

Pennsylvania Workers Compensation: ABNORMAL WORK CONDITIONS FOR TRANSPORTATION WORKERS IN PENNSYLVANIA



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Recently, the Pennsylvania Commonwealth Court affirmed a Workers' Compensation Judge's ("WCJ") decision that an "abnormal work condition" did not exist for a bus driver employed by a government agency who was threatened with a gun and denied state workers' compensation benefits. The Court opined that the credible evidence presented in the case demonstrated that it was foreseeable that such assaults with a firearm could occur within that specific type of employment category.

Overview

Since 1974, nearly all Pennsylvania employers have had to maintain state workers' compensation insurance under the Pennsylvania Workers' Compensation Act.¹ The Act, normally construed liberally by the courts in favor of injured workers (commonly referred to as claimants) due to its stated humanitarian nature, provides for payment of medical expenses and, in the event the claimant is unable to work, wage loss compensation benefits until the person is able to return to work.²

However, in cases regarding psychological or mental injuries,

Pennsylvania state courts over the years have moved away from liberal construction of the Act and toward the requirement of an elevated degree of proof before finding compensability.

In Pennsylvania, psychological injuries can fall into an umbrella of three different types of injuries; "physical/mental," "mental/physical," and "mental/mental."

The first type of injury is a physical injury causing later mental or emotional difficulties, also known as the "physical/mental." In this scenario, which commonly presents itself as the claimant incurring an acute physical event which leads to mental depression, the claimant has to show the physical stimulus caused the mental disability.³

Another type of injury occurs when the claimant incurs a mental stress which leads to, exclusively, a physical injury. This is known as a "mental/physical" scenario, which is exemplified where emotional stimuli, such as a heated argument leads to a physical form of disability, a manifestation, such as a heart attack.⁴

Neither of these types of injuries requires the claimant to prove that he or she was forced to deal with an abnormal work condition. This step is required exclusively for "mental/mental" claims, mental stimuli causing mental disability. The Commonwealth Court has clarified that, "compensability for psychiatric injuries which are

unaccompanied by physical trauma requires a claimant to prove that he suffered a psychiatric injury which was causally related to the employment and was more than a subjective reaction to normal working conditions for that kind of job."⁵

In a mental/mental case, the burden of proof is on the claimant to prove that the incident caused an emotional injury.⁶ More specifically, the claimant must prove that his mental condition was the result of an, "actual objective abnormal working condition, as opposed to a subjective, perceived, or imagined employment event."⁷ For the claimant, this represents a significant and different burden than those cases claiming a physical injury or a "physical/mental" case.⁸

Proving that an abnormal work condition exists for a claimant seeking Pennsylvania state workers' compensation benefits is a fact specific inquiry to be determined by the Workers' Compensation Judge.⁹

McLaurin v. WCAB (SEPTA),¹⁰ illustrates some of the special considerations necessary for an analysis of what constitutes an abnormal work condition for one type of transportation employee in a state compensation setting.

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Facts of *McLaurin*

Claimant, Craig McLaurin, was employed by the Southeastern Pennsylvania Transportation Authority ("SEPTA")¹¹ for under a year when, while driving through a part of the city, he encountered a group of young men who entered the bus without paying their respective fares.¹² When the young men exited the bus, one of the group approached McLaurin and pulled a gun from his pocket. McLaurin believed that he was about to be shot and begged for his life. Shortly thereafter, the assailant exited the bus. Claimant reported the incident to his supervisor and never returned to work.

The claimant then filed a claim for workers' compensation benefits alleging that he suffered a work-related, post-traumatic stress disorder, anxiety, chest pain/angina and impotence as a result of the October 2006 incident.¹³ Claimant's treating physician diagnosed post-traumatic stress disorder, anxiety depressive disorder and insomnia related to the incident. A psychologist also testified on behalf of the claimant and diagnosed work related post-traumatic stress disorder. SEPTA also presented the testimony of two (2) employer fact witnesses, a worker who oversees the training of new employees and another who testified regarding the records of prior assaults of SEPTA bus drivers.¹⁴

The first employer fact witness confirmed that new bus drivers are advised to expect dangerous passengers and are given training on how to deal with difficult situations. Further testimony was submitted by the employer regarding radios and silent alarms that are present for bus drivers in anticipation of dangerous situations. SEPTA introduced evidence showing that all drivers are given codes to be used when radioing for help and that busses are equipped with a silent alarm that notifies the control center of a problem if the driver is unable to speak. Specifically, SEPTA offered as exhibits the training DVD and

Rules and Regulations Manual that instructs drivers on how to handle certain situations including dangerous passengers.¹⁵

