

Inside Workers Comp NY

CORRECTION

Legal decisions, Polls, Commentary and Analysis, News Reports and Bulletins, Questions and Answers about the New York State Workers Compensation Board and system, for attorneys, carriers, employers, claimants, doctors and third party vendors.

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Dear Friend,

The New York State Workers Compensation Board, perhaps in response to my nudging last week, has just published **four new Full Board Review decisions**, filed April 10, 2010 and are undoubtedly from the March 16, 2010 meeting. [Sorry, some of the emails sent over the weekend included an incorrect linking address. The above link will now take to you to proper page.]

Before I detail what they are, a few notes are in order:

1. The Board has deleted their prior postings from the January meeting but on my website, I will keep all of the FBR's posted, which can be indexed from the Full Board Review page which is on the DECISIONS PAGE.
2. The brief summary posted on the FBR's page will be taken directly from the decision itself but on occasion I will make a comment - see below. However, I will take any questions from you as to the meaning or impact of these decisions as viewed by an insider.

There is a total mix of cases in terms of issues and reversals/affirmances, etc.

All four were mandatory as there was one commissioner who dissented on each of the four cases. Do remember that on those MOD's in which there is a dissent, the losing side must be given a full board review if they ask for one. Otherwise it is at the discretion of the Board and it seems that fewer are being considered in order, most likely, to reduce the work load of the commissioners. And those FBR's which are denied are read, at this time, only by Vice Chairman Libous - none of the other commissioner are aware of cases in which one of the parties seeks on a non-mandatory review, something which I think is in violation of WCL which requires that a board panel make the decision, not one omnipotent commissioner.

In three cases, the FBR's affirmed the majority of the board panel and in one it reversed, in effect agreeing with the minority.

In two cases, the final FBR's went against the law judge and two supported the law judge.

Issues were:

- ANCR
- Notice per WCL §18
- Was surgery as result of the initial injury
- Voluntary withdrawal for the labor market
- Causally related death

Enjoy.

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BULLETIN - BULLETIN

Thanks to Ron Balter for bringing to our attention via LinkedIn the following:

In an attempt to save the state's taxpayers money the state plans to cancel hearings on Fridays statewide effective May 21, 2010 to furlough the Judges. The Board as an agency will remain open five days a week but will only conduct hearings four days a week. This despite the fact that the Board is not funded by tax dollars.

Will the carriers demand a 20% refund on the assessments for as long as the Board operates at 80% of what they were assessed for? And if the carriers do not ask for a refund are they properly protecting their policyholders and shareholders? the fact that the Board plans to stop hearings on Fridays as part of its participation in Governor Patterson's proposed furlough program.

BUT the salaries paid to the law judges, as well as the entire Board staff, do not come from the State budget but come from assessments against carries who sell workers compensation insurance.

May we assume that the response from the powers that be would be "Huh?"

By the way, does this furlough and corresponding pay cut also apply to the commissioners?

FULL BOARD REVIEWS

Case Summaries & Complete Decisions



In one case in which the Full Board Review reversed both the Law Judge and the majority on the Board Panel, it is unfortunate that there was a major typo.

After noting almost a dozen times that the claimant's spouse died in February 2003, the final Full Board decision makes reference to a hospitalization in May 2003, three months after the date of death.

A minor typo? Maybe.

But what if the losing party appeals on the grounds that this lack of attention to this detail could also mean that a similar lack of attention was given to other key facts in the case, and that had the Board properly read the file, the decision could have come out the other way.

NOT ACCEPTABLE!!

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