

2721

WEBER GALLAGHER
SIMPSON STAPLETON
FIRES & NEWBY LLP

October 6, 2008

VIA FIRST CLASS MAIL

Elizabeth A. Crum
Deputy Secretary for Compensation and Insurance
Department of Labor and Industry
WCAB-WCJ Regulations – Comments
651 Boas Street
Harrisburg, PA 17121

Direct Dial: (215) 972-7900
Email: cdavis@wglaw.com

RECEIVED
2008 OCT 15 PM 2:44
INDEPENDENT REGULATORY
COMMISSION

Dear Ms. Crum:

Please accept this as our firm's comments regarding the proposed rulemaking recently published in the Pennsylvania Bulletin on September 6, 2008.

We approve amendments relating to the Workers' Compensation Appeal Board and Workers' Compensation Judges to reflect that filings and appeals can be made electronically. We believe the filing of materials electronically will result in a cost savings for all parties in the Commonwealth. However, we would encourage promulgation of specific rules which would allow Answers to Claim Petitions to be filed electronically with either the Bureau or Judges. This would allow attorneys who represent employers in the Commonwealth the ability to e-file answers regardless of the hour or location. We would also suggest promulgation of specific rules which address a system crash. In that case, we would recommend providing for a reasonable extension of filing deadlines beyond the current 20 day answer period. This is important both for answers to claim petitions, and the filing of claim petitions themselves in situations in which the Statute of Limitations might be implicated.

Regarding the proposed change to Section 131.13 (relating to continuances or postponements of hearings), we have a concern about removing the "substantial or compelling reasons" language for a Judge to grant a continuance and replacing it with a "good cause" standard. We believe that it might be beneficial to include a definition of good cause under the definition section of the Special Rules at Section 131.5. If the term "good cause" is not defined, it could be interpreted by workers' compensation judges on an inconsistent basis across the Commonwealth and possibly allow an easier standard than what now exists to obtain a continuance of postponement of hearings. This could harm both employers and claimants state wide.

PHILADELPHIA NEW YORK PITTSBURGH NEWARK HARRISBURG SCRANTON CHERRY HILL LONDON

Ms. Crum
October 6, 2008
Page - 2 -

We believe that the amendment for Section 131.41 (relating to requests for supersedeas and reconsideration of supersedeas), to clarify that a Judge can modify a previous grant or denial of supersedeas on the Judge's own motion to be beneficial to employers and would strongly support that change.

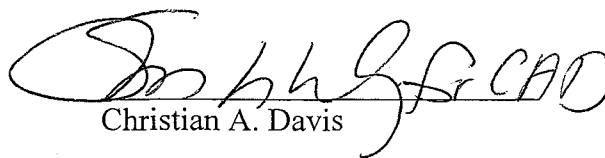
As to the proposed amendment of Section 131.53 (relating to procedures subsequent to the first hearing), we do have a concern with the removal of Subsection (f), which provided that the dates of medical examinations, if not scheduled prior to the first hearing actually held, shall be scheduled within 45 days after the first hearing actually held. It is our reading of the amendments that subsection (f) was removed and replaced by Section 131.52 First Hearing Procedures, Subsection 4, which indicates that the Judge at the first hearing shall establish dates for setting any medical examinations to be scheduled.

Our concern about deleting the 45 day rule would be that it could lead to different time periods being imposed on employers by different Judges across the Commonwealth, including setting forth time periods less than 45 days. We feel that the 45-day rule should be the floor and represents an adequate time period allowing for independent medical examinations after the first hearing due the associated issue with obtaining a subpoena from the Judge and then the medical records affiliated with the case. Many times, the first hearing represents the first time the claimant testifies and the employer learns about all present and past treating doctors.

Lastly, we agree with the proposed amendment to Section 131.59(b) (relating to mandatory mediation) to indicate that an adjudicating judge cannot conduct a mandatory mediation conference, nor can the mandatory mediating judge participate in a decision on the merits of a petition.

Thank you for allowing us to share our comments on the proposed rulemaking.

Very truly yours,


Christian A. Davis

CAD/vtc