

When Does the 90 day Clock Begin to Tick in the Context of a Temporary Notice of Compensation Payable (TNCP)?

In a recent Commonwealth Court decision, the Court addressed applicable Sections of the Act, and associated Regulations in order to determine whether or not the employer timely contested liability of a work injury in the context of withdrawal of a Temporary Notice of Compensation Payable (TNCP).

Generally, the Act affords employers the option to accept a work injury on a temporary basis without admitting full liability of a claim while additional investigation can occur. This can be accomplished via the issuance of a TNCP. In the event the employer does not file proper notice revoking the TNCP within the 90 day period during which temporary compensation is paid or payable, the employer will be considered to have admitted liability of the claim, and the TNCP will convert to a Notice of Compensation Payable (NCP) by operation of law.

In *Valley Stairs and Rails v. WCAB (Parsons)*, the Claimant, Mr. Parsons, sustained a back injury on Friday, March 27, 2015. He left work early in order to obtain medical treatment, however, employer ended up paying him his full wages for the day. Based on his work schedule, he did not work on weekends. Claimant failed to return to work on Monday, March 30, 2015, or any day thereafter.

A TNCP was issued, which identified the 90 days commencing as of March 30, 2015. On the 90th day thereafter, the employer revoked the TNCP, although, the bureau nonetheless issued a Notice of Conversion of the TNCP to an NCP. The employer stopped paying compensation and the Claimant filed a Penalty Petition. The Workers' Compensation Judge (WCJ) denied the Petition and found the employer's revocation was timely within the 90 day period. Claimant appealed and argued the WCJ erred in finding his first date of disability was March 30, 2015, since his injury rendered him unable to work as of March 27, 2015. Claimant took the position that because the employer revoked the TNCP after 90 days had passed following the actual date of injury, the Bureau properly issued the Notice of Conversion. The WCAB reversed the WCJ's ruling and sided with Claimant.

On employer's appeal to the Commonwealth Court, the Court referred to Bureau Regulation 121.15(a) in order to determine when the 90 day period of disability commenced. The Court held that per such regulation, disability is considered to commence on the day following the injury when the claimant is paid his full wages for the day or shift when the injury occurred. In the case of Mr. Parsons, since he was paid his full wages on the date of injury and did not work on weekends, the Court found his first day of disability was the following Monday, March 30, 2015. It further determined that since the employer contested liability within the 90 day period of disability, the revocation of the TNCP was timely, and the WCAB decision was reversed.

Comment: A few key takeaways from this decision include: employers need to be cognizant of the fact that just because the Bureau unilaterally issues a Notice of Conversion of a TNCP to an NCP does not necessarily mean the conversion is valid. Also, this case is a reminder that all claims need to be closely analyzed on a case by case basis, including assessing as when a TNCP is going to convert. Carriers and TPAs should work closely with employers to ensure accurate information is produced in a timely manner. For example, in *Parsons*, the case could have turned out very differently, including potential exposure for a sizable penalty award, in the event the employer did not have payroll evidence to establish that Mr. Parsons was paid his full wages on the date of injury.

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