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Commonwealth Court Holds Three Year Filing Limitation in Second Paragraph of Section 413 Applies to Entire Section

In Fitzgibbons v. WCAB(City of Philadelphia) the Claimant had a May 4, 1997 injury described on a notice of compensation payable as epicondylitis of the left elbow. Benefits were suspended upon her July 13, 1998 return to work without loss of earnings. On August 26, 2002 she filed a review and reinstatement petition seeking to add neck, low back, left hip, leg and knee injuries.

The Claimant's testimony that all of these injuries existed at the time the NCP was issued is presumed credible.

Under prior caselaw, a petition to change the description of injury must be filed within three years. Jeanes Hospital v. WCAB (Hass) However, in the course of proceedings under any pending petition, a WCJ can review the description of injury "at any time" if it be proved that the notice of compensation payable was in any material respect incorrect. Cinram Manufacturing, Inc. v. WCAB (Hill) The Commonwealth Court has now held that the Claimant has three years from the last date of payment to file a petition to review the description of injury even in a case where the injuries existed at the time the NCP was issued.

The Court stated both paragraphs of Section 413 must be read together. Accordingly, the limitation that a petition must be filed within three years after the last payment applies to any petition to review, modify or reinstate filed under the section.

Parties must be aware that consistent with the Supreme Court's holding in *Cinram*, a WCJ may review and modify or set aside an NCP or Agreement "at any time" upon petition or in the course of proceedings under any petition pending before the WCJ. A Claimant petitioning to amend the description of injury has a three year limitation, but a Claimant who is before the WCJ on another petition can always add descriptions of injury that existed when the NCP was issued.

Posted by Robert Vonada at [7:48 AM](#)