

PENNSYLVANIA BUREAU OF WORKERS' COMPENSATION

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SPORTS INJURIES – in which stadium did you get hurt?

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1. A BRIEF HISTORY – HOW PROFESSIONAL ATHLETES CLAIMS BEGAN

2. OUR THEME- HOW ARE PROFESSIONAL ATHLETE CLAIMS DIFFERENT ...
and HOW THEY ARE SIMILAR TO “REGULAR” WORK COMP CASES

3. JURISDICTION

- a. The Pennsylvania Workers' Compensation Act “shall apply to all injuries occurring within this Commonwealth”. Section 101.
- b. The “Extra-Territorial Provisions provide Pennsylvania Workers' Compensation benefits, under specific circumstances. Section 305.2
 - i. Injured during an “away” game ... does PA law apply?
- c. Federal Court jurisdiction
 - i. (WCJ Briston case)
- d. Collective Bargaining Agreement Language

4. NOTICE of INJURY

- a. *“Unless the Employer shall have knowledge of the occurrence of the injury...”*
 - i. Employee *shall* give notice to Employer with 21 days

- ii. If notice is not given within 120 days, *"no compensation shall be allowed"*. Section 311
- iii. In cases where, *"the nature of the injury or its relationship to the employment is not know ..."*

b. The *phenomenon* of "indestructible" professional athletes NOT reporting injury

5. Train, Practice, Play, Injury, Train, Practice, Play, Injury, Train, Practice, play, injury...

- a. Professional Athletes must train to maintain their physical condition, are these "off-season" injuries, within the *scope of employment*?
 - i. Where an athlete *did not* have his employer's permission, in violation of his contract, to participate in an uncompensated off-season roller hockey team, as a means to remain in physical condition, Compensation was denied. See: Dandenault v. WCAB (Philadelphia Flyers, LTD) (Pa. Cmwlth. 1999).
 - ii. Contrast with decisions where recreational, athletic or off-duty activities have qualified for compensation.
- b. Old Injury, Old Team versus New Team, New Injury
 - i. Professional athletes may have a lengthy history of multiple injuries to multiple body regions.
 - ii. Some of these injuries are disabling, that is limiting their performance and some injuries do not impact upon their performance.

6. "DISABILITY" versus Injury distinction

- a. *Battles v. WCAB (Pittsburgh Steelers Sports Inc.)*, (Pa. Cmwlth. 2013)

A recent review by one panel of the Commonwealth Court

- b. Disability = loss of earnings.
c. Disability as a physical limitation upon work duties?
d. What about the Professional athlete team roster issues?
i. I lost my job to the new guy
ii. I may be a step slower, but I am a wiser player

7. AVERAGE WEEKLY WAGE ISSUES

Who is a "Professional Athlete"?

- a. The term "professional athlete" is defined by the Act;
- i. NFL, NBA, NHL, NL Baseball, AL Baseball
ii. Wages are *more than* eight (8) times the Statewide Average Weekly Wage
- b. Inclusions/Exclusions to AWW
- c. Inclusions/Exclusion to Post-Injury payments.
- i. "Injury Protection Benefit"
An Injury Grievance Credit *was not* available to the Employer as there is a Section 308.1(c) (3) credit against Partial disability benefits, *not* against total disability benefits.
See: *Pittsburgh Steelers Sports Inc. v WCAB (Williams)*, (Pa. Cmwlth. 2002).
- ii. Employer has a "dollar-for-dollar" credit for "*payments in lieu of compensation*"
See: *Wallace v. WCAB (Pittsburgh Steelers)* (Pa. Cmwlth. 1999) and *Pittsburgh Steelers Sports Inc. v WCAB (Erenberg)* (Pa. Cmwlth. 1992).

8. SEASONAL EMPLOYMENT

Section 309 (e) defines the AWW calculation for occupations *which are exclusively seasonal ...*

- a. The average weekly wage shall be one-fiftieth (1/50) of the *total wages* earned from all occupations, during the 12 calendar months preceding the injury
 - i. ...unless it is shown that during that year, by reason of exceptional circumstances, such calculation *does not fairly ascertain the earnings of the employee*
 - ii. Note: is says earnings of the employee, not his/her *future earnings*.
- b. QUERY? If the professional athlete must train during the “off season” and considers those injuries to be compensable ... is it truly a seasonal occupation ??? (Just asking).

