



News & Case Notes

<u>Subject</u>	<u>Claimant</u>	<u>34 NCN Issue</u>
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"015-0010(4)" Factors Must Be Considered/Analyzed in Determining "Reasonable" Award	Terilynn McNiel-Dane	2
"262(11)(a)" - "Penalty-Related" - Claimant Appeal - Board Found "Unreasonable" Claim Processing - Award Granted for Both Hearing/Review Levels	Stanley T. Castle	11
"307(5)" (Responsibility) Not Applicable - No "307" Order Had Issued - Fee Subject to "308(2)(d)"	Chris E. Pardue	11
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"Ceases" Denial - "262(6)(c)" - Not Precluded By Prior Litigation Order Regarding "Initial" Claim - "Combined Condition" Analysis Was "Alternative" Reasoning	Donelle Applegate	8
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Treatment for Compensable Back Condition Not Major Cause of Claimed Abdomen Condition - <i>Hames</i> Applied, <i>Robinson</i> Distinguished	Jane E. Birdsong	8
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COSTS

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COURSE & SCOPE

"Arising Out of Employment" - "After Work" Fall on Employer's Walkway Heading to Car - Knee "Gave Out" - No "Employment-Related" Risk	Wesley A. Canfield	2
"Course of Employment" - Injury Performing "Employment-Related" Activity on Personal Time - Retrieving Item From Employer's Loft For Holiday Display	Micah Dugan	2
"Going & Coming" Rule - "Break-Related" Injury Returning to Employer's Office From Walk on Public Sidewalk With Co-Workers - No "Personal Comfort" Exception	Katherine Mandes	1
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COURSE & SCOPE (CONT.)

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"On Call" Nurse - Fall in Walkway at Home - Returning From Work Assignment - Intending to Send "Notes" to Employer's Computer - Arose Out Of/Within Course Of" Employment	Cami Bean	8
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Impairment Findings - "Chronic Condition" Award - "Significant Limitation/ Repetitive Use" - Meaningful/Important" - "Higher Threshold" Than "Partial Loss of Use"	Donald V. Burch	10
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Impairment Findings - Impairment Based on Accepted Conditions at Claim Closure, Not "Work-Related Injury Incident" - <i>Brown</i> Distinguished	Stuart C. Yekel	7
Impairment Findings - Legally Cognizable "Preexisting Condition" - "Apportionment" Rule Applied to "Unclaimed/Unaccepted" Combined Condition	Claudia S. Stryker	6

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EXTENT (CONT.)

Impairment Findings - No Findings Due to Accepted Conditions - "Apportionment" Rule ("035-0013") Not Applicable	Eugene Walters	8
Impairment Findings - Prior "Injury Denial" Litigation (Finding That Carrier Did Not Meet "BOP" Under "266(2)(a)" For Unspecified "Combined Condition") - Did Not Establish Compensability of "Preexisting Condition" For Subsequent "Rating" Purposes	Jason C. Griffin	6
Impairment Findings - "Significant Limitation"/"Repetitive Use" - "035-0019(1)(i)" - "Meaningful" "Important" - Higher Threshold Than Partial Loss of Inability to Repetitively Use Body Part	Angelica M. Spurger	10
"ROM" Impairment Findings - "Contralateral Joint Comparison" - "035-0011(3)" - Not Applied When "Comparison" Not Used in Calculation of Previous Award for Same Body Part	Eric J. Stevenson	2

HEARING REQUEST

"319(1)" - Timely Hearing Request From Carrier Denial - Request And Cover Letter Referred to "Injury Date"/"Any Outstanding Denial"	Mauricio Cabrera-Vargas	3
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MEDICAL SERVICES

"245(1)(a)" - Diagnostic Procedure (Discogram) - Proposed to Determine Cause/Extent of Work-Related Injury/Incident	Barbara A. Easton	3
"Propriety" Dispute Regarding Medical Bill - Jurisdiction Rests With WCD - "704(3)(b)(B)"	Steven C. Johnson	7

