

(b) A copy of the motion and supporting statement with a copy of the original claim petition shall be served upon the party sought to be joined and all other parties.

(c) It shall be the responsibility of the moving party to give notice of any hearing of the motion to the party sought to be impleaded.

(d) Such motion shall be granted only where the moving party has satisfied the Judge of Compensation that there exists a substantial likelihood that the party to be joined is or may be liable for compensation benefits to the petitioner.

(e) If the order sought is granted, the order shall be served upon the party joined forthwith who shall file an answer within 30 days of the date of service of the order.

(f) In cases where it appears that the only issue involved is which carrier or employer is liable to the petitioner for the benefits sought, the Judge of Compensation may order the moving party to pay the benefits in whole or in part as a condition of joinder subject to an order for reimbursement, if another party is held to be liable for such benefits.

(g) If a respondent knowingly files an incomplete, inaccurate or frivolous motion for third party joinder, such circumstances may be considered in the apportionment of any counsel fee awarded, in addition to a counsel fee not to exceed \$200.00 to each opposing counsel of each party sought to be joined.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Standard of substantial likelihood deleted at (c); discretionary assessment allowed at (f).

Amended by R.1997 d.110, effective March 3, 1997.
See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

Added (c) and recodified former (c) through (f) as (d) through (g).

Case Notes

Employer was not entitled to implead claimant's subsequent employers. *Kirkpatrick v. National Cleaning Contractors, Inc.*, 93 N.J.A.R.2d (WCC) 151.

Unlikelihood of other party's liability required denial of impleader motion. *Hegel v. Dutch Country*, 93 N.J.A.R.2d (WCC) 115.

12:235-5.5 Conditions allowable for discovery

(a) Discovery, except a deposition for preservation of testimony, may be allowed in those contested cases where there are issues in dispute in addition to the nature and extent of petitioner's temporary or permanent disability.

(b) All discovery shall be concluded not less than 10 days prior to the first listed date for plenary trial.

12:235-5.6 Discovery

(a) Interrogatories shall be allowed without motion in fatal cases.

(b) Interrogatories shall be allowed without motion where the injured worker is treated by the employer's physician and where medical information is not available to the worker.

(c) The employer shall be required to furnish or make available for inspection and copying all records of medical treatment, examinations and diagnostic studies authorized by the respondent. The respondent shall have the same right when the worker is treated by his or her own physician. If either party fails to furnish said information within 30 days of receipt of demand of records, it may be responsible to reimburse its adversary for the cost of procuring the same.

(d) Interrogatories shall be allowed without motion in cases of review or modification of a prior award on the grounds of increase or decrease of disability. The party seeking such review or modification shall furnish the adversary party with a chronology of the pertinent events from the date of the last award or judgment to the filing of the petition for the increase or decrease of disability indicating the essential facts upon which the petition is grounded.

(e) Interrogatories shall be allowed without motion in occupational disease cases on standard form interrogatories as set forth in N.J.A.C. 12:235-14.2.

(f) Interrogatories in those cases allowed without motion shall be served by the petitioner not later than 30 days after service of the answer to the petition and by the respondent not later than 15 days after the service of its answer. Answers to the interrogatories shall be served within 45 days after service of the interrogatories. A Judge of Compensation upon motion for good cause may enlarge the time provided for service of answers. Supplemental interrogatories may be allowed on motion for good cause shown.

(g) Interrogatories may be allowed in other cases, upon motion, for good cause shown.

(h) Depositions of witnesses may be allowed, upon motion, for good cause shown.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Deposition of witnesses allowed.

Amended by R.1997 d.110, effective March 3, 1997.
See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

In recodified portion of (b) as (c); in (c), added last sentence; recodified former (c) through (g) as (d) through (h); and in (e), amended N.J.A.C. reference.

12:235-5.7 Testimony of injured or ill petitioner by depositions

(a) A petitioner seeking compensation who is in such a physical condition that it is imperative that his or her testimony be taken by deposition, in order to preserve the person's rights or those of his or her estate or dependents, may give a deposition.

(b) The deposition may be ordered by a Judge of Compensation upon notice to the adverse party and taken before a certified shorthand reporter.

(c) The appearance by an attorney for the respondent shall not constitute a waiver of any of the rights of the respondent or its insurance carrier.

(d) A report from a physician shall be attached to the application to take depositions stating the medical basis upon which the deposition is sought.

(e) A deposition for this purpose may also be taken by consent of all parties, provided there is a report from a physician stating the medical basis upon which the deposition is sought.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Petitioner's deposition allowed if medical basis provided.

12:235-5.8 Certification of pre-existing conditions

(a) In all cases in which the petitioner claims total and permanent disability, the petitioner or petitioner's attorney shall, prior to the first hearing date, furnish to all other parties a written certification as to the existence of any condition pre-existing the last claimed compensable episode.

(b) The certification shall include the names and addresses of physicians and institutions furnishing treatment or examinations for any such pre-existing conditions.

(c) The petitioner may in lieu of furnishing actual records or reports, furnish executed authorizations for the records and reports of each such physician and institution.

(d) Copies of all records and reports so obtained by the respondent shall be furnished to the petitioner or petitioner's attorney within 10 days of receipt.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Stylistic changes.

12:235-5.9 Pretrial conference

(a) In any formal proceeding, the Division shall schedule a pre-trial conference where the following shall be accomplished:

1. All medical reports shall be exchanged;
2. The Judge and the attorneys shall agree upon the type of examination(s) required by each party;
3. The Judge and the attorneys shall make a sincere effort to limit issues; and
4. A pre-trial memorandum on a form prescribed by the Division shall be executed; or
5. There shall be an adjournment upon good cause shown.

(b) Incomplete medical examinations by either party shall be considered good cause for the adjournment of a pre-trial conference; provided, however, that no such adjournment shall be granted unless each party requesting the adjournment shall supply to the Judge the name(s) of the examining physician(s) and the date(s) of the examination(s).

(c) Any case set down for pre-trial on more than one occasion, if not ready because of failure of respondent to comply with this section, shall be placed on the trial list, and in the event an award is made, such failure shall be considered in the apportionment of the counsel fee. This provision shall not apply in any case in which the failure to have medical examinations is due to petitioner's neglect or refusal to appear for the examinations, in which event the case shall be marked, "not moved."

(d) Any case listed pre-emptorily, in which no appearance is made on behalf of the petitioner and which is not adjourned for good cause, shall be marked "not moved" and administratively discontinued. The case shall not be restored to the calendar except on notice of motion, provided however, the Judge of Compensation may for good cause and on the Judge's own motion restore a case marked "not moved" to the trial or pre-trial calendar. The counsel fee normally allowed shall be reduced within the discretion of the Judge of Compensation for each time a case has been marked "not moved" when the attorney for the petitioner is responsible for such marking. When a case has been marked "not moved" because of the petitioner's failure without good cause to submit to a physical examination at the request of the respondent, the petitioner may be penalized in the apportionment of fees at the discretion of the Judge of Compensation.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Medical examination requirements added.

Amended by R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

In (d), substituted "Judge of Compensation" for "official presiding".

Case Notes

Compensation judge clearly abused his discretion by refusing to continue hearing on claimant's motion when counsel received copy of employer's medical expert's report moments before hearing. *Waters v. Island Transp. Corp.*, 229 N.J.Super. 541, 552 A.2d 205 (A.D.1989).

Workers' compensation judge must respect and ensure due process and fundamental rights of litigants. *Waters v. Island Transp. Corp.*, 229 N.J.Super. 541, 552 A.2d 205 (A.D.1989).

There was no waiver of cross-examination of petitioner's medical witness by failure of request in pre-trial memorandum (citing former N.J.A.C. 12:235-4.16, 5.55, 5.56 and 5.62). *Indelicato v. Town of West New York*, 170 N.J.Super. 563, 407 A.2d 837 (App.Div.1979).

12:235-5.10 Conduct of formal hearings

(a) Attorneys representing both petitioners and respondents shall provide sufficient personnel to handle all lists expeditiously.

(b) Only an attorney at law licensed to practice in the State of New Jersey shall act as attorney of record, or appear and prosecute or defend any action in any formal hearing.