9. THE POST-INJURY EARNINGS CALCULATION

- a. in the case of the professional athlete, the term “wages of the Injured worker” for purposes of calculating partial disability shall mean two (2) times the Statewide Average Weekly Wage. Section 308.1(e).
- b. the result ... the highly compensation professional athlete (earning more than 8 times the AWW rate) will have his/her AWW rate *artificially lowered*, for purposes of calculating any PPD benefit rate.

- c. Compare to the *nearly* highly compensated athlete, not meeting the “professional” definition ... will have his/her PPD benefit entitlement calculated based upon the *actual* AWW figure.
- d. Section 308.1 has withstood a constitutional challenge, that this artificial AWW figure for PPD calculations is a violation of equal protection guarantees of the 14th Amendment. See: Lyons V. WCAB (Pittsburgh Steelers Sports Inc.) (Pa. Cmwlth. 2002).
- e. **EXAMPLE**
Assume a 2014 injury, the 2014 AWW figure is \$932.00.

- i. 8 times that AWW figure is 7,456.00
If the professional athlete earns more than \$388,000 per year...
For PPD calculation, the AWW is set at \$1,864.00.
[Two times the AWW]
- ii. 7 times that AWW figure is \$6,524.00
If the professional athlete earns about \$338,000 per year...
For PPD calculation the AWW is \$6,760
(\$338,000 divided by 50 weeks)

NOTE: This example illustrates the strategy that may be involved (by each party) in establishing a specific date of injury, among the several possibilities available.

10. MEDICAL ONLY CASES

- a. What is the strategy for the Employee to enter into a Medical Only NCP?
 - i. No litigation

- ii. No examination of post-injury earnings
 - iii. Life- time medical coverage for work related injury
 - iv. The athlete is still playing, no "disability"
- b. What is the strategy for the Employer/Insurer?
- i. No litigation, no costs
 - ii. No arguments of passive versus active income
 - iii. Lifetime medical expense liability (limited?)
 - iv. Disability issued deferred, to another day ... or another Insurer

11. MEDICAL EVIDENCE ISSUES

- a. Claim Petition burden of proof – establish disability.
- b. Termination Petition burden of proof –establish full recovery.
- c. QUERY? Where does the professional athlete fit?
 - i. Physically recovered to return-to play ...
But not able to return-to-work
 - ii. Residual disability ... but able to play

12. MEDICAL EVIDENCE ISSUES – CAUSATION

Professional athletes may have a past history of injury... high school, college, prior sports teams...

- a. Medical Discovery Issues are important in the Professional Athlete Case.

- b. Medical records are maintain by individual team trainers , in addition to “team” physicians and other “outside” healthcare providers or consulting specialists.
- c. “Away” game injuries may involve out-of-state evaluation and treatment.
- d. Specific past injury and/or ongoing progressive wear and tear conditions may raise separate questions of;
 - i. Medical causation
 - ii. Liability for disability
 - iii. Liability for future medical care

13. APPORTIONMENT – is it available?

Section 322 of the Act allows payment of workers’ compensation, on a pro-rata basis, where an employee suffers from more than one injury while in the employ of more than one employer.

14. SPECIAL ISSUES IN PROFESSIONAL ATHLETE CLAIMS

- a. There is a Necessity for the Review of Voluminous Medical records for MULTIPLE YEARS, MUTLIPLE BODY REGIONS, MULTIPLE PROVIDERS
- b. Player RELUCTANCE to report injury
- c. Different injury dates, involve different earnings and may result is “professional athlete” status for one year, but not for another year ... what are the implications?
- d. The TEAM ROSTER issue as a defense

15. SETTLEMENT OF THE PROFESSIONAL ATHLETE CLAIM

- a. What issues are relevant to the professional athlete?
- b. Future Medical Expenses ... Medicare?

16. COLLEGE ATHLETE INJURIES

Recent newspaper accounts report the litigation initiated by college athletes to be considered “employees’ of their respective universities.

-What are the Work Comp implications?

- a. College athletes are not included in the Section 308.1 language regarding compensation limitation and calculations...
- b. ... BUT this does not mean that they are excluded from consideration as an “employee”!
- c. Definition of “Employee”
 - i. Valuable Consideration
 - ii. Control Test

17. HYPOTHETICAL QUESTION REGARDING PROFESSIONAL ATHLETE CLAIMS