

EMPLOYER BEARS BURDEN OF PROVING CLAIMANT'S LOSS OF EARNING POWER IS DUE TO LACK OF U.S. CITIZENSHIP

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David Cruz v. WCAB (Kennett Square Specialties); 69 MAP 2012; decided July 21, 2014; by Madam Justice Todd

The claimant filed a claim petition alleging that he sustained a work injury on July 19, 2008, while working as a truck driver for the employer. At a hearing held before the Workers' Compensation Judge, the employer's attorney cross examined the claimant, who was born in Ecuador and had lived in the U.S. for 10 years, regarding his citizenship status and his ability to work. Claimant's counsel objected to the line of questioning, but the Judge overruled on the basis that citizenship was relevant. In response to additional questions from the employer, however, the claimant invoked his Fifth Amendment right against self-incrimination.

The Judge granted the claim petition and ordered the employer to pay the claimant's reasonable and necessary medical expenses. However, the Judge also suspended the claimant's benefits from the date of injury, finding that the employer had met its burden to establish that the claimant was not a United States citizen and not authorized to work in this country. Thus, the Judge suspended the claimant's benefits.

The claimant appealed to the Workers' Compensation Appeal Board. The Board partially reversed the Judge's decision by finding that the employer did not meet its burden of proof regarding the claimant's citizenship status solely by relying on an adverse inference created by the claimant's failure to answer the employer's questions. The Commonwealth Court affirmed the Board. The court held that the Judge's adverse inference from the claimant's refusal to answer questions about his immigration status did not support a finding that the claimant was an undocumented alien.

The Pennsylvania Supreme Court affirmed the Commonwealth Court's decision. The Supreme Court held that the employer bears the burden of establishing, through competent evidence, that

a claimant's loss of earning power is due to his employment eligibility status under federal law. According to the Court, the Judge found that the claimant had established, at the time of the hearing, that he was still disabled because of his work-related injury and that, because the claimant met his burden of proof of entitlement to benefits, the burden then shifted to the employer to show why its request for a suspension of benefits should be granted. In addition, the Court held that the adverse inference taken based on the claimant's refusal to answer questions regarding his citizenship status under the Fifth Amendment was not sufficient evidence to support a suspension of the claimant's benefits. In the Court's view, any inference drawn was too speculative and, standing alone, was not enough to establish that the claimant's loss of earning power was due to his status as an undocumented worker. II



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