Recent Developments In Workers Compensation Supercedeas Fund Reimbursement

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INTRODUCTION

The basic premise of the Pennsylvania Workers Compensation Act is that it is to be liberally construed in favor of the employee to effectuate its humanitarian objectives. As a result, when Workers Compensation Claimants are paid workers compensation benefits which, after litigation, it is determined they are not entitled, they are not required by law to repay those monies to the employer or insurer. Instead, the Legislature created a source of money (the Pennsylvania Workers Compensation Supercedeas Fund) from which employers and insurers are to be reimbursed for these overpayments. The Commonwealth Court’s 2003 decision of Wausau Insurance Co. v. WCAB, as interpreted by the Supercedeas Fund, dealt a severe blow to the employer’s right to Workers Compensation Supercedeas reimbursement. The Pennsylvania Supercedeas Fund (which administers the Fund) has relied upon the Wausau case for the proposition that any workers’ compensation benefits paid pursuant to a Claim or Reinstatement Petition cannot be refunded through the Supercedeas Fund unless all the benefits paid were attributable to a period of time after a Request for Supersedeas was filed. This, in essence, prohibits an employer from receiving Supercedeas reimbursement after a favorable appellate decision even though no compensation was owed or paid before the Request for Supercedeas was made. Seemly, the only way to recapture this money is to never pay the same, even in the face of an order requiring payment.

CATCH-22

In Joseph Heller’s novel “Catch-22”, a man is considered insane if he willingly continues to fly dangerous combat missions, but if he makes the necessary formal request to be relieved of such missions, the very act of making the request proves that he is sane, and, therefore, ineligible to be relieved of duty. Per the Supercedeas Fund’s interpretation of the Commonwealth Court’s 2003 decision in Wausau, the only way an employer can receive Supercedeas reimbursement in claimant-filed petitions is to request Supersedeas at a time when a request for Supersedeas is inappropriate. For instance, when a claimant files a claim petition, the employer’s right to Worker’s Compensation Supercedeas reimbursement is lost. The Pennsylvania Supercedeas Fund (which administers the Fund) has relied upon the Wausau case for the proposition that any workers’ compensation benefits paid pursuant to a Claim or Reinstatement Petition cannot be refunded through the Supercedeas Fund unless all the benefits paid were attributable to a period of time after a Request for Supersedeas was filed. This, in essence, prohibits an employer from receiving Supercedeas reimbursement after a favorable appellate decision even though no compensation was owed or paid before the Request for Supercedeas was made. Seemly, the only way to recapture this money is to never pay the same, even in the face of an order requiring payment.

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3 Hereinafter referred to as the “Fund”.
tion unnecessarily paid to workers while at the same time, relieving the employee of the harsh results of an automatic Supersedeas. The Fund is endowed exclusively by annual assessments levied on insurers and employers. If the employer is ultimately successful on the merits of a litigated petition, it can then apply to the Fund for full reimbursement. The Fund’s interpretation of the Wausau case throws a roadblock up in the face of this equitable system.

THE ACT AND CASE LAW ON SUPERSEDEAS REIMBURSEMENT

Section 4438 of the Workers’ Compensation Act provides that:

In any case in which a Supersedeas has been requested and denied, under the provisions of Section 413 or section 430, (and) payments of compensation are made as a result thereof and upon the final outcome of the proceedings, it is determined that such compensation was not, in fact, payable, the insured who has made such payment shall be reimbursed therefrom.

