



State of New Jersey

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
PO BOX 381
TRENTON, NEW JERSEY 08625-0381

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

HAROLD J WIRTHS
Commissioner

MEMORANDUM

April 11, 2014

To: May 1, 2014 Workers' Compensation Seminar Attendees

From: Peter J. Calderone, Director and Chief Judge *PJC*

Subject: Syllabus for the Seminar

Attached please find the Syllabus prepared by judges and attorneys for our Fourth Annual Statewide Seminar. The Seminar will begin at 1 pm and end at 4 pm in each of our vicinages except Bridgeton. The Administrative Office of the Courts has approved 3.5 CLE credits which includes 1 Ethics credit for the program.

Please register at the location of your choice as soon as possible so that we can provide the necessary accommodations and CLE forms at each location.

The Syllabus topics for the Seminar are:

- A. Second Injury Fund - Expert Advice in Handling Fund Cases
- B. Temporary Disability Issues since Cunningham (386 N.J. Super. 423)
- C. Ethical Issues in Fair Dealing with Court and Other Parties

Your participation and attendance is greatly appreciated.

Attachment

New Jersey Is An Equal Opportunity Employer

Section A:

**Second Injury Fund- Expert Advice in
Handling Fund Cases**

SECOND INJURY FUND

N.J.S.A. 34:15-95 et. seq.

I. Filing of Verified Petition

A. Verified Petition**

1. Include:

- a. Work—employers, duties, dates
- b. Income—earned/unearned (WC, SS, TDB, UIB, LTD, VA, Union)
- c. Medicare Eligibility
- d. Pre-existing accidents and/or disabilities
- e. Date of last compensable accident, resulting injuries
- f. Wage/rate for last accident
- g. Lawsuits—civil or workers' compensation
- h. Dependents—names, dates of birth
- i. Education

2. Send:

- a. Original and two (2) copies of Verified Petition to:
Office of Special Compensation Funds
P.O. Box 399
Trenton, New Jersey 08625
[or (3) copies w/SASE for returned/stamped copy]
- b. Permanency exams MUST INCLUDE ESTIMATE OF 100% TOTAL DISABILITY
- c. Copy of VP and medicals to respondent(s)

B. Other Documentation:

1. Send directly to DAG at least two (2) weeks prior to court listing:
Second Injury Fund
P.O. Box 105
Trenton, NJ 08625
(609) 984-1940 (fax) (or bring to court)
2. Include:
 - a. Respondent's exams (if done)
 - b. Pre-existing medical records
 - c. Prior exams
 - d. Prior judgments, orders, §20's

II. Conference

A. All parties must attend

B. Parties must be prepared, or request adjournment 3 days in advance (copy Fund)

1. KNOW: wage/rate, amount/weeks of temp paid, whether petitioner ever returned to work, other income/benefits received
2. Obtain Social Security Disability ACE info** and/or pension info before conference
3. Consider: FCE/DVR, Partial Total, §20, offset rate
4. Complete Second Injury Fund Information Review form**

C. DAG will request adjournment to review any documentation not previously received

D. Negotiate—possible outcomes:

1. Not totally and permanently disabled (no Fund liability)
2. Not compensable (no Fund liability)
3. Total from last accident or exposure alone (no Fund liability)

4. Total from pre-existing disability alone (no Fund liability)
 5. Total from a progression of pre-existing disability (no Fund liability)
 6. Total from a combination of compensable disabilities, but cannot separate into pre-existing/partial total and last/total (possible Fund liability after 450 weeks=12(b))
 7. Total from a combination of pre-existing disability and last compensable accident or exposure= FUND CASE
- E. Split(%)between Respondent(s) and Fund—**last accident first**
- F. Date of Totality
- G. SSA offset**
- H. Pension offset
- I. Third Party/Section 40 Liens

