

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Perry County Construction Company,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1208 C.D. 2011
	:	
Workers' Compensation Appeal Board	:	Submitted: April 20, 2012
(M.C., a minor child of John T. Collins,	:	
Dec'd),	:	
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER¹**

FILED: September 18, 2012

Perry County Construction Company (Perry) petitions for review of the June 3, 2011, Order of the Workers' Compensation Appeal Board (Board) affirming the decision and order of a Workers' Compensation Judge (WCJ) that granted M.C.'s (Claimant) fatal claim petition. Initially, we note that there are three decisions and/or orders issued by the WCJ in this matter that gave rise to this appeal. The WCJ issued

¹ The majority opinion was reassigned to the authoring judge on July 18, 2012.

his initial decision and order on February 4, 2010 (February 2010 Decision), but later issued amending decisions on March 3, 2010 (First Amending Decision) and March 29, 2010 (Second Amending Decision). Perry did not appeal from the February 2010 Decision or the First Amending Decision; however, Perry filed a timely appeal with the Board from the Second Amending Decision on April 19, 2010.² Claimant filed a motion to quash Perry's appeal on the basis that the appeal was untimely and failed to adequately specify the issues on appeal. (Motion to Quash Appeal, R.R. at 105-13.) Upon review, the Board quashed Perry's appeal in part due to Perry's failure to timely appeal the February 2010 Decision and the First Amending Decision. (Board Op. at 3.) The Board concluded that Perry waived its right to appeal any issues with respect to those two decisions that were not later corrected in the Second Amending Decision. (Board Op. at 3-4.) Accordingly, the Board limited Perry's appeal to the issue of whether the WCJ erred, in the Second Amending Decision, by correcting a "typographical error" in the February 2010 Decision by replacing, in conclusion of law 4, "Perry County Construction, Inc." with "F. Eric Thebes, t/d/b/a Perry County

² Section 423(a) of the Workers' Compensation Act, Act of June 2, 1915, P.L. 736, as amended, 77 P.S. § 853, provides:

Any party in interest may, within twenty days after notice of a [WCJ]'s adjudication shall have been served upon him, take an appeal to the board on the ground: (1) that the adjudication is not in conformity with the terms of this act, or that the [WCJ] committed any other error of law; (2) that the findings of fact and adjudication was unwarranted by sufficient, competent evidence or was procured by fraud, coercion, or other improper conduct of any party in interest. The board may, upon cause shown, extend the time provided in this article for taking such appeal or for the filing of an answer or other pleading.

Thus, the failure to appeal a WCJ decision to the Board within 20 days deprives the Board of jurisdiction.

Construction” as the employer of Claimant’s father, John T. Collins (Decedent). (Board Op. at 4.) The Board concluded that the WCJ did not err. (Board Op. at 4.)

On appeal to this Court, Perry argues that the Board erred in affirming the WCJ’s February 2010 Decision because both the Board and the WCJ lacked personal jurisdiction over F. Eric Thebes. Perry also contends that the “correction” to conclusion of law 4 is more than a mere correction to a typographical error but, instead, constitutes a substantive change to the parties that resulted in a judgment against a new defendant, F. Eric Thebes, without the protections mandated by due process.

On June 22, 2007, Claimant filed a fatal claim petition against “Perry County Construction Company” alleging that Decedent died by accidental electrocution while in the course and scope of his employment with Perry. (Fatal Claim Petition at 1, R.R. at 001.) Therein, Claimant alleged that the coroner notified Perry of Decedent’s death on February 28, 2007, by informing “[F]. Eric Thebes, President of Corporate employer [who] was at the scene at the time of [Decedent’s] electrocution and death.” (Fatal Claim Petition at 2, R.R. at 002.) Perry filed an answer to the fatal claim petition denying the material allegations raised in the petition. (Answer at 1-3, R.R. at 003-04.) Hearings before the WCJ ensued.

At the hearings, Perry contested liability on the theory that Decedent was a self-employed independent contractor, and not an employee, at the time of his death. Alternatively, Perry argued that even if Decedent was found to be an employee, he was not within the scope of his employment at the time of death. To this end, Mr.

Thebes, Perry's owner, testified on Perry's behalf. (February 2010 Decision at 1; Findings of Fact (February 2010 FOF) ¶ 1.)