In the year 2000 in the Decision of Robb v. WCAB (Hooper), the Commonwealth Court reiterated the five requirements that must be met by an employer prior to receiving Supersedeas reimbursement as follows: 1) Supersedeas must have been requested; 2) the request for Supersedeas must have been denied; 3) the request must have been made in a proceeding under Section 413 of the Act; 4) payments were continued because of the order denying Supersedeas; and 5) in a final outcome of the proceeding, it is determined that such compensation was not, in fact, payable. (See also Borough of Workers’ Compensation v. WCAB (Liberty Mutual Ins. Co.),). The facts in the Hooper case conform with the case law in this Commonwealth Court concerning Supersedeas reimbursement that has been in place for many years, so it is surprising that the Wausau case would cite Hooper to support its dramatic diversions from what had been the standard for Supersedeas reimbursement for many years. In Hooper, the court denied Supersedeas reimbursement to a defendant/employer who unilaterally suspended benefits; subsequently filed a Petition for Suspension with a Request for Supersedeas Reimbursement; and then sought reimbursement of monies paid to the claimant during the time period that it had unilaterally, and without a Judge’s order, suspended claimant’s benefits. Specifically, in Hooper, on June 24, 1991, the employer unilaterally suspended claimant’s benefits. On December 30, 1991, the employer filed a Petition to Modify and/or Suspend the claimant’s benefits and filed a Request for Supersedeas. The Judge issued an order granting the defendant’s Request for Supersedeas, but ordered the defendant to pay benefits to the claimant from June 24, 1991 through March 31, 1992. The employer then subsequently sought reimbursement from the Supersedeas Fund for the entire period that benefits were paid from June 21, 1991 through March 31, 1992. The Workers’ Compensation Appeal Board, and subsequently, the Commonwealth Court, held that reimbursement was only proper from the date that the insured filed its Request for Supersedeas, rather than the date on which the insured/employer illegally and unilaterally stopped making payments. The ultimate decision of the Hooper court was that it would not sanction reimbursement from the Fund nor reward an employer by allowing reimbursement from the Fund where the employer had unilaterally suspended claimant’s benefits and thereafter requested Supersedeas. The Hooper court indicated that, “If an employer files an Application for Supersedeas, Supersedeas can be effective no earlier than the date on which the employer filed such an application. Moreover, the granting of Supersedeas Request cannot erase the employer’s obligation to pay benefits for the time during which Supersedeas was not in effect.” The Hooper case also stands for the proposition that, “The subsequent granting of a Supersedeas Request does not excuse an earlier violation of the Act. Furthermore, the triggering date for reimbursement is the date on which the employer files an Application for Supersedeas.” Thus, the Hooper Decision stands for the proposition that monies paid prior to the Request for Supersedeas cannot be reimbursed from the Fund, but monies paid after the Request for Supersedeas are reim-

6 Section 443(b), Pennsylvania Workers Compensation Act.
8 77 P.S. 999(a).
9 Purdon’s Statues, Title 77.
12 Hooper at 746 A.2d 1178.
13 Id. at 1183.
14 Id.
bursable from the Fund. The Fund’s interpretation of the Wausau decision15 stands that precedent on its head. Specifically, the Wausau Court decided that the defendant’s Requests for Supercedeas in regards to an Employer filed Termination Petition and an Appeal were only made as of September 9, 1992 and, thus, the defendant would only be entitled to reimbursement from that date. The Court disregarded the fact that the first-time defendant could or should have requested Supercedeas was after many years of benefits had already been ordered to be paid by the Judge and the Board.

Although a request for Allocatur to the Supreme Court of Pennsylvania was made by

