

## COMMONWEALTH COURT ORDERS CLAIMANT'S COUNSEL TO REFUND UNREASONABLE CONTEST ATTORNEYS' FEES TO EMPLOYER

PA Workers' Compensation • January 11, 2017

*County of Allegheny v. WCAB (Parker), Parker v. WCAB (County of Allegheny)*; No. 82C.D. 2016 – No. 112 C.D. 2016; Filed December 20, 2016 - By Senior Judge Colins

In this case, the employer was successful with a 2007 suspension petition concerning the claimant's 1993 work-related shoulder injury. A Workers' Compensation Judge granted the petition, but the Workers' Compensation Appeal Board later reversed that decision and awarded unreasonable contest counsel fees. The Board's basis for the reversal was that the employer was barred by collateral estoppel from pursuing a suspension in light of a prior 2004 decision denying an earlier suspension petition. The Board remanded the case for a determination as to the amount of fees. On remand, the judge awarded counsel fees, which the Board then affirmed on appeal, with a modification of the attorneys' fee amount. The employer then appealed to the Commonwealth Court and requested supersedeas in connection with that appeal. This request was denied by the court. However, the court did reverse the Board's decisions, concluding that the Board erred in reversing the suspension of the claimant's benefits on the basis of collateral estoppel and that the Board erred in awarding counsel fees since the claimant was not the prevailing party.

The employer then filed an application for Supersedeas Fund Reimbursement with the Bureau of Workers' Compensation, which included a request to recover the attorneys' fees paid. The Bureau approved the reimbursement, except for the counsel fees since the fees were not reimbursable under Section 443 of the Act. Consequently, the employer filed a petition seeking to recover the unreasonable contest attorneys' fees that it paid directly from the claimant's attorney who received them. The employer's petition was denied by the Workers' Compensation Judge, and the Board affirmed.

The Commonwealth Court, however, reversed, relying on a prior decision from the court wherein it held that, where litigation costs are

awarded and paid by the employer as a result of a denial of a stay and the cost award is later reversed on appeal, the employer is entitled to an order requiring claimant's counsel to re-pay the erroneously awarded costs. It concluded that allowing counsel to retain costs to which he was not entitled would result in unjust enrichment and deprive the employer from relief since litigation costs cannot be recovered from the supersedeas fund.

According to the court, the prior case for litigation costs was analogous to the unreasonable contest attorneys' fee situation as those fees were erroneously awarded. The employer also lacked a remedy to recover the counsel fees since Supersedeas Fund reimbursement is limited to "payments of compensation," *i.e.*, disability and medical payments.

The court addressed a number of policy arguments raised by the claimant's bar in an amicus brief they filed. Primarily, the bar took the position that such a reimbursement would have a chilling effect on the representation of claimants. The court was not persuaded by this. In the court's view, allowing retention of improperly awarded unreasonable contest attorneys' fees is neither necessary nor appropriate to the protection of claimants' rights to obtain compensation to which they are entitled. ■



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