

A Summary of Recent Pennsylvania Appellate Court Decisions

By Daniel J. Siegel, Esquire
LAW OFFICES OF DANIEL J. SIEGEL, LLC

66 W. Eagle Road • Suite 1 • Havertown, PA 19083-1425
(610) 446-3457 • Fax (610) 471-0570 • E-mail dsiegel@danielsiegel.com

REPORTING DECISIONS THROUGH OCTOBER 21, 2011

PENNSYLVANIA APPELLATE COURT DECISIONS

I. CIVIL LITIGATION

A. *Arbitration Agreements*

- [*O'Donnell v. Hovnanian Enterprises, Inc., 2011 PA Super 210 \(October 4, 2011\)*](#)

- **Holding:** By engaging in the judicial process, *i.e.*, filing a Complaint and/or attempting to win favorable rulings from the judicial system following the filing of a Complaint, a party waives its right to proceed through arbitration.

All decisions are “[hyperlinked](#)” to the slip opinion. All you have to do is “[click](#)” or “[ctrl + click](#)” on the title of the case, and if connected to the Internet, your browser will open up the decision for you to read in its entirety. Try it and see!

B. *Contracts of Employment*

- [*Guerra v. Redevelopment Authority of the City of Philadelphia, 2011 PA Super 181 \(August 24, 2011\)*](#)

- **Holding:** A government agency's Rules and Regulations for Personnel Administration, without statutory authority, do not create an enforceable contract of employment or tenure under either contract law or estoppel theory.

C. *Dragonetti Actions/Wrongful Use of Civil Proceedings*

- [*Keystone Freight Corp. v. Stricker, 2011 PA Super 2016 \(October 12, 2011\)*](#)

- **Holding:** A claim for wrongful use of civil proceedings pursuant to 42 Pa.C.S. § 8351 is a tort arising when a person institutes civil proceedings with a malicious motive and lacking probable cause. Absence of probable cause is not conclusively established merely because of a favorable jury verdict in the prior proceeding. Thus, a party proceeding with such a claim must show that the primary purpose for which the proceedings were brought was not that of securing proper discovery, joinder of parties, or adjudication of the claim on which the proceedings were based. 42 Pa.C.S. § 8354(4).

D. *Employment Discrimination - Pennsylvania Human Relations Act*

- [*Canal Side Manor v. Pennsylvania Human Relations Commission, No. 2459 C.D. 2010 \(Pa.Cmwlth., October 20, 2011\)*](#)

- **Holding:** In a claim for housing discrimination, the Pennsylvania Human Relations Commission has properly adopted the proof standards normally applied in employment cases. Thus, when direct evidence of discrimination is presented, such evidence is sufficient to support a finding of discrimination.

E. Expert Testimony - Products Liability

□ [**Wiggins v. Synthes \(U.S.A.\), 2011 PA Super 172 \(August 12, 2011\)**](#)

- **Holding:** In a product liability action based upon the "malfunction theory," an expert is not required to testify that the product is defective. Rather, the expert may refer to the product as "ineffective" and the jury may infer the existence of a defect through circumstantial evidence of the "ineffectiveness." Thus, a plaintiff must only present circumstantial evidence that a product was defective, and is not required to prove by expert opinion that a defective product caused his injuries.

F. Insurance Policies - Duty to Defend

□ [**Penn-America Insurance Co. v. Peccadillos, Inc., 2011 PA Super 176 \(August 19, 2011\)**](#)

- **Holding:** An insurance company's duty to defend is not limited to meritorious actions, and extends to actions that are "groundless, false, or fraudulent," provided there exists the possibility that the allegations implicate coverage. The obligation to defend remains unless an exclusion clearly defeats every cause of action averred in the underlying Complaint. Thus, although a liquor liability exclusion may clearly exclude liability based upon a business's having "caused or contributed to intoxication," it does not limit, in any way, liability that may be assessed for other reasons.

