

[J-052-98]
THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

MARVIN PHILLIPS, : No. 0049 W.D. Appeal Docket 1997
: :
Appellant : :
v. : Appeal from the Order of the
: Commonwealth Court entered July 18, 1996
: at No. 2717 C.D. 95 affirming the Order of
: the Workmen's Compensation Appeal
WORKMEN'S COMPENSATION APPEAL : Board dated September 20, 1995 at No.
BOARD (CENTURY STEEL, : A94-2407
WESTINGHOUSE, ATLANTIC PLANT : :
MAINTENANCE, SAUERS, SCHNEIDER : :
& MINNOTTE) : :
Appellees : ARGUED: March 9, 1998
: :

DISSENTING OPINION

MR. JUSTICE SAYLOR

DECIDED: JANUARY 7, 1999

I am unable to conclude that Section 440 of the Workers' Compensation Act precludes an appellate court from assessing counsel fees pursuant to Appellate Rule 2744 against a workers' compensation claimant who pursues a frivolous appeal.

I agree with the majority that, although Section 440 of the Act provides for an award of attorney's fees in favor of an employee claimant in a case where the insurer (or employer) has unreasonably contested liability, the employer has no reciprocal right under the Act to seek counsel fees from a claimant who has filed a baseless claim petition. This follows from the plain language of the statute and is consistent with its remedial purposes.

In my view, however, it does not follow that the substantive provisions of Section 440 extend to the appellate process and supersede Appellate Rule 2744, which accords appellate courts the ability to impose sanctions as a means to control and supervise their

dockets. Nor do I view the application of Appellate Rule 2744 to a workers' compensation claimant as chilling the legitimate exercise of appellate rights. An employee is not penalized for pursuing his or her appellate rights -- only an appeal deemed frivolous by the appellate court as lacking any basis in law or fact will expose a party to counsel fees.

Since the Commonwealth Court found this appeal frivolous, and since the record supports such conclusion, I would affirm.

Mr. Justice Zappala and Mr. Justice Cappy join this Dissenting Opinion.