

PFIW Newsletter

Your source for workers' compensation information



“An Injury to One is an Injury to All”

February 2008

Issue 1

Inside this issue:

Cover Story Continued	2
No Rules for Evidence	2
Chapter President's Report	3
Chapter Events	4
Join the PFIW	4
PFIW Panel Attorneys	5
What Can I Do?	6



PFIW Featured Panel Attorney



Thomas More Holland

Thomas is licensed to practice law in Pennsylvania and New Jersey. He is a member of:

1. The Philadelphia, Pennsylvania, and American Bar Associations
2. The Philadelphia, Pennsylvania and American Trial Lawyers Associations
3. The National Employment Lawyers Association
4. The Pennsylvania Federation of Injured Workers
5. He has served as a consultant on employment discrimination and worker's compensation matters for WPVI 6-ABC in Philadelphia.

President's Voice

Now that the new year is on us we are going to make some changes in the PFIW. There is much to do for injured worker rights.

The PFIW Board of Directors is going to take on new membership. I hope that this new blood on the board will move us to bigger and better things for injured workers.

We have acquired some funding for the 2008 year but we will continue to seek more resources. Some of our projects we will work on will require additional funding.

The PFIW will sponsor a rally at the Capitol Rotunda Gallery again this year on April 28, 2008. I want to get Legislators to participate this year to hear from them what we can expect in the way of reform for worker's compensation.

One of the reform issues we plan to address is the use of funded employment. This is so ridiculous it should not have been allowed in the first place. Everyone knows the jobs are only temporary and it is being used to strip an injured worker of his/her worker's compensation benefits. We also plan to tackle several other issues as well.

Since legislation was passed that allows for better oversight of worker's compensation judges we want to make sure the Bureau is using it as a guideline and that judges are actually going to have oversight. The PFIW has for a long time felt that the oversight was nonexistent.

Fraud In Pennsylvania Worker's Compensation

Fraud perpetrated on injured workers by an employer/worker's compensation insurance company is a huge problem for an individual filing a worker's compensation claim. The fraud can happen in several ways:

1. When the injury occurs the employer will ask the worker not to file an injury report. An injured worker is guided to his/her HMO for medical treatment and the employer either pays the workers wages or allows unemployment to be collected while the worker is in recovery.
2. The employer flat out refuses to file an injury report with the State Labor & Industry Department.
3. The employer/workers compensation insurance company submits fraudulent information during claim hearings or submits the fraudulent information to a third party, which will make an impact on the claim.
4. The employer/worker's compensation insurance company denies that a worker related injury occurred when they knew for a fact that it did happen. This causes a long and expensive litigation, which runs up the cost of workers compensation claim.
5. The employer/worker's compensation insurance company hires a private investigator to do surveillance on an injured worker. The wrong person gets videotaped but it is still allowed to for use against the injured worker.
6. False investigative reports and surveillance videotapes are sent to the injured workers treating physician turning the physicians against the injured worker.
7. The employer/worker's compensation insurance company files a false Independent Medical Examination report in a workers compensation claim hearing. This is usually done in an old claim.
8. The employer/worker's compensation insurance company solicits a false Physical Capacities Evaluation from a doctor who never examined the injured worker.

When this type of fraud is committed there is absolutely nowhere for an injured worker to file a complaint. If the worker's compensation referee does not recognize the evidence or practice as fraudulent then it is allowed to occur.

The Worker's Compensation Bureau says that it is up to the worker's compensation referee as to whether the fraudulent action of the employer/worker's compensation insurance company rises to the standard of fraud. Most referees do not recognize any unethical action perpetrated on an injured worker by an employer/worker's compensation insurance company to be an act of fraud. As a matter of fact a lot of the referees think it is funny.

Here is what the worker's compensation act says about fraud in a claim:

Section 1102. A person, including, but not limited to, the employer, the employee, the health care provider, the attorney, the insurer, the State Workmen's Insurance Fund and self insured's, commits an offense if the person

For Your Information

There is an opinion in law that states what the purpose of the workers compensation act is to be; the only problem is finding a way to get the Commonwealth to enforce it. The following is part of a decision handed out by Judge Robert Simpson:

“The object of all interpretation and construction of statutes is to ascertain and effectuate the intension of the General Assembly.” 1 Pa. C.S.A. §1921(a). The ultimate goal of the workers' compensation program is to make an injured employee whole. O'Brien v. Workers' compensation Appeal Board (City of Philadelphia), 780 A.2d 829 (Pa. Cmwlth. 2001). Thus, the Act must be liberally construed to effectuate its humanitarian purposes with the borderline interpretations resolved in favor of the injured employee. Erb v. Workers' Comp. Appeal Bd. (Steris Corp), 812 A.2d 773 (Pa. Cmwlth. 2002) petition for allowance of appeal denied, 821 A.2d 588, _Pa_(2003). Contrary to the Board's assertion, section 306(f.1) (6) (iv) m.

