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Pennsylvania Self-Insurers' Association

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January 2012

Professionals Sharing Workers' Compensation Information

PRESIDENT'S MESSAGE

Happy New Year and Welcome to the first edition of the electronic newsletter. We thought long and hard about the decision to go paperless with our product but in the end, reality guided our move. Our motive is to continue to provide our members with the most current and vital information regarding self-insurance, legal updates and the status quo for Pennsylvania Workers' Compensation. Make sure you send us your email addresses either via U. S. Mail or at our website, www.psianet.org, so that we can remain connected.

I'd like to leave you with this thought on the New Year written by author Judith Christ:

"Happiness is too many things these days for anyone to wish it on anyone light.

So let's just wish each other a blessed New Year and leave it at that."

Regards,

Cheryl

Inside this issue. . .

PENNSYLVANIA WORKERS' COMPENSATION: MEDICAL DISORDERS MASQUERADING AS PSYCHOLOGICAL CONDITIONS IN THE REALM OF WORKERS' COMPENSATION LAW

By: Christian A. Davis and David A. Assalone
Weber Gallagher Simpson Stapleton Fires & Newby, LLP

This article addresses the topic of psychological injury claims by highlighting how inherently challenging it can sometimes be in properly diagnosing such claims. The article later provides practical real life considerations for handling a psychological injury claim in the Pennsylvania workers' compensation system.

Melinda Beck of the WALL STREET JOURNAL recently described the difficulties that doctors and patients alike face properly diagnosing mental illnesses.[1] What once was previously thought to be a mental illness, is now turning out instead to be a symptom of an underlying medical ailment. Two striking examples given are a woman's depression turning out to be a side effect of her high blood pressure medication and a manager at work who has anger outbursts revealed to be caused by a type of treatable epilepsy.

Moreover, what initially may seem like depression in a patient caused by prior emotional and psychological problems may actually be the result of an underactive thyroid, a vitamin D, B-12 or Folate deficiency or even heart disease. Anxiety may actually be due to an overactive thyroid, respiratory problems, very low blood pressure, a

concussion, or even anaphylactic shock. Mental issues resulting in cognitive changes may actually be the result of a brain injury, Alzheimer's, Parkinson's, liver failure, or mercury/lead poisoning. Amazingly, it is asserted by Ms. Beck that more than 100 medical disorders can masquerade as psychological conditions.

In looking at the frequency of misdiagnoses of medical ailments for mental illness, it appears that these misdiagnoses are not few and far between, but instead are occurring with regularity. Medical conditions are alleged to be the cause of psychiatric issues in up to twenty-five percent (25%) of psychiatric patients and may contribute to the development of psychiatric issues more than seventy-five percent (75%) of the time. Unraveling this confusion becomes more challenging when, according to Harvard psychiatrist, Barbara Schildkrout, a psychiatrist or medical doctor tries to determine the cause and effect relationship between patients' medical conditions and their mental health issues.[2] While a psychiatrist may ask a patient about their previous mental health, they frequently rely on a patient's medical doctor to deal with the medical issues and to diagnosis a patient for medical ailments. Compound this reliance on the fact that psychiatrists and medical doctors are seeing and getting to know their patients less and less and the result is that patient's medical ailments are being misdiagnosed as mental illnesses.

These underlying medical ailments become even more difficult to spot and properly diagnose when there is a psychological explanation or reasoning for a patient's symptoms. If a psychiatrist learns from a patient that they are feeling depressed and anxious and at the same time learns that the patient was nearly seriously injured in an accident at work, the psychiatrist could easily reason that the work-incident caused the patient's depression and anxiety.[3] However, at the same time, the patient could be suffering from diabetes or have low blood sugar, which have been shown to manifest themselves in ways that appear like a patient is suffering from depression or anxiety. Overall, in those instances the psychiatrist lacks the requisite medical background information on a patient to determine whether it is an underlying medical condition that is affecting the patient rather than a psychiatric issue.