SEPTA's Workers' Compensation coordinator testified that between June 1, 2005 and November 1, 2005, there were 292 passenger disturbances on SEPTA busses and 11 assaults on operators. In another period between June 1, 2006 and June 25, 2007 there were 738 disturbances and another 62 assaults on bus drivers. The coordinator also noted that there had been 2 bus drivers threatened by gun point since the beginning of 2007 through the time of the hearing on August 23, 2007.¹⁶

The WCJ found Claimant's testimony credible and his reaction to be understandable. The WCJ found Claimant did suffer work related post traumatic stress disorder and that his continuing symptoms prevented him from returning to work. However, the WCJ also found SEPTA's witnesses credible on the critical issue of whether the experience of being accosted with a gun was an abnormal working condition. The Judge concluded as a matter of law that the incident was not an abnormal working condition that other employees in Claimant's classification would not be exposed to.¹⁷

Claimant ultimately appealed to the Commonwealth Court who affirmed the WCJ decision which denied benefits. On appeal, the Claimant argued that life-threatening assaults were extremely rare, and thus, not normal working conditions for SEPTA bus drivers. Claimant also argued that the training materials that the training materials did not address a potential assault with a firearm and "[n]obody expects to go out and get a gun put in their face."¹⁸

In contrast, SEPTA argued that dangerous conditions were commonplace for SEPTA bus drivers and that work conditions are not abnormal when they are foreseeable

or could have been anticipated.¹⁹ The Commonwealth Court adopted the arguments of the employer, and affirmed. The Court agreed that psychological injury cases were highly fact sensitive and that for events to be considered abnormal they should be considered in the context of specific employment. The Court specifically pointed to the fact that "[t]he WCJ also painstakingly reviewed and summarized SEPTA's incident reports and noted that life-threatening situations occurred with enough frequency to lead her to conclude that they were not abnormal working conditions for employees in McLaurin's classification."²⁰

Furthermore, the Commonwealth Court detailed that the claimant offered no proof that the claimant's incident was something that the bus driver could not anticipate. "McLaurin had the burden to prove by objective evidence that his injury was not a subjective reaction to normal work conditions. He offered no proof that the October 2006 incident represented something that a SEPTA bus driver could not anticipate."²¹ In contrast, SEPTA offered evidence that such incidents did occur with such regularity that the handling of such incidents were built into the operations training program.


Conclusion

McLaurin demonstrates the heavy burden upon the claimant, in a transportation employee case, to collect benefits incurred pursuant to a psychiatric disability stemming from a psychiatric work place incident. *McLaurin* makes clear, that at least in Pennsylvania, assaults upon bus drivers, even those involving firearms, are not so unforeseeable such that they constitute an abnormal working condition.

This case may be a positive development for the transportation law practitioner in other state jurisdictions. This case can be used to establish compensability guidelines concerning

a transportation employee submitting a claim for benefits for an alleged psychological disability stemming from a non-physical trauma. This case, in some respects, represents a text book example on how to defend a mental/mental case where the foreseeability of the non-physical stimuli is clear.

The existence of *McLaurin* should also help attorneys representing claimants because it represents the clear obstacles that exist in mental/mental cases where violence can be commonplace. To be sure, claimants can recover benefits for psychological claims for disability stemming from

non-physical stimulation. However, it appears as though an employer can reduce its exposure to such claims if it presents not only a fair warning of the possible violence, but also specific training guidelines for the employees. 

Endnotes

1. 77 PA. CONS. STAT. § 671 (2001).
2. *Id.* at § 411(1).
3. *Donovan v. WCAB (Academy Med. Realty)*, 739 A.2d 1156 (Pa. Commw. Ct. 1999).
4. *Panyko v. WCAB (U.S. Airways)*, 888 A.2d 724 (Pa. 2005).
5. *RAG Cyprus Emerald Resources, L.P. v. WCAB (Hopton)*, 912 A.2d 1278 (Pa. 2007).
6. *Martin v. Ketchum, Inc.*, 568 A.2d 159 (Pa. 1990).
7. *Martin, US Airways, and Thomas v. WCAB (Atlantic Ref. Co.)*, 423 A.2d 784 (Pa. Commw. Ct. 1980).
8. *Martin v. Ketchum, Inc.*, 568 A.2d at 159.
9. *Babich v. WCAB (PA Department of Corrections)*, 922 A.2d 57 (Pa. Commw. Ct. 2007).
10. 980 A.2d 186 (Pa. Commw. Ct. 2009).
11. SEPTA is a municipal entity that operates multiple forms of public transit, including bus, regional rails, light rail trolleys, and subways. The system serves Philadelphia and a number of suburban towns in Bucks, Delaware and Montgomery counties.
12. *McLaurin*, 980 A.2d at 187.
13. *Id.* at 188.
14. *Id.*
15. *Id.* at 189.
16. *Id.*
17. *Id.* at 189.
18. *McLaurin*, 980 A.2d at 189.
19. *Id.* at 189.
20. *Id.* at 190.
21. *Id.*