(c) Hearings shall be scheduled by the Director or a designated representative of the Director.

(d) The Judge of Compensation shall, at the commencement of the day, call the list of cases in open court. No adjournment shall be granted unless there is found to be good cause. No adjournment shall be granted for medical examination unless the name of the examining physician and date of examination are supplied.

(e) Trials shall commence and continue in a timely manner subject to scheduling constraints of the Division. Said scheduling may be accelerated as ordered by the Director, the Supervising Judge of the vicinage or the Judge of Compensation to whom the case has been assigned.

(f) All formal hearings or applications shall be conducted in open court, except when the Supervising Judge of the district deems the matter to be so delicate that the hearing of a party or witness in camera is warranted. When this occurs, a stenographic record shall be made.

1. Bifurcation of any trial may be permitted by the Judge of Compensation. The order of proof shall be determined by the Judge of Compensation to whom the case is assigned.

(g) All formal hearings including motions where a record is required shall be recorded stenographically by a certified shorthand reporter subject to such limitation as may be provided by statute.

1. Upon a determination reached at the conclusion of all hearings, including motions, the cost for the attendance of the certified shorthand reporter shall be assessed by the Judge of Compensation. Transcripts of the testimony may be obtained from the certified shorthand reporter at the official scheduled rates.

(h) When there are pending in the Division two or more formal proceedings involving a common question of law or fact arising out of employment by the same employer or different employers, or out of the same accident or series of accidents, or out of the same exposure or series of exposures, to causes of occupational disease, the Judge of Compensation or the Director may, on motion, or on the Judge's own initiative, order a joint hearing of any or all matters in issue. The Director or the Judge of Compensation may order all such proceedings consolidated, and have such orders concerning proceedings designed to avoid unnecessary costs or delay. The order shall state the county in which the consolidated proceedings are to be heard.

(i) Upon the commencement of a formal hearing, counsel may make opening statements on behalf of their respective

clients. All matters agreed upon shall be stipulated upon the record. However, this shall not bar the parties from making further stipulations as the trial proceeds, until the close of the formal hearing.

(j) Counsel may make closing statements or file post-trial briefs. Post-trial briefs, if ordered or volunteered, shall be submitted within 15 days after the conclusion of the hearing. Each party thereafter may have seven days to file a reply brief, if so desired or ordered.

(k) Prior to the testimony of an expert witness, the producing party shall provide the Judge of Compensation and opposing counsel with a written curriculum vitae of the witness.

(l) Questions calling for the opinion of an expert witness need not be hypothetical in form, unless the Judge of Compensation in the Judge's discretion so requires. If the hypothetical question is submitted in written form, counsel shall provide sufficient copies for the Judge of Compensation, opposing counsel, the witness and the stenographer, and the hypothetical question may be marked as an exhibit in the proceedings in lieu of reading it to the witness.

(m) All medical experts for both parties who regularly examine petitioners to determine the nature and extent of their disability shall adhere to the vacation schedules established annually by the Director. If such medical expert is not available to testify because of an unexcused absence at any other time, the Judge of Compensation may require the party for whom such medical witness is to appear, to arrange for an examination and appearance at trial by another medical expert.

1. A medical expert who regularly examines petitioners means a medical expert who performs a minimum of 25 workers' compensation examinations per year.

(n) All exhibits shall be marked with an identifying number, the date of submission and initials of the court reporter.

1. An exhibit list shall be prepared by the Judge to be retained in the file and forwarded to the Division for microfilming and storage.

2. At the conclusion of the hearing, the Judge shall determine which exhibits are to be retained in the file and forwarded to the Division for microfilming and storage.

3. All other exhibits shall be returned to respective counsel for retention until the expiration of time for appeal or 20 years as determined by the Judge.

(o) When a deposition has been taken to preserve the testimony of an injured or ill petitioner the introduction into evidence of such deposition shall be limited to those cases where the deponent cannot appear because of medical inability to appear or death or where all parties consent to the introduction of the deposition into evidence.

(p) Judges of Compensation may refer the petitioner to the Division of Vocational Rehabilitation when warranted.

(q) Prior to testifying, a witness shall be administered an oath by the Judge of Compensation or by a certified shorthand reporter qualified to administer oaths. Because of religious beliefs, a witness may affirm in place of an oath.

(r) Forms of subpoena, bearing the seal of the Department, shall be made available at all district offices. An attorney-at-law of New Jersey may prepare a subpoena and authorize its service, in accordance with the Rules of Civil Practice of New Jersey, in the name of the Judge of Compensation assigned to the case, to compel the attendance of witnesses and the production of books and papers and such other items as shall be subject to production.

(s) When a party has unreasonably failed to present its case in a timely fashion, the Judge of Compensation may, upon 21 days notice, close the proofs as to that party.

(t) All reserved decisions shall be rendered by the Judge of Compensation within 30 days from completion of the last day of hearing, or within 30 days from the date of filing of briefs. Additional time to render reserved decision may be allowed only on approval of a written application to the Director.

(u) The Judge of Compensation shall notify all parties by letter of the decision, detailing its terms and the name of: the reporter and the certified shorthand reporting firm to which it has been dictated; centralized word processing center; or other method by which the opinion is produced.

(v) A judgment or an order shall be deemed entered as of the date the judgment or order is signed by the Judge.

(w) (Reserved)

(x) A party proposing the form of judgment or order may forward the original thereof to the Judge who heard the matter and shall serve a copy thereof on every other party together with a notice advising said party that unless they notify the Judge and the proponent of the judgment or order in writing of their specific objection thereto within 10 days after such service, the judgment or order may be signed in the Judge's discretion. If no such objection is timely made, the Judge may forthwith sign the judgment or order. If objection is made, the matter may be listed for hearing in the discretion of the Court.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Moral turpitude removed as standard at (b); bifurcation of trials, accelerated scheduling allowed; post-trial brief form required; medical expert and exhibit retention requirements added; decision schedule changed.

Amended by R.1997 d.110, effective March 3, 1997.
See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

In (h), inserted reference to the Judge of Compensation; inserted new (s); recodified former (s) through (u) as (t) through (v); in (v), inserted references to an order and deleted reference that judgment be final; and added (x).

Case Notes

Trial judge's opinion followed by finding that claimant was totally disabled, was insufficient to allow meaningful review. *Lister v. J.B. Eurell Co.*, 234 N.J.Super. 64, 560 A.2d 89 (A.D.1989).

Compensation judge clearly abused his discretion by refusing to continue hearing on claimant's motion when counsel received copy of employer's medical expert's report moments before hearing. *Waters v. Island Transp. Corp.*, 229 N.J.Super. 541, 552 A.2d 205 (A.D.1989).

Workers' compensation judge must respect and ensure due process and fundamental rights of litigants. *Waters v. Island Transp. Corp.*, 229 N.J.Super. 541, 552 A.2d 205 (A.D.1989).

There was no waiver of cross-examination of petitioner's medical witness by failure of request in pre-trial memorandum (citing former N.J.A.C. 12:235-4.16, 5.55, 5.56 and 5.62). *Indicato v. Town of West New York*, 170 N.J.Super. 563, 407 A.2d 837 (App.Div.1979).

Under former N.J.A.C. 12:235-5.62, an employee may not, by waiving cross-examination of employer's medical expert, require the employer to present only the medical expert's report and preclude the employer from calling the expert as a witness. *Vaughn v. State (Div. of Motor Vehicles)*, 151 N.J.Super. 251, 376 A.2d 976 (App.Div.1977).

Self-insured employer was required to reimburse PIP insurance carrier for benefits paid bloodmobile worker injured in automobile accident while traveling between job sites. *Brown v. American Red Cross*, 95 N.J.A.R.2d (WCC) 181.

Exposure to ticks while inspecting building during course of employment did not warrant disability rating for Lyme's disease. *Smart v. Asbersite*, 95 N.J.A.R.2d (WCC) 179.

Contusion of right kneecap in fall during course of employment as patient trainee was too minor to warrant disability rating. *Carpenter v. Yockey Enterprises*, 95 N.J.A.R.2d (WCC) 177.

Injuries to back and right arm in fall over stool during course of employment warranted 12 ½ percent partial/total permanent orthopedic disability. *Gathers v. PVC Container Corp.*, 95 N.J.A.R.2d (WCC) 173.