15 The facts of Wausau involve a claimant-filed Claim Petition which was granted by the Judge for a closed period between September 4, 1985 through July 7, 1986. The claimant then appealed that Decision to the Board which reversed the Judge’s Decision and awarded ongoing benefits to the claimant. The Board ultimately was affirmed by the Commonwealth Court which held that the Judge did err in his initial Decision terminating the claimant benefits as of July 7, 1986 and thereafter remanded the entire case back to the Judge. The defendant, in the interim, had filed a Termination Petition alleging that Supercedeas should be granted as of April 19, 1989. The Judge ultimately granted Supercedeas on December 15, 1992 in regards to the Termination Petition which was filed on September 9, 1992. The remanded Claim Petition was thereafter consolidated with the employer's parallel-filed Termination Petition. The defendant, thereafter, appealed the Board’s Decision and requested Supercedeas which was denied by the Board on October 22, 1992 and subsequently by the Commonwealth Court on December 1, 1992. On June 18, 1997, the Workers’ Compensation Appeal Board issued a Final Decision terminating the claimant’s benefits as of September 11, 1989. That Decision was not appealed. The defendant/employer then requested Supercedeas reimbursement from the Fund and the Judge awarded reimbursement only for the closed period between September 9, 1992 through June 18, 1997. The defendant then filed an appeal which ultimately resulted in the Commonwealth Court’s Decision in Wausau. In that Decision, the Commonwealth Court reviewed both Sections 430 and 413 of the Act as the defendant/employer had requested Supercedeas, not only in regards to an appealed Decision, but also in regards to its employer filed Termination Petition. In regards to the defendant/employer’s Request for Supercedeas pursuant to Section 430 as it relates to the Request for Supercedeas on appeal of the Board’s Order requiring it to reinstate the claimant’s benefits, Wausau cited the Hooper Decision as supporting its stand that reimbursement can only be granted for those payments attributable to a claimant’s period of disability subsequent to the date the Request for Supercedeas was filed.

The legacy of Wausau has been felt by many defendants and employers who had cases in litigation when Wausau was decided, only to be stymied by the Fund’s interpretation of Wausau after a request for reimbursement on an employee filed petition. An example of the same is found in the Burgess case. After being placed in a suspension status, Ms. Burgess filed a Reinstatement petition in 2001. The workers compensation Judge issued a decision in June 2002 granting benefits for the period from March 1999 to August 2001, representing over $17,000 in indemnity. An appeal of the Judge’s decision was taken to the Worker’s Compensation Appeal Board along with a request for Supercedeas. Supercedeas was denied by the Board and, as a result, defendant made payment of all money ordered to be paid by the Judge. The Board, in 2003, reversed the award and defendant sought Supercedeas reimbursement of the money which it paid to claimant which Ms. Burgess was ultimately not entitled. In his decision of February 2, 2005, Workers Compensation Judge Deeley indicated that he felt

that the defendant should be able to recover from the fund when payments are made because of a Judge’s order. . . . In general when claimant’s files petitions there is no Supercedeas at issue. Compensation is not being paid. The wrongful payments are made pursuant to a Judge’s order. . . . This Judge felt through the years that the Supercedeas Fund is paid for by the defendants and should be (used to) reimburse them for payments made pursuant to a Judge’s order when it is later determined the Judge’s order is wrong. . . . However, as I read . . . Wausau the direction

16 Bureau claim no. 301207, Deeley, J., February 2, 2005. An appeal of this decision is currently pending before the Workers Compensation Appeal Board at No. 05-0474.
of the Commonwealth Court is clear. (There-
fore) reimbursement is denied.17