On February 4, 2010, the WCJ circulated the initial February 2010 Decision, which was captioned “[M.C.] v. Perry County Construction,” granting Claimant’s fatal claim petition. (February 2010 Decision at 16.) Even though Perry was named as the defendant, the WCJ refers to the “defendant” in this decision by more than one label. For example, on the first page of the decision, the WCJ states that “[t]he event occurred while [Decedent] was assisting **F. Eric Thebes, t/d/b/a Perry Construction Company (hereinafter, ‘PCC’ or ‘Defendant,’**” and “[t]he defendant, **F. Eric Thebes, t/d/b/a Perry Construction Company**, filed a timely [a]nswer.” (February 2010 Decision at 1 (emphasis added).) While the WCJ then refers to either “PCC” or “defendant” throughout the decision, the WCJ also refers to “Perry County Construction” and “Perry County Construction, Inc.” and to Mr. Thebes as “Defendant Thebes.” (February 2010 Decision at 1, 6-9, 10, 15-16.) In the reasoning/analysis section of the February 2010 Decision, the WCJ notes that “[w]hether **Perry Construction Co.** is merely Mr. Thebes doing business under a fictitious name, or a business corporation, **it** fits within the statutory definition of ‘employer.’” (February 2010 Decision at 10 (emphasis added).) In conclusion of law 4, the WCJ states that “[t]he record in this case clearly establishes that [Decedent] was electrocuted and subsequently died in Perry County, [PA,] while in the employ of **Perry County Construction, Inc.**” (February 2010 Decision at 15 (emphasis added).)

In relevant part, the WCJ’s order granting the fatal claim petition refers only to “defendant” and states as follows:

[T]he Fatal Claim Petition is GRANTED.

The claimant, [M.C.], is awarded Fatal Claim benefits as prayed for until he reaches the age of 18 years. Section 307 [of the Workers’ Compensation Act (Act)³] is the controlling section of the Act. The claimant is awarded all benefits as entitled in Section 307(a),⁴ 32% of \$640.00 per week.

The **defendant** failed to establish a reasonable basis for contesting this matter. Therefore, the claimant is awarded attorney[’]s fees as provided by Section 440 of the Act.⁵

The **defendant** shall pay the claimant interest on all due and payable compensation as set forth in Section 406.1 of the Act.⁶ The claimant’s counsel is awarded quantum meruit attorney[’]s fees.

(February 2010 Decision at 16 (emphasis added).) On March 3, 2010, the WCJ circulated the First Amending Decision, pursuant to 34 Pa. Code § 131.112,⁷

³ 77 P.S. § 561.

⁴ 77 P.S. § 561(1)(a).

⁵ Added by Section 3 of the Act of February 8, 1972, P.L. 25, as amended, 77 P.S. § 996.

⁶ Added by Section 3 of the Act of February 8, 1972, P.L. 25, as amended, 77 P.S. § 717.1.

⁷ Section 131.112 of the Special Rules of Administrative Practice and Procedure Before Workers’ Compensation Judges (Special Rules) states, in pertinent part:

(a) A decision or an order of a judge may be amended or corrected by the judge subsequent to the service of notice of the decision and order. A typographical or clerical error or obvious omission or error on the part of the judge may be corrected on the judge’s motion or on the motion of one or both parties

* * *

(c) Neither the request for correction nor the corrected decision and order will extend the appeal period of the original decision and order as to any part of that
(Footnote continued on next page...)

amending the February 2010 Decision to find that “**the defendant, Perry County Construction**, did not have a reasonable basis” to contest this matter and to award Claimant attorney’s fees pursuant to Section 440 of the Act. (First Amending Decision at 1 (emphasis added).)

On March 29, 2010, the WCJ circulated the Second Amending Decision, pursuant to 34 Pa. Code § 131.112, again amending the February 2010 Decision as follows:

A.) This Judge finds that **the defendant, F. Eric Thebes, t/d/b/a Perry County Construction**, did not have a reasonable basis for contesting this matter. Therefore, as provided by [Section] 440 of the [Act], as amended, [Decedent], his depend[e]nt [Claimant], and their counsel . . . are awarded quantum meruit attorney[’]s fees in the amount of \$54,001.00 as set forth in exhibit C-27, to be paid by the defendant.

B.) A typographical error was located and must be corrected. Paragraph 4 of the Conclusions of Law circulated February 4, 2010 should read:

*“The record in this case clearly establishes that [Decedent] was electrocuted and subsequently died in Perry County, PA, while in the employ of **F. Eric Thebes, t/d/b/a Perry County Construction.**”*

(Second Amending Decision at 1 (italics in original, bold added).)

(continued...)

decision and order which is not the subject of the request for correction or amendment.