While Ms. Beck focuses her analysis in "Confusing Medical Ailments With Medical Illness" on specific medical ailments that may manifest themselves as mental illnesses, a discussion on the confusion of medical ailments for mental illness is particularly relevant in regards to the field of workers' compensation law as well.

In Pennsylvania, psychological injuries are compensable, work-related injuries under the Pennsylvania Workers' Compensation Act (the "Act") when they fall into one of three categories: physical/mental, mental/physical and mental/mental.[4] In the physical/mental and the mental/mental categories, a claimant must prove that a physical or mental event, respectively, caused the claimant to suffer a corresponding mental injury and/or disability. While in mental/mental cases a claimant has the additional hurdle of proving that he or she was forced to deal with an abnormal work condition in order for an injury to be accepted as compensable under the Act, both of these categories acknowledge that mental illnesses are compensable, work-related injuries under the Act.

As such, the accurate diagnoses of mental illnesses and the causal link between these illnesses and an incident that arose during the course and scope of claimant's employment relationship are critical. If those in the psychiatric field are misdiagnosing patients with mental illnesses when the true problems are physical and medical in nature, then there are certainly claimants being improperly diagnosed with work-related mental injuries and improperly receiving workers' compensation benefits under the Act.

In ***Family Counseling Center v. WCAB (Porter)***[5], the claimant sustained a cervical strain and bulging disc injury while in the course of her employment on October 21, 1991. In 1994, approximately three years later, the claimant began to receive treatment for depression.[6] On March 15, 1999, approximately five years after beginning treatment for depression, the claimant filed a Review Petition, alleging a psychiatric component to her 1991 work-related injury.[7] In support of her Claim Petition, claimant introduced the deposition testimony of a psychiatrist who opined that claimant suffered from a major depression illness that was caused in substantial part by her physical work-related injury and subsequent disability.[8] The psychiatrist acknowledged that there were other possible factors to claimant's depression, such as the death of her parents, the death of her brother, concerns over her father's estate and marital problems, but nevertheless concluded that claimant's 1991 work-related injury, and her subsequent disability from it, were the substantial causes of her depression.[9] While the employer presented a psychiatrist who disagreed as to what was the major cause of claimant's depression, the Workers' Compensation Judge (the "WCJ") ultimately found the claimant to be totally disabled as a result of her psychiatric injury.[10]

While the record in this matter clearly established that the claimant had emotional and psychiatric stimuli that could have caused her to become depressed, a large percentage of those stimuli were not work-related.[11] Additionally, while it is clear that claimant's medical expert opined, and the WCJ ultimately agreed, that the work-

related injury was the substantial cause of claimant's depression, it is much less clear if there were any medical ailments that claimant suffered from that could have caused or contributed in part to claimant's depression.[12]

Perhaps the claimant sustained a head trauma at some point prior to the work-related accident in 1991 or during the approximately eight years before claimant's filing of her Review Petition. Perhaps claimant had a vitamin D, B-12 or folate deficiency, or maybe claimant was suffering from diabetes or heart disease. Any of these physical symptoms could have been present and could have accounted for, at least in part, claimant's depression.

As defense attorneys who practice every day in the field of workers' compensation, it is our duty and obligation to examine and fully explore these potential non-work-related reasons for why a claimant may appear to suffer from a work-related mental illness. If counsel can establish that a claimant is suffering from a non-work-related medical disorder that displays symptoms similar to or commonly causes a mental illness, then counsel may be more successful in defending a claim on the grounds that the alleged mental injury did not arise in the course and scope of claimant's employment.