The Burgess case is an example of the in-
equity created by the Fund’s interpretation of Wausau and what is for the defendant/em-
ployer, very hard to swallow. The Wausau
court states that if there is an inequity in the
law, the same is to be addressed by the legisla-
ture, not the courts.18 However, it appears that
the holdings in the cases prior to Wausau (Liberty Mutual and Hooper) and the Act,
would have permitted Supercedeads reimburse-
ment where all five of the prerequisites for
Supercedeads reimbursement have been met;
that is, Supercedeads reimbursement can and
should be allowed where Supercedeads has
been requested; the request has been denied;
the request is made pursuant to Section 413 of
the Act; payments were continued because
Supercedeads was denied; and the final deter-
mination is that compensation was not, in fact,
payable. The Commonwealth Court’s Decision
in Hooper is perfectly reconcilable with
Section 443 of the Act. It makes perfect sense
to preclude reimbursement from the Fund for
monies paid by defendant to a claimant prior
to the time that Supercedeads was requested.
For, if that was permitted, the Fund would
very soon be insolvent as employers could
wait months or years before filing a petition
with a request for Supercedeads and then re-
ceive each and every penny back that it ever
paid on a claim if a Decision was ultimately
rendered in their favor. However, the Fund’s
interpretation of the Wausau case is com-
pletely at odds with the wording of the Act in
regards to reimbursement of monies paid after
the request for Supercedeads was made. It is
absolutely irrelevant that payment of monies
made after a request for Supercedeads are attrib-
utable to a period of time prior to the date the
Supercedeads was requested and denied, absent
any type of violation of the law such as unilat-
eral suspension of benefits. If the result and
reasoning of the Fund’s reading of Wausau is
condoned, the same may ultimately lead to
employers ignoring the Decisions of Judges,
the Board and the Commonwealth Court to
pay claimants workers’ compensation bene-
fits. Defendants will take their chances with
regards to penalties and attorney’s fees being
assessed against them as opposed to paying a
claimant years worth of past due compensa-
tion that a claimant may ultimately not be
entitled. By advocating the position set forth in

VICTORY FOR THE EMPLOYER:
CONSOLIDATED FREIGHTWAYS19

In the very recent decision of Consolidated
Freightways, the Commonwealth Court has es-
sentially eviscerated the Fund’s slanted inter-
pretation of the Wausau decision. With facts
virtually identical to the Burgess case, the
Court held that an employer is entitled to re-
imbursment from the Fund where monies
are paid to a claimant subsequent to the em-
ployer’s request for Supercedeads even though
the alleged reoccurrence predates the Super-
cedeads request. Specifically, the claimant in
Consolidated Freightways was injured on
December 11, 1992 and thereafter his benefits
were suspended in 1993 after his return to
work. In 1995, he petitioned for reinstatement of
his benefits as of 1994. After many years of
litigation, the employer was ordered to rein-
state the claimant’s benefits from January 1994
to May 1995. In response to that order, the
claimant filed an appeal and a request for
Supercedeads on appeal which was denied and,
as a result, the employer paid the claimant
over $55,000 in compensation and interest.
When the order requiring reinstatement was
subsequently reversed, the employer sought
reimbursement from the Fund. The Fund, in
turn, denied the employer’s request, citing
Wausau. Writing for the Court, Judge Leavitt
quickly dismissed the Fund’s position as “ir-
relevant” and ignorant of reality.20 The Court
held that “(i)t is hard to conceive of a rein-
statement proceeding where . . . . the period of
time attributable to Claimant’s alleged recur-
ing disability predated Employer’s Superce-
deas request.”21 Furthermore, the Court held

17 Id. at p. 3, Discussion.
18 Wausau at 16.
19 Bureau of Workers Compensation v. W.C.A.B.
20 Consolidated Freightways at 6.
21 Id.
that “the Legislature did not intend to foreclose employers and their insurers from reimbursement for benefits that have been wrongly reinstated, but such would be the inevitable result of the impossible procedural standard asserted by the Bureau.”\textsuperscript{22} The Court affirmed the Worker’s Compensation Appeal Board’s decision requiring the fund to reimburse the employer for all monies paid after the date it requested Supersedeas.

CONCLUSION

The Supersedeas Fund was established by the Act as a means of reimbursing employers who pay worker’s compensation benefits to claimants who ultimately are not entitled to the same, with the promise that payments made after a request for supersedeas will be reimbursed. Absent a violation of the Act by non-payment or withholding payment, employers should be permitted to receive supersedeas fund reimbursement from this employer/insurance funded source. The Supersedeas Fund’s reliance upon the Wausau case to deny these benefits has now been essentially dealt a death knell by Consolidated Freightways which described the Fund’s position as one which made no sense and, absent the wise instruction of Consolidated Freightways, would have permitted the very type of injustice that the Legislature sought to avoid when the Fund was established.

\textsuperscript{22} Id.