

**THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:  
AUGUST 2012 AT A GLANCE  
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**CLAIM PETITION/ ILLEGAL ALIEN**

- Pennsylvania Supreme Court grants employer's Petition for Allowance of appeal that appeal Commonwealth Court decision that held that the WCJ's drawing of an adverse inference resulting from the claimant's refusal to answer whether he was a naturalized citizen or an undocumented worker, by invoking his privilege against self-incrimination under the Fifth Amendment to the United States Constitution, could not be the sole support of a finding that the Claimant was an undocumented alien that resulted in the suspension of claimant's compensation.

The Commonwealth had reasoned that a claimant's immigration status is relevant only to determining whether an employer is entitled to a suspension, not to whether the claimant's claim petition should be granted. Although Claimant's claim petition was the only formal petition pending before the WCJ, the WCJ correctly treated Employer's response to Claimant's claim petition as a request for suspension.

The Commonwealth Court further reasoned that It is the employer's burden in every instance to prove its entitlement to a suspension. Therefore, the burden was on Employer to demonstrate Claimant's undocumented status, even in the context of a Claim Petition.

- The Pennsylvania Supreme Court sets forth the issues as follows:
  - a) Did the Commonwealth Court err in placing the burden of proof in a claim petition on the Employer, when the Claimant failed to establish his ongoing entitlement to benefits by providing information on his documented status to the Employer and to the court?
  - b) Did the Commonwealth Court err in failing to consider its own holding in Brehm v. WCAB (Hygienic Sanitation Co.), 782 A.2d 1077 (Pa. Cmwlth. 2001) which states that a claimant who refuses to provide either the court or his employer with information necessary to make a determination, may have his workers' compensation benefits suspended until such information is provided?
  - c) Did the Commonwealth Court err in concluding that [the] Workers' Compensation Judge's decision was not supported by substantial competent evidence where the record, in its totality, together with an adverse inference, does support the contention

that the Claimant is an undocumented worker, thereby entitling the Employer to a suspension of benefits?

*Kennett Square Specialties v. WCAB (Cruz) No. 41 MAL 2012 (Per Diem, August 15, 2012) 8/12*

### **COMPROMISE AND RELEASE AGREEMENT**

- Courts may rescind a Compromise and Release Agreement based on a clear showing of fraud, deception, duress, or mutual mistake. However, the party seeking to set aside the agreement has the burden of proof, and the test to set aside a Compromise and Release on the basis of mistake is more stringent than for fraud or duress. Indeed, evidence demonstrating a mutual mistake must be clear, precise and indubitable.

In this matter the claimant failed to in this case, claimant failed to produce any credible evidence showing that Employer was mistaken regarding the unpaid medical bill of Dr. William O'Brien, showing a total balance due of \$37,674, at the time of settlement where the WCJ rejected Claimant's evidence as not credible and noted that medical bills were neither mentioned in the C&R agreement.

- Claimant was also not entitled to set aside the Compromise and Release Agreement under the doctrine of mutual mistake. Generally, a unilateral mistake which is not caused by the fault of the opposing party affords no basis for relief. However, if a party to a contract knows or has reason to know of a unilateral mistake by the other party and the mistake, as well as the actual intent of the parties, is clearly shown, relief will be granted to the same extent as if a mutual mistake existed.

Without supporting evidence and a finding of actual intent, it is impossible for Claimant to carry her burden under the doctrine of unilateral mistake. In this matter, there simply is no evidence that Employer knew or should have known of Claimant's mistake regarding the unpaid medical bills.

*Hoang v. (Howmet Aluminum Casting, Inc.)WCAB No. 2277 C.D. 2011 (Decision by JUDGE McCullough, August 20, 2012)*