

Court Confirms That "Medical Only" Means "Medical Only"

By: Sandra Niemotka and Max Kimbrough

Workers' Compensation Alert

1.20.16

In *Sloane v. Workers' Compensation Appeal Board (Children's Hospital of Philadelphia)*, 124 A.3d 778 (Pa. Cmwlth. 10/1/2015), the Commonwealth Court of Pennsylvania made two important rulings.

First, the court held that where an injury has been accepted for medical purposes only, the claimant must file a petition seeking wage loss benefits within three years of the date of injury, or else be forever barred. This is a much better time limit than 500 weeks, which was the alternative preferred by claimants.

Second, the court held that a Claim Petition, not a Reinstatement Petition, is the proper petition for a claimant to file when she wants wage loss benefits where the injury has been accepted for medical purposes only. A Claim Petition involves a tougher burden of proof for claimants than a Reinstatement Petition.

As background, the Claimant in *Sloane* suffered a work injury to her right elbow and right knee in **2006**. The employer accepted this injury for medical purposes only by way of a Medical-Only Notice of Compensation Payable (MONCP). The Claimant did not receive wage loss benefits for this injury, but she eventually went out of work in 2007 before having a right knee replacement.

In **2011**—approximately three and a half years after she went out of work for the 2007 surgery and almost five years after the injury date—the Claimant filed a Reinstatement Petition, seeking wage loss benefits as of the date of the surgery.

Typically there is a three-year statute of limitations for filing a petition, which would have made Claimant's petition untimely. However, the Claimant argued that she should be able to take advantage of the 500-week deadline to file a reinstatement of suspended benefits. The Claimant tried to draw an analogy to Medical Only cases that are awarded by Workers' Compensation Judges, which had the effect of putting the Claimant in a Suspension status. Claimant also pointed to another time limitation section of the Act, Section 413(a), which allows workers' compensation judges to revise bureau documents at "any time." 77 P.S. § 771.

The Commonwealth Court held that under Section 315 of the Pennsylvania Workers' Compensation Act, all Review, Modification, and Reinstatement Petitions must be filed "within three years after the date of the most recent payment of compensation made prior to the filing of such petition." 77 P.S. § 602. Moreover, payment of medical bills does *not* constitute "compensation" that would toll the limitations period.

The court further explained that a Reinstatement Petition is not the proper petition when a claimant is seeking wage loss benefits after the only document to accept liability is an MONCP. It may seem obvious, but under an MONCP, the employer accepts liability for an injury for medical purposes only; no wage loss is payable. If the claimant wants wage loss benefits in such a situation, she must file a Claim Petition, not a Reinstatement Petition. A Reinstatement Petition is not proper because there is nothing to "reinstate" when wage loss benefits were never paid in the past.

Accordingly, in this case the court denied the Claimant's claim as untimely, since she did not file a petition seeking wage loss benefits for the 2006 injury within three years of the injury date.

This decision is important for two reasons. First, it makes clear that where an injury has been accepted for medical purposes only and the claimant wants to receive wage loss benefits, the proper petition to file is a Claim Petition, rather than a Reinstatement Petition. This is important because the Claim Petition carries a higher burden of proof than does a Reinstatement Petition.

Second, this decision establishes that under a medical-only claim, the "clock starts ticking" as of the date of the injury, and will not be tolled by the payment of medical bills. Thus, when the injury has been accepted by way of an MONCP, claimants have a hard deadline of three years from the date of injury to file a Claim Petition seeking wage loss benefits, or else they may be forever barred. This will prevent claimants from filing "surprise" petitions many years later, and will give more certainty and closure to the claims process.

Employers are therefore encouraged to accept claims with an MONCP instead of a "full" NCP, where possible. Employers should also feel less apprehensive about accepting liability for an injury with an MONCP. As of now, there should not be a concern that this type of acceptance would give claimants a suspension status with a 500-week period to seek wage loss benefits. However, the decision is not final because the claimant has requested a review by the Pennsylvania Supreme Court.

There is some assurance of the *Sloane* holding to be found in another Commonwealth Court decision issued on October 26, 2015. In *Ingrassia v. Workers' Compensation Appeal Board (Universal Health Services, Inc.)*, 126 A.3d 394 (Pa. Cmwlth. 10/26/2015), the Court decided that the proper petition after an MONCP is a Claim Petition with the higher burden of proof than a Reinstatement petition.

For questions or further information, please contact Sandra Niemotka (215.864.6338; niemotkas@whiteandwilliams.com) or another member of the Workers' Compensation Group.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.