Lumbar injury in slip and fall while responding to emergency as hotel maintenance man warranted permanent partial disability. *Saleh v. Inn America Hospitality*, 95 N.J.A.R.2d (WCC) 169.

Burns received by waitress while attempting to burn off soiled thread from restaurant uniform arose out of and in course of employment. *Somma v. Crab's Claw Inn*, 95 N.J.A.R.2d (WCC) 167.

Injuries from slip and fall in employer's parking lot at work warranted 15 percent partial/total neurological and psychiatric disability. *Nobilio v. Carriage House*, 95 N.J.A.R.2d (WCC) 163.

Orthopedic and psychiatric conditions resulted from chest trauma to corrections officer during jail fight and warranted permanent total disability rating. *Paylor v. County of Hudson*, 95 N.J.A.R.2d (WCC) 160.

Injury to back while bending supported award for temporary disability and medical treatment, but did not support award for disc-related surgery. *Ciccoello v. Pathmark Supermarkets*, 95 N.J.A.R.2d (WCC) 155.

Back injury during course of employment was cause of overlapping orthopedic and neurological impairments warranting permanent partial disability. *Blanco v. Urethane Roofers*, 95 N.J.A.R.2d (WCC) 151.

Chiropractic treatment was not an intervening cause that broke chain of causation between work of police officer and surgically treated back injury. *Alston v. East Orange*, 95 N.J.A.R.2d (WCC) 146.

Alleged injury sustained in altercation with police officer while engaged in groundskeeping duties were not work related and were not compensable. *McClain v. City of Newark*, 95 N.J.A.R.2d (WCC) 144.

Teacher's head injury when struck by falling object in classroom caused disabling sleep disorder for which total and permanent disability was warranted. *Ferrara v. Manchester Regional High.* 95 N.J.A.R.2d (WCC) 137.

Injury while picking up a ledger at work caused persistent and debilitating back problems and warranted permanent and total disability. *Warrelmann v. Boveri*, 95 N.J.A.R.2d (WCC) 133.

Proceedings in bankruptcy against employer did not stay administrative proceedings against state uninsured fund for workers' compensation benefits. *Zentz v. St. Konstantinos, Inc.*, 95 N.J.A.R.2d (WCC) 132.

Stroke suffered by employee was not a basis for obtaining an occupational disability when no medical evidence established employment as causative factor. *Bowe v. Pettit*, 95 N.J.A.R.2d (WCC) 130.

Expert testimony was insufficient to warrant occupational disability award when employee voluntarily removed himself from work place, received a work pension, age-related social security benefits and gave every appearance of being in good health. *Hutchinson v. United Airlines*, 95 N.J.A.R.2d (WCC) 128.

Injury to clerk in family store was a compensable occupational injury notwithstanding earning of wages. *Loveatz v. Hilltop*, 95 N.J.A.R.2d (WCC) 127.

Injuries sustained by bartender when stabbed by patron arose out of personal animosity and were not compensable. *Horace v. Stokes*, 95 N.J.A.R.2d (WCC) 125.

More creditable testimony of employer's expert precluded employee's compensable disability claim arising from work accident. *Thames v. Laid Law Transit*, 95 N.J.A.R.2d (WCC) 122.

Wage reconstruction was not required absent proof that employee would have been promoted, with a pay raise, and worked overtime but for injury. *Patton v. Holiday Skating*, 95 N.J.A.R.2d (WCC) 118.

Exposure to asbestos and other irritants during employment as machinist and dyemaker materially contributed to development of obstructive and restrictive pulmonary disease. *Drozdz v. Harris Corporation*, 95 N.J.A.R.2d (WCC) 112.

Agreement by employee to forego workers' compensation payment while continuing to receive state disability payments was in accordance with state law and was not prejudicial. *Mahoney v. Marlboro Township*, 95 N.J.A.R.2d (WCC) 109.

Second accident net substantially, but only temporarily, aggravated disability from first accident was not a basis for obtaining additional benefits until original disability returned. *Caldwell v. Millville Hospital*, 95 N.J.A.R.2d (WCC) 100.

Severe burns to right foot from splash and spill of molten aluminum while operating smelting furnace warranted a 35 percent permanent partial total disability of foot for orthopedic residuals. *Batie v. Shiel-dalloy*, 95 N.J.A.R.2d (WCC) 95.

Exposure to dust and mist while grinding quartz in manufacture of eyeglasses was not a basis for obtaining occupational pulmonary disability benefits absent causative proof. *Schultz v. Esco Products*, 95 N.J.A.R.2d (WCC) 93.

Employer was entitled to a reduction in workers' compensation benefits on basis of employee's receipt of Social Security disability benefits for herself and her auxiliary. *Smith v. La Roche*, 95 N.J.A.R.2d (WCC) 89.

Nurse's physical complaints subsequent to disability award for herniated disk were purely subjective and, absent supporting objective medical testimony, were insufficient to establish an increase in disability. *Husar v. Riverview Medical*, 95 N.J.A.R.2d (WCC) 87.

Right of control made injured passenger in pick-up truck employee of landscaping service for workers' compensation purposes. *Royal Insurance v. Pohlman*, 95 N.J.A.R.2d (WCC) 83.

Injury sustained by cook when he fell in parking lot outside restaurant while bringing dirty clothes to car were sustained in course of employment. *Zucker v. Marty's Famous*, 95 N.J.A.R.2d (WCC) 79.

Exposures to chemical cleansers and glue during employment worsened preexisting pulmonary disability and warranted a 50 percent partial total disability. *Monroe v. ISS Building Services*, 95 N.J.A.R.2d (WCC) 77.

Conditions encountered by insurance manager at work were of an orthopedic, pulmonary, cardiovascular, and psychiatric nature and warranted total disability award. *Casey v. Blue Cross*, 95 N.J.A.R.2d (WCC) 71.

Employer at time of traumatic back injury was solely responsible for permanent disability and need for medical treatment. *Reyes v. Rudco*, 95 N.J.A.R.2d (WCC) 67.

Stab wounds received by bartender while acting on behalf of her employer to prevent injury to business invitee were compensable. *Schurer v. Library II*, 95 N.J.A.R.2d (WCC) 65.

Treatment at hospital for foot was not for a work-related injury, but was for a nonwork diabetic condition and was not compensable. *Guastaferrero v. Owens Brockway*, 95 N.J.A.R.2d (WCC) 62.

Employee exposed to fumes and dust in work as a millwright was not entitled to an award for partial total pulmonary disability, but was entitled to a 5 percent disability award for vertigo. *Pinto v. Englehard Metals*, 95 N.J.A.R.2d (WCC) 57.

Medical reports so diminished employee's credibility as to preclude award of disability benefits for slip and fall in course of employment. *Kelly v. Johnson & Johnson*, 95 N.J.A.R.2d (WCC) 54.

Chronic obstructive pulmonary disease, being at least a significant condition contributing to employee's death, was a proper basis on which to award dependency benefits to employee's wife and child. *Remboske v. Homasote*, 95 N.J.A.R.2d (WCC) 48.

Increase in payments for foot disability that was recurring because of walking and standing was not warranted. *Grahl v. Kaiser*, 95 N.J.A.R.2d (WCC) 46.

Causal relationship between welding work and alleged pulmonary disabilities from chemicals was not established. *Martin v. DK Tool & Die*, 95 N.J.A.R.2d (WCC) 41.

Carpenter with his own tools, equipment, and vehicles was nevertheless an employee of contractor for unemployment and temporary disability purposes. *Anthill Construction v. Department of Labor*, 95 N.J.A.R.2d (LBR) 36.

Rheumatoid arthritis and psychiatric sequelae arising from work related trauma were sufficient to cause total disability. *Bobo v. Pater-son Board*, 95 N.J.A.R.2d (WCC) 34.

Injury due to work-related accident was not compensable absent evidence as to its occurrence. *Averos v. GJ Chemical*, 95 N.J.A.R.2d (WCC) 33.

Lifting by baggage handler did not aggravate prior disability for lumbosacral strain. *Owen v. Continental*, 95 N.J.A.R.2d (WCC) 30.

