



News & Case Notes

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EXTENT (cont)

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Carrier's "Failure to Appear" at Hearing Not "Unjustified" Under "006-0071(2)" - Notice of Hearing Not Mailed to Employer/Claim Administrator	Saba Zahilay	4
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HEARING REQUEST

"Good Cause" for Untimely Filed Hearing Request - "Mistakes/Inadvertences" (Due to Claimant's Illiteracy, Dyslexia, Misunderstanding of Process) - Liberally Construed in Light Most Favorable to Party Seeking Relief - Goodwin Court's Interpretation of "319(1)(b)" Applied	Samuel Goodwin II	6
"Rebuttable Presumption" of Untimely Filing - Not "Rebutted" by Date of Cover Letter, Claimant's Attorney's Unsworn Representations, & Carrier's Receipt of Its Copy - No "Certification/ Affidavit" of Mailing or Standard Office Procedures - "319(1)(a)," "005-0046(1)(c)"	Eric C. Kopf	7

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HEARING REQUEST (cont)

Reference to "Denial" Encompassed Carrier's Denials of Both "Aggravation" & "New/ Omitted Medical Condition" Claims - Same "Injury Date," "Claim Number," Date of Denials - Checking of "Aggravation" Box Did Not Narrow Scope of Hearing Request	Christopher Kama	7
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INJURY vs. O.D.

Onset of Condition - Identifiable Event/Discrete Period - "Injury" Theory Applied	Michael M. Kemp	3
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ISSUE PRECLUSION

"Release to Regular Work" For Particular Period - Prior "TTD" Litigation - Not Preclusive Regarding Subsequent "Work Disability" Litigation	Sandra L. Read	4
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Final "Recon Order" Determination of "Non-Med Stat" Had Preclusive Effect on Subsequent Recon Order's "Med Stat" Finding	James A. Hoyt	9
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JURISDICTION

"262(12)(a)" - WCD's "Penalty/Fee" Administrative Decision - "Original" Jurisdiction Concerning Hearing Request Rests with WCD	Sylvano V. Anchietta	4
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"LIER"

Compensability/"Rule of Proof" - "Could Have Contributed" Standard Not Applicable (Applies to Responsibility/"Rule of Assignment")	Manuel Gallardo	10
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MEDICAL SERVICES

"Physical Therapist" Services - Alleged Violation of WCD Rule - Jurisdiction Rests With WCD, Not WCB - "704(3)(a), (b)(B)"/"250"	Jacob E. Mantle	6
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MENTAL DISORDER

Employment Conditions ("Groping" By Customer, Targeted/Harassed by Supervisor/CoWorkers) - Not "Generally Inherent" in Every Working Situation - "802(3)"	Grant Smith	6
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"Manner" in Which Claimant Was Treated at Work (Demeaned, Belittled, "Stalked") - Not "Generally Inherent" - "802(3)(b)"	Jessica R. Cilione	10
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OCCUPATIONAL DISEASE

Claimant Required to Prove Existence of “Condition” (Not Merely “Symptoms”) - Not Required to Prove “Specific Diagnosis,” Unless Expressly Claimed	Yolanda S. Beverly	8
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OWN MOTION

Hearing Referral - Carrier Did Not Provide “Discovery” - Insufficiently Developed Record – “012-0040(3)”	Modesto A. Valencia	3
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PENALTIES

“WCD” Jurisdiction - “262(11)(a)” - Although Hearing Request Referred to “Other” Issues, Record Established “Penalties/Attorney Fees” Were Sole Issues When Request Filed	Andre L. Garnett	4
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“268(5)(g)” - Increased PPD Award From Recon Order - Based on “Info” That Carrier Should Have Known at Claim Closure	Sandra L. Read	4
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Carrier’s Acceptance of “Right” Epicondylitis (Following Litigation Order Finding “Bilateral” Epicondylitis Compensable) Found Unreasonable - No “Amounts Then Due” to Base Penalty - “262(11)(a)”	Sean S. Edmunson	6
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“268(5)(f)” - Unreasonable Claim Closure - Discrepancy in “AP” Impairment Findings Not Clarified Before Issuance of “NOC”	David L. Lambert	10
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PREMATURE CLOSURE

“AP” Did Not Specifically Concur With Examining Physician’s “No Impairment” Report - Not a “Qualifying Statement” - “Insufficient Information” to Close Claim - “030-0020(2)(a)”	Guadalupe Gonzalez-Ramirez	2
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“Insufficient Info” to Determine Impairment (“030-0020(2)(b)”) - “Preponderance of Medical Opinion”/“Med Stat” Rule N/A (“030-0035”)	Ryan Marchand	3
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Accepted Condition (Including Direct Medical Sequelae) Must Be “Med Stat” at Claim Closure	James A. Hoyt	9
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PREEXISTING CONDITION

“Diabetes” (Diagnosed/Treated Before Work Injury) Was “Active Contributor” of Need for Treatment for “Combined” Foot Ulcer Condition - “Delay in Treatment” Not a “Causal” Factor, But One of Several “Components” of Diabetes (Diminished Sensation/Blood Flow, Elevated Blood Sugar, Compromised Healing) - “005(24)(a), (b), (c)”	Guillermo Torres	5
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RECLASSIFICATION

