

THE SUPREME COURT INVALIDATES IMPAIRMENT RATING: IRE PHYSICIAN FAILED TO ADDRESS CLAIMANT'S PSYCHOLOGICAL CONDITIONS THAT WERE NOT MADE PART OF THE WORK INJURY UNTIL AFTER IRE WAS PERFORMED

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Duffey v. WCAB (Trola-Dyne, Inc.); No. 4MAP 2016; Decided January 19, 2017; By Chief Justice Saylor

The Supreme Court of Pennsylvania has weighed in again on Pennsylvania's Impairment Rating system. In this case, at the expiration of 104 weeks, the employer requested an impairment rating of the claimant, describing the claimant's underlying compensable injury as "bilateral hands – nerve and joint pain." The claimant injured his hands while picking up electrified wires while repairing a machine. The impairment rating physician gave the claimant a six percent whole-body impairment. The employer then issued a notice to the claimant adjusting his disability status from total to partial. The claimant challenged the adjustment within 60 days by filing a Petition to Review. According to the claimant, the IRE was invalid because the IRE physician failed to rate the full range of work-related injuries, including an adjustment disorder with depressed mood and chronic post-traumatic stress disorder.

The Workers' Compensation Judge agreed that the claimant's psychological conditions should be added to the Notice of Compensation Payable (NCP) and determined that the IRE was invalid since the IRE physician did not address those conditions. The Workers' Compensation Appeal Board, however, reversed, holding that the IRE physician evaluated the accepted injury as reflected in the NCP at the time of the IRE, pointing out that the claimant did not seek to amend the NCP to include additional injuries until six months after the IRE was performed.

The Commonwealth Court affirmed the Board and, in doing so, emphasized that Section 306(a.2) required a determination of the degree of impairment "due to the compensable injury." That compensable injury, according to the court, was the injury set forth in the NCP.

The Pennsylvania Supreme Court reversed the Commonwealth Court, interpreting Section 306(a.2) of the Act much differently. As stated

by the Supreme Court, under Section 306(a.2) and the applicable impairment guidelines, the IRE physician must exercise professional judgment in order to render appropriate decisions concerning both causality and apportionment. According to the court's review of the evidentiary record, the IRE physician did not apply professional judgment to assess the psychological conditions identified by the claimant during the IRE examination, nor did the physician determine whether the conditions were fairly attributable to the claimant's compensable injury. In the court's view, the IRE physician ignored a range of potential diagnoses and impairments, and, for this reason, the Supreme Court held that the IRE was invalid.

A considerable portion of the opinion written by Chief Justice Saylor was used to address a strong dissent written by Justice Wecht. Moreover, Chief Justice Saylor raised again the point he made in his opinion in the case of *IA Construction Corporation v. WCAB (Rhodes)*, 110 A.3d 1096 (Pa. 2016), that the impairment rating provisions of the Act beg for legislative review. ||



Francis X. Wickersham, Esq.
Shareholder
Workers' Compensation

620 Freedom Business Center
Suite 300
King of Prussia, PA 19406
Direct: (610) 354-8263
Fax: (610) 354-8299
Email: fxwickersham@mdwgc.com