G. Insurance Policies - Motor Vehicle Insurance - Household Exclusion

□ [**Allstate Fire and Casualty Insurance Co. v. Hymes, 2011 PA Super 200 \(September 13, 2011\)**](#)

- **Holding:** A "household exclusion" in a motor vehicle insurance policy, which excludes coverage for damages sustained while "on" a motorcycle, bars a claim for injuries sustained when a plaintiff is thrown from the motorcycle he was operating after colliding with a car.

H. Judgments - Opening

□ [**Hazar v. Zabala, 2011 PA Super 168 \(August 11, 2011\)**](#)

- **Holding:** The addition of "D/B/A" after a party's signature to a lease does not impart a limitation of liability for the individual unless the signee identifies himself as an officer, member or agent of the Limited Liability Company. Further, an otherwise inconspicuous clause appearing outside the body of the lease in an addendum, which is not separately signed, is invalid and unenforceable. Thus, the trial court erred by refusing to open a judgment by confession.

□ [**Smith v. Morrell Beer Distributors, Inc., 2011 PA Super 183 \(August 26, 2011\)**](#)

- **Holding:** Courts may offer relief from the entry of a default judgment under Pa.R.C.P. 236(b) even if a petitioner fails to attach a verified copy of the Answer to the Complaint as required under Pa.R.C.P. 237(a), provided the petition is (1) filed within ten days of the entry of judgment, and (2) the proposed Answer states a meritorious defense.

□ [**City of Philadelphia v. Lane Advertising, Inc., No. 1449 C.D. 2010 \(Pa.Cmwlt., October 4, 2011\)**](#)

- **Holding:** A judgment by default may be stricken when the plaintiff fails to comply with the notice provision of Pa.R.C.P. 237.1 when the notice is not substantially in the form adopted by the Pennsylvania Supreme Court.

I. *Judicial Immunity*

□ [***Langella v. Cercone, 2011 PA Super 196 \(September 2, 2011\)***](#)

- **Holding:** A judge is not entitled to judicial immunity as a matter of law when (1) there is clear absence of jurisdiction, or (2) the judge was not performing a judicial act. Thus, (1) a judge does not have automatic jurisdiction over a person who enters the judge's chambers to discuss matters ancillary to a prior decided case, and (2) discussions about personal matters in the judge's chambers are not considered judicial acts.

J. *MCARE Act*

□ [***Fletcher v. Medical Care Availability and Reduction of Error Fund, No. 107 M.D. 2006 \(Pa.Cmwlth., en banc, August 26, 2011\)***](#)

- **Holding:** The Medical Care Availability and Reduction of Error Fund (MCARE Fund), 40 P.S. §§ 1303.101-1303.910, is responsible for providing excess coverage on behalf of physicians who commit malpractice when the doctors have "basic insurance coverage" and have paid a surcharge to MCARE for extended coverage. The surcharge paid to MCARE need not specifically be entitled "MCARE tail coverage" in order for MCARE to be liable.

K. *Medical Malpractice*

□ [***Passarello v. Grumbine, 2011 PA Super 199 \(September 9, 2011\)***](#)

- **Holding:** Physicians are not liable for errors in judgment unless it is proven that an error of judgment was the result of negligence. Thus, consistent with *Pringle v. Rappaport*, 980 A.2d 159 (Pa.Super. 2009), the "error in judgment rule" has been abrogated as a defense in medical malpractice cases.

L. *Medical Records Act - Calculation of Charges*

□ [***Wayne M. Chiurazzi Law, Inc. v. MRO Corp., 2011 PA Super 169 \(August 11, 2011\)***](#)

- **Holding:** Under the Medical Records Act, 42 Pa.C.S.A. §§ 6151-6160, the calculation of estimated actual and reasonable expenses for paper copies is not required; rather, the statutory schedule creates safe harbor rates for the estimated actual and reasonable expenses of producing such paper copies, as adjusted yearly by the Pennsylvania Secretary of Health. The statutory schedule does create safe harbor copying rates for non-paper copies, such as copies produced on CD or by electronic means, and entities that reproduce medical records can be held responsible for calculating, and then charging, the estimated actual and reasonable copying expenses of producing such non-paper copies.