Individuals soliciting mortgages from mortgage banker were not independent contractors, but employees of banker for unemployment and temporary disability purposes during period in question. *Galaxy Mortgage v. Department of Labor*, 95 N.J.A.R.2d (LBR) 27.

Work-related injury to teacher when struck by falling door warranted partial/total disability award. *Wilson v. Plainfield Board*, 95 N.J.A.R.2d (WCC) 27.

Claim of permanent disability with respect to injuries to hand and back in incidents at work was not established. *Thomas v. Magic Rental*, 95 N.J.A.R.2d (WCC) 25.

Right of estate to proceed to proof hearing upon claimant's death for reasons unrelated to disability. *Montrose v. Columbus Hospital*, 95 N.J.A.R.2d (WCC) 24.

Disk injury was compensable notwithstanding three years between work accident and surgeries. *Quinn v. Coca Cola*, 95 N.J.A.R.2d (WCC) 21.

Previous foot fracture did not preclude disability for subsequent amputation of foot. *Rice v. Modern Disposal*, 95 N.J.A.R.2d (WCC) 18.

Truck driver serving interests of employer at time of disability was employee entitled to compensation. *Fulling v. Crown*, 95 N.J.A.R.2d (WCC) 14.

Individual was not an independent contractor, but was an employee for unemployment compensation purposes when no indicia of an independent business was present. *LBK Computer v. Department of Labor*, 95 N.J.A.R.2d (LBR) 13.

Exposure to Bromine during course of employment warranted partial total disability for anxiety stress disorder. *Wegrzynek v. Exxon Chemical*, 95 N.J.A.R.2d (WCC) 12.

Transcriptionists retained by medical transcription service to transcribe and type information from recording tapes in their homes were not independent contractors, but employees of transcription service for unemployment insurance purposes. *Transcriptions Ltd. v. Department of Labor*, 95 N.J.A.R.2d (LBR) 9.

Sheetrockers and tapers performing drywall services were employees of subcontractor for unemployment insurance purposes. *Wayne Construction v. Department of Labor*, 95 N.J.A.R.2d (LBR) 7.

First employer's insurer remained liable absent aggravation of work-related injury in subsequent employment. *Heathcote v. Cape May*, 95 N.J.A.R.2d (WCC) 6.

Subsequent employers not liable for incapacity due to injury and prior employment. *Cook v. Imperial*, 95 N.J.A.R.2d (WCC) 2.

Failure to rehire employee after returning from vacation was not retaliatory as due to filing workers' compensation claim against employer. *Milleman v. Mid-Atlantic Mechanical*, 95 N.J.A.R.2d (LBR) 1.

No retaliatory discharge of employee who filed workers' compensation claim. *Milleman v. Mid-Atlantic Mechanical, Inc.*, 95 N.J.A.R.2d (LBR) 1.

Employee injured in employer's parking lot entitled to recovery; keys failed to open office. *D'Ambra v. Avco Financial Services*, 94 N.J.A.R.2d (WCC) 249.

Flight attendant assaulted by co-employee; disability benefits. *Pelchat v. Continental Airlines*, 94 N.J.A.R.2d (WCC) 244.

Serious back condition; permanent partial disability. *Neves v. Cleve-Tenn Industries, Inc.*, 94 N.J.A.R.2d (WCC) 237.

Mentally handicapped employee; totally disabled; accident during employment. *Williams v. Accurate Bushing Co.*, 94 N.J.A.R.2d (WCC) 231.

Any on-the-job injury or disability; proof. *Awkward v. State of New Jersey*, 94 N.J.A.R.2d (WCC) 228.

Permanent partial disability; psychiatric and dermatological disability experienced during employment. *Gass v. Avalon Plumbing & Appliance*, 94 N.J.A.R.2d (WCC) 224.

Part-time employee; proof of partial permanent disability. *Edge v. United Parcel Services*, 94 N.J.A.R.2d (WCC) 221.

Employee exposed to asbestos; partial permanent disability. *Tiger v. Manville Sales Corp.*, 94 N.J.A.R.2d (WCC) 219.

Psychological disability; not result of employment. *Zubow v. Dean Witter Trust Co.*, 94 N.J.A.R.2d (WCC) 214.

Psychiatric injury; not result of employment. *Halpin v. Commerce Life Insurance*, 94 N.J.A.R.2d (WCC) 212.

Partial disability; exposure to asbestos during employment. *Behm v. Jersey Central Power and Light*, 94 N.J.A.R.2d (WCC) 209.

"Home friend" failed to show that she suffered from a disability permanent in quality and partial in character, and failed to establish the basis for awarding temporary disability benefits. *Mathis, Eula v. New Community Corporation*, 94 N.J.A.R.2d (WCC) 204.

Part-time clerk who tripped over construction material on the public sidewalk in front of a college-owned parking building which was controlled by a Ground Lease tenant was denied her claim against the college. *Burgos v. Essex County College*, 94 N.J.A.R.2d (WCC) 202.

Warehouse employee suffered post traumatic stress disorder and was entitled to temporary disability and partial total disability benefits. *Yaviliak v. Twin County Grocers*, 94 N.J.A.R.2d (WCC) 197.

Widow and minor children were entitled to dependency benefits when officer died from AIDS. *Laugherty v. City of Jersey City*, 94 N.J.A.R.2d (WCC) 194.

Failure to establish that there was an employer/employee relationship between the parties at the time of the accident. *Scillath v. Jed Scott Auto Parts*, 94 N.J.A.R.2d (WCC) 193.

Sewerage plant laboratory technician failed to prove that her employment was a material cause of her pulmonary disability. *Raines v. Passaic Valley Sewerage Commission*, 94 N.J.A.R.2d (WCC) 191.

Senior citizen toll collector who became disabled was entitled to have his wages reconstructed at the rate of hours worked by people doing the same type of work on a full time basis. *Sheridan v. New Jersey Highway Authority*, 94 N.J.A.R.2d (WCC) 187.

Plumber sustained a compensable partial permanent orthopedic disability and a psychiatric disability. *Abrantes v. Achieve Plumbing & Heating*, 94 N.J.A.R.2d (WCC) 185.

Employee's application for modification of prior award of benefits and claim for new injury were appropriately denied. *MacGillis v. Papa Sarris T/A La Mirage & Conair*, 94 N.J.A.R.2d (WCC) 182.

Award of benefits for partial/total disability was appropriate. *Vieira v. Arena Construction*, 94 N.J.A.R.2d (WCC) 180.

Worker's compensation benefits awarded to decedent's grandson. *Mangielle v. Lenox, Inc.*, 94 N.J.A.R.2d (WCC) 178.

Denial of additional worker's compensation benefits for an alleged additional injury was appropriate. *Drost v. Manville Foodtown Store # 2811*, 94 N.J.A.R.2d (WCC) 174.

Sanction imposed against employer; refusing injured employee disability and medical treatment benefits. *Rush v. Ocean Township Board of Education*, 94 N.J.A.R. 2d (WCC) 171.

Award appropriate; asthma exacerbated by exposure to cigarette smoke and fumes. *Nardone v. Georgia-Pacific Company*, 94 N.J.A.R.2d (WCC) 165.

Denial of additional worker's compensation benefits. *Sayres v. J. Spinelli & Sons Excavating*, 94 N.J.A.R.2d (WCC) 163.

Permanent partial disability; Lyme disease. *Salender v. Jersey Central Power and Light Company*, 94 N.J.A.R.2d (WCC) 157.

Denial of worker's compensation benefits to intoxicated volunteer member of first aid squad was appropriate. *Cuba v. Kearny Volunteer Rescue Squad, Inc.*, 94 N.J.A.R.2d (WCC) 153.

Award of worker's compensation benefits to live-in domestic employee was appropriate. *Wint v. Malien*, 94 N.J.A.R.2d (WCC) 149.

Denial of worker's compensation benefits; injury occurred during commute to work. *Flanagan v. Avis Rent-A-Car Systems*, 94 N.J.A.R.2d (WCC) 146.

Total permanent disability and medical benefits appropriate; employment unlikely to work in the future. *Fisher v. Hygrade Furniture*, 94 N.J.A.R.2d (WCC) 138.