III. **Settlement**

- A. Agree to % split or 12b, date of totality, offset, credit, liens, fees, etc.
- B. If any offsets, judge must set fees first (See Fiore v. Trident Construction Co., 251 N.J. Super.101 (App. Div. 1991))
- C. Prepare Order for Total Disability with Second Injury Fund**and Addendum**(if necessary), Decision of Dismissal**on CP's dismissed
- D. Submit forms to all counsel **2 weeks** prior to court date
- E. Put through on record before judge and with all counsel and petitioner present
- F. Fund brochure given to petitioner

IV. **Trial**

- A. If case cannot be resolved, **take petitioner's testimony**. (Most cases can be resolved after hearing/seeing petitioner)
- B. Do not bifurcate—unless issue is compensability, etc. and only with Fund agreement
- C. Medical testimony—Fund DAG/Judge will use discretion regarding need for participation

V. **Post Judgment**

- A. Motion** to Reopen
 1. Return to work; medically improved
 2. Receipt of Social Security, Pension, or Third Party monies: recalculate rate
 3. Overpayments
- B. Amended Orders**
 1. To terminate benefits
 2. Offset rate
 3. §40 lien credits
 4. Recoup overpayment

VI. **Resources**

Division of Workers' Compensation Website: www.nj.gov/labor/wc

**forms available on website

**Social Security Offset
Calculations #1**

| | | |
|-----------|------------------------|-----------|
| 80% ACE = | 2,583.20/mo | 594.52/wk |
| Comp Rate | (X12 divided by 52.14) | 480.00/wk |

Initial SSA Entitlement

| | | |
|-------------|-----------------------------------|-----------|
| Wage Earner | 1,070.00/mo | 246.26/wk |
| Auxiliaries | 534.90/mo | 122.90/wk |
| | (Round down to nearest dollar) | |

| | |
|----------------|------------------------|
| 594.52 | "CAP" |
| <u>-246.26</u> | <u>Wage Earner</u> |
| 348.26 | Offset Rate (w/o aux.) |
| <u>-122.90</u> | <u>Auxiliaries</u> |
| 225.36 | Offset Rate (w/aux.) |

**Social Security Offset
Calculations #2**

| | | |
|-----------|------------------------|-----------|
| 80% ACE = | 831.20/mo | 191.30/wk |
| Comp Rate | (X12 divided by 52.14) | 480.00/wk |

Initial SSA Entitlement

| | | |
|-------------|-----------|------------|
| Wage Earner | 510.20/mo | 117.38/wk. |
| Auxiliaries | 247.30/mo | 56.85/wk. |

| | |
|----------------|------------------------|
| 480.00 | "CAP" |
| <u>-117.38</u> | <u>Wage Earner</u> |
| 362.62 | Offset Rate (w/o aux.) |
| <u>- 56.85</u> | <u>Auxiliaries</u> |
| 305.77 | Offset Rate (w/aux.) |

SUMMARY

The Second Injury Fund was created by the Legislature to absorb part of the impact upon employers of awards of permanent disability in certain cases. Under N.J.S.A. 34:15-95 the Fund is liable when a partially disabled worker becomes totally and permanently disabled as a result of the combination of a work-connected accident or illness and the pre-existing disability. Lewicki v. N.J. Art Foundry, 88 N.J. 75, 83 (1981). The intent of the Fund is to "encourage the hiring by industry of people handicapped by pre-existing disabilities..." Paul v. Baltimore Upholstering Co., 66 N.J. 111, 129 (1974), protecting both the employer from an unfair burden and the worker from being denied employment because of the risk of total disability. However, the Fund is not meant to relieve employers of responsibility for the injuries their employment caused. In fact, Second Injury Fund benefits are specifically precluded under circumstances where:

...the disability resulting from the injury caused by the person's last compensable accident in itself and irrespective of any previous condition of disability constitutes total and permanent disability... [N.J.S.A. 34:15-95(a)]

Thus, the Second Injury Fund is not liable when the last compensable disability constitutes total and permanent disability. Katz v. Twp. of Howell, 68 N.J. 125 (1975); Paul v. Baltimore Upholstering Co., supra 66 N.J. at 129; Wexler v. Lambrecht Foods, 64 N.J. Super. 493 (Cty. Ct. 1951). While encouraging employers to hire handicapped workers, the legislative policy behind the Second Injury