NEW/OMITTED MEDICAL CONDITION CLAIM

Claimed "Sacroiliac Joint Dysfunction" Not "In Existence"	Crystal A. Phelps	4
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OFFSET

PTD/TTD Benefits Paid During Same Period - "Mutually Exclusive" "Wage Replacement" Benefits - "Double Recovery" - Offset Authorized for Carrier to Recover Overpayment	Gaylen J. Kiltow	4
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OWN MOTION

“278(1)(a), (b), (2)(d)” - Premature Closure/Permanent Impairment Evaluation - Limited to Conditions For Which Claim Was “Reopened”	Richard D. Slocum	12
Arbiter Request May be Filed Between Request for Review/Decision on Merits - “012-0060(1)(b)(C), (6)(a)”	Daniel S. Bishop	6
NOC Invalid - Claim Closed W/O “AP” Impairment Findings	Charles D. Leffler	11
NOC - Issued W/O “AP” Findings - Not Invalid - Carrier Attempted to Obtain “AP” Findings	Dwayne L. Minner	11
Penalty/Attorney Fee - Unreasonable Refusal to Close Claim	Scott V. Morelli	4
PPD - Carrier “Arbiter” Request Granted	Kevin T. Kinnamore	8
PPD - “Chronic Condition” - Significant Limitation/ Repetitive Use - “Meaningful/Impairment” - Work Disability - “BFC” - WCD Rule W/I Director Authority - Claimant’s Affidavit - Corroboration of Job Description/DOJ Code	Debra J. Walker	12
PTD - Claimant Not a “Worker” at Claim Closure - Not in “Work Force” - No “PTD” Entitlement - <i>Schleiss</i> Apportionment - “005(30)”	Leonard L. Seeger	2
TTD - Issue Preclusion- “Pre-Closure” Decision (Same Claim)	Tony L. Clark	3

PENALTY

“262(11)(a)” - Unreasonable Denial - No “Legitimate Doubt” - Physician’s Opinion Supported “Initial” Compensability of Claim	Briana Kessler	12
“268(5)(d)” - NOC “Permanent Impairment” Award for “Class 1” Respiratory Condition - Not Unreasonable	Christina Song	3
“268(5)(d)” - Unreasonable “NOC” “PPD” Award - Misleading Letter to “AP” Regarding “Dissipation” of “Disability” From Prior Claim	Roger D. Samples	9
“268(5)(d)” - Unreasonable Refusal to Close Claim - Both “Pre” and “Post” Claim Closure Request Considered	Janice J. Boechler	4
“268(5)(d)” - Unreasonable “ROM” Calculation in “NOC” - Penalty Based on That “Unreasonable” Amount, Not Entire Award	James L. Williams	4

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PENALTY (CONT.)

“268(5)(e)” - Increased PPD Award Granted by Recon Order - Based on Information Carrier Could Reasonably Have Known at Claim Closure - “AP” Chart Notes Referred to “Heavy” Lifting in “At-Injury” Job, Whereas “AP” Release to Regular Work Based on “Job Description” Referring to “Light” Lifting	Anita Ferrer	1
“268(5)(e)” - Recon Order Award - “Chronic Condition” Value “Increased” - Based on “Info” That Carrier Reasonably Could Have Known at Closure - Did Not Seek “AP” Clarification	Gene A. Gieseke	9
“Amounts Then Due” - Based on Untimely Paid TTD Benefits, Less Recoverable Overpayment	Mauricio Gabino-Rivas	5
Carrier Without Legitimate Doubt Regarding Claimant’s Entitlement to TTD Benefits - Had Received Notice of AP’s “Open-Ended” Authorization - WCD’s Subsequent Disapproval of “AP” Status Did Not Effect Prior Authorization	Carl W. Hamilton	7
“De Facto” Denial - Amounts “Then Due” as of Hearing Date	Jesse R. James	8

PREEXISTING CONDITION

“005(24)” - Hernia Injury - Abdominal Wall Weakness - “Mere Susceptibility”	Dennis L. Corkum	12
“005(24)(c)” - Prior Rotator Cuff Tear/Surgery - Not Active Contributor to Damaging Shoulder - Merely Rendered More Susceptible to Injury	Rick L. Minton	9
“225” - Did Not Apply to Initial Compensability of “Combined Condition” Claim	Eric S. Sofich	9