With that purpose in mind one has to wonder why so many who have filed a workers compensation claim are being mistreated and denied medical treatment and have their injury claim denied by so many Pennsylvania workers' compensation judges. Somewhere along the line the mandate of worker's compensation gets lost at the Pennsylvania Bureau of Workers Compensation.

Continued next page

does any of the following: Section. 1102 Worker's Compensation referees do not recognize fraud and the Worker's Compensation Bureau refused to hold them accountable when they do not uphold the fraud portion or the worker's compensation act. Injured workers are told that the Worker's Compensation Bureau has no control over its referees. Well, who's overseeing them to make sure they are complying with the worker's compensation act and not imposing their personal spin on each claim? There is no place to file a complaint with the Worker's Compensation Bureau when a referee is way out of line. This is supposed to be the job of the Worker's Compensation Bureau's Chief of Adjudication. Instead the Worker's Compensation Bureau tells you to file an appeal if you were not happy with the referee's handling of the claim and the decision handed down. This drives up the cost of worker's compensation again with additional litigation when all that is required is to hold the referees to the standard of ethics they were sworn to. Injured workers are not unhappy with the decisions, they are unhappy that fraud was allowed to be perpetrated on them and a tainted decision is handed out as a result of that fraud.

Hear is the stand the Bureau of Workers' Compensation takes on the fraud issue:

Provable fraud is a criminal offense for which an individual or corporation (considered a natural person by statute) can be prosecuted by any prosecuting authority having jurisdiction to do so. In Pennsylvania, the prosecuting authority would be the district attorney in the county where the fraudulent conduct was actually committed and, possibly, the Office of the Attorney General, particularly its Insurance Fraud Task Force. Any individual who believes conduct rises to the level that probable cause for fraud exists should set up a meeting, either with the proper prosecuting authority or the local police of the jurisdiction where the alleged offense was committed, to review the evidence and discuss the merits of the case. The prosecuting authority has the power to determine whether the state will file criminal charges of its own violation or if it will approve of an individual filing a private criminal complaint. Once approval to file charges is granted, a preliminary hearing is held after which a district justice from the local magisterial district binds over prima facie cases to county court. Ultimately, a judge determines whether fraud was committed in a bench trial or a jury determines it if the defendant requests a trial by jury. The sentence one might expect in a fraud case depends on the sentencing guidelines for the offense and the prior record of the person convicted. Unfortunately, I cannot tell you how many employers or insurance companies are prosecuted for fraud each year since we do not bring the prosecutions - in fact, we don't even "count" the complaints that are misdirected to us that we attempt to redirect to the proper party.

Injured workers have approached the Attorney General, prior to Tom Corbit, for help. The Attorney General said they did not have jurisdiction to investigate and prosecute. Section 1109 of the worker's compensation act gives jurisdiction but the response was this:

The office of the Attorney General will not investigate or prosecute fraud perpetrated on an injured worker by an employer/worker's compensation insurance company but they would be glad to investigate and prosecute fraud perpetrated by an injured worker.

Injured workers have been shut out when it comes to filing a fraud complaint. There is absolutely nowhere to file such a complaint. If you are filing a complaint against an injured worker there are many places to do that. Pennsylvania has a website to report insurance fraud but it is run by all insurance personnel and funded by insurance company funds.

Most worker's compensation attorneys will not make waves about fraud during the hearing process because they don't want to upset the judge. They may be back in front of the same judge for another injured worker and they don't want any bad feelings carrying over from a different claim.

This impacts the injured worker and keeps true justice out of reach.

There is a very simple solution to this problem. Oversight on the worker's compensation judge needs to be stepped up. Judges must know they have to file fraud complaints to the proper authority when it occurs in a claim. It should not be passed over as it is now. Where is the Office of Adjudication for the Bureau of Workers Compensation?

