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Central Jersey Claims Association Legal Update

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Bellino v. Verizon Wireless

In this published Appellate Division case, Verizon Wireless challenged the decision of the Workers' Compensation Judge, ordering respondent to continue to provide medical treatment and temporary disability benefits to petitioner. The petitioner was employed by respondent at its store in Secaucus, as a customer service and sales representative. She tripped over some boxes and fell forward over the cartons landing on the ground. She had "immediate pain in her right hand and arm, right knee, left ankle, and lower back." A dispute arose over the need for additional treatment, which was ultimately terminated. Thus, petitioner filed what was her second motion requesting temporary disability benefits and medical treatment. The Workers' Compensation found for the petitioner, and ordered that the treatment suggested by one of petitioner's expert physicians be provided.

Verizon Wireless argued that petitioner's claim should be dismissed based on the anti-fraud provision of the Workers' Compensation Act (Act), N.J.S.A. 34:15-57.4, as she had purportedly offered "fraudulent information" to her physicians. The Judge of Compensation found that respondent had failed to prove by a preponderance of evidence that petitioner "purposely or knowingly made false or misleading statements for purposes of obtaining benefits," and respondent appealed.

On appeal, the Appellate Division addressed the necessary elements required by the anti-fraud provision, N.J.S.A. § 34:15-57.4, "to negate a claimant's eligibility for benefits under the Act." Specifically, it considered the state of mind that an employer was required to demonstrate to exclude a petitioner who, when applying for benefits, made misstatements pertaining to his or her medical history.

The Appellate Division explained that under the anti-fraud provision, it is a crime of the fourth-degree to make “a false or misleading statement, representation or submission concerning any fact that is material to that claim for the purpose of wrongfully obtaining the benefits[.]” The Court further explained that it is required that the petitioner make the fraudulent statement “with a conscious objective to obtain benefits to which one knows he or she is not entitled or with an awareness that the intentional falsehood will cause the desired result of fraudulently obtaining benefits.” Furthermore, the Court stated that showing that the employee made a statement which was inaccurate or false, or omitted material facts, is not sufficient, but rather, the moving party is required to show the following:

“(1) the injured worker acted purposefully or knowingly in giving or withholding information with the intent that he or she receive benefits;

(2) the worker knew that the statement or omission was material to obtaining the benefit; and

(3) the statement or omission was made for the purpose of falsely obtaining benefits to which the worker was not entitled.”

The Appellate Division upheld the Judge of Compensations decision finding respondent failed to demonstrate the required elements under the anti-fraud provision, as respondent failed to demonstrate that petitioner intentionally made false statements for the purpose of acquiring benefits. Further, the Court found that the Judge of Compensation did not abuse his discretion by ordering respondent “to seek permission of the court in stopping benefits if the petitioner was not medically cleared for work,” as it had prematurely stopped benefits previously. The decision of the Judge of Compensation was affirmed.

Hersh v. County of Morris

This is a Supreme Court of New Jersey case that is a victory for employers. It limits the scope of the “control” necessary to hold an employer responsible for an off-premises parking lot accident.

Cheryl Hersh was an employee of the County of Morris. The County rented approximately sixty-five parking spaces for its employees in a private parking garage, which was located about two blocks from plaintiff’s office. Ms. Hersh had the County’s permission to park in the garage in one of the rented spots. While exiting the garage on her way to work, she was struck by an car while crossing a public road between the garage and her office, resulting in significant injuries.

The Workers’ Compensation Judge found her injuries compensable, concluding that the petitioner’s incident “arose from the course of her employment” since it took place after her arrival at her employer-controlled lot. The Appellate Division affirmed the Workers’ Compensation Judge The decision of the judge of compensation was affirmed by the Appellate Division, and the case was appealed to the New Jersey Supreme Court.

In a significant finding for employers, the Supreme Court found that since

defendant had no control over the garage where plaintiff parked, the ingress and egress path from the garage to her office, or the public road where her injuries occurred, and exposed her to no special or additional hazards, plaintiff's injury happened outside of defendant's premises and thus was not compensable under the Workers' Compensation Act.

The Supreme Court stated that under N.J.S.A. 34:15-36, "[e]mployment shall be deemed to commence when an employee arrives at the employer's place of employment to report for work and shall terminate when the employee leaves the employer's place of employment, excluding areas not under the control of the employer." Id. at 20. The Court then explained that the key inquiries under the premises rule are as follows: "(1) where was the situs of the accident, and (2) did the employer have control of the property on which the accident occurred." (citing Livingstone v. Abraham & Strauss, Inc., 111 N.J. 89, 96 (1989)).

Following a careful review of the history of the case law in this area, the Court explained that the cases stood for the principle that for purposes of workers' compensation benefits, public places that are not controlled by the employer are not deemed to be part of the premises of the employer, even if the route is used by employees for ingress or egress to their place of work, "except in those instances where the employer controls the route."

Applying that standard, the Supreme Court found that the garage was not owned, maintained, or controlled by the County. The Court explained that the County merely rented a small part of the garage, and did not obtain "a direct business interest" by paying for its workers to use it. Furthermore, the Court stated that the County had no control over the public road where the incident happened, and did not dictate the route that the petitioner had to use to get to work. Additionally, the petitioner assumed no "special or additional hazards" during her walk to work. The Court concluded that under the facts of this case, "an employee who is injured on a public street, not controlled by the employer, is not entitled to compensation under the Workers' Compensation Act." The judgment of the Appellate Division was reversed.

Kehoe v. Ultralum Enters., 2014 N.J. Super. Unpub. LEXIS 581
(App. Div. March 18, 2014)

This case involves a dependency claim filed with the Division of Workers' Compensation. The petitioner and decedent were in a committed relationship and resided together beginning in 1999 up until his death in March 2007, when decedent fell from a platform during the course of his employment. It was undisputed that decedent's death was caused by a work-related incident, and thus his statutorily recognized dependents are qualified to receive benefits pursuant to the Workers Compensation Act. But because the petitioner and decedent were not married through a licensed marriage ceremony recognized by law when he died, and since common law marriage has been prohibited by the New Jersey Legislature, the Workers' Compensation Judge denied petitioner's claim for benefits as decedent's surviving spouse.

The petitioner's argument that New Jersey was required to acknowledge and “give full faith and credit to her common law marriage in Texas” was also rejected by the Judge of Compensation. On appeal, petitioner presented the identical argument that the Judge of Compensation denied, and the Appellate Division affirmed.

The Appellate Division held that under the facts of this case, it was undisputed that, pursuant to New Jersey law, petitioner and decedent “were never formally married.” Furthermore, the Court stated that petitioner’s argument that her common law marriage in Texas should be recognized by the Court “lack[ed] sufficient merit to warrant discussion in a written opinion.” Thus, the Appellate Division affirmed the decision of the Judge of Compensation.