In aiding counsel in recognizing and flushing out these potential non-work-related causes for a claimant's alleged work-related mental illness, below is a list of strategies and tips for defense counsel to review:

- Identify if the claimant has any genetic, family pre-dispositions for the following medical ailments either through claimant's physical examination with an independent medical examiner or during claimant's deposition/testimony: diabetes, heart disease, cancer, epilepsy, strokes, Alzheimer's, Parkinson's and/or substance abuse;
- Identify if the claimant has personally shown any signs of suffering from any of the above-listed medical ailments;
- Have your independent psychiatric expert conduct a records review of claimant's medical history, in particular for any pre-existing injuries, such as evidence of head trauma, concussions or brain injury;
- Have your independent medical doctor perform, or request that claimant undergo, a blood test, specifically testing for an overactive or underactive thyroid, low levels of vitamin D, B-12 and folate, steroid abuse and mercury or lead poisoning;
- Have your independent psychiatric expert review claimant's medical history and treatment records prior to issuing a final opinion on claimant's mental health;
- Insure claimant has undergone a full, complete physical examination within the last six months, even if claimant is only alleging a work-related mental illness;
- In claimants, age 55 and above, who are alleging their first episode of depression, have your independent medical doctor examine claimants for hypertension, diabetes and signs of a heart attack (depression is an early indicator for all three);
- During claimant's testimony or deposition, question claimant regarding whether he or she has experienced a sudden change in mood, personality, weight, appetite or sleep; and,
- Fully explore, if possible, prior treatment with claimant's family doctor or doctors.

In conclusion, more and more medical conditions are being confused by both medical doctors and psychiatrists for mental illnesses. This trend is due to many factors, but primarily two: 1) psychiatrists and doctors are spending less time with their patients which prevents them from gaining sufficient information on their patient's injuries and subsequently misdiagnosing their patients; and 2) recognizing an underlying medical condition becomes increasingly more difficult for a medical doctor or psychiatrist when a psychiatric explanation also exists for the patient's symptoms. However, by recognizing these common misdiagnoses and taking actions to differentiate these medical ailments from the mental illnesses they masquerade as, doctors and counsel can come to more accurate diagnoses. Specifically, by using the above-checklist, defense counsel should have a good starting point in ensuring that only claimants with true work-related mental illnesses, whether they fall under the physical/mental or mental/mental umbrella, are compensated under the Act.

Footnotes

[1] Melinda Beck, *Confusing Medical Ailments With Mental Illness*, WALL ST. J., August 9, 2011, at D1.
[2] *Id.*
[3] *See generally, Monessen, Inc. v. WCAB (Marsh)*, 631 A.2d 1119 (Pa. Cmwlth. 1993).
[4] 77 P.S. § 1, *et al.*

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[5] 798 A.2d 318 (Pa. Cmwlth. 2002).
[6] *Id.* at 319.
[7] *Id.*
[8] *Id.* at 320.
[9] *Id.*
[10] *Id.* at 320-21.
[11] *Id.* at 320.
[12] *Id.* at 321.

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BUREAU UPDATE

THE BUREAU OF WORKERS' COMPENSATION LAUNCHES HEALTH & SAFETY TRAINING INSTITUTE

Submitted by: Tanyia Miller, Information Writer, Bureau of Workers' Compensation

The Department of Labor & Industry, Bureau of Workers' Compensation's Health & Safety Division, is launching its online Health & Safety Training Institute, PATHS. PATHS is a no-fee, statewide service that provides employers and employees with easy access to cost-effective health and safety resources. PATHS helps participants in the workers' compensation system achieve greater efficiency in their workers' compensation cost-containment efforts by creating safer, accident-free workplaces.

PATHS gives employers access to a comprehensive, online collection of health- and safety-related training sessions available through reputable sources. This training will help employers reduce workplace safety- and health-related incidents, resulting in workers' compensation policy premium reductions. Workers' compensation costs associated with incidents in the workplace are a considerable portion of an employer's business costs. Learn how to reduce your workers' compensation costs through effective, proactive health and safety training programs that will benefit your employees and your bottom line.

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- Develop a novel approach for claim investigation or surveillance?
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- Develop an effective light duty and/or return-to-work program?

