

[J-107-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

PITT OHIO EXPRESS	:	No. 54 WAP 2005
	:	
v.	:	
	:	Appeal from the Order of the
WORKERS' COMPENSATION APPEAL	:	Commonwealth Court entered May 4,
BOARD (WOLFF)	:	2005 at No. 2430 CD 2004, reversing the
	:	Order of the Workers' Compensation
	:	Appeal Board entered on October 14,
	:	2004 at A04-0275.
	:	
APPEAL OF: DUANE WOLFF	:	ARGUED: September 11, 2006

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: DECEMBER 27, 2006

I concur in the result. I would emphasize that, in this case, the claimant's refusal to follow through on the initial offer of employment was not based upon a recommendation by his treating physician. Although the majority phrases its holding in broad terms, I question whether it should extend to circumstances in which a claimant reasonably relies on a physician's medical advice. This would seem to militate against affording an indeterminate preclusive effect to a finding of bad faith, even though the doctor's conclusions might later be rejected by a workers' compensation judge in light of conflicting medical evidence adduced in the workers' compensation proceedings.