M. *Motor Vehicle Financial Responsibility Law - Attorney's Fees*

□ [***Herd Chiropractic Clinic, P.C. v. State Farm Mutual Automobile Insurance Co., 2011 PA Super 178 \(August 23, 2011\)***](#)

- **Holding:** Insurance companies that follow the peer review process under Section 1797 of the Motor Vehicle Financial Responsibility Law (MVFRL), 75 Pa.C.S.A. § 1797, are not liable for damages for bad faith, but may be liable for attorney's fees if the court determines on review that the medical care in dispute was medically necessary.

N. Preliminary Objections - Venue

□ [*Schultz v. MMI Products, Inc., 2011 PA Super 225 \(October 21, 2011\)*](#)

- **Holding:** In ruling upon Preliminary Objections relating to venue, it is not dispositive that three defendants did not raise, and therefore waived, the issue of venue. Simply because these defendants did not object to venue, it does not follow that venue is proper for all defendants. *Of note, the Superior Court went out of its way to admonish counsel for plaintiff for their sloppiness, and considered the appeal despite counsel's apparent waiver of issues both below and on appeal.*

O. Settlement - Manner of Discontinuing Actions

□ [*Wright v. Lexington & Concord Search and Abstract LLC, 2011 PA Super 160 \(August 1, 2011\)*](#)

- **Holding :** When a case is settled in court before a judge, the court should enter an Order stating that the matter was settled, but should **not** have the Prothonotary mark the matter discontinued. The plaintiff, upon receipt of the settlement funds, should file a Discontinuance or Order to Settle, Discontinue and End to the defendant under Pa.R.C.P. 229 and Pa.R.C.P. 229.1.

P. Summary Judgment

□ [*Casselbury v. American Food Service, 2011 PA Super 217 \(October 12, 2011\)*](#)

- **Holding:** The grant of summary judgment was improper when the record, viewed most favorably toward the plaintiff, *i.e.*, the non-moving party, establishes that the defendant undertook responsibility for maintaining the safety of the object that caused the injury at issue.

Q. Underinsured Motorist Coverage - Regular Use Exclusion

□ [*Williams v. Geico Government Employees Insurance Co., No. 29 WAP 2009 \(Pa., October 19, 2011\)*](#)

- **Holding:** The "regular use" exclusion in a personal automobile insurance policy is valid to preclude the payment of underinsured motorist benefits to a police officer injured in the course of employment while operating a police vehicle for which the officer did not have the ability to obtain UIM coverage. Justice Orie Melvin authored the majority opinion. Justice Saylor filed a [concurring opinion](#), Justice Baer filed a [concurring opinion](#), and Justice Todd filed a [concurring opinion](#) in which Justice McCaffery joined.

R. Underinsured Motorist Coverage & Workers' Compensation Claims

□ [*Heller v. Pennsylvania League of Cities and Municipalities, No. 16 WAP 2009 \(Pa., October 19, 2011\)*](#)

- **Holding:** A workers' compensation exclusion in an employer-sponsored insurance policy violates public policy and is therefore unenforceable. The Court noted that while the exclusionary provision did not facially violate the cost containment provisions of the Motor Vehicle Financial Responsibility Law, its inclusion in an employer-sponsored policy operates to foreclose the majority of expected claims. Thus, the exclusion renders the coverage illusory and the insurer receives a windfall by charging a premium for the coverage. Justice Saylor filed a [dissenting opinion](#) in which Chief Justice Castille joined. Justice Orie Melvin authored the majority opinion.

