



*Pennsylvania Workers' Compensation
Judges Professional Association*

Please Reply to:

3047

823 Reamer Avenue Ext
Greensburg, PA 15601
March 19, 2014

Elizabeth A. Crum
Director of Adjudication
Workers' Compensation Office of Adjudication
WCAB/WCJ Regulations-Comments
1010 North Seventh Street
Harrisburg, PA 17102

2014 MAR 25 AM 11:19

RECEIVED
IRRC

Dear Director Crum,

The Pennsylvania Workers' Compensation Judges Professional Association respectfully submits the following comments related to the Proposed Subchapter D of the Rules related to proceedings involving the Uninsured Employers Guarantee Fund (UEGF).

Initially, we agree that procedural rules may be appropriate to address the legitimate needs of UEGF to learn about a claim and to prepare for trial. However, we disagree with the language of Proposed Rules 131.202 and 131.204.

Proposed Rule 131.204 (and related changes to Rules 131.3 and 131.53a(a)) prohibits any exercise of discretion on the part of the Judge. Such discretion is fundamental to any procedural system designed to promote fairness. Current Rule 131.53a(a) recognizes this and allows the judge to modify rules "as may be appropriate" and to direct procedures "which are fair and just for a determination of the issues consistent with the act." To exclude Subchapter D from this provision would cause potential unfairness and would be antithetic to first principles as stated by the Rules: "to promote, consistent with fairness and due process, the orderly and expeditious determination of proceedings before judges...." (Rule 131.1).

Under Proposed Rule 131.204 the Judge cannot waive Rules 131.201 or 131.202 unless all parties agree. This is regardless of the circumstances, which may include availability of witnesses or the parties' interest in resolving the case. For example, a party may wish to present testimony which could achieve a resolution without UEGF involvement. Under the Proposed Rule the Judge could not proceed with this testimony even though doing so would be in UEGF's interest.

page two

Comments to the Proposed Rules

In addition, the requirement that *all* parties agree to a rule waiver would subject the judge's discretion to the consent of the uninsured employer, who may be guilty of a felony of the 3rd degree under Sec. 305(b) of the Act. Not only is a potential criminal given more rights than law-abiding employers and their insurers, he or she is also given veto power over rulings by the judge, even those which may be requested by the claimant or UEGF. This cannot be the Rules' intent.

In discussion with our members we are aware of no system-wide problems in ensuring UEGF's due process rights to participate in litigation and to present evidence. The current Rules recognize that the rights of the parties can be protected by allowing variation in case management, such as one-day trials or consolidated hearings. This system works and should not be disturbed. If there are specific concerns regarding abuse of discretion, these should be addressed through the appellate process.

We also disagree with Proposed Rule 131.202 which requires the judge to "inform the claimant on the record of the existence of the UEGF and give the claimant information about the UEGF, as provided by the Office of Adjudication." This Rule inappropriately involves the judge as an agent of the UEGF and the Department and compromises the judge's impartiality as an independent fact finder. Further, the judge's actions in this regard may become a material issue in a defense based on the claimant's failure to file within 45 days of the date the claimant became aware of the lack of insurance under Section 1603(b) of the Act. We believe that if legal notice is to be given, it should be done so by the Department acting in its administrative capacity, and not by its independent judiciary.

We suggest that the involvement of the judge in providing written legal information as provided by the Office of Adjudication is contrary to Section 1404(a) of the Act which requires the judge to avoid impropriety (1404(a)(1)), to perform duties impartially (1404(a)(2)), to abstain from expressing views on the merits of a case (1404(a)(4)), and to uphold the integrity and independence of the workers' compensation system (1404(a)(13)).

Our comments reach matters of concern for the maintenance of an independent adjudicatory system for now, and in the future. They are respectfully submitted for consideration.

Sincerely



Ada Guyton
President
PWJCPA