

Termination of Employment Before an Injury?

Marazas v. WCAB (Vitas Healthcare Corp.), No. 337 C.D. 2014, Filed 8/11/2014

The claimant (employee) worked as a driver technician picking up medical equipment and furniture in the Delaware Valley area. The employee worked an on-call weekend and was then given an itinerary of work on Monday that would have lasted until midnight. The manager refused to reduce the number of stops and the employee quit. The manager directed the employee to empty out his personal items from the truck and the manager was escorting the employee to do this when the employee fell and injured his left ankle and knee as well as upper, middle and lower back.

The employee filed a claim petition which the WCJ granted. The WCAB remanded for findings as to whether the employee was still considered employed since he was terminated before injury occurred, although still on employer's premises. The Workers' Compensation Judge (WCJ) on remand again found in the former employee's favor and granted the claim. The WCAB reversed on grounds that the man was no longer an employee when the injury occurred.

The Commonwealth Court agreed with the WCJ and reinstated the decision granting benefits. The Court noted that injury occurred on employer's premises and that the former employee was directed and supervised by the manager to remove personal items from the truck. The former employee was in the process of seeing to this task when injury occurred and thus was furthering the interests of the employer. He was under employer's control at the time of the injury and was in the course and scope, thus the injury is compensable.

Comment: The employee had initially filed a civil action against the employer, but voluntarily withdrew the action and filed a claim under the Act. The Court's decision discusses the concept of Judicial Estoppel which was asserted by the employee in an effort to prevent the employer from defending against the compensation claim, at least in part. The employer in the civil case filed an answer and new matter alleging that the former employee was an employee and was in the course and scope when injured and thus the civil action was barred. The employer then took a contrary position in the compensation case. Although the elements of Judicial Estoppel were not established this is an example of the need to be careful that inconsistent positions are not alleged when there is a civil action against the employer as well as a compensation claim.

For more information, please contact Peter J. Weber at pweber@wglaw.com or 215.972.7901.