34 Pa. Code § 131.112(a), (c).

On April 19, 2010, Perry appealed the WCJ's Second Amending Decision to the Board alleging, *inter alia*, that the WCJ erred in finding as fact that "[e]ven if [Decedent] is held to be an employee, he was an employee of F. Eric Thebes t/d/b/a Perry County Construction and not Perry County Construction Company, Inc., a duly formed Pennsylvania corporation." (Appeal from [WCJ's] Findings of Fact and Conclusions of Law at 2, R.R. at 071.) Perry also alleged that the WCJ erred in his conclusion of law "[t]hat [Decedent] was electrocuted and subsequently died in Perry County, Pennsylvania, when in the employ of F. Eric Thebes, t/d/b/a Perry County Construction." (Appeal from [WCJ's] Findings of Fact and Conclusions of Law at 2, R.R. at 071.)

As stated previously, the Board determined that Perry waived its right to appeal any issues with respect to the February 2010 Decision and the First Amending Decision that were not corrected by the Second Amending Decision and quashed any part of the appeal relating to those prior decisions. (Board Op. at 3-4.) The Board also determined that Perry did not claim any error regarding the portion of the Second Amending Decision changing the WCJ's February 2010 Order awarding attorney fees, thus, the only issue properly appealed was whether the WCJ erred in correcting "the typographical error" in conclusion of law 4 by replacing "Perry County Construction, Inc." with "F. Eric Thebes, t/d/b/a Perry County Construction." (Board Op. at 4.) The Board explained:

The [WCJ] made this correction to make his decision consistent, as he had previously referred to the Defendant as 'F. Eric Thebes, t/d/b/a Perry County Construction' throughout the original Decision, and not just as 'Perry County Construction, Inc.' Thus, this was simply a typographical error that the [WCJ] was correcting. Defendant nevertheless argues this correction was a substantive change that changed who the employer actually was. However, the [WCJ] repeatedly referred to Defendant as

‘F. Eric Thebes, t/d/b/a Perry County Construction’ in the original Decision, and thus even without the correction, Defendant would still be ‘F. Eric Thebes, t/d/b/a Perry County Construction’ and not simply ‘Perry County Construction, Inc.’ The correction did nothing to substantively change the original Decision. Therefore, we determine no error.

(Board Op. at 5 (footnote omitted).) Accordingly, the Board affirmed the WCJ’s Second Amending Decision. (Board Op. at 6.) Perry then filed the instant Petition for Review.⁸

In this appeal, Perry claims that both the Board and the WCJ lacked jurisdiction to enter a judgment against Mr. Thebes because he was never named individually as a defendant in these proceedings. Perry also contends that Mr. Thebes’ due process rights were violated by the “correction” to conclusion of law 4 contained in the Second Amending Decision because it constitutes a substantive change to the WCJ’s February 2010 Decision and results in a judgment against Mr. Thebes as a new defendant.

“It is axiomatic that due process is flexible and calls for different procedural protections in different situations.” LaFarge Corporation v. Commonwealth of Pennsylvania, Insurance Department, 557 Pa. 544, 552, 735 A.2d 74, 78 (1999) (citing Morrissey v. Brewer, 408 U.S. 471, 481 (1972)). The most basic requirement of due process is notice. Id. at 552, 735 A.2d at 78. In addition, “a party may either

⁸ “This Court’s review of an order of the Board is limited to determining whether the necessary findings of fact are supported by substantial evidence, whether Board procedures were violated, whether constitutional rights were violated or an error of law was committed.” MV Transportation v. Workers’ Compensation Appeal Board (Harrington), 990 A.2d 118, 120 n.3 (Pa. Cmwlth. 2010).

expressly or impliedly consent to a court's personal jurisdiction.” Wagner v. Wagner, 564 Pa. 448, 463, 768 A.2d 1112, 1120 (2001). “[A] party may affirmatively state his consent or take such steps or seek such relief that manifest his submission to the court’s jurisdiction over his person.” Id.