Dismissal of claim for increased disability was appropriate. *Lanno v. Jersey Shore Medical Center and Monmouth Dental Center*, 94 N.J.A.R.2d (WCC) 129.

Award for partial/total disability; objective/demonstrable medical evidence test. *Dalfonzo v. Keansburg Ice & Fuel Co., Inc.*, 94 N.J.A.R.2d (WCC) 126.

Award to employee suffering from lung disease was appropriate. *Neiber v. Ingersoll-Rand Company*, 94 N.J.A.R.2d (WCC) 121.

Award for partial/total disability; orthopedic and neurological injuries. *Kane v. PMC Specialty Group*, 94 N.J.A.R.2d (WCC) 117.

Employee was entitled to worker's compensation benefits while engaged in a weight loss program. *Jaronko v. Bishop-Sanzari, Inc. & R. A. Hamilton*, 94 N.J.A.R.2d (WCC) 115.

No partial/permanent disability; injury did not interfere substantially with employee's life. *Intelli v. The Hose Shop*, 94 N.J.A.R.2d (WCC) 113.

Award of temporary disability payments and medical benefits was appropriate. *Keratt v. New Jersey Turnpike Authority*, 94 N.J.A.R.2d (WCC) 111.

Award made to employee with prior heart disorder who suffered partial/total disability was appropriate. *Doyle v. Highlands Borough*, 94 N.J.A.R.2d (WCC) 106.

Additional worker's compensation award to employee for the same injury was appropriate. *Landry v. Auto Life Management*, 94 N.J.A.R.2d (WCC) 104.

Award of worker's compensation benefits and finding of partial/total disability was appropriate. *Feliciano v. Wheelock Signals, Inc.*, 94 N.J.A.R.2d (WCC) 101.

Treatment and medical expenses were not compensable or reimbursable under the worker's compensation statute. *Gorrin v. Kullman Industries*, 94 N.J.A.R.2d (WCC) 98.

Award for partial/total permanent disability was appropriate. *Alli-good v. Sears, Roebuck & Co.*, 94 N.J.A.R.2d (WCC) 97.

No objective medical evidence of disability. *Austin v. Fluets Corporation*, 94 N.J.A.R.2d (WCC) 94.

There was a failure to offer objective medical evidence of neuropsychological disability. *Kavanagh v. Hunterdon Developmental Center*, 94 N.J.A.R.2d (WCC) 91.

Failure to meet burden of proving permanent disability. *Ladezma v. Rebtex, Incorporated*, 94 N.J.A.R. (WCC) 90.

Cigarette-smoking asbestos worker; failure to prove that asbestos exposure contributed in material degree to lung cancer. *Gauntlett v. Johns-Manville*, 94 N.J.A.R.2d (UCC) 85.

Police officer failed to prove any ophthalmologic or orthopedic disability. *Rodriguez v. City of Newark*, 94 N.J.A.R.2d (WCC) 83.

Defendant's claim was barred when employee had accepted lump sum settlement. *Slinger v. Okonite Co., Inc.*, 94 N.J.A.R.2d (WCC) 82.

Employment accident; compensation for orthopedic injuries but not for high blood pressure. *Taylor v. Fell Corporation*, 94 N.J.A.R.2d (WCC) 78.

Multiple sclerosis; evidence established that work-related accidents aggravated dormant condition. *Toye v. Scholes Co. and S & M Electric Co.*, 94 N.J.A.R.2d (WCC) 74.

Employee did not meet his burden of proof; no objective medical evidence. *Kramer v. Level Line, Inc.*, 94 N.J.A.R.2d (WCC) 71.

Employment exposure to asbestos contributed in a material way to the development of employee's cancer. *Rustay v. Ingersoll-Rand Company*, 94 N.J.A.R.2d (WCC) 68.

Psychiatric condition allegedly due to work stress; not entitled to worker's compensation. *Bieyle v. V.R.H. Construction Co.*, 94 N.J.A.R.2d (WCC) 61.

Failure to prove that layoff was retaliation; filing workers' compensation claim. *Cosimano v. Gardner Merchant Food Services, Inc.*, 94 N.J.A.R.2d (LBR) 59.

Cough allegedly due to exposure to dust and paint fumes; not permanently disabled. *Chew v. Excell Wood Products*, 94 N.J.A.R.2d (WCC) 57.

Discharged employee injured in a car accident during the course of his employment; temporary disability and medical benefits. *Fouler v. Altenheim*, 94 N.J.A.R.2d (WCC) 52.

Travelling for business; worker's compensation. *Novis v. Rosenbluth Travel*, 94 N.J.A.R.2d (WCC) 51.

Inhalation of chlorine gas caused serious pulmonary impairment. *Eccles v. town of Kearny*, 94 N.J.A.R.2d (WCC) 45.

Award of disability benefits and payment of medical treatment by employer was proper. *Moytzoirellhs v. Greenbrook Nursing Home*, 94 N.J.A.R.2d (WCC) 41.

Employee's work-related injury was minor and did not affect his working ability. *Calvopina v. Menlo Building Maintenance Co.*, 94 N.J.A.R.2d (WCC) 40.

Failure to sustain burden of proof of occupational pulmonary disease and of work-related heart attack. *Yuzuik v. Union Carbide Corporation*, 94 N.J.A.R.2d (WCC) 36.

Employee failed to sustain burden of proving her condition substantially worsened. *Giordano v. Visiting Homemakers of Ocean County*, 94 N.J.A.R.2d (WCC) 31.

Dismissal; failure to appear and complete case. *McCoy v. Witco*, 94 N.J.A.R.2d (WCC) 30.

Sales consultant failed to demonstrate a compensable partial permanent disability. *Branch v. Macy's*, 94 N.J.A.R.2d (WCC) 26.

Award in excess of award offered by employer was proper failure to demonstrate a preexisting percentage of disability. *Traberman v. Brio Sanditoy Corp.*, 94 N.J.A.R.2d (WCC) 24.

Temporary disability benefits; abdominal pain from morbid obesity. *Oliver v. Vineland Developmental Center*, 94 N.J.A.R.2d (WCC) 22.

Dependency benefits properly awarded to children of deceased firefighter; lung cancer. *LeFurge v. City of Plainfield*, 94 N.J.A.R.2d (WCC) 20.

Employee suffering from multiple sclerosis proved aggravation by work-related injury. *Cooney v. Terminex*, 94 N.J.A.R.2d (WCC) 16.

Worker sustained burden of proof in demonstrating a causal link. *Vaccarelle v. Exxon U.S.A.*, 94 N.J.A.R.2d (WCC) 11.

Dispatcher failed to sustain his burden of proof demonstrating a causal link between exposure to chemicals and lymphoma/leukemia. *Trucke v. Coastal Industries*, 94 N.J.A.R.2d (WCC) 9.

Auto worker; compensable partial permanent disability. *Blain v. Premier auto Body, Inc.*, 94 N.J.A.R.2d (WCC) 7.

Failure to sustain burden of proof of permanent partial disability. *Velez v. Difeo Auto Mart*, 94 N.J.A.R.2d (WCC) 3.

Landlord failed to prove that tenant was a causal employee. *Martin v. Pollard*, 94 N.J.A.R.2d (WCC) 1.

Claimant with orthopedic and pulmonary disabilities failed to show occupational disease. *White v. E.R. Squibb*, 93 N.J.A.R.2d (WCC) 158.

Claimant was not entitled to modification of award. *DeGennaro v. Greater New York Box Co.*, 93 N.J.A.R.2d (WCC) 150.

No entitlement to benefits where subjective evidence was supported only by minimal physical evidence. *Daly v. Owens-Brockway Glass Containers*, 93 N.J.A.R.2d (WCC) 141.

Machine operator failed to show partial permanent disability. *Merant v. Superwear Corporation*, 93 N.J.A.R.2d (WCC) 139.

Claimant failed to establish necessity or authorization for medical treatment or change in circumstances. *Jackson v. Clara Maas Memorial Hospital*, 93 N.J.A.R.2d (WCC) 138.

Modification of partial permanent rating not justified in absence of medical evidence demonstrating an increased disability. *Williams v. AT & T Technologies*, 93 N.J.A.R.2d (WCC) 130.

