

Case Law Update



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Supreme Court



Hartford o/b/o Chen v. Kamara, Thrifty Car Rental etal., *Your Other Partner*
199 A.3d 841 (Pa.2018)

Absent the injured worker's assignment or voluntary participation as a plaintiff, the insurer may not enforce Section 319 subrogation rights. (Dissents filed)



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Supreme Court

City of Philadelphia v. WCAB (Sladek),
195 A.3d 197 (Pa.2018)



Section 108(r) only requires the employee to establish a general causative link between his/her cancer and a Group 1 carcinogen. The employer may not rebut this presumption with generalized epidemiologic evidence. (2 Concurring and Dissenting Opinions filed.)



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Supreme Court

US Airways et al v. WCAB (Bockelman),



petition for allowance of appeal granted 10/3/18: The Petition is GRANTED, LIMIT TO: Is the Commonwealth Court's order contrary to long-standing case law...holding that an employee is not in the course and scope of employment while traveling between a parking lot and the workplace unless the employer mandates how an employee commutes to work and/or where the employee must park...? (Oral Argument scheduled May 2019).



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Commonwealth Court

Employee Coverage Issues

Piedmont Airlines et al v. WCAB (Watson),
194 A.3d 737 (Pa.Cmwltth.2018)

Employee who walked through but was not parked in an employee lot, was in course of employment when he fell, as his badge gave him access to that lot.



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Commonwealth Court



Van Leer v. WCAB (Hudson),
A.3d (Pa.Cmwlth/2/27/19)

Injured individual who cared solely for one member of the household and did not provide any medical care to her fell within domestic service exception.



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Kreschollek v. WCAB (Commodore Maintenance Corp.),
A.3d (Pa.Cmwltth.1/7/19)

Although employee worked on both sides of the Benjamin Franklin Bridge, his injury on the ground in New Jersey granted jurisdiction to NJ not Pennsylvania.



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IRE's



Dana Holding Corp. v. WCAB (Smuck),
A.3d (Pa.Cmwlth.10/11/18)

Employee whose case was pending at the WCAB after litigation of a 2014 IRE petition was entitled to the retroactive effect of Protz II



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Fatal Claim/Dependency



Aqua America Inc v. WCAB (Jermon Jeffers, deceased),
A.3d (Pa.Cmwltth.12/4/18)

After age 18, to be eligible for benefits, medical diagnosis not enough to show a child is dependent because of a disability. Proof of dependency required.



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Date of Disability



Valley Stairs and Rails v. WCAB (Parsons),
A.3d (Pa.Cmwltth.1/24/19)

Date of disability is the date benefits become due; injured employee paid full wages for date of injury not entitled to benefits until first day of wage loss. (case decided in context of withdrawal of NTCP)



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Duration of Disability

Thomas Kurpiewski v WCAB (Caretti),
A.3d (Pa.Cmwlth.1/18/19)



Employee with chromium allergy developed in work as a bricklayer remains disabled from his time of injury job, even without current symptoms or need for treatment. Wages calculated pursuant to 309(d) because of periods of layoff.



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Medical Treatment



Workers Compensation Security Fund v. BWC Fee Review (Scomed)

Medicare Billing Policy does not preempt the Utilization Review Process and Fee Review does not determine reasonableness and necessity.



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Rogele, Inc. v. WCAB (Hall),
198 A.3d 1195 (Pa.Cmwlth.2018)

Neither an alleged “home incident” nor prior Utilizations Reviews regarding toxicology screenings and oral medications alleviated the employer from payment for employee’s intrathecal pump and supplies



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Supersedeas Fund

Erie Ins. Co. et al v. WCAB (Commonwealth DLI/BWC),
A.3d (Pa.Cmwltth.2/21/19)



No supersedeas reimbursement for medical payments unilaterally withheld by Employer in violation of the Act, even if benefits ultimately paid.



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