S. *Uniform Partnership Act - Distribution of Assets*

□ [Huber v. Etkin, 2011 PA Super 174 \(August 16, 2011\)](#)

- **Holding:** In an action for payment of proceeds from the dissolution of a partnership pursuant to the Uniform Partnership Act, 15 Pa.C.S.A. §§ 8301-8365, contingent fees realized after dissolution of the partnership are subject to distribution pursuant to each partner's share in the net profits after factoring in all the proper charges and costs.

II. ETHICS

A. *Disciplinary Matters*

□ [Office of the Disciplinary Counsel v. Eshelman, 167 DB 2009 \(Pa., August 17, 2011\)](#)

- **Summary:** The Pennsylvania Supreme Court entered an Order suspending an attorney from practice for three years. According to the Report and Recommendations of the Disciplinary Board, the attorney claimed that he reacted to the pressures of practice and personal matters by retreating into a world of computer and video games, and that this "addiction" prevented him from meeting his professional responsibilities. The Board recommended a three year suspension to reflect the serious nature of Respondent's violations and to provide time for respondent to regain the skills and competence he demonstrated in his earlier years of practice.

III. UNEMPLOYMENT COMPENSATION

A. *Conflict with Record*

□ [Spence v. Unemployment Compensation Board of Review, No. 412 C.D. 2011 \(Pa.Cmwlt., September 23, 2011\)](#)

- **Holding:** The Unemployment Compensation Board of Review may make specific Findings of Fact, in addition to a Referee's findings under Section 504 of the Unemployment Compensation Law, 43 P.S. § 824. If the findings conflict with the facts of record, the case should be remanded in order to assure that the Board is reviewing the correct file.

B. *Independent Contractor*

□ [SkyHawke Technologies LLC v. Unemployment Compensation Board of Review, No. 1691 C.D. 2010 \(Pa.Cmwlt., August 31, 2011\)](#)

- **Holding:** In determining an employee's eligibility for unemployment compensation benefits, non-compete agreements and Third Party Service agreements are not dispositive of an employee-employer relationship; rather, they are factors to be weighed in the totality of the circumstances.

C. *Necessitous & Compelling Reason to Quit*

□ [Munski v. Unemployment Compensation Board of Review, No. 193 C.D. 2011 \(Pa.Cmwlt., September 27, 2011\)](#)

- **Holding:** Leaving employment out of fear of losing one's job may constitute a cause of a necessitous and compelling nature. However, absent further evidence, an employee's belief that he will be laid off if he rejects a severance package is not a reasonable basis to support the entitlement to unemployment compensation benefits.

- [*Elliott Co., Inc. v. Unemployment Compensation Board of Review*, No. 1783 C.D. 2010 \(Pa.Cmwlt., en banc, October 13, 2011\)](#)

- **Holding:** Voluntarily quitting a job because of changes to an employer's retirement health care plan is not a necessitous and compelling reason sufficient to entitle the claimant to unemployment compensation benefits.

D. *Reasonable Limitations*

- [*Rohde v. Unemployment Compensation Board of Review*, No. 2629 C.D. 2010 \(Pa.Cmwlt., August 31, 2011\)](#)

- **Holding:** An employee who reasonably limits the hours available to work each day for medical reasons may still be eligible for unemployment benefits under Section 401(d)(1) of the Unemployment Compensation Law, 43 P.S. § 801(d)(1), if the limitation does not effectively remove the employee from the labor market.

E. *Voluntary Retirement*

- [*Oliver v. Unemployment Compensation Board of Review*, No. 1655 C.D. 2010 \(Pa.Cmwlt., August 17, 2011\)](#)

- **Holding:** In order to receive unemployment compensation benefits following a voluntary retirement, a claimant must establish that (1) he or she acted with ordinary common sense in retiring, and (2) made a reasonable effort to preserve his employment. Thus, when an employee voluntarily resigns from his employment, he must show a necessitous and compelling cause for doing so in order to be entitled to unemployment benefits under Section 402(b) of the Unemployment Compensation Law, 43 P.S. § 402(b). When an employee resigns for fear that his pension benefits will be lowered after union negotiations, but admits that his pension was reduced because of early retirement, the employee lacks a necessitous and compelling cause to retire.