Fund is also "concerned against inroads upon the Fund unless all the statutory criteria, both affirmative and negative, are satisfied." Katz, supra, 68 N.J. at 131-132. See also, Paul, supra, 66 N.J. at 129. The Fund is not an insurance scheme or an old-age fund; it is simply meant to encourage the hiring of handicapped workers by relieving employers of the effects of total disability which has occurred in part due to a prior handicap. Schuman v. Male, 70 N.J. Super. 234, 240-241 (App. Div. 1961).

The proof requirements necessary to impose Fund liability are stringent. The Fund provisions of the compensation statute are not remedial and are not given a liberal construction. Moreover, the burden of proof to establish statutory criteria is upon the party who seeks to implicate the Fund. Lewicki v. N.J. Art Foundry, supra, 88 N.J. at 84; Katz v. Twp. of Howell, supra, 68 N.J. at 131-2; Ort v. Taylor Wharton Co., supra, 47 N.J. 198, 207 (1966). Three affirmative elements must be shown: compensable permanent disability which was less than total, pre-existing permanent partial disability, and a causal nexus between those elements and a resulting permanent total disability. Lewicki v. N.J. Art Foundry, supra, 88 N.J. at 90.

Fund benefits are also denied if the pre-existing condition or disease is progressive and worsens after the last compensable accident and that progression results in a petitioner becoming totally disabled. N.J.S.A. 34:15-95(c) (d).

Fund payments are subject to a Social Security disability offset. The Fund is entitled to the same offset benefits as is the respondent, and depends upon the petitioner's (and auxiliaries)

initial Social Security benefit amount and 80% Average Current Earnings (ACE). This offset is available until petitioner turns 62 years of age. N.J.S.A. 34:15-95.

The Fund is entitled to an Ordinary Disability Pension offset, to the same extent as the respondent. Only the petitioner's initial pension amount (not annuity) is used to calculate the offset. The offset lasts as long as the petitioner continues to receive the pension. N.J.S.A. 43:15A-25.1. See also, Rosales v. State of N.J., 1999-7099, decided April 13, 2005 by the Honorable Richard E. Hickey, III, J.W.C.; No. A-2110-02 (App. Div. November 8, 2004).

The Fund is entitled to exercise third-party lien credits against any monies received from lawsuits arising out of the last compensable accident or exposure, if not first exhausted by the respondent. The rights of the Fund cannot be waived or compromised. N.J.S.A. 34:15-40. See also, Bello v. Commissioner of the Department of Labor and Industry, 56 N.J. 41 (1970).

Fund benefits end upon the petitioner's death. Fund benefits do not vest, and therefore, the Fund does not pay benefits to any dependents. N.J.S.A. 34:15-95.2. Medical bills are not the responsibility of the Fund, and the petitioner must seek payment of related bills from the respondent. The Fund does not pay attorneys' fees, costs, or penalties.

Application for benefits from the Second Injury Fund must be made by a Verified Petition filed within 2 years after the date of the last payment of compensation by the employer or the insurance carrier. N.J.S.A. 34:15-95.1.

Hypotheticals

- Petitioner is 40 years of age. He went to work for Respondent as a carpenter in 2010 after receiving an award of 25% partial permanent disability for an injury he sustained while working for a prior employer in 2007. As the result of the new injury, Petitioner experienced an increase in his low back pain and needed an additional low back surgery. After recovering from his surgery, he was authorized to return to work with limitations of lifting up to 35 pounds.

(Petitioner is not totally and permanently disabled. No Fund liability).

- Assume Petitioner still has his award of 25% partial permanent disability for his low back and while working for Respondent he injures his low back and experiences an increase in his low back pain. There is no change in pathology to his lumbar spine. After authorized physical therapy, his low back pain decreases to baseline and he is authorized to return to work full duty and has no restrictions on his outside activities.

(Petitioner does not have a compensable permanent partial disability. No Fund liability).

