

What's Hot in Workers' Comp

SPECIAL PENNSYLVANIA WORKERS' COMPENSATION ALERT

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Supreme Court holds that claimant's receipt of pension benefits is not a presumption of retirement but is, instead, an inference that must be considered in connection with the totality of the circumstances.

In *City of Pittsburgh and UPMC Benefit Management Services, Inc. v. WCAB (Robinson)*; 18 WAP 2011; decided March 25, 2013, the Supreme Court clarified the employer's burden of proof with respect to a Petition to Suspend Benefits based on a claimant's retirement. In this case, the claimant started receiving a disability pension after her work injury. The employer then petitioned to suspend benefits, asserting that the claimant had voluntarily removed herself from the work force and that she had not looked for a job in the general labor market. The claimant challenged the petition, presenting evidence that she was registered to work with the Pennsylvania Job Center but was not employed due to the unavailability of work and because the employer had eliminated a light-duty position that she had held.

The Workers' Compensation Judge denied the petition, concluding that the claimant was forced into disability retirement when the light-duty position was eliminated. The Appeal Board affirmed, as did the Commonwealth Court. In affirming the decisions below, the court held that in a petition based on the retirement of a claimant,

the employer must show, by the totality of the circumstances, that the claimant has chosen not to return to the work force. In other words, the mere acceptance of a pension by a claimant does not equate with retirement.

The Supreme Court of Pennsylvania agreed with the Commonwealth Court and provided further clarification with respect to the employer's burden of proof in retirement cases. According to the Court, where an employer challenges the entitlement to continuing compensation on the grounds that the claimant has removed himself or herself from the work force by retiring, the employer has the burden of proving that the claimant has voluntarily left the work force. There is no presumption of retirement from the fact that a claimant seeks or accepts a pension. The acceptance of a pension entitles the employer to a permissive inference of retirement, and such an inference, on its own, is not sufficient evidence to establish retirement. The inference that arises from an acceptance of pension benefits must be considered in the context of the totality of the circumstances.

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