- [*The Philadelphia Housing Authority v. Unemployment Compensation Board of Review*, No. 892 C.D. 2010 \(Pa.Cmwlt., August 31, 2011\)](#)

- **Holding:** An employee's decision to voluntarily retire at a point in time when he perceived his pension terms to be most favorable for him did not provide him with a necessitous and compelling reason to quit under Section 402(b) of the Law.

F. *Willful Misconduct*

- [*Weingard v. Unemployment Compensation Board of Review*, No. 2726 C.D. 2010 \(Pa.Cmwlt., August 10, 2011\)](#)

- **Holding:** A request for a loan made to an employee under the supervision of the requesting employee may constitute willful misconduct under the Unemployment Compensation Law because there is an unspoken, and implicit, coercion in such an act.

IV. WORKERS' COMPENSATION

A. *Average Weekly Wage Calculation*

- [*Lenzi v. Workers' Compensation Appeal Board \(Victor Paving\)*, No. 741 C.D. 2011 \(Pa.Cmwlt., October 13, 2011\)](#)

- **Holding:** Unemployment compensation benefits are not included in the calculation of an injured worker's average weekly wage under Section 309(d) of the Workers' Compensation Act, 77 P.S. § 583.

B. *Course and Scope of Employment*

□ [*Werner v. Workers' Compensation Appeal Board \(Greenleaf Service Corp.\)*, No. 25 C.D. 2011 \(Pa.Cmwlt., September 1, 2011\)](#)

➤ **Holding:** In a Fatal Claim Petition, the claimant bears the burden of demonstrating that the decedent's injury arose in the course of employment and was causally related thereto. If the record fails to establish where the injury occurred, how the injury occurred, when the injury occurred and, most importantly, what the employee was doing when the injury occurred, then the claimant has failed to establish that the decedent was injured in the course and scope of employment.

□ [*Lewis v. Worker's Compensation Appeal Board \(Andy Frain Services, Inc.\)*, No. 1501 C.D. 2010 \(Pa.Cmwlt., September 22, 2011\)](#)

➤ **Holding:** A claimant, who violates a positive work order is not acting in furtherance of the interest of the employer, and does not meet the burden of proving he was injured within the scope of his employment when he (1) left his designated work station and wandered the premises of the employer, (2) did not use his radio to report any problems as directed, and (3) abandoned his position to the detriment of the employer.

C. *Eligibility for Act 534 Benefits*

□ [*McWreath v. Department of Public Welfare*, No. 2102 C.D. 2010 \(Pa.Cmwlt., August 19, 2011\)](#)

➤ **Holding:** Under the law commonly known as "Act 534," employees of Pennsylvania penal and correctional institutions and mental hospitals injured in the course of their employment are entitled to receive their salary until they are able to return to work for their employer at a salary equal to the salary earned at the time of the injury. Act 534 benefits are separate from benefits under the Pennsylvania Workers' Compensation Act. Under Section 1 of Act 534, an employee is entitled to benefits as long as the work-related "disability" prevents the employee's return to the Department's employment at his or her pre-injury salary. Section 1 does not require the actual availability of a position with a Department in order to be eligible for benefits. In addition, unlike the Heart and Lung Act, Section 1 does not require injured employees to have current membership in the workforce to be eligible for benefits.

D. *Expert Testimony*

□ [*O'Neill v. Workers' Compensation Appeal Board \(News Corp. Ltd.\)*, No. 2203 C.D. 2010 \(Pa.Cmwlt., September 15, 2011\)](#)

➤ **Holding 1:** Testimony by a medical expert, which expresses skepticism about a previously-accepted work-related injury/diagnosis, may be competent, credible and sufficient to satisfy the employer's burden in a termination petition. Even if a medical expert admits to uncertainty, reservation or lack of information with respect to medical details, the testimony remains unequivocal provided the expert expresses belief that, in his or her professional opinion, a fact exists.

