Bugbee&Conkle, LLP

Workers' Compensation News

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Bugbee & Conkle Firm Seminar: March 11, 2010

Bugbee & Conkle, LLP will host an afternoon seminar for its clients and other invitees Thursday, March 11, 2010 at the Holiday Inn French Quarter Hotel in Perrysburg, OH. Please mark this date on your calendar. The theme of the seminar will be to answer the question: "What can I do when...." Because the seminar is in the development phase, we invite you to submit suggestions for topics based on your own employment and workers' compensation experiences. You may contact us through our website or call 419-244-6788 and ask for Mary Folck. We look forward to seeing you in March!

Court of Appeals Holds Fixed Situs Employee Not Entitled to Workers' Compensation Benefits When Injured in a Motorcycle Accident in Transit to Work

In *Seese v. Ohio Bureau of Workers' Compensation*, 11th Dist. No. 2009-T-0018, 2009-Ohio-6521, the court of appeals denied workers' compensation benefits to a claimant who was injured in a motorcycle accident on his way to work.

In this case, the claimant was a fixed-situs employee who commuted to work daily. The employer called the claimant into work on his day off to perform an emergency repair caused by a windstorm the day before. The claimant sustained serious injuries in a motorcycle accident during his commute to work on this day.

The claimant filed a claim for workers' compensation benefits, which the Bureau initially disallowed. The Industrial Commission, however, reversed the Bureau decision, allowing the claim. The employer appealed to

court and a jury returned a verdict in favor of the employer. On appeal, the claimant argued his claim should have been compensable under the "special hazard" and/or "special mission" exceptions to the "coming and going rule."

The court of appeals rejected the claimant's arguments. According to evidence produced at trial, there were no road hazards on the day of the accident, and therefore, there were no hazards the claimant faced that the average commuter would not also face. Additionally, the court found the claimant was not on a special mission, despite the fact he was called into work on his day off.

The court of appeals' decision provides a cogent analysis of the "coming and going" rule as well as the various exceptions to the rule.

Significant Bureau Rule Changes promulgated in 2009; More to Come in 2010

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In 2009, the Bureau amended, rescinded, and/or promulgated over 200 of its rules contained in Ohio Admin.Code 4123 et seq. Many of the amendments encompass cosmetic changes to the wording of the rules. However, quite a few of the rules underwent substantial substantive revisions.

Of note, this publication's November, 2009 issue reported on the amendment of Ohio Admin.Code 4123-5-18 (D), which regards medical proof necessary to support a request for TTD compensation. This rule appears to require claimants to complete both pages of a C-84 each and every time they seek compensation for a new or continuing period of disability. The Bureau has begun rejecting requests for TTD compensation that lack the first page of the C-84, which requires the claimant's signature and certification. It still remains unclear whether the Commission will follow the Bureau's interpretation of this rule.

Other substantial rule changes involve vocational rehabilitation, group rating, alternative dispute resolution procedures, motion practice, and 90-day temporary total disability examinations.

In November, 2009, the Bureau filed proposed rules regarding its Health Partnership Program (HPP). Included in these proposed rules are more definitive processes for payment of medical services, especially regarding self-insured employers. The rules currently in effect fail to specify how self-insured employers reimburse medical providers for services. Generally, self-insured employers reimburse healthcare providers according to the Bureau's fee schedule. However, because of the ambiguities in the HPP rules, controversies have arisen regarding reimbursement to hospitals. (See the *November, 2008 Workers' Compensation News* lead article by clicking the link). The rule changes to the HPP program appear to be designed to address such controversies.

This article merely highlights some of the recent and future Bureau rule changes. Because of the shear volume of rule changes, however, this article simply cannot address such changes with any specificity. To review the full text of recent Bureau rule changes, visit the Register of Ohio's website by clicking the link.

HIPAA Rule Requires Notification of Breaches of Unsecured Protected health Information

Effective September 23, 2009, the Department of Health and Human Services requires "covered entities" and "business associates" of covered entities to provide notification of breaches of unsecured protected health information to affected individuals, the Secretary of HHS, and possibly the media. To avoid notification under the rule (45

CFR 164 et seq.) covered entities must employ specific technological measures to render PHI unusable, unreadable, or undeciferable by unauthorized individuals. More information about the amended HIPAA rule can be found by clicking the link or contact us at 419-244-6788