- Assume that instead of receiving an award for 25% partial permanent disability, Petitioner was injured in 2007 and was diagnosed and treated for a lumbar sprain and strain, from which he fully recovered. He lost no time from work and was able to work full duty following his brief course of physical therapy. He also had preexisting hypertension, right carpal tunnel surgery and a fractured right ankle. In 2010, he suffered a severe injury to his low back, requiring multiple surgeries. He was diagnosed with a failed back syndrome and is continuing to receive pain management treatment because nothing further can be done concerning his injury. He is taking heavy doses of narcotic medications and is severely depressed. His authorized treating doctor has said that Petitioner cannot return to employment due to his low back condition.

(Petitioner is totally disabled from the last compensable accident, regardless of his pre-existing conditions. No Fund liability).

- Petitioner was injured due to a fall at home in 2007 and as a result had several low back surgeries, and was then diagnosed with a failed back syndrome. He was awarded Social Security Disability as the result of this injury. In 2010, he decided to attempt a trial work period so that he could keep his Social Security Disability benefits and try to find a lighter type of work that he could do. He attempted to work answering phones but tripped and fell the first day of work resulting in a right ankle sprain. He has not returned to work since recovering from his right ankle sprain.

(Petitioner is totally disabled from pre-existing disability alone. No Fund liability).

- Petitioner was diagnosed with diabetes and was insulin dependent and experiencing some diabetic neuropathy in his legs prior to his compensable low back accident with Respondent. As the result of his compensable injury, he had right shoulder surgery to repair a rotator cuff tear and was authorized to return to work with a 25 lb. lifting restriction. While he was out of work treating for his shoulder, his diabetes progressed and the neuropathy was so severe he was unable to return to any type of employment because he could not sit or stand for any period of time.

(Petitioner is totally disabled as the result of the progression of his pre-existing disability alone. No Fund liability).

- Petitioner had a prior award of 25% partial permanent disability for his low back and suffered a compensable low back injury, resulting in an additional surgery. After his surgery, he was authorized to return to work with a 20 lb. lifting restriction. The weekend before he was about to return to work, Petitioner suffered a severe myocardial infarction which resulted in his inability to return to work.

(Petitioner is totally disabled as the result of his compensable condition, together with subsequent conditions. No Fund liability).

- Petitioner is totally disabled as the result of his prior award of 25% disability for his low back, and his three compensable low back surgeries resulting in a failed back syndrome and resultant lifetime pain management treatment.

(Fund case because petitioner is totally disabled as the result of his compensable and pre-existing disabilities).

- Petitioner has two compensable accidents in 2010. As the result of the first injury, he injures both knees. As the result of the 2nd accident, he injures his right shoulder and low back. Petitioner has surgery to his low back and right shoulder but undergoes conservative treatment to his knees. Before he can return to work following his right shoulder and low back surgeries, it is determined that he needs bilateral knee replacements which are performed. Petitioner had a bad result from the knee surgeries and still has on-going low back and right shoulder pain. He has substantial restrictions from both accidents and is unable to return to even sedentary work.

(12b Fund case since petitioner is totally disabled from a combination of the two compensable injuries. Petitioner is entitled to 450 weeks of benefits between the two compensable injuries and 12b benefits from the Fund).

TABLE OF CASES

Allen v. Great Atlantic & Pacific Tea Co., C.P. 2005-13683, decided September 30, 2009 by the Honorable Diana Ferriero, J.W.C. Despite pre-existing conditions or treatment, the petitioner had no prior functional loss, and in any case, the extensive disability arising from the last compensable accident alone totally disabled petitioner. Affirmed, No. A-1333-09 (App. Div. December 21, 2010).

Bello v. Commissioner of the Dep't. of Labor and Indus., 56 N.J. 41 (1970). The Second Injury Fund is entitled to be fully reimbursed under N.J.S.A. 34:15-40 for credits from a third-party action arising from the last compensable injury, regardless of the percentage of disability attributable to the injury.