➤ **Holding 2:** If deposition testimony is not the basis for an award, then the deposition testimony is not related to the matter at issue and therefore, litigation costs associated with the deposition testimony are not reimbursable under Section 440(a) of the Act, 77 P.S. § 996(a).

E. *Hearing Loss Benefits*

- [*McClure v. Workers' Compensation Appeal Board \(Cerro Fabricated Products and PMA Group\)*, No. 388 C.D. 2011 \(Pa.Cmwlt., September 15, 2011\)](#)

- **Holding:** For purposes of a hearing loss claim under Section 306(c)(8)(iv) of the Workers' Compensation Act, 77 P.S. § 513(8)(vi), when more than one employer is responsible for a claimant's hearing loss, each employer is liable for only the hearing impairment caused by each employer. In addition, a corporation is not a successor-in-interest when there was no merger or consolidation, the transaction expressly excluded workers' compensation claims, there is no allegation that the transaction was fraudulent, *i.e.*, to escape liability to pay compensation or defraud creditors, and there is no indication that the sale was not for fair value.

F. *Impairment Rating Evaluations*

- [*Westmoreland Regional Hospital v. Workers' Compensation Appeal Board \(Pickford\)*, No. 1188 C.D. 2009 \(Pa.Cmwlt., *en banc*, September 23, 2011\)](#)

- **Holding:** An Impairment Rating Evaluation (IRE) performed pursuant to Section 306(a.2) of the Act, 77 P.S. § 511.2, must be based upon the claimant's physical condition at the time of the evaluation. Thus, an IRE that assigns a zero impairment rating to a work injury is not invalid because the *AMA Guides* require objective evidence before a condition can be rated. In a dissenting opinion, Judge Leadbetter argued that the Majority's conclusion is contrary to the Pennsylvania Supreme Court's holding in *Diehl v. Workers' Compensation Appeal Board (I.A. Construction)*, No. 26 WAP 2009 (September 29, 2010), which reaffirmed the role of the WCJ as the ultimate fact-finder in a proceeding on a petition to modify a claimant's disability statute based on results of IRE requested by an employer more than 60 days after the claimant's receipt of 104 weeks of total disability benefits.

G. *Misapplication of the Law*

- [*Green v. Workers' Compensation Appeal Board \(US Airways\)*, No. 2539 C.D. 2010 \(Pa.Cmwlt., August 22, 2011\)](#)

- **Holding:** The mere reference to the "degenerative nature" of a claimant's injury is insufficient to rule out "work-relatedness." To the contrary, a degenerative condition may be activated or accelerated by work-related trauma.

H. *Misrepresentation of Physical Limitations*

- [*Sauer v. Worker's Compensation Appeal Board \(Verizon Pennsylvania, Inc.\)*, No. 1316 C.D. 2010 \(Pa.Cmwlt., August 26, 2011\)](#)

- **Holding:** A claimant is entitled to reinstatement of disability benefits when light-duty employment is terminated, provided the discharge is not based upon the conduct of the claimant. When a claimant misrepresents his physical abilities and is discharged because of this type of misrepresentation, he is not entitled to a reinstatement of disability benefits.

I. *Penalties - Failure to Pay Medical Bills*

- [*CVA Inc. and State Workers' Insurance Fund v. Workers' Compensation Appeal Board \(Riley\)*, No. 2658 C.D. 2010 \(Pa.Cmwlt., October 14, 2011\)](#)

- **Holding:** An employer's unilateral refusal to pay medical bills for an acknowledged work-related injury is a violation of the Act that warrants the imposition of penalties.