“Disabling” “PTSD” Claim - “Reasonable Expectation of Permanent Disability” - “Psychiatrist” Rating Not Required - “005(7)(c)”	Ross A. Fuhrman	1
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RECONSIDERATION PROCEEDING

“ARU” Authorized to “Abate/Withdraw/Republish” its Order on Reconsideration - W/I 30-Day Appeal Period (Even if Hearing Request Filed)	Melonie Cramer	2
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Untimely “Request” From “NOC” - No “Good Cause” Exception - “268(5)(e),” “030-0145(1)”	Juan Lopez-Ciro	2
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Failure to Attend Medical Arbiter Exam (Without “Good Cause”) - Recon Order is Based on Existing Record (No Arbiter Exam/Report)	Isis R. Harris	6
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Board W/O “Remand” Authority to ARU for Clarification of ARU’s “Apportionment” Inquiry to Medical Arbiter For Supplemental Report - “Apportionment” Inquiry Relevant for “Combined Condition” Claims, “Denied/Superimposed” Conditions, & if Worker’s Condition Not Caused, in Any Part, by Compensable Injury	Joel E. Johnson	12
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Board W/O “Remand” Authority to ARU for Clarification of ARU’s “Apportionment” Inquiry to Arbiter for Supplemental Report - “Apportionment” Inquiry Relevant for “Combined Condition” Claims, “Denied/Superimposed” Conditions, & if Worker’s Condition Not Caused, in Any Part, by Compensable Injury - Challenge to Arbiter’s Findings (W/O Closing Evaluations of Prior/Current Injuries) Not Raised to ARU at “Recon” Level	Tanya M. Jones	12
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REMANDING

For ALJ Ruling on Unaddressed “Reopen Record” Request/“Waiver” Issue - “295(5)”/“007-0025”	Robert J. Marsh	2
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RESPONSIBILITY

"LIER" - Claimant Could Assert "Impossibility/Sole Cause" Defense for "Unjoined" "Presumptively Responsible" Employer	Thomas L. Chenoweth	1
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SCOPE OF DENIAL

Disputed Issue Concerned Denial of Injury Claim for Knee Condition - Specifically Diagnosed Conditions Neither Expressly Denied Nor Raised at Hearing	Joseph E. Koubek	8
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STANDARDS

Work Disability - Claimant Not Released to "At Injury" Job - Based on Job Description, "Agreed" Job Analysis - "214(2)," "726(4)(f)(E)"	Sandra L. Read	4
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Work Disability - "BFC" - Claimant's Affidavit Regarding "At-Injury" Job Considered as Corroboration of "DOT" Description	David L. Lambert	10
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SUBJECT WORKER

"LHWCA" Exclusion ("027(4)") - Not Applicable, Record Did Not Establish "LHWCA" Claim Conclusively Determined	Thomas L. Chenoweth	1
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Injury While Performing Unpaid Teaching Assistant Duties - No Reasonable Expectation of Remuneration - "005(30)"	Joshua Wuhrman	10
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SUPPLEMENTAL DISABILITY

Hearing Request (Referring to Employer/Claim Administrator) Encompassed ComPro's "Ineligibility" Determination; "Verifiable Documentation" Untimely Provided	Mackenzie Wageman	3
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THIRD PARTY DISPUTE

"Malpractice" Settlement with Former Attorney - Stemmed from "Third Party" Action - Settlement Proceeds "Lienable"	Manuel T. Resendiz	1
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"NCE" Statutory Claim Agent for "WCD" - Initial Claim Acceptance Revoked via "DCS" - No "Paying Agency" Because No "Compensable Injury" - Claimant's Settlement Not Subject to "Third Party" Lien	Toni M. Dover	7
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TEMPORARY DISABILITY

Leaving "Modified Job" - Claimant Misunderstood "AP" Work Restrictions - "Lost Wages" Not "Due to Compensable Injury"	Dave Morgan	11
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TTD

Prior "Non-MCO" "AP's" Time Loss Authorization "Open Ended" - No "MCO/AP" Later Terminated Authorization - Claimant Did Not Continue to Seek Care After "MCO Notice" - "262(4)(i) "Termination" Authorization Not Applicable	Freiherr George Von-Bothmer Zuschwegerhoff	5
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"Rate" Calculation - "Irregular Hours" - "Average Weekly Wage" Between New "Collective Bargaining Agreement" & Injury Date - "New Wage Earning Agreement" - More Than Change in Rate of Pay - Former "060-0025(4)(a)"	Mohammad Abed-Rabuh	6
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"AP" Retracted "Modified Job" Offer - Carrier Did Not Confirm That "AP" Continued to Approve "Modified Job" - Carrier Not Entitled to Terminate TTD - "268(4)(c)," "060-0030(3)(c)(E)"	Ian M. Reoch	8
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WORK DISABILITY

"SVP" - Combination of "DOTs" for "At Injury" Job - Based on Job Description & Vocational Expert's Report, Corroborated by Claimant's Affidavit - "035-0012(5)"	Yumiko Kaminishi	11
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WORKER REQUESTED MEDICAL EXAMINATION

No Entitlement to WRME - "Records Review" IME Done Prior to Denial - Subsequent IME "Exam" Done - Denial not Based on the "Exam" IME - WCD Denial of WRME Affirmed	Julie A. Dellinger	1
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