Separate back injuries while lifting bundles of newspapers at work justified partial permanent disability rating. *Smith v. Greater Media*, 93 N.J.A.R.2d (WCC) 128.

Physical pain and depression as a result of slip and fall at work justified total and permanent disability rating. *Ferrante v. CIT Group*, 93 N.J.A.R.2d (WCC) 117.

Homeowners were not liable for disability claim absent evidence of an employment relationship with injured carpenter. *Moore v. Hetrick*, 93 N.J.A.R.2d (WCC) 113.

Inability to operate foot pedal machinery justified permanent partial disability rating following ankle fracture in work-related accident. *Stopa v. Chanel*, 93 N.J.A.R.2d (WCC) 112.

Shoulder pain preventing employee from doing previous work justified permanent disability rating. *Juliano v. United Parcel*, 93 N.J.A.R.2d (WCC) 109.

Refining and reclaiming precious metals lead to permanent disability from asbestosis as a result of job. *Caggiano v. Engelhard*, 93 N.J.A.R.2d (WCC) 106.

Scars resulting from work-related burns justified partial permanent disability rating. *Holzheimer v. Bayonne*, 93 N.J.A.R.2d (WCC) 103.

Increased disability to back over and above accumulative prior awards was not shown. *Slappy v. Newark*, 93 N.J.A.R.2d (WCC) 100.

Objective medical evidence established a compensable partial permanent disability equivocal to three work accidents. *Mintz v. Busch*, 93 N.J.A.R.2d (WCC) 98.

Firemen earned no more than a 7.5 percent disability for chronic bronchitis. *Toomey v. Hoboken*, 93 N.J.A.R.2d (WCC) 94.

Employee failed to sustain burden of proof on issue of causation with respect to cut on forehead at work. *Levine v. Mueller*, 93 N.J.A.R.2d (WCC) 93.

Results of range-of-motion tests and functional restrictions established partial total permanent disability. *Laird v. Sambol*, 93 N.J.A.R.2d (WCC) 88.

Preexisting personality disorder precluded claim for psychiatric disability arising from incident at work. *Allen v. Children's Home Society*, 93 N.J.A.R.2d (WCC) 85.

Idiopathic event causing back injury was not connected to employment. *Field v. Clayton*, 93 N.J.A.R.2d (WCC) 84.

Worker's chronic back pain entitled him to permanent partial disability benefits. *Baptista v. Witco Corporation*, 93 N.J.A.R.2d (WCC) 78.

Worker was not entitled to increase in permanent partial disability benefits. *Napolitano v. Molecu Wire Corporation*, 93 N.J.A.R.2d (WCC) 76.

Worker's increased disability did not merit increase in compensation award. *Stefanick v. Johns-Manville Products Corp.*, 93 N.J.A.R.2d (WCC) 75.

Worker was entitled to award of permanent total disability benefits. *Shaw v. Long Branch Board of Education*, 93 N.J.A.R.2d (WCC) 72.

Worker injured off employer's premises was not entitled to award of compensation benefits. *Geres v. St. Peter's Medical Center*, 93 N.J.A.R.2d (WCC) 70.

Former employer was responsible for costs of worker's medical treatment. *Metros v. General Motors Corp., Hyatt Bearings Division*, 93 N.J.A.R.2d (WCC) 68.

Injury on coffee break in adjacent trucking company's yard did not arise out of employment. *Berkery v. Freightways*, 93 N.J.A.R.2d (WCC) 60.

Poor state of health entitled wife separated from worker at time of death to dependency benefits. *Woolcott v. Roma Food*, 93 N.J.A.R.2d (WCC) 58.

Fall by visiting home health nurse rated a 22 percent partial disability. *Backof v. Medical Center*, 93 N.J.A.R.2d (WCC) 56.

Surgeries performed following multiple head and facial injuries were a reasonable, medical necessity. *Byrd v. Off The Road Tire*, 93 N.J.A.R.2d (WCC) 54.

Back injury at work was directly related to next day's hospitalization for ruptured disk. *Hersh v. Hersh & Sherman*, 93 N.J.A.R.2d (WCC) 51.

Permanent partial disability was not established without objective medical evidence showing more than only some degenerative changes to back. *Morris v. K-Mart*, 93 N.J.A.R.2d (WCC) 48.

Causal relationship between colon cancer and long asbestos exposure warranted partial total disability award. *Rosamilia v. Essex*, 93 N.J.A.R.2d (WCC) 42.

Significant injuries to face, neck and back in employee parking lot warranted permanent disability award. *Zablocki v. Maas*, 93 N.J.A.R.2d (WCC) 38.

Expenses of psychiatric treatment following suicide attempt resulting from workplace injury were compensable. *Ellison v. Concurrent Computers*, 93 N.J.A.R.2d (WCC) 34.

Temporary disability payments were appropriate for school psychologist injured when bookcase hit head. *Sweet v. Jackson Board of Education*, 93 N.J.A.R.2d (WCC) 27.

Permanent disfigurement and neurosensory changes warranted partial permanent disability award. *Goode v. Herculite*, 93 N.J.A.R.2d (WCC) 25.

Back injury sustained by security officer warranted permanent, though limited disability award. *Currey v. Ocean County*, 93 N.J.A.R.2d (WCC) 22.

Stroke which commenced while mechanic was exerting extraordinary physical activity warranted total disability award. *Manning v. Engineering*, 93 N.J.A.R.2d (WCC) 18.

Long-term occupational exposure to asbestos warranted a partial, total award for pulmonary disability. *Stelzie v. Salvesen*, 93 N.J.A.R.2d (WCC) 15.

Control test established that carpenter working on house was not independent contractor, but was employee of homeowner. *Henry v. Parks*, 93 N.J.A.R.2d (WCC) 12.

Permanent partial disability resulted from occupational exposure to asbestos. *Russomanno v. Otis Elevator*, 93 N.J.A.R.2d (WCC) 9.

Gunshot wound to head at work resulted in total and permanent disability for which special adjustment benefits was due. *Lugo v. Franklin*, 93 N.J.A.R.2d (WCC) 2.

Worker suffered permanent partial disability as result of on-the-job accident. *Van Amburgh v. Rohil Estates*, 92 N.J.A.R.2d (WCC) 188.

Employer was not entitled to credit or offset for worker's pre-existing illness. *Woolsey v. New Jersey Bell Telephone Company*, 92 N.J.A.R.2d (WCC) 180.

Worker's widow was not entitled to dependency benefits. *Petit-Clair v. New Jersey Transit*, 92 N.J.A.R.2d (WCC) 176.

Worker was "employee" entitled to worker's compensation benefits. *Ojibe v. Thomas J. Reale, Inc.*, 92 N.J.A.R.2d (WCC) 173.

Worker was entitled to 25 percent permanent partial disability benefits for pulmonary injury. *Sutera v. City of Hoboken*, 92 N.J.A.R.2d (WCC) 170.

Employer failed to prove that termination of worker's benefits was warranted. *Kincade v. City of Wildwood*, 92 N.J.A.R.2d (WCC) 161.

Worker's unemployment was not compensable. *Cairns v. City of East Orange*, 92 N.J.A.R.2d (WCC) 155.

Worker's injury was causally related to employment. *Paduch v. Stony Brook Construction*, 92 N.J.A.R.2d (WCC) 152.

Mechanic was entitled to permanent partial disability benefits. *Landon v. Town & Country Motors*, 92 N.J.A.R.2d (WCC) 150.

Worker was entitled to slight increase in pulmonary disability benefits. *White v. Johns-Manville Sales Corporation*, 92 N.J.A.R.2d (WCC) 147.

Worker's settlement of his claim extinguished subsequent dependency claim. *Szikszai v. Simmons Precision*, 92 N.J.A.R.2d (WCC) 145.

Collision resulted in worker's permanent partial disability. *Reynolds v. Strober New Jersey Building Supply, Inc.*, 92 N.J.A.R.2d (WCC) 144.

Worker failed to prove that his injury occurred on the job. *McDuffie v. New Jersey Bell Telephone Company*, 92 N.J.A.R.2d (WCC) 142.