Fiore v. Consolidated Freightways, 140 N.J. 452 (1995). Prior loss of function can be aggravated by the employment injury and need not be static or fixed, but it must be disabling prior to the compensable injury.

Florke v. Visiting Homemakers Service of Ocean County, CP 1993-59367, decided July 16, 2002 by the Hon. Lawrence G. Moncher, J.W.C. If there was prior physical impairment or loss of function as a consequence of petitioner's obesity, it would qualify as prior disability. However, petitioner's pre-existing weight condition must be a disabling factor.

Gallo v. Township of Woodbridge, No. A-6339-08 (App. Div. May 19, 2011). Petitioner's prior back had been quiescent prior to the last compensable accident, and therefore, was not partially disabling.

Katz v. Township of Howell, 67 N.J. 51 (1971), appeal after remand 68 N.J. 125 (1975). In Katz I, the Court set forth the requirement of credible proof of a pre-existing disabling condition, the extent of that disability, and its causal relationship to total permanent disability. In Katz II the Court held that liability of the Fund requires: (1) the worker must be permanently and totally disabled, (2) the prior disability must be partial and permanent, and (3) the prior condition and the subsequent employment-connected injury must "in conjunction" result in total permanent disability. There is no Fund liability if the compensable condition in and of itself caused the total permanent disability regardless of preexisting disability.

Lewicki v. New Jersey Art Foundry, 88 N.J. 75 (1981). Not every prior disability claimed to contribute in causing total permanent disability must meet the rigorous standard of "fixed, measurable, and arrested" but some evidence of preexisting disability must be offered beyond

the mere statement of the petitioner. If progressive physical deterioration subsequent to the last compensable injury results in total permanent disability there is no Fund liability.

Nisivoccia v. County of Essex, No. A-1864-07, A-1946-07 (App. Div. August 25, 2009). Determination of extent of pre-existing disability cannot be mere calculation of the prior disability awards. Petitioner testified he performed at high functional capacity before the accident.

Ort v. Taylor-Wharton Co., 47 N.J. 198 (1966). When a petitioner is permanently and totally disabled from two successive periods of exposure with the same employer, the first giving rise to permanent partial disability and not contributing to the successive disability, the Fund can be liable. The burden of proof of Fund liability is for respondent. The Fund is not required to demonstrate non-liability.

Paul v. Baltimore Upholstering Co., 66 N.J. 111 (1974). Respondent's credit for prior payment of partial total disability, when total permanent disability is found, shall be for dollars paid, not the number of weeks previously awarded. Last carrier responsible for paying the difference between permanent partial award and total disability award, so that petitioner's weekly benefit is at total permanent rate.

Perez v. Pantasote, Inc., 95 N.J. 105 (1984). Injured employee bears burden of proving compensation claim by a preponderance of demonstrable objective medical evidence. The validity of a medical finding of permanent injury may decrease with the passage of time.

Rosales v. State of N.J., No. A-2110-02 (App. Div. November 8, 2004); C.P. 1999-7099, decided April 13, 2005 by the Honorable Richard E. Hickey, III, J.W.C. Respondent and Second Injury Fund are entitled to dollar-for-dollar offset for pension portion of Ordinary Disability Benefits.

Shepley v. Johns-Manville Prods. Corp., 141 N.J. Super. 387 (App. Div. 1976). When a series of disabilities arise from one exposure there is no Fund liability.

Zabita v. Chatham Shop Rite, Inc., 208 N.J. Super. 215 (App. Div. 1986). When a compensable injury aggravates, activates or accelerates a pre-existing condition the employer is responsible for all disability flowing from the injury including the aggravation, activation or acceleration. The Fund is then responsible for the difference between the amount paid by the respondent and total permanent disability.

