extent of permanency. At the conclusion of trial, the WCJ found that the claim was not compensable and entered an Order of Dismissal. However, before doing so, the WCJ ruled that he had no authority to review the first WCJ's decision and left the first Order undisturbed. Employee appealed this Order. The employer, however, did not.

Rather than filing an appeal or cross-appeal after the trial, the employer instead filed a claim against the employee in Superior Court seeking repayment of approximately \$250,000.00 in benefits paid pursuant to the first Order. The Superior Court dismissed this claim. Employer appealed the dismissal to the Appellate Court. The dismissal was upheld by the Appellate Division. Subsequently, employer filed a motion in Workers' Compensation Court seeking to open the case to obtain reimbursement of benefits paid. This motion was heard by a third WCJ. The third WCJ found that the Order for medical and temporary disability was interlocutory since employer had filed a timely motion seeking leave to appeal when that Order was entered. However, the WCJ also found that the employer should have filed an appeal once the final Order was entered dismissing the claim. The failure to do so was fatal to the employer's claim for reimbursement. The Appellate Division, after addressing issues regarding unjust enrichment, upheld the WCJ's decision. The Appellate Division found that employer was required to file an appeal from the Trial Judge's Dismissal Order within the mandatory 45 days. The employer's failure to do so foreclosed any means of obtaining reimbursement from the employee.

Comment: This decision makes clear to all parties that any part of an Order deemed unfavorable must immediately be appealed or cross-appealed within 45 days of the Trial Court's final Order, regardless of whether the final Order was generally favorable. If an employer fails to file a timely appeal or cross-appeal, all Orders will stand in their entirety. It is especially important for employer's to appeal in cases where there have been benefits paid pursuant to a prior Order, but the employer ultimately prevails at trial on the issue of compensability.

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