

# 06.24.13

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## Week of June 24th 2013 – New Jersey Workers' Compensation Update

Thank you for your attention to these matters. Please feel free to contact our [office](#) if you would like to discuss these cases in further detail.

**Lattoz v. New Jersey Turnpike Authority** (NJ Superior Court- Appellate Division Unpublished, A-4335-11T2 June 2013)

Petitioner filed a workers' compensation claim on November 11, 2008 alleging occupational exposure to the bilateral knees. Testimony revealed the petitioner attributed his bilateral knee pain in 2000 to his employment. Then on May 23, 2005 the petitioner was told by his treating physician that he would need a knee replacement, but should wait until he was 50 for the surgery. The petitioner had no accidents after this evaluation in 2005.

The trial Judge dismissed petitioner's claim with prejudice on statute of limitations grounds stating that the petitioner testified he believed in 2000 that his knee condition was caused by his job and then on May 23, 2005 the petitioner became aware that his knees were sufficiently damaged to require knee replacements giving him notice of the permanent disability related to this work injury/exposure. Since the claim was not filed before May 23, 2007 (within the 2 year statute) it was barred by the statute of limitations.

The petitioner appealed arguing that he lacked the requisite knowledge prior to July 23, 2008 when he had bilateral knee replacements.

The Appellate Division affirmed the trial court noting that the petitioner attributed the knee pain to work in 2000. Then in May 2005 it was evident that knee replacement was discussed since the petitioner testified he was told he was too young for them and was told to wait to have surgery. Therefore, the Appellate court felt the petitioner had the requisite knowledge of the nature of the disability and its relationship to his job.

**Jacqueline Dennis v. Trump Marina** (A-0100-12T3 Decided June 4, 2013)

Petitioner filed two worker's compensation claims, the first for occupational exposure for 22 years of employment as a banquet server for the Respondent and a second claim for a traumatic event on August 8, 2007. Petitioner claimed injuries to her cervical, thoracic and lumbar spine as well as a psychiatric overlay.

At trial, the worker's compensation Judge determined that petitioner sustained a compensable occupational exposure and awarded petitioner 70% of partial total disability, broken down 60% for the orthopedic injuries and 10% for the psychiatric injury. The WJC also awarded petitioner total and permanent disability relative to the traumatic claim splitting the overall disability between the respondent and the second injury fund 30/70 respectively.

Respondent/Trump appealed 6 different issues including the alleged shifting of the occupational exposure burden of proof to the Respondent; petitioner's alleged failure to sustain burden; insufficiency of psychiatric evidence; decision made was not based on reasoned explanation and whether the Court erred in excluding video surveillance of the petitioner.

With regards to the first 5 issues raised by the Respondent on appeal, the Appellate Court determined that "so long as they (judge's decisions) rest on sufficient credible evidence, a compensation Judges finding of fact are binding on appeal." The Court affirmed the awards substantially for the reasons set forth by the WCJ in his decision on July 24, 2012.

The remaining issue of exclusion of the video surveillance evidence was separately addressed by the Appellate Court. Regarding the surveillance, the video was obtained 9 months after the parties completed

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the pre-trial memorandum and 6 months after the petitioner testified. The Court concluded that based on the holding in **Gross v. Neptune**, 378 NJ Super 155 (App. Div. 2005), exclusion of the surveillance materials is at the discretion of the Judge where the tapes were "made after trial began and are therefore inadmissible...unless the employer can show that it was unaware, and could not have been aware, of the circumstances warranting surveillance before the hearing."