Worker was entitled to modification of previously settled claim. *Rolstad v. Tri-County Asphalt*, 92 N.J.A.R.2d (WCC) 138.

Independent contractor was not entitled to workers' compensation benefits. *Bozzolasco v. J.T. Ski Construction Co.*, 92 N.J.A.R.2d (WCC) 136.

Accidental fall rendered worker permanently and totally disabled. *Rivera v. Frank's Tree Service, Inc.*, 92 N.J.A.R.2d (WCC) 134.

Worker was entitled to increased benefits for psychiatric disability. *Woods v. CPC International, Inc./Best Foods*, 92 N.J.A.R.2d (WCC) 132.

Worker was entitled to modification of prior compensation award. *Cook v. Dollar Rent-A-Car*, 92 N.J.A.R.2d (WCC) 129.

Worker's deception did not disqualify him from receiving benefits. *Gomes v. Jose Natoli Construction Co.*, 92 N.J.A.R.2d (WCC) 127.

Worker was entitled to 17 ½ percent temporary partial disability benefits. *Yar v. Springfield Heating and Air Conditioning, Inc.*, 92 N.J.A.R.2d (WCC) 125.

Worker's disabilities were unrelated to occupational exposure. *Shannon v. State of New Jersey*, 92 N.J.A.R.2d (WCC) 120.

Worker suffered disability in trip and fall accident. *Wydner v. Caldor's*, 92 N.J.A.R.2d (WCC) 116.

Worker was entitled to have disabilities from single accident "stacked". *Kim v. Wolf*, 92 N.J.A.R.2d (WCC) 112.

Worker suffered disability due to knee injury. *Markle v. Newark Board of Education*, 92 N.J.A.R.2d (WCC) 110.

Worker's carpal tunnel syndrome was work related. *Mackenzie v. New Jersey Bell Telephone Co.*, 92 N.J.A.R.2d (WCC) 107.

Worker's preexisting condition was aggravated by workplace accident. *Gronikowski v. K-Mart Corporation*, 92 N.J.A.R.2d (WCC) 102.

Asbestos exposure caused worker's cancer. *Zematis v. Exxon Company*, 92 N.J.A.R.2d (WCC) 98.

Chemical worker's liver damage was work-related. *Dean v. Powell-Duffryn*, 92 N.J.A.R.2d (WCC) 97.

Chimney worker's permanent total disability was job-related. *Lackey v. Custodis-Ecodyne, Inc.*, 92 N.J.A.R.2d (WCC) 92.

Worker injured in a fall suffered permanent partial disability. *Smith v. Borough of Stone Harbor*, 92 N.J.A.R.2d (WCC) 87.

Workers's disability was caused by three separate accidents. *Genovese v. McGraw-Hill, Inc.*, 92 N.J.A.R.2d (WCC) 83.

On-the-job exposure to chemical fumes caused workers's disability. *Ostendorf v. Acme Markets, Inc.*, 92 N.J.A.R.2d (WCC) 81.

Bus driver was entitled to 30 percent permanent partial disability benefits. *Nordaby v. Cape May County Holiday Tours*, 92 N.J.A.R.2d (WCC) 76.

Worker failed to timely notify her employer of on-the-job accident. *Michelotti v. CVI Services Group*, 92 N.J.A.R.2d (WCC) 73.

Insurer would be assessed penalties for negligent denial of disability claim. *Gianotti v. Teledyne Farris Engineering*, 92 N.J.A.R.2d (WCC) 70.

Construction worker suffered permanent partial disability as result of accident. *Beam v. Gianetti Excavating Co., Inc.*, 92 N.J.A.R.2d (WCC) 67.

Worker suffered permanent total disability due to repetitive injuries. *Peterson v. Hermann Forwarding Co.* 92 N.J.A.R.2d (WCC) 60.

Evidence offered by worker was insufficient to prove permanent partial disability. *Crean v. Somerville Lumber Co.* 92 N.J.A.R.2d (WCC) 57.

Worker's job-related chemical exposure was cause of fatal lung cancer. *Lee v. Engelhard Industries*. 92 N.J.A.R.2d (WCC) 56.

Worker failed to prove that he suffered from work-related asbestosis. *Gile v. Jersey Central Power & Light Co.* 92 N.J.A.R.2d (WCC) 53.

Worker's chronic illness was job related. *Daye v. Ciba Geigy*. 92 N.J.A.R.2d (WCC) 46.

Worker's lower back injury was permanently and totally disabling. *Martinez v. Esselte Pendaflex*. 92 N.J.A.R.2d (WCC) 42.

Worker failed to prove entitlement partial permanent disability benefits. *Blackwell v. N.J. Transit Bus Operations, Inc.* 92 N.J.A.R.2d (WCC) 41.

Worker suffered no pulmonary function disability. *Weston v. Excelled Sheepskin & Leather Coat Corporation*, 92 N.J.A.R.2d (WCC) 39.

Motor vehicle collision occurred in the course of "special mission". *Martin v. Jersey Central Power & Light Company*, 92 N.J.A.R.2d (WCC) 34.

Worker's employment aggravated underlying circulatory deficiency. *Felix v. Elegant Lingerie*, 92 N.J.A.R.2d (WCC) 32.

Workplace exposure to chemicals was material cause of worker's death. *Corio v. American Cyanamid Company*, 92 N.J.A.R.2d (WCC) 29.

Worker would be awarded permanent partial disability benefits. *Magill v. C & K Construction Company*, 92 N.J.A.R.2d (WCC) 25.

Worker would be awarded partial total disability benefits. *Hobbs v. General Motors Corporation*, 92 N.J.A.R.2d (WCC) 20.

Claimant failed to prove her entitlement to dependency benefits. *Toms v. Dee Rose Furniture, Inc.*, 92 N.J.A.R.2d (WCC) 18.

Worker suffered no permanent disability as result of asbestos exposure. *Boszczuk v. Johns-Manville*. 92 N.J.A.R.2d (WCC) 17.

Worker's widow met burden of proving entitlement to benefits. *Slack v. Johns-Manville Products Corporation*. 92 N.J.A.R.2d (WCC) 13.

Worker suffered total disability as result of work place accident. *Johnson v. Blue Crest Farms*. 92 N.J.A.R.2d (WCC) 9.

Permanent injury to worker's leg would be offset by credit for prior condition. *Flancer v. Dell Chrysler*. 92 N.J.A.R.2d (WCC) 7.

Worker's compensable permanent disability had significantly worsened. *Wilson v. South Jersey Port Corporation*. 92 N.J.A.R.2d (WCC) 3.

Worker's psychiatric disability was not caused by work place accident. *Ramon Rivera v. Egg Harbor Boat Company*. 92 N.J.A.R.2d (WCC) 2.

Worker's gunshot wound did not "arise out of" his employment. *Riley v. Potter-Hillman Ford*. 92 N.J.A.R.2d (WCC) 1.

12:235-5.11 Interpreters

In any proceeding for which the services of an interpreter are required, a professional interpreter shall be utilized unless the Judge of Compensation, with the consent of the parties, determines otherwise. An interpreter shall be sworn or make affirmation or declaration to interpret accurately.

New Rule, R.1997 d.110, effective March 3, 1997.
See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

12:235-5.12 Enforcement of orders

(a) For unreasonable failure to comply with any written order of a Judge of Compensation or with any requirements of this subchapter, a Judge of Compensation may:

1. Dismiss or grant the motion or application for enforcement of order;
2. Suppress a defense or claim;
3. Exclude evidence;
4. Order costs or reasonable expenses, including attorney's fees, to be paid to the Second Injury Fund of the State of New Jersey or an aggrieved representative or party; or

5. Take other appropriate case-related action.

(b) Before taking any action under N.J.A.C. 12:235-5.12(a) above, the Judge of Compensation shall hold a hearing on the appropriateness of the action and the reasonableness of any compensatory levy or sanction.

(c) Unless a stay is obtained from the appropriate appellate court or the Judge of Compensation, the failure to obey an order of the Judge of Compensation shall constitute grounds for compensatory sanctions against the attorney, the parties, or both. Filing of an appeal does not constitute an automatic stay of the judgment or order being appealed.

