



**“Back to the Future” – Revisiting the Injury
Description on Past NCP Forms.**

by Richard A. Estacio

The Pennsylvania Supreme Court has ruled that a claimant need only file a review petition to add new work injuries to an injury already accepted in an NCP – a claim petition is not necessary. On April 14, 2005, the Pennsylvania Supreme Court handed down its long-awaited decision in Jeanes Hospital v. WCAB (Hass), J-90-2004 (filed April 14, 2005). In doing so, it reversed the Commonwealth Court’s previous ruling, which had held in 2003 that where an employer had accepted an initial injury via a Notice of Compensation Payable (NCP), and thereafter the claimant sought to add new injuries which first arose only after the issuance of the NCP, the claimant must file a claim petition, subject to the time limitations set forth in §315, 77 P.S. §607 (3-year statute of limitations). The Supreme Court has now ruled that a claimant need only file a petition to review, and the filing of a claim petition is unnecessary. This ruling has significant implications for employers.

By way of background, the claimant in Jeanes Hospital was a nurse who was injured when she attempted to move a ventilator-dependent patient on August 31, 1995. The employer accepted the injury via NCP and described the claimant’s injury therein as “low back.” Over four years after the incident, the claimant filed a Petition to Review the NCP to include shoulder injuries, fibromyalgia, thoracic outlet syndrome, and depression.

In the Commonwealth Court’s view, seeking to add these new and distinct injuries so long after the initial incident would be unfair to the employer, and the claimant should instead be

bound by the 3-year statute of limitations under §315 applicable to original claim petitions,¹ not the open-ended provision in §413(a), which provides that a petition to review an NCP can be brought “at any time.”

In reversing the lower court, the Supreme Court emphasized the “policy concerns” and humanitarian goals of the WC Act, and reasoned that not requiring claimants to file a claim petition within three (3) years of the date of the incident for these later injuries best achieved these objectives. The flaws in the High Court’s analysis, however, are both legal and public policy based.

Characterizing the third paragraph of §413(a) as “often overlooked,” the Court remarked that a petition filed “pursuant to this section be treated the same ‘as if such petition were an original claim petition.’ ”² Since the Court has seized upon this statutory language to provide the legal underpinning for treating a review petition as if it were an “original claim petition,” then it follows that the Court should have also made the 3-year statute of limitations under §315 applicable to review petitions as well as claim petitions. The court’s failure to so extend its rationale underscores the inherent unfairness in adopting this truncated approach, which benefits only claimants and unfairly prejudices employers.

As noted, this is an unfortunate development for employers. This decision leaves the door wide open for the “layering on” of additional injuries many years after the initial work injury. In light of this decision, we have several recommendations. First, the injury description set forth on the NCP should be narrowly drawn (i.e., suspected disc herniation at L4-5 is better than “lumbar spine injury”). Second, an independent medical examination (IME) should be

¹ It is interesting to note that the Supreme Court incorrectly stated that the applicable statute of limitations is 2 years. Section 315 of the Act provides a 3-year statute of limitations for the filing of a claim petition. The language containing the 2-year time period was retained for historical purposes, and apparently the Court read only that provision and did not see the current 3-year provision, both of which are set forth in §315.

² Jeanes Hospital, 2005 WL 856065, p. 7 *quoting in part* §413(a) of the Act.

considered even in certain “no lost time” (NLT) situations, as “insurance” against a future attempt to amend the NCP. Third, as in every litigated case, strong medical evidence must be developed to refute claimant’s contention that the subsequent injuries are work related. Fourth, employers should attempt to establish the lack of timely notice of the later injuries. On this latter point, the Jeanes Hospital Court specifically mentioned that it would not consider a notice defense since it had not been raised by the employer therein.

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