PROSPECTIVE DENIAL

Denial Pertained to “New Injury” Claim - Not Interpreted as Invalid Prospective/“Back-Up” Denial of Existing Claim	Jude S. Hardesty	6
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PTD

“Odd-Lot” Doctrine - “Physically/ Vocationally” Totally Incapacitated - No “Suitable” Occupation Available - “Direct Medical Sequelae” Considered Under “268(15)”	Roger Wilson	2
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RECONSIDERATION PROCEEDING

“268(6)(f)” - “Clarifying” Report From Arbitrator - ARU Forwarded Carrier’s “Clarification” Request to Arbitrator - Report Admissible at Hearing	Gabriel Gallegos	3
ARU “Recon Denial/Evidentiary” Decision - “Abuse of Discretion” Review - No Authority to “Remand” to ARU, But Remedy May Be “Fashioned” For ARU to Reconsider Ruling	Joseph Federico, Jr.	5
Raising “PTD” Via “Recon Request” Form	Darlene L. Sparling	1

RESPONSIBILITY

Attorney Fee - “382(2)” Fee Payable by Appealing Carrier Who Contested Compensability	Damon E. Smith	10
Claimant Proves “Actual Causation” Against Earlier Carrier - Established “Presumptive Responsibility” For “LIER” Purposes	Damon E. Smith	10

STANDARDS

“BFC” - Based on “DOT” Code(s) For “At Injury” Job, Specific Job Analysis, or “Party Agreed” Job Description - Claimant’s Affidavit Probative for Corroborative Purposes	Charles L. Chase	7
Work Disability Award - Claimant Not Released/ Returned to Regular Work - “At-Injury” Duties Were Performed on a “Steady/Customary” Basis	Terilynn McNiel-Dane	2
Work Disability - “BFC” - “Specific Job Analysis” Outweighs “DOT” Code - More Accurate Description of Strength Requirements of “At-Injury” Job	Donald V. Burch	10
Work Disability - Release to Regular Work - “214(2)(a),” “726(4)(f)(E)”	Jorge O. Benites	10

SUBJECT WORKER

“005(30),” “027(7)(a)” - Not Subject to Direct/Control of Alleged Employer - “Right to Control/Nature of Work” Tests	Steven Vaida	4
“005(30)” - Injury Before “Pre-Orientation/Training” Session - No Employment Agreement to Provide Remuneration for Services	Mary K. Meyers	9
“Permanent Employment Relationship Test”	Maria Perez	12

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TPD BENEFITS

Modified Job - Employment Termination - No "TTD" Reinstatement	Robert W. Bell	9
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TTD

"268(4)(c)" - Termination of TTD Benefits Not Authorized - Claimant's Refusal of "Modified Job" Offer Justified - Not at "Site" Consistent With "Pre-Injury" Employment Arrangement	Donald E. Fermanian	10
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"AP" Authorization - Chart Note Listed Accepted "Conjunctivitis" Condition (Among Other Conditions) - Sufficient to Trigger Carrier's "Time Loss" Obligation	Vincent O. Robison	5
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Board Not Authorized to Create "Administrative Overpayment" - Could Not Award "Procedural" TTD Where Subsequent NOC Had Not Awarded TTD - Penalty Available if Carrier's Claim Processing Unreasonable	Jackie A. Scott	8
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"Emergency Room" Physician's TTD Authority - Limited to 14-Days - "245(2)(b)(B)" - No "Open-Ended" Authorization	Jason Osborne	8
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"Physician's Assistant" Authorized - Based on "AP" Direct Involvement	Jesus M. Nunez	12
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"Physician Assistant" Time Loss Authorization - Limited to 30 Days From First Visit - "245(2)(b)(B)"	Ana Galvan	6
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TTD: Release to "Regular Work" - "At Injury" Duties - "Recurring/Customary" Basis	Sandra L. Read	10
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