New Rule, R.1997 d.110, effective March 3, 1997.
See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

SUBCHAPTER 6. INFORMAL HEARINGS

12:235-6.1 Purpose of informal hearings

(a) The informal hearing process is a service provided by the Division to effectuate the amicable adjustment of controversies between injured workers and their employers involving their respective rights under the Act.

(b) The informal hearing procedure is not expressly contained within the provisions of the Act.

(c) The filing of an application for an informal hearing will not toll the time limitation periods for the filing of a formal claim petition or a dependency claim petition as provided by the Act.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).
Stylistic changes.

12:235-6.18 Adjournment

When it appears that certain cases cannot be resolved at the first hearing, due to lack of notice or knowledge of any injury, incomplete reports, or for any good cause, the Judge of Compensation shall be promptly informed so that the Judge may have an opportunity to notify the parties and arrange for rescheduling.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Text on failure of employer or carrier to appear recodified to 6.17; text on adjournment recodified from 6.19.

12:235-6.19 (Reserved)**SUBCHAPTER 7. SECOND INJURY FUND CASES****12:235-7.1 General procedure**

(a) Upon the filing of a verified petition for Second Injury Fund (Fund) benefits a settlement conference shall be scheduled before a Judge of Compensation where representatives of the employee, employer(s) and the Fund are noticed to attend.

1. The settlement conference may be adjourned by a Judge of Compensation for good cause.

(b) If a settlement cannot be effectuated at the settlement conference, the matter may be listed for trial on a day when the probable responsible respondent is regularly scheduled to appear.

(c) If the Judge of Compensation finds that the petitioner is not totally and permanently disabled, the Fund petition shall be dismissed.

(d) If the Judge of Compensation finds that the petitioner is totally and permanently disabled and the total and permanent disability is the result of the last compensable accident, the Fund application shall be dismissed.

(e) If the Judge of Compensation finds that the petitioner is totally and permanently disabled and the total and permanent disability is the result of the effects of the last compensable accident and subsequent conditions, the Fund application shall be dismissed.

(f) If the Judge of Compensation finds that the petitioner is totally and permanently disabled and the total and permanent disability is the result of the last compensable accident together with pre-existing conditions, the Judge of Compensation shall schedule a hearing upon the application for Fund benefits on a day when the Deputy Attorney General representing the Fund regularly appears.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Procedures used when settlement cannot be effected; how trial is listed; and manner of dealing with a Second Injury Fund application specified.

Amended by R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

In (b), substituted "may be listed" for "shall be listed"; and deleted (b)i, which provided that the judge be guided by a referenced case.

12:235-7.2 Hearing

(a) The hearing to determine whether the petitioner is entitled to Fund benefits shall be upon the transcript of the hearing for benefits previously heard, supplemented by oral and documentary evidence as may be required in the discretion of the Judge of Compensation for a full and true disclosure of the facts as to Fund responsibility and where applicable, as to an apportionment of the responsibility of the Fund.

Correction: The word "apportionment" has been corrected from "appointment".

See: 18 N.J.R. 1201(a).

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Stylistic changes.

Case Notes

Claimant could not be denied compensation for any retroactively due payments. *Gulick v. H.M. Enoch, Inc.*, 280 N.J.Super. 96, 654 A.2d 987 (A.D.1995).

Former N.J.A.C. 12:235-8 provided for the consolidation of a Second Injury Fund matter with the compensation case and the conducting of formal hearings pursuant to former N.J.A.C. 12:235-4. *Lewicki v. New Jersey Art Foundry*, 88 N.J. 75, 438 A.2d 544 (1981).

Fundamental considerations of due process require construction of former N.J.A.C. 12:235-5.62 which would permit the Second Injury Fund to request cross-examination of petitioner's medical experts in the same manner as employer-respondent's. *Lewicki v. New Jersey Art Foundry*, 176 N.J.Super. 358, 423 A.2d 645 (App.Div.1980), affirmed in part, reversed in part 88 N.J. 75, 438 A.2d 544 (1981).

Obese employee; benefits under Second Injury Fund. *Smithbower v. Fieldville Farms*, 94 N.J.A.R.2d (WCC) 216.

12:235-7.3 Payment of benefits

(a) Pending determination of the application for Fund benefits, the employer previously found liable shall commence payments at the applicable rate for permanent total disability.

(b) Upon approval of an application for benefits from the Fund, the Judge of Compensation shall enter an order requiring payment from the Fund from the date when the final payment of compensation by the employer is or was payable for the last compensable injury following which the employee became totally and permanently disabled. No payment from the Fund shall be made for any period prior to the date of filing the verified petition for Fund benefits.

1. If the employer has paid in excess of the amount for which it is responsible, the employer shall be reimbursed by the Fund.

(c) The payment from the Fund may be made to the employer as reimbursement for a period where the payments have been made by the employer to the employee beyond the time period for which the employer is determined to be liable.

(d) Such payments shall be made from the Fund directly to the employee for such periods to which the employee may be entitled in accordance with the provisions of N.J.S.A. 34:15-95 and subject to (a) above.

Amended by R.1991 d.466, effective September 3, 1991.
See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Employer payment to and from the Fund specified.
Amended by R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

In (d), substituted "in accordance with" for "subject to", amended N.J.S.A. reference, and inserted reference to (a).

Case Notes

Award of disability benefits pending Second Injury Fund final hearing disposition was appropriate. *Reed v. Brookdale College*, 94 N.J.A.R.2d (WCC) 34.

12:235-7.4 Filing

(a) The verified petition for benefits shall be filed in accordance with N.J.S.A. 34:15-95.1 and shall include a succinct and accurate description of all medical, legal and factual basis upon which the petitioner alleges eligibility for Fund benefits pursuant to N.J.S.A. 34:15-95. The verified petition shall be under oath or affirmation and be accompanied by all physician's reports in possession of the applicant or the applicant's attorney.

(b) The verified petition shall also include the following:

1. Name and address of petitioner;
2. Social security number of petitioner;
3. Age and date of birth of petitioner;
4. Marital status and educational background of petitioner;
5. A summary of petitioner's employment history;
6. A description of disabilities which existed prior to the date of the last compensable injury, and the date of onset of each;
7. The last compensable injury, indicating the date and a description of the occurrence; a description of the injury; brief description of the medical treatment for the injury; a description of permanent injury; name and address of employer and its insurance carrier; petitioner's wages and compensation rate; and a listing of all compensation paid to date for this injury;
8. An indication as to whether a third party tort claim has been made as to the last compensable injury, stating the name and address of the third party and the status of the claim;

9. A copy of all reports which are in the possession or control of the party filing the applications from all proposed expert witnesses and all treating physicians;

10. A description of all wage replacements presently being received by the petitioner;

11. References to all prior allowances and awards in workers' compensation matters concerning the petitioner, including the date of the accident and the extent of the allowance or award.

(c) Respondent shall provide all evaluative reports to the Second Injury Fund at the first motion hearing.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Stylistic changes.

Amended by R.1997 d.110, effective March 3, 1997.

See: 28 N.J.R. 4067(a), 29 N.J.R. 799(a).

Added (c).

Law Review and Journal Commentaries

Workers' Compensation. P.R. Chenoweth, 137 N.J.L.J. No. 16, 52 (1994).

Case Notes

Misrepresentation on employment application as to physical health did not bar recovery of benefits. *Akef v. BASF Corp.*, 275 N.J.Super. 30, 645 A.2d 158 (A.D.1994), certification granted 139 N.J. 186, 652 A.2d 174, affirmed 140 N.J. 408, 658 A.2d 1252.

SUBCHAPTER 8. COMMUTATION OF AWARD

12:235-8.1 Application for commutation

(a) All applications for commutation of compensation payments pursuant to N.J.S.A. 34:15-25 shall be filed with the Director.

(b) Applications for commutation of compensation shall be made only after the entry of an award.

Amended by R.1991 d.466, effective September 3, 1991.

See: 23 N.J.R. 1759(a), 23 N.J.R. 2642(a).

Stylistic changes.

12:235-8.2 Application form for commutation

(a) The application for commutation shall be made on a form prescribed by the Division which shall include:

1. The applicant's name, address, and social security number;
2. The name and address of the employer;
3. The name, address, and file number of the employer's insurance carrier;
4. The date of award;