J. Positive Work Order Violation

- [**Habib v. Workers' Compensation Appeal Board \(John Roth Paving Pavemasters\), No. 2612 C.D. 2010 \(Pa.Cmwlt., August 12, 2011\)**](#)
 - **Holding:** There are three criteria for establishing a positive work order violation, and precluding an award of benefits: (1) The injury must be caused by the violation of the work order; (2) The employee must actually know about the order; and (3) The order must implicate an activity not connected with the employer's work duties.

K. Presumption of Disease Causation

- [**City of Philadelphia v. Workers' Compensation Appeal Board \(Kriebel\), No. 49 EAP 2010 \(Pa., October 19, 2011\)**](#)
 - **Holding:** An expert opinion is not sufficient to rebut the presumption of disease causation under the Workers' Compensation Act, 77 P.S. §§ 1-1041.4; 2501-2626. Thus, an expert's opinion does not constitute substantial competent evidence when it is based upon unfounded supposition, rendering it legally insufficient to overcome the presumption of disease causation. In this case, the employer presented the testimony of an expert who concluded that the decedent's contraction of Hepatitis C was drug-related based solely upon one note in the decedent's medical records written in 1971.

L. Psychological Injuries

- [**PA Liquor Control Board v. Workers' Compensation Appeal Board \(Kochanowicz\), No. 760 C.D. 2010 \(Pa.Cmwlt., en banc, September 20, 2011\)**](#)
 - **Holding:** In a claim for a psychological injury, a claimant must establish that the injury was the result of abnormal working conditions not "normal" in the claimant's job. Because of the frequency of liquor store robberies, as well as the training provided to employees regarding store robberies, robberies of liquor stores are a normal condition for retail liquor store employment in today's society. Thus, a claim for a psychic injury following a gun point robbery must fail. In a dissenting opinion, Judge Cohn Jubelirer argued that the majority opinion overemphasizes the role played by the foreseeability of any given workplace event, transforming them into normal working conditions.

M. Supersedeas Fund Reimbursement

- [**GMS Mine Repair & Maintenance, Inc. v. Workers' Compensation Appeal Board \(Way\), No. 92 C.D. 2011 \(Pa.Cmwlt., October 7, 2011\)**](#)
 - **Holding:** Only the liable employer is entitled to reimbursement from the Supersedeas Fund. Thus, when a defendant is determined not to be the responsible employer, it cannot receive Supersedeas Fund reimbursement and must instead seek reimbursement from the otherwise responsible party.

N. Termination of Benefits

- [**Miller v. Workers' Compensation Appeal Board \(Peoplease Corp., Arch Insurance Co. and Gallagher Bassett Services\), No. 204 C.D. 2011 \(Pa.Cmwlt., October 11, 2011\)**](#)
 - **Holding:** An employer must present unequivocal medical testimony that the claimant has fully recovered in order to be entitled to a termination of benefits.

O. Undocumented Alien

□ [Kennett Square Specialties and PMA Management Corp. v. Workers' Compensation Appeal Board \(Cruz\), No. 636 C.D. 2011 \(Pa.Cmwth., October 19, 2011\)](#)

- **Holding:** A claimant's status as an undocumented alien worker does not preclude him from receiving disability under the Workers' Compensation Act. When it is shown, however, that the claimant is capable of performing some work, albeit in a modified capacity, the employer is entitled to a suspension of benefits because of the claimant's undocumented status, and is not obligated to show job availability because it is presumed that an undocumented alien cannot work in this country.

P. Unreasonable Contest

□ [Grady v. Workers' Compensation Appeal Board \(Lutz\), No. 16 C.D. 2011 \(Pa.Cmwth., August 5, 2011\)](#)

- **Holding:** In a decision that conflates the longstanding case law, the Court holds that an employer's failure to pay benefits when due warrants the imposition of penalties, but not a finding of unreasonable contest; the Court also held that forcing a claimant to prove things that are not legitimately disputed constitutes an unreasonable contest. In so ruling, the Court does not explain how, as in this case, where an employer does not present any medical evidence, that does not constitute requiring a claimant to prove something that is not legitimately disputed. A Petition for Allocatur has been filed.

