

[J-102-2004]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

PATRICIA GALLIE	:	No. 278 MAP 2003
	:	
v.	:	
	:	Appeal from the Order of the
WORKERS' COMPENSATION APPEAL	:	Commonwealth Court entered on 9/10/03
BOARD (FICHTEL & SACHS	:	at No. 1138 CD 2003 reversing the Order
INDUSTRIES)	:	of the Workers' Compensation Appeal
	:	Board dated 4/30/03 at No. A02-1054
	:	
APPEAL OF: FICHTEL & SACHS	:	
INDUSTRIES	:	ARGUED: May 13, 2004

CONCURRING AND DISSENTING OPINION

MR. JUSTICE SAYLOR

Decided: October 25, 2004

I join the majority's analysis and holding on the central question presented, namely, the impact of provision to the Department of a utilization review report upon the timeliness of a petition for review from the utilization review.

I would apply a different analysis, however, relative to a failure of service upon a claimant's counsel. By virtue of the character of the attorney-client relationship, individuals rely upon their lawyers to protect their interests that are within the scope of the retention. Indeed, in virtually all litigation contexts, service upon counsel is required -- the utilization review process is no exception, since, as the majority observes, the Department's regulations require service by certified mail of a determination upon claimants' counsel, if known. See 34 Pa. Code §127.476(c), (e). In view of this representational dynamic and the Department's regulations, I would hold that the receipt

triggering the thirty-day period for filing a petition for review of a URO report is by the claimant and known counsel.

Here, Claimant maintains that she has been represented by counsel since August of 1997. The worker's compensation judge, however, did not render any findings concerning whether Claimant was in fact represented and, if so, whether this was known to Employer. Accordingly, as the parties dispute the facts surrounding counsel's involvement,¹ I would remand the matter for additional fact finding.

Mr. Justice Nigro joins this concurring and dissenting opinion.

¹ Employer contends that the fact that Claimant filed the petition for review herself corroborates that she was not represented by counsel. On the front of the petition for review, however, Claimant provided the name and telephone number of her attorney.