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The Pennsylvania Association of Rehabilitation Professionals

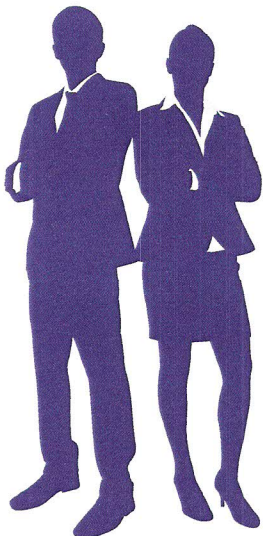
PARP News

A Chapter of the International Association of Professionals

Supreme Court of PA Eastern District, Nov. 21, 2013 / Act 57 Victor Alberigi, CRC, LPC, ABDA

A Pennsylvania Supreme Court decision made in November 2013 concerning standards for Worker's Compensation for Labor Market Surveys is understood to substantially increase the burden of attempts by employers to modify worker's compensation benefits. The decision argued on March 7, 2012, and decided on November 21, 2013, involved a claimant who was injured in her employment with Phoenixville Hospital and who made application for all five jobs comprising a Labor Market Survey (LMS).

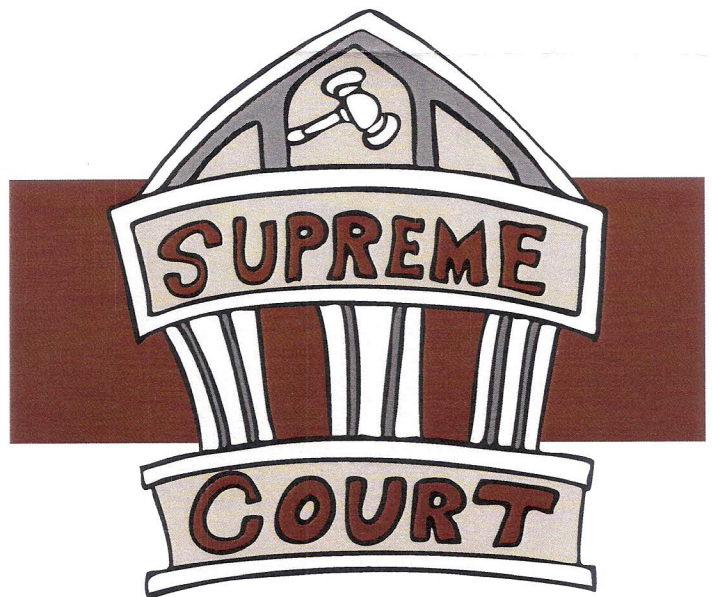
The claimant was not offered employment by any of the five employers cited in the LMS. The Workers Compensation Judge (WCJ) ruled against the insured indicating that the claimant "acted in good faith" by applying for all the jobs comprising the LMS. The claimant had not been required to apply for the jobs by the vocational case manager, as is common practice in Act 57 cases. Nevertheless, the WCJ determined that the insured had failed to establish the right to a modification of benefits under Section 306[b] of the Act.



The insured was also unsuccessful before the Worker's Compensation Appeal Board (WCAB) and it was not until the insured reached the Commonwealth Court that it met success. Commonwealth Court reversed the WCAB noting that an insured need only show, at the time which the LMS was conducted, that jobs cited were available within the claimant's medical release and in his or her geographic area of employment.

The claimant then brought the case to the Pennsylvania Supreme Court, which ruled that "the proof required to reduce or suspend benefits must rest upon the existence of meaningful employment opportunities and not the simple identification of jobs found in employment listings and want ads." The Supreme Court also remanded the case to the WCJ in order to give the claimant a chance to demonstrate why she was not hired for any of the jobs for which she applied.

Based upon this case ruling, it can be understood that, in addition to LMS jobs being within a claimant's physical and vocational restrictions, said jobs need to be proven to be actually available and open at the time of the LMS. Additionally, it can be understood that claimants need to be notified of the LMS jobs cited



on a timely basis in order to allow claimants to have the opportunity to apply for said jobs should they wish to. Thus, a claimant is furnished with the opportunity to challenge the results of an LMS based upon their physical, educational, and vocational capacities. It is also understood that vocational case managers will need to have follow-up contact with employers cited in Labor Market Surveys to determine if the claimant applied for the jobs, what the hiring decision was, and

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whether the job was still open at the time the claimant applied. Since the vocational case manager would not be present at the time which the claimant may apply for jobs, the results of this interaction and whether job sabotage may have been committed would likely not be known by the vocational case manager.

In light of the results of this State Supreme Court decision in Pennsylvania, vocational case managers would appear to need to notify claimants of jobs cited in the LMS on a timely basis should the claimant decide to apply for the jobs included in the LMS. Furthermore, a timely follow-up contact with employers, in order to determine the results of the claimant's potential application, would appear to be necessary. Obtaining detailed information from employers concerning a claimant's application would clearly appear to

be a challenge facing vocational case managers.

Thus, the results of this Supreme Court decision are considered to cause several concerns for vocational case managers, many of which have been briefly highlighted herein. How cases will be decided upon in light of this new case law will need to be monitored closely by all parties involved. It would appear that this decision would empower claimants who elect to apply for LMS jobs, while causing added complexity for vocational case managers, litigators, and employers seeking benefit modification.

2/19/13; John Earley, Former Assistant Counsel, State Workers Insurance Fund entitled "New Legal Standard for Labor Market Surveys, Phoenixville V. WCAB [Shoap] No. 32 EAP 2011.