Q. Untimely Appeal - Certificate of Mailing

□ [Mills v. Workers' Compensation Appeal Board \(School District of Harrisburg\), No. 1958 C.D. 2010 \(Pa.Cmwth., August 15, 2011\)](#)

- **Holding:** When filing a document with an appellate court, Pa.R.A.P. 1514 requires a party to use a United States Postal Service Form 3817 Certificate of Mailing; the form must identify the case to which it pertains and must either be included in the mailing or mailed separately to the Prothonotary. If a party does not comply with these requirements, the document will be deemed to be filed on the day it is received. While this case follows most of the prior decisions, it is inconsistent with the Appeal Board decision in *Bates v. Workers' Compensation Appeal Board (Cheltenham Twp.)*, A07-2300 (December 26, 2008) in which [the Law Offices of Daniel J. Siegel, LLC assisted counsel for claimant](#) and the Board held:

We determine that the Appeal was timely under Section 423(a) because, as it was stamped as received by the Board on November 8, 2007 and it was delivered to the Board through the mail, it logically would have to have been placed in the mail by Claimant on or before November 7, 2007, making the filing I by mail timely as performed within twenty days of circulation of the WCJ's I Decision. We note that, while our Regulations provide that filing by mail is "deemed complete" upon deposit in the mail as evidenced by a United States Postal Service postmark, that regulation does not state that proof based on the presence of a United States Postal Service postmark is the *exclusive* means of establishing timely filing by mail but merely a "safe harbor" in which an appeal will be found to be timely filed. We conclude that in these circumstances, where an Appeal would logically have to have been placed in the mail within twenty days of the circulation of the WCJ's Decision based on the time-stamped date of receipt by the Board, timely filing by mail can be established absent a United States Postal Service postmark, and we therefore deny Defendant's Motion to Quash.

R. *Withdrawal From the Workforce/Voluntary Retirement*

☐ [*Department of Public Welfare/Norristown State Hospital v. Workers' Compensation Appeal Board \(Roberts\), No. 1677 C.D. 2010 \(Pa.Cmwlt., June 21, 2011\)*](#)

- **Holding:** A worker who (1) sought and received a retirement and disability pension *that precluded him from working*, and (2) was capable of sedentary work but did not look for work has voluntarily withdrawn from the workforce, thereby entitling the employer to a suspension of benefits.

Remember, visit *Pennsylvania Legal Research Links*,
and make www.palegallinks.com your home page for Pennsylvania research.

The screenshot shows a Microsoft Internet Explorer browser window displaying the website <http://www.palegallinks.com/>. The browser's address bar shows the URL, and the page title is "Pennsylvania Legal Research Links". The website content includes a navigation menu with links to Home, Philadelphia Legal Websites, Pennsylvania Legal Websites, Dan Siegel's Summaries of Appellate Decisions, Philadelphia Government Websites, Pennsylvania Government Websites, Pennsylvania County Websites, and Find Your Pennsylvania Legislator. Below the navigation menu, there is a sponsorship notice: "Sponsored by Integrated Technology Services, LLC and The Havertown, Pennsylvania Law Offices of Daniel J. Siegel, LLC". The main content area features a "Welcome to Pennsylvania Legal Research Links" message, identifying it as the user's home page for Pennsylvania legal research. The welcome message includes a brief description of the website's purpose and provides links for finding state and federal courts, agencies, and elected officials. A sidebar on the right contains "Popular Links" and "Federal Court Links" sections. The footer of the website provides contact information and copyright details for Integrated Technology Services, LLC and the Havertown, Pennsylvania Law Offices of Daniel J. Siegel, LLC.