If you answered yes to any of the above — please summarize your initiative and submit it to PSIA for the **2012 Award of Excellence** no later than December 31, 2012.

For more information or details – please contact: Attorney Harry Rubright, **PSIA,** P.O. Box 706, Schuylkill Haven, PA 17972 - (570) 385-4511.

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CHECK YOUR VOICE MAIL!

By: Attorney Kevin L. Connors
Connors Law LLP

A recent Pennsylvania Supreme Court Decision, in ***Gentex Corporation v. WCAB (Morack)***, takes a bold leap forward in integrating voice mail into the modalities available to an injured employee seeking to provide his/her employer with notification sufficient to satisfy the sometimes ambiguous vagaries of Section 312 of the Pennsylvania Workers' Compensation Act, for purposes of ensuring claim viability for compensability purposes.

Examining the subtle nuances of this Decision, particularly as it impacts on claim acceptance and denial, it can be compressed into the single bullet targeting the notice bulls eye, putting aside both medium or modality, that if an employee says, through voice mail, e-mail, or through the more traditional attorney letter of representation, that they cannot work because of an injury, irrespective of whether that declaration does not contain a specific reference to the employee believing that the injury is or is not work-related, as was the apparent case in ***Gentex***, that communication could well constitute a Section 312-satisfying notice, such that the claim would not be dismissed or barred, at least by the Supreme Court, on grounds that the employee had been silent too long to be entitled to be compensated.

In fairness to the Supreme Court, the employee's workers' compensation claim in ***Gentex***, contains some facts that resulted in the Concurring Opinion of Justice Baer authoring a scathing indictment of Gentex's challenge/defense of its employee's claim, calling Gentex's defense as "unfortunate that someone in corporate management chose to pursue this regrettable course," having pursued "a technical defense in the hope of avoiding its rightful obligation," "rather than acknowledging the undisputed genesis" of the employee's injury.

So how did ***Gentex*** ever involve an issue so important for the Supreme Court, in the opinion authored by Madame Justice Todd, to result in the Court concluding that "while this scenario providing notice was not 'letter perfect,' the humanitarian purpose of the Act directs that "again a meritorious claim ought not, if possible, be defeated for technical reasons," apparently seeking to exhume appellate sales with corrective wins, when the Gentex employee never specifically notified Gentex that she was unable to work because of a work injury within the 120 days as required by Section 311 of the Act, apparently satisfying Section 312 of the Act, that the injury preventing the employee from working was "considered" to be work-related by her treating physician.

Even the nuances look to be askew.

Perhaps some case facts will help us understand the leap from "I cannot work" to "I cannot work because of a work injury."

The injured employee in ***Gentex*** began working for Gentex right out of high school, in 1960. After working for Gentex for 35 years, she stopped working in 2005, because of hand pain.

Working as a lens inspector for Air Force helmets, the employee, was required to sometimes handle hundreds of helmets on a daily basis, with each helmet weighing about 9 lbs. Over time, her job responsibilities and duties were increased, such that she began to arrive at work at one hour early.

About 2 years before she stopped working, she noticed pain and swelling in her hand, while she was working. At times, her fingers would lock in certain positions, and she then told her supervisor, in January of 2005, that she could no longer tolerate the pain, and would have to leave work.

She then made an appointment for a medical evaluation, with the physician giving her a note excusing her from work. That note was never entered into evidence in the case.

She delivered the doctor note to Gentex, delivering it to the guard house (?), although she did not have direct contact with anyone in risk management or human resources.

Over the next 5 days, she telephoned into work, indicating that she could not work because of swelling in her hands. On February 2, 2005, she applied for short term disability benefits, and, in the benefit application form, she indicated that she did not believe that her injury was work-related, listing her conditions as swelling in her arms, hands, knees, and ankles. She attributed those conditions to pre-existing fibromyalgia and high blood pressure, both of which had been diagnosed in 1993.

