

Claimant's Testimony Alone Insufficient to Defeat Employer's Modification Petition

The recent Commonwealth Court Decision of [World Kitchen v. Workers' Compensation Appeal Board \(Rideout\)](#), 1789-CD-2008, was a win for employers and insurance carriers on an employer-filed Modification/Suspension Petition. The Court specifically held that Claimant's testimony alone (i.e., that she felt that she was unable to perform a light duty job) was insufficient to defeat the Defendant's Modification/Suspension Petition where the Defendant presented medical testimony from an orthopedic surgeon that Claimant was able to perform the light duty jobs in question.

The Court differentiated the burdens of proof imposed upon the parties in a Modification/Suspension Petition versus a Reinstatement Petition. Judge Leavitt, writing for the Court, indicated that because the Petition pending before the Workers' Compensation Judge was a Modification/Suspension Petition, "medical evidence was needed to establish the Claimant's capabilities and whether a particular job fell within those capabilities." Judge Leavitt noted that the Employer did present un rebutted medical evidence from their IME physician that the jobs in question were within the Claimant's restrictions and, as well, the Workers' Compensation Judge found the employer's doctor's testimony to be credible.

In contradiction to the same, the Claimant presented no medical evidence other than her own lay testimony that she did not feel that she could perform the light duty jobs in question. In its decision reversing both the Workers' Compensation Judge and the Appeal Board who had denied the Defendant's Modification Petition, the Commonwealth Court indicated the Claimant's subjective beliefs concerning her work abilities were insufficient to challenge a Modification/Suspension Petition. However, the Court specifically stated that had the Petition pending before the Judge been a *Reinstatement* Petition, the Claimant's testimony alone could have been the basis for the Reinstatement of a Claimant's benefits. Again, though, because the pending Petition was a Modification/Suspension Petition, medical evidence was necessary on behalf of the Claimant to rebut the medical evidence of the employer.

The Commonwealth Court specifically defines and differentiates the burdens of proof placed upon the parties in regards to Modification/Suspension Petitions, compared to Reinstatement Petitions, and specifically rejects the application of Reinstatement principals to an employer's Modification Petition. Importantly, the Court's decision deals a fatal blow to claimants attempting to defend against a Modification/ Suspension Petition without presenting medical evidence.

Should you have any questions or comments in regards to the Commonwealth Court's decision in [Rideout](#), please contact Perry Merlo at 717-391-1171 or pmerlo@postschell.com.

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