No Rules for Evidence does not equal a "Reasoned Decision"

The worker's compensation Judges and the Board of Appeals are not bound by any rules of evidence. This means the Judges get to choose which evidence will be considered and what evidence will not be considered. In 1996 when the last reform to the workers compensation act was done, Pennsylvania Legislators voted to reduce the standard of evidence. The standard used to be "clear and convincing evidence" now it is "sufficient competent evidence". The standard for evidence was lowered. This was done so the employer/worker's compensation insurance company could enter unclear evidence into the record for consideration.

Section 422. (a) Neither the board nor any of its members nor any workers' compensation judge shall be bound by the common law or statutory rules of evidence in conducting any hearing or investigation, but all findings of fact shall be based upon sufficient competent evidence to justify it. All parties to an adjudicatory proceeding are entitled to a reasoned decision containing findings of fact and conclusions of law based upon the evidence as a whole, which clearly and concisely states and explains the rationale for the decisions so that all can determine why and how a particular result was reached. The workers' compensation judge shall specify the evidence upon which the workers' compensation judge relies and state the reasons for accepting it in conformity with this section. When faced with conflicting evidence, the workers' compensation judge must adequately explain the reasons for rejecting or discrediting competent evidence. Uncontroversial evidence may not be rejected for no reason or for an irrational reason; the workers' compensation judge must identify that evidence and explain adequately the reasons for its rejection. The adjudication shall provide the basis for meaningful appellate review.

The way workers' compensation hearings are conducted in Pennsylvania re

sults in evidence being submitted over a long period of time and this can confuse the WC Judges when he/she authors a decision.

This has allowed fraudulent information to be entered into evidence. The fraudulent information gets into the record because the Judge chooses the evidence to be considered. Not all evidence entered into the record is considered when a Judge is writing a decision. Most Judges allow all evidence submitted by the employer/worker's compensation insurance company to be entered into evidence even if there are strong objections by the injured workers attorney.

The Judges for the Bureau of Worker's Compensation are picked from a pool of attorneys that practices worker's compensation law. These Judges have prejudices when hired because they are practicing worker's compensation law and it does not matter which side of the fence they were on. The Judges do not leave their prejudices at home as the law instructs them to. If you get in front of a Judge who was pro employer the decision handed down will reflect that prejudice. To allow lawyers selected from this pool of candidates to preside over a worker's compensation claim is a bad for both parties because the knife cuts both ways. If the Judge is pro injured worker then the employer/workers compensation insurance company gets the short end of the stick. Here is what the Pennsylvania Workers Compensation Act says about this subject:

How can you receive a reasoned decision when not all of the evidence entered into the record is considered? A reasoned decision is supposed to explain why evidence was considered or omitted. This does not happen in Pennsylvania! The Judges omit evidence and give no reason why it was not considered. One source of evidence is found credible and another is not but there is no explanation as to why the evidence was found to be credible or not credible.

Continued next page

This means that good evidence submitted by an injured worker can and often is omitted with no explanation.

This attitude towards the decision process has the worker's compensation system in Pennsylvania clogged up with Appeals. Instead of holding the Judges to the standard of section 422(a) the Bureau of Worker's Compensation would have an injured worker spend more money for legal fees to fix an error made by a Judge. The Bureau of Workers' Compensation stand on this issue is "If you don't like the decision whether or not it is wrong Appeal it". Don't worry about whether or not a Workers' Compensation Judge is disciplined for bringing his/her prejudice to the claim.

This adds more litigation to a claim and increases the cost of a worker's compensation claim. The Bureau has no way of disciplining a Judge, which means bad decisions are still being handed out with no consequence to the referee creating the problem.

On average it takes about 18 months to get an appeal through the Pennsylvania worker's compensation system and the attorney for the injured worker is collecting legal fees the entire time and this causes an addition litigation cost to the claim.

There are worker's compensation Judges in Pennsylvania that attorneys representing injured workers will not appear in front of because they know they have no chance of gaining a favorable decision for their client. There are many injured workers in Pennsylvania who are unable to get legal council for this reason. They go in front of the workers compensation Judge on their own and hope for the best. So, in Pennsylvania not everyone is getting the legal council they are entitled to under the law but Legislators do nothing to help correct this problem.

This is a bunch of crap.

The solution is to get the Judges to screen the evidence entered into a claim much closer and fairer. It's called accountability!