Eventually, she was referred to a rheumatologist, with the rheumatologist diagnosing her with bilateral carpal tunnel syndrome and flexor tendonitis, ruling out fibromyalgia or high blood pressure as the cause of her hand

pain, further concluding that her hand pain was being caused by work-related injuries. The rheumatologist released her to return to work with restrictions on March 24, 2005, although no restricted-duty work was ever made available to her, and she was subsequently terminated from her employment with Gentex.

A critical question of fact arose in the case, as to the timing and order of events after the rheumatologist diagnosed her hand pain as being work-related, with her testifying that she had telephoned the human resources manager, had been unable to reach her, but had left her several voice mail messages regarding her injuries, although she never spoke directly to that HR manager.

The HR manager testified that she was working from home, on maternity leave, that she never spoke directly to the employee regarding her injury or claim, and that she only recalled one voice mail message from the employee, talking vaguely about "work-related problems," without any specific information being given as to the nature, cause of the problem, body part affected, or why it was considered to be "work-related." Moreover, the HR manager eventually testified that she did not become aware that the employee was making a claim for workers' compensation benefits until Gentex received the claimant's Claim Petition, filed in October of 2006.

Procedurally, the workers' compensation judge found in favor of the claimant, finding that she sustained a work-related injury, and finding that she had given notice to her employer, accepting her testimony on that issue as more credible than that of the HR manager. In so ruling, the WCJ found and concluded that the claimant had sufficiently described her injuries to her employer pursuant to Section 312 of the Act, the same requiring that the employee notify the employer that the employee "received an injury, described in ordinary language, in the course of his/her employment on or about a specified time, at or near a place specified." ***77 P.S. § 632.***

Not surprisingly, as otherwise we would not have this decision to review, the employer filed an appeal of the WCJ's decision, to the Pennsylvania Workers' Compensation Appeal Board, with the Appeal Board, no less surprisingly, affirming the WCJ's decision, likewise concluding that she had satisfied the notice/description requirements of Section 312, by virtue of her voicemail message to the HR manager, in which she had indicated that she had "worked-related problems."

Again without surprise, the employer filed an appeal of the Appeal Board's ruling to the Pennsylvania Commonwealth Court, with the Commonwealth Court concluding that she had given timely notice of her injury, satisfying Section 311 of the Act, but that her description of her injury as being work-related to her employer was insufficient to satisfy the description requirements of Section 312. So ruling, the Commonwealth Court concluded that the voicemail message left with the employer's HR manager had been legally insufficient to describe the injury in "ordinary language," reversing the granting of the claimant's Claim Petition by both the WCJ and the Appeal Board.

As with cream always rising to the top, the Supreme Court granted allocator specifically to determine "what constitutes sufficient notice under Section 312 of the Act," as well as to determine "an employer's duty to conduct the reasonable investigation into the circumstances surrounding a work-related injury," which employer-initiated investigation would presumably be triggered by notice of an injury being perfected under both Sections 311 and 312 of the Act.

Without unnecessarily belaboring the nuanced and self-serving arguments advanced by both Morack and Gentex, the Court ultimately determined, in reliance not only on the evidence of record, legal arguments asserted, but also thankfully implicating, as the Court must from time to time reference, the Pennsylvania Statutory Construction Act, that the Act, being intended to benefit injured employees, requires liberal interpretations to effectuate humanitarian objectives, that hypertechnical injury descriptions need not be communicated, to satisfy "described in ordinary language," as the bell-ringer in a disputed noticed claim.

Moreover, the Court found that notice, under Section 312, need not be given in a single communication, but can be communicated in the context of a series of communications or conversations between the employee and employer, that, when placed in their context, and viewed under the microscope of the totality of the circumstances, it was sufficient for the Court to conclude that "what constitutes adequate notice pursuant to Section 312 is a fact-intensive inquiry, taking into consideration the totality of the circumstances."

This means what?

We know, maybe a lot, maybe nothing.