Section B:

Temporary Disability Issues Since
Cunningham (386 N.J. Super. 423)

MAY 2014 WORKERS COMPENSATION SEMINAR

TEMPORARY DISABILITY BENEFITS

Cunningham v. Atlantic States Cast Iron Pipe, 386 NJ Super 423 (App. Div. 2006)

Facts: Petitioner sustained a compensable knee injury, returned to work and was later terminated for cause (failure to report to work for three consecutive days due to incarceration). During a later period of disability, he sought temporary disability under the WC Act. The WC judge ordered temporary benefits, reasoning that Petitioner did not intend to remove himself from the labor market and, to the contrary, "...was extremely distressed at losing his employment and very much wanted to retain his job." She held that the obligation for temporary disability "continues after they leave the employment irrespective of whether they left voluntarily."

Issue: Did Petitioner suffer a current wage loss so as to be entitled to temporary disability?

Petitioner's Position: Petitioner argued he was entitled to temporary total disability due to work related knee injury because he was incapacitated and had not voluntarily abandoned his employment thereby taking himself out of the labor market.

Respondent's Position: The Respondent agreed that Petitioner was temporary totally disabled due to the work knee injury. It argued that Petitioner "suffered no wage loss... [since he] voluntarily abandoned his employment, and he was unemployed" when the new period of disability began.

Holding: Reversed and remanded to allow Petitioner to prove that "not only that he was available and willing to work, but that he would have been working if not for the disability... [since] temporary disability benefits constitute replacement for actual wage loss" (emphasis added). The court expressed that there's no distinction between voluntary departure and termination for cause when addressing eligibility for temporary disability. It stated, "[T]he reason for separation from employment, if unrelated to the employment or disability, is not dispositive of" entitlement to temporary disability.

The court reviewed: Electronic Assoc. v Heisinger, 111 NJ Super 15 (App. Div. 1970, cert. denied), (Petitioner who *retired* from the workforce voluntarily was denied temporary disability, because to hold otherwise would have created a "fictitious wage-earning status"), Tamecki v. Johns-Manville, 125 NJ Super 355 (App. Div. 1973, cert. denied), (temporary disability precluded after Petitioner *returned to school* full time), and Outland v. Monmouth-Ocean Educ., 154 NJ 531 (1998) (wage loss need not be from the employment where injury occurred, so long as the teacher proved she would have been working, thereby avoiding a "windfall").

Catalina v. AIG, CP 2008-1138, Judge Jill M. Fader decision October 13, 2013

Facts: Petitioner was injured, returned to work, and was later awarded permanent partial disability. She re-opened the claim and underwent authorized total knee replacement surgery. At the time of disability due to surgery and recovery, Petitioner was already receiving State of NJ Unemployment Benefits for six months. Petitioner testified she certified bi-weekly to the Division of Unemployment that she was available to work, and was actively seeking work. She posted her resume on line, worked with headhunters and interviewed with prospective employers.

Issue: Whether receipt of unemployment benefits during a period of total disability while undergoing authorized medical care constitutes wages such that Petitioner is eligible to receive temporary disability under the WC Act.

Petitioner's Position: Petitioner argues that receiving unemployment benefits constitutes "wages" satisfying the Cunningham requirements of availability and willingness to work and disability impacting the ability to work.

Respondent's Position: Relying on Cunningham, Respondent argued that Petitioner has the burden to prove that she was available and willing to work, and would have been working but for the disability.

Holding: The court awarded Petitioner WC temporary disability. Reflecting on Cunningham, Judge Fader stated that "the overriding issue is whether the employee has suffered a *current wage loss* (Court's emphasis) at the onset of the new disability period so as not to bestow a 'windfall' upon the Petitioner." After considering Petitioner's credible testimony about her efforts to seek and gain employment while receiving unemployment compensation, Judge Fader stated, "given the totality of the circumstances, including Petitioner's skills and prior work history, and bearing in mind the current state of the economy, Petitioner receives unemployment benefits precisely because she has been able to demonstrate that she has the prospect of employment." She specifically held that receipt of unemployment benefits constitute wage loss in this case. Unemployment benefits after the date her physician deemed her to be temporarily totally disabled and until she reaches maximum medical improvement should be declined by Petitioner.