The President's Report - Berks County Chapter

Dear Injured Workers and Friends,

Members please renew your membership for (2008), if you have not already; if you can not afford to pay just indicate hardship on your renewal form.

My next BCTV show is scheduled for March 3rd, 2008. My guest will tentatively be W.C. Attorney Sam Pond, live call in # for the show is 610-378-0426.

Dennis Straub
President, Berks County Chapter

The President's Report - Dauphin County Chapter

Dear PFIW Member,

Our Chapter is really down on membership. We will continue our membership drive to increase our Chapter participation.

Dauphin County Chapter will launch a campaign for better workers compensation reform this year with members of both the House and Senate Labor Committees. Anyone wishing to volunteer to be on this committee just let me know.

Our Chapter needs some members to become volunteers to promote our reform agenda. If you want to chair a committee just contact me at 717-948-1735 or e-mail me at mak101@comcast.net.

Our Chapter will try to coordinate with other Chapters this year on many of these reform campaigns. This may bring about better results.

Mike Kerstetter
President, Dauphin County Chapter

The President's Report - Lehigh Valley Chapter

Dear PFIW Member,

Our Recording Secretary cast the lone vote for 3 year Trustee position. The election was held due to the fact that only one person accepted the nomination. Trustee, Frank Behum, is now an official Trustee. This was the only business completed at the last meeting, since we went right into our Christmas Party.

I would like to thank our members and our Attorney for bringing covered dishes. We had a lot of food, and a good variety to choose from.

Ken M. Kitay will be our guest speaker at our January 24th meeting.

Several years ago PFIW published a Cook Book. We will reproduce these recipes and add them to our Chapter newsletter.

Annual dues are due. Most of the active members have already rejoined, thank you. If your address label is circled in read, your dues are due now. Please fill out the APPLICATION in the newsletter. Give the other application to a family member or a friend if you need more just call and we'll see that you get more.

Peter DePietro
President, Lehigh Valley Chapter

The President's Report - Lebanon County Chapter

Dear Chapter Members,

No Report

Larry Beam
President, Lebanon County Chapter

Chapter Events

Berks County Chapter

MONTHLY MEETING SCHEDULE—2nd Tues. each month:

Next Meeting at 7:00PM:
February 12, 2008 at 1055 Spring Street, Wyomissing, PA 19613

BERKS COMMUNITY TV SHOW—1st Monday of odd Months:
(Channel 13 on Comcast, Channel 19 on Service Electric Cablevision):

Upcoming Show — March 03, 2008 at 8:00 PM:

Repeat shows on:
Sun. 9:00 PM,
Mon. 8:00 AM,
The following Wed. 2:00 PM.

Lebanon County Chapter

MONTHLY MEETING SCHEDULE—4th Weds. of every month:

Next Meeting:
February 27, 2008 at 6:30 PM at the Annville Free Library

Dauphin County Chapter

MONTHLY MEETING SCHEDULE—3rd Thurs. of every other month:

Next Meeting at 6:30 PM
March 20, 2008 at the Middletown Public Library

Lehigh Valley Chapter

MONTHLY MEETING SCHEDULE—4th Weds. each month:

Next Meeting at 6:30 PM:
February 27, 2008 at 612 Elm Street, Bethlehem, PA 18016
Guest Speaker to be determined.

BINGO—Thursday of every week at 7:00 PM:
Dewey Fire House, Hellertown, PA
No Smoking
Cash Prizes

“An Injury to One is an Injury to All”

Join today!
Visit us on the web: www.pfiw.org

PENNSYLVANIA FEDERATION OF INJURED WORKERS
27 Rose Ave.
Middletown, PA 17057

Application For Membership

Name _____

Address _____

City & State _____

County _____ Zip Code _____

Phone _____ E-mail _____

Signature _____ Date _____

I am:

- An injured worker
- A family member or friend of an injured worker
- A support or advocate of the Pennsylvania Federation of Injured Workers

(Membership of twelve dollars (\$12.00) is good for a 12-month membership.)