Breaking it down, or at least trying to, it means an injured employee can provide Sections 311 and 312 satisfying notice to his/her employer within 120 days of knowing that he/she has, or believes has, a work injury, so long as the employee informs the employer that the injury occurred as follows:

- At work;

- At a specified time and place;
- That the injury is described in ordinary, not Shakespearian language;
- Taking into consideration both the context and the setting of the injury (pretending to have no understanding of what that means?); and,
- That the "notice" can be provided over time, and through a series of communications, if the exact nature of the injury and its work-relatedness is not immediately known to the employee.

Circuitously circling back on its own tail to rationalize this ruling, the Supreme Court conceded that the claimant, at the time that she initially notified her employer of her hand injuries, was unaware that the injuries either were or might have been work-related, such that she could not have possessed the knowledge requisite to trigger the requirement of providing notice to her employer, who likely should have known what then took 6 years of appeals to figure out, that is, that a work injury was being/had been reported.

In effect, the Supreme Court ruled, while affirming the WCJ's granting of the Claim Petition, and reversing the Commonwealth Court's ruling, that the notice given by Morack was not "letter perfect," but that it was sufficient to meet the requirements of the Act.

The Majority Opinion was joined in by Justices Castille, Eakin, McCaffery, and Melvin.

THE CONCURRING OPINION

The Concurring Opinion, authored by Justice Baer and joined in by Justice McCaffery, scolded the employer for challenging/contesting the claim, by suggesting that "rather than acknowledging the undisputed genesis of her injuries and paying her the due compensation, Gentex opted to pursue a technical defense in the hope of avoiding its rightful obligation. It is unfortunate that anyone in corporate management chose to pursue this regrettable course."

THE DISSENT

Justice Saylor authored a Dissenting Opinion, adopting the rationale utilized by the Commonwealth Court in its ruling on this issue. See, ***Gentex Corporation v. WCAB (Morack) 975 A.2d 1214 (Pa. Cmwlth. 2009)***.

In reversing the rulings of the WCJ and Appeal Board, the Commonwealth Court had held that she did not satisfy the notice/description requirements of Section 312, as her voicemail message to Gentex's HR manager had not been specific or descriptive enough to indicate that she was reporting a work-related injury, coupled with the Commonwealth Court's reliance upon her self-executed short term disability benefits claim form, in which she had indicated that her injuries were not work-related, attributing the same to pre-existing conditions.

In so holding, the Commonwealth Court had ruled that she had not given a "reasonable description of her work-related injuries," as required under Section 312 of the Act.

PRACTICALLY SPEAKING

Pretty simple?

Issue clarified?

The short answer is, no!

In truth, the ***Gentex*** decision would seem to significantly expand the employer's duty to investigate what might otherwise be a rather cryptic description indirectly suggesting employee-conceived impressions of a work injury, effectively magnifying the ache that the employee came to work with into the lumbar fusion that you now need to find sufficient reserves to settle, or for which some type of work can be offered to reduce the ill-described exposure.

One also has to wonder why the very simple requirement of describing what an employee has probably long-suspected is so difficult to understand, particularly when there is such a delay in the injury being reported by employee to employer, and when the description given by the employee to the employer is, well, not only not "letter perfect," but actually presupposes, if we accept the Supreme Court's logic, that the employer should have known not only that the work injury was being reported, but that it should not have been surprised, since it should have always known that its employee would one day report that work had injured him/her.

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So, in essence, does ***Gentex*** stand for the proposition that "I work, therefore, I must be injured," or does it instead stand for the proposition that "they work for us, so we better expect them to get injured?".

Truthfully, is there ever a difference?

So what do you, as employer, need to do, beyond checking and responding to voicemails that may or may not indicate that a work injury is being reported, with the answer perhaps being that the employer, when presented with a medical note excusing an employee from work, should, at that time, directly ask the employee if the employee is reporting or claiming a work injury, and, if so, why so.