Discussion Questions

- (1) Are supplemental temporary total disability benefits permitted or required under the Act or case law? (See Soto v. Herr's Foods, CP 2011-18325, Judge Emille R. Cox decision September 7, 2012)
- (2) If an employer offers to pay the employee's normal salary while he performs light duty within the authorized doctor's limits, but not at the employer's location (i.e. while performing volunteer work in a soup kitchen, stuffing envelopes for a non-profit, or working a phone bank for a charity), and the employee refuses the light duty offer, (a) must the employer pay temporary disability, and (b) if the employee refuses, may he file for unemployment compensation?
- (3) Is an employee who applies for Social Security Disability Benefits following a work-related injury precluded from temporary disability benefits under the WC Act if the application is made without temporary disability benefits ever ending? If the application is made after temporary disability ends and the authorized treating doctor recommends additional medical treatment again placing the petitioner out of work, is temporary due?
- (4) What proof would be necessary to establish wage loss so as to entitle petitioner to receive temporary disability benefits?
- (5) If an extension of unemployment benefits is not granted and then the authorized doctor takes petitioner out of work would temporary disability benefits have to be paid? What would petitioner have to demonstrate to establish wage loss at that point?

Section C:

Ethical Issues in Fair Dealing with Court and Other Parties

Ethical Issues- Fair Dealing With Court and Other Parties

Some **true** scenarios to discuss:

1. Petitioner provides his attorney with a social security number for the claim petition that is filed certified as true by petitioner.

The attorney later learns that his client committed identity theft and the social security number provided is false and belongs to someone other than her client. What should she do?

If the attorney does not do anything with this knowledge and the court or respondent later finds out that the social security number is not the petitioner's number and obtained through identity theft, what should they do?

2. Petitioner's attorney sends petitioner to Dr. A for a psychiatric examination and Dr. A finds no present psychiatric disability. The attorney then sends petitioner to Dr. B who finds a psychiatric disability. Petitioner's attorney does not submit Dr. A's report and Dr. A does not receive a court allowance for his services while Dr. B receives \$400. When Dr. A requests payment, the attorney refuses to pay Dr. A for his services claiming that since the report was not submitted there was no court allowance.

Should Dr. A's report have been submitted? Is Dr. A entitled to be paid for his services?

3. Respondent's attorney sends petitioner to Dr. C for an orthopedic examination and Dr. C finds a work related disability. The attorney asks Dr. C to reconsider his report. Dr. C submits a new report that indicates a disability "regardless of cause" which is the only report the attorney submits to the court and parties.

Is there an obligation to advise the court and other parties of the earlier opinion of Dr. C?

4. Petitioner's attorney has her office and a substantial workers' compensation practice in New Brunswick. To assist a friend who lives in Camden County, she files a claim petition for the friend. The Division distributes claim petitions based on the address of the petitioner on the claim.

The attorney utilizes her office address rather than petitioner's address so the claim is listed in New Brunswick rather than Camden. Is this permissible?

The attorney utilizes petitioner's Camden County address but also files a Motion to Transfer the case from Camden to New Brunswick without consulting her client maintaining in the attorney's affidavit that it is in the best interest and convenience of the parties to have the case heard in New Brunswick. Is this permissible?

5. Petitioner and her attorney have disagreements.

The attorney advises petitioner to find a new lawyer sending petitioner a letter that she no longer represents petitioner. Is that enough to end the representation?

Petitioner fires her attorney which the attorney memorializes in writing. Is that enough to end the representation?

6. Attorney A files a claim petition for a work accident and attends several conferences on the claim. Petitioner later contacts Attorney B on the same claim and asks Attorney B to represent her.

Rather than initiate a substitution of attorney since Attorney A may have a right to an attorney lien, Attorney B files a new claim petition. Is there anything wrong with that?

Rather than file a new claim, Attorney B files a substitution of attorney and contacts Attorney A requesting the file. Attorney A refuses to turn over the file unless Attorney B agrees to a \$1.00 per page copying fee. Is that permissible?

OPEN DISCUSSION OF ANY OTHER FAIR DEALING ISSUES