PFIW Worker's Compensation Panel Attorneys



Gregory Boles
1515 Market St.
Suite 1510
Philadelphia, PA 19102
Bus: (866) 772-0700
Bus Fax: (215) 827-5616



Christopher Gasda
814 South 49th St.
Philadelphia, PA 19143
Bus: (267) 496-3887



Peter J. Classetti
547 East Washington Ave.
P.O. Box 274
Newton, PA 18940
Bus: (866) LAW-7702
Bus Fax: (215) 504-2300
E-mail: pclassetti@sgsglegal.com



Stephen J. Hogg
19 S. Hanover St.
Carlisle, PA 17013-3307
Bus: (717) 245-2698
Bus Fax: (717) 245-0829
E-mail: shogg@nexspot.com



W. Scott Henning
1300 Linglestown Rd.
Harrisburg, PA 17110
Bus: (800) 422-2224
Bus Fax: (717) 233-3029
E-mail: henning@hhrllaw.com



Kenneth M. Kitay
21 E. State St.
Suite 200
Kennet Square, PA 19348
Bus: (888) 548-2952
E-mail: ken@kennethmkitaylaw.com



Thomas More Holland
1522 Locust St.
Philadelphia, PA 19102
Bus: (877) 429-8327
Bus Fax: (215) 592-8550
E-mail: tmh@tmhlaw.com



Samuel H. Pond
1818 Market St.
35th Floor
Philadelphia, PA 19103
Bus: (888) 772-6671
Bus Fax: (215) 587-8417
E-mail: spond@paworkinjury.com



Mary Kay Rauenzahn
11 N. 9th St.
Lebanon, PA 17042
Bus: (717) 274-9250, ext. 85127
Bus Fax: (610) 845-3903
E-mail: mrauenzahn@princelaw.com



Anthony Vellner
10 West Market St.
1st Floor
Bethlehem, PA 18018-5770
Bus: (610) 814-3120
E-mail: avellner@aol.com

PFIW O.W.C.P. Panel Attorneys (Federal Worker's Compensation Claims)



Jeffery Zeelander
1608 Walnut St.
Suite 1300
Philadelphia, PA 19103
Bus: (215) 545-2132

Claims Information

Certification of Records

The Pennsylvania Bureau of Worker's Compensation recently changed the look of the certification of records document: it is now on 8 1/2" x 11" white bond paper. The yellow legal size certification document will not longer be used. When requesting that the bureau certify copies of the workers' compensation records, submit your request in writing, along with your request for records, to:

Bureau of Workers' Compensation
Attention: Records Unit
1171 South Cameron Street
Room 109
Harrisburg, PA 17104-2501
or
fax to: 717-783-6365

For additional information on requesting records, see the bureau policy online at www.state.pa.us, PA Keyword: workers comp.

PA Federation of Injured Workers

27 Rose St.
Middletown, PA 17057-4674

Phone: 717-948-1735
Email: pfiw@comcast.net



The PFIW is always here for injured workers & workplace safety.

«AddressBlock»

“An Injury to One is an Injury to All”

We're on the Web!
www.pfiw.org

NONPROFIT
US POSTAGE
PAID
Permit #8
Middletown,

What Can I Do to Help Make a Difference?

Many times we are asked; "What can I do? I am only one person". The answer to that is very simple:

1. When a large number of people complain about something it tends to get attention. Contact your Legislators, both Senators and Representatives, to let them know about the problems you are experiencing and ask them to help reform the workers compensation act for injured workers and not employers and their insurers. Also contact the members of the Senate Labor & Industry Committee and the House of Representatives Labor Relations Committee.
2. The real power to make change comes from injured workers and injured worker advocates who have registered to vote and do so. Vote for politicians who care about injured worker rights.
3. You can attend the PA Workers Compensation Advisory Council meetings held at the Bureau of Workers Compensation. Once in a while they allow people who attend the meeting to speak to them. This council is supposed to write legislative recommendations to the Legislators on workers compensation reform. Call or e-mail the Bureau of Workers Compensation for meeting information. 717-783-5421 or ra-li-bwc-helpline@state.pa.us
4. Join the Pennsylvania Federation of Injured Workers. The more members we have the louder our voice will be in Harrisburg.

If all injured workers and injured worker advocates/supporters would register to vote and get one other person or more to do the same, injured workers would then be able to say; "the abuse of injured workers stops now." Votes could be cast for Legislators that would reform the workers compensation act so it would reflect the workers compensation mandate.

If you haven't done it yet get out and register to vote and make your voice heard on election day. Don't assume that others will vote to make the difference. Only you can make the difference, vote!

Register
&
Vote



Register
&
Vote