Pondering that puzzled perplexity, one wonders if that is what Section 312 statutorily intended?

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LEGAL UPDATE

By: Attorney Frank Wickersham and Attorney Jay Habas
Marshall, Dennehey, Warner, Coleman & Goggin

CLAIMANT FAILED TO PROVE THAT THE DECEDENT DIED IN THE COURSE AND SCOPE OF HIS EMPLOYMENT WHEN HE WAS FOUND IN HIS HOME OFFICE SINCE THERE WAS INSUFFICIENT EVIDENCE AS TO HOW, WHEN AND WHAT DECEDENT WAS DOING AT THE TIME HE SUSTAINED THE INJURY THAT LED TO HIS DEATH.

Donald Warner v. WCAB (Greenleaf Service Corp.)
25 C.D. 2011 (September 1, 2011) - opinion by Judge Brobson.

Decedent, an international sales manager who worked out of his house or at the employer's facility when not traveling, was found dead in his home office by his wife. The evidence established that the decedent had communicated work-related e-mails and phone calls that morning while home due to a non-work injury that prevented him from making a sales trip. The employer provided the decedent with a computer, phone and other home office equipment, and reimbursed him for home office-related expenses. The evidence indicated that decedent died from blunt force head trauma, and blood was found on stairs outside the front door of the house and in a bathroom, but there was no evidence as to how, when and where the decedent was injured, and more particularly, what he was doing at the time.

The Commonwealth Court affirmed the decisions of the WCJ and the WCAB denying the fatal claim petition on the basis that the claimant failed to establish through competent evidence that the decedent died in the course and scope of his employment. Claimant tried to establish a claim under the "personal comfort" doctrine, which provides that when an employee sustains an injury during an inconsequential or innocent departure from work during regular work hours, it is nonetheless considered to have been sustained in furtherance of the employer's business. The court rejected this argument because the record was unclear as to the circumstances of the

decedent's death. While the claimant contended that the circumstances suggested the decedent slipped and hit his head while outside smoking a cigarette, the court held that this was speculative at best.

HEART ATTACK SUFFERED AT HOME AFTER RECEIPT OF LETTER TERMINATING EMPLOYMENT HELD NOT TO BE WITHIN THE SCOPE OF EMPLOYMENT.

Little v. WCAB (B&L Ford/Chevrolet)
No. 1857 C.D. 2010 (July 28, 2011) - opinion by Judge Brobson.

The Commonwealth Court upheld the denial of a fatal claim petition, finding that the claimant failed to meet her burden of proving that her husband died in the course and scope of his employment or while furthering the employer's business when he suffered a fatal heart attack two days after receiving a letter terminating his employment.

The decedent in ***Little*** had sustained a work-related shoulder injury and was assigned to light duty work for a time before being directed to return to his regular job. The decedent was later sent home from work after the employer received a letter from his attorney indicating that he could not perform any manual labor, with the employer requesting that decedent provide a doctor's report advising what type of work he was capable of performing. Decedent obtained a note from his doctor, but before he could provide it to the employer he was told he did not need to bring it in. The employer then issued a letter of termination. Upon receipt of the letter, the decedent became distraught, and was unable to eat or sleep. With the letter of termination in his hand, he collapsed and died.

On appeal, the Court identified that this case presented the question of whether the law intended employers to bear the risk of a compensable injury that may follow the termination of employment and is a consequence of that decision, even when it bears no relationship to employment responsibilities and occurs after the employment relationship ends. In finding that the claim was not compensable, the Court in ***Little*** noted that when an injury occurs off-premises the relationship to the employment must be clear. This case is distinguished from those where on the job stress and exertion to a claimant which caused injury while still employed is compensable. In ***Little***, there was an absence of any evidence that stress at the work place was a contributing factor in decedent's heart attack.

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ANNUAL MEETING
November 11, 12 and 13, 2012
Nemacolin Woodlands Resort
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