

PA Supreme Court to Rule on Scope of Judges' Credibility Determinations

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Workers' Compensation Alert

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Pending before the Pennsylvania Supreme Court is a case with the potential to change our understanding of a Workers' Compensation Judge's (WCJ) powers when making credibility determinations.

In *IA Construction v. WCAB (Rhodes)*, the Commonwealth Court reversed the WCJ's decision to deny the employer's Modification Petition on the basis that the employer's medical expert was not credible. In the underlying case, the claimant was determined to have sustained compensable work injuries to his head, neck and back. The employer subsequently filed a Modification Petition, seeking to modify benefits to Partial Disability based on an Impairment Rating Evaluation (IRE) which found that the claimant had a 34% whole body impairment. The WCJ ultimately denied the employer's Modification Petition, finding that the IRE physician's categorization of the claimant's injuries and interpretation of the claimant's impairment level from his brain injury was not credible.

The Court acknowledged that WCJs have broad powers to assess a witness' credibility, but that such credibility findings must be supported by "substantial evidence." The Court ruled that "if a WCJ is to reject an IRE and the deposition testimony of the doctor who conducted the IRE as unpersuasive, there must be evidence of record to support the bases for that rejection." Because the WCJ did not cite to evidence in support of her reasoning that the IRE physician's testimony lacked credibility or improperly calculated the claimant's impairment rating, "there simply was not substantial evidence of record to which [the WCJ] could point in support of disregarding [the IRE physician's] testimony." [1] Accordingly, the Commonwealth Court reversed the WCJ's decision, which in effect granted the employer's Modification Petition.

The claimant subsequently filed a petition for allowance to appeal to the Pa. Supreme Court, which granted the petition. The question before the Court is "whether the Commonwealth Court overstepped its appellate function in making credibility judgments which is the sole function of the Workers' Compensation Judge."

On April 5, 2016, oral argument was held before the Court, and the justices' questions may provide some insight into how they will ultimately rule. According to *The Legal Intelligencer*, Court justices expressed skepticism with the claimant's petition and the WCJ's credibility determination. The claimant's counsel asserted at oral argument that appellate courts cannot overturn a trial judge's credibility determinations unless they are arbitrary and capricious. However, Justice Christine Donohue expressed concern with the WCJ's credibility determination, given that "what she's doing is reading a cold record." Similarly, Justice David Wecht expressed concern with the WCJ's credibility determination based on a "cold-paper review."

While not necessarily determinative of how either Justice Wecht or Justice Donohue will rule in this matter—nor how the rest of the Court will rule—it is interesting that Justices Wecht and Donohue appeared to favor the employer's position. The justices were both recently elected to the Court. They are also both Democrats—a party affiliation that sometimes results in a justice tending to favor claimants over employers.

Should the Court affirm the Commonwealth Court's decision, it will be an important victory for employers. Appellate courts are loath to overturn WCJs' credibility determinations, often simply finding that the WCJ has unlimited authority to assess credibility. But if the Commonwealth Court's decision is left to stand, then it will ensure that WCJs' credibility determinations have some basis in the evidence—*i.e.*, that they are supported by "substantial evidence"—or else they risk being overturned by an appellate court.

We will watch this case closely and update the analysis once the Court renders its decision. For questions or further information, please contact Sandra Niemotka (215.864.6338; niemotkas@whiteandwilliams.com) or another member of the Workers' Compensation Group.

The Commonwealth Court's opinion can be found [here](#).

[1] This is a similar standard to that which the Commonwealth Court established in *School District of Philadelphia v. WCAB (Davis)*, 38 A.3d 992 (Pa. Commw. Ct. 2011). There, the WCJ found that the employer's actuarial witness was not credible, without citing to any "substantial evidence" in the record in support thereof. The Court ruled that the WCJ could not simply reject the actuary's methodology in a vacuum as being not credible, and that to allow such behavior would be to allow WCJs to "drive[] a truck through this loophole."

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