

**THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:
JUNE 2016 AT A GLANCE
BY MITCHELL I GOLDING, ESQ.
KENNEDY, CAMPBELL, LIPSKI & DOCHNEY
(W) 215-861-6709**

APPEAL/ INTERLOCUTORY ORDER

- An order by a WCJ denying a Joinder Petition is a final order and not interlocutory. This is because the order disposes entirely of the issues set forth in the Joinder Petition. Therefore, it is subject to an immediate appeal.

However, a party may take an appeal nunc pro tunc where there has been a breakdown in the administrative process. A breakdown in the administrative process occurs when the party seeking to appeal an order in an untimely manner establishes that its delay in taking action was caused by extraordinary circumstances involving fraud, a breakdown in the administrative process, or non-negligent circumstances related to the claimant, his counsel, or a third party.

When an adjudicator erroneously includes prohibitory language in a decision and order by labeling the order interlocutory and the order not only fails to advise a litigant of the right to appeal, which is the custom in workers' compensation matters, but rather affirmatively directs the litigant that he or she may not appeal an order, the may have grounds to seek nunc pro tunc review.

In this matter the Court directed that the UEGF be given an opportunity to establish that a breakdown in the administrative process occurred such that the Board should have considered its appeal nunc pro tunc where the WCJ dismissed the Joinder of a carrier and erroneously labeled its order an interlocutory and not subject to appeal rather than a final order.

Uninsured Employers Guaranty Fund v. WCAB (Gerretz, Reliable Wagon and Auto Body, Inc., and Somerset Casualty Insurance Company), No. 445 C.D. (Decision by Judge Brobson, June 14, 2016) 6/16

MEDICAL BENEFITS /ATTORNEY FEES

- The WCJ did not err in denying claimant's counsel a 20% attorney fee chargeable to the claimant's medical bills where the WCJ concluded that the Claimant failed to establish that any particular work performed specifically advanced the payment of medical bills to warrant a 20% attorney fee of the medical bill payments and where the WCJ found that testimony did not establish that the Agreement provided Counsel with 20 percent of the medical bills paid.

This is because the Agreement did not explicitly provide for a 20 percent attorney fee on Claimant's medical benefits and Counsel did not demonstrate to the WCJ why such a fee was justified in light of the time and effort expended on obtaining medical benefits for Claimant. The WCJ was also correct in finding that Counsel's requested fee was unreasonable in light of the work performed.

- Upon determining whether medical bill payments should be included in a contingent fee agreement, the WCJ must assess: (1) whether the claimant and counsel intended for counsel to receive a percentage of the medical bill payments; and (2) whether the fee is reasonable.

In addition, a reasonableness inquiry in this context should address the amount and degree of difficulty of the work performed by the attorney ***upon obtaining payment of medical benefits***. This requires a quantum meruit analysis.

Thus, counsel seeking a contingent fee on medical bill payments in addition to the per se reasonable 20 percent contingent fee on indemnity benefits must demonstrate to the WCJ why such a fee is justified in light of the time and effort expended on obtaining medical benefits for the claimant.

- Although the provider would be prohibited from going after the claimant for the difference between the amount billed and the Medicare-based reimbursement rates, the Act would not prohibit the provider from seeking reimbursement from the claimant for the balance resulting payment of an amount less than the Medicare-based reimbursement rates resulting from counsels 20% attorney fee chargeable to the medical bill.

The court voiced its concern that a claimant may not be aware that her counsel's interest in receiving attorney's fees based on medical benefit payments can be in conflict with the claimant's own financial interests. As expressed by Judge Pellegrini in a prior decision, "at the minimum," a claimant should be informed "of the potential conflict and informed that he may wish to employ an attorney to advise him of the reasonableness of the fees sought by his counsel."

Righter v. WCAB (Righter Parking), No. 1356 C.D. 2015 No. 1356 C.D. 2015 (Judge Cohn Jubelirer, June 14, 2016) 6/16