Here, the question of whether Mr. Thebes had notice, prior to the issuance of the WCJ’s Second Amending Decision, that he would be held individually liable as a defendant in the proceedings before the WCJ is not easily answered. The February 2010 Decision is less than clear as to whom the WCJ believed the employer to be in this case, and the WCJ did not make specific findings as to this issue. Instead, the WCJ refers to Decedent’s employer with several different labels and does not specifically identify the defendant by name in the order granting the fatal claim petition. In addition, Mr. Thebes, as owner of Perry, is not named in an individual capacity in any filings, including the fatal claim petition; there is no evidence in the record that he was served in an individual capacity; and the order accompanying the February 2010 Decision does not address Mr. Thebes individually or impose liability on him in an individual capacity. As such, it was reasonable for Mr. Thebes to believe, at the time the WCJ issued the February 2010 Decision, that the WCJ’s order imposed liability on the entity known as “Perry County Construction Company” and not him in an individual capacity. This reasonable belief was reaffirmed by the WCJ’s First Amending Decision, which also does not impose liability on Mr. Thebes individually but, instead, amends the February 2010 Decision to specifically find “that **the defendant, Perry County Construction** did not have a reasonable basis for contesting” the fatal claim petition. (First Amending Decision at 1 (emphasis added).) It was not until the WCJ issued the Second Amending Decision that liability

was specifically imposed on Mr. Thebes, in an individual capacity, which was well after the 20 day appeal period had expired with respect to the February 2010 Decision.

This Court recognizes that Mr. Thebes participated in the proceedings and testified before the WCJ as Perry's owner. However, the record does not show that Mr. Thebes affirmatively consented to jurisdiction over his person so that he could be held personally liable as an individual defendant. Despite hearing equivocal testimony pertaining to Perry's corporate status, the WCJ did not make an explicit determination that Mr. Thebes is individually liable as a sole proprietor.⁹ As set forth above, until the February 2010 Decision was amended for the second time on March 29, 2010, to specifically name Mr. Thebes, individually, as a liable defendant, it is unclear that Mr. Thebes had notice of his individual liability. Such lack of notice would constitute a violation of Mr. Thebes' due process rights.

Furthermore, the "correction" to conclusion of law 4 by replacing "Perry County Construction, Inc." with "F. Eric Thebes, t/d/b/a Perry County Construction" as the employer, is more than a mere correction to a typographical error if Mr. Thebes

⁹ Mr. Thebes testified before the WCJ on January 22, 2008 that: (1) he formed Perry "40 some years ago"; (2) the company "was incorporated sometime"; (3) he did not think it was incorporated at the time of his testimony; (4) he did not know if the company was incorporated at the time of Decedent's death; (5) he "never took care of the book work or nothing"; (6) he "guess[ed]" he was the owner; and (7) he did not know if he was an employee of Perry. (Hr'g Tr. at 13-16, January 22, 2008, R.R. at 255-58.) Mr. Thebes' bookkeeper, Bonnie Caltwright, testified that she maintained the checkbook for Perry and that she paid both business and personal expenses for Mr. Thebes from the same checking account. (February 2010 FOF ¶ 21; Hr'g Tr. at 81-84, January 21, 2009, R.R. at 629-32.) However, the WCJ found Ms. Caltwright's "testimony to be incredible and not worthy of belief." (February 2010 FOF ¶ 22.)

did not have proper notice. Instead, such correction would constitute a substantive change in the parties that resulted in a judgment against a new defendant, Mr. Thebes, without the protections mandated by due process. Therefore, until Mr. Thebes had notice of his alleged individual liability, he cannot have waived his right to appeal an adverse decision holding him personally liable.¹⁰ Notice of Mr. Thebes' individual liability occurred on March 29, 2010 when the WCJ issued the Second Amending Decision from which Mr. Thebes timely appealed to the Board. Preserved within that appeal is the issue of whether the WCJ erred in finding Mr. Thebes individually liable for the payment of fatal claim benefits as ordered by the WCJ's February 2010 Decision granting Claimant's fatal claim petition. (Appeal from [WCJ's] Findings of Fact and Conclusions of Law at 1-2, R.R. at 070-071.) Accordingly, it would be a denial of due process to Mr. Thebes not to grant him an appeal from the February 2010 Order on the issue of whether liability can be imposed on him in an individual capacity.

Because it is unclear whether Mr. Thebes had notice of his individual liability, we are constrained to vacate the Board's June 3, 2011 Order affirming the WCJ's February 2010 Order granting the fatal claim petition. This matter is remanded to the Board for further remand to the WCJ for additional findings of fact and conclusions of law based on the existing record as to whether Mr. Thebes had notice of his

¹⁰ Due process rights relating to personal jurisdiction and lack of notice, like most constitutional rights, may be waived when they are not raised in a timely manner. Wagner, 564 Pa. at 461, 768 A.2d at 1119.

individual liability and whom or what entity is liable as the employer for the benefits awarded by the granting of the fatal claim petition.¹¹

RENÉE COHN JUBELIRER, Judge

¹¹ We note that Perry, as the named defendant on the fatal claim petition, did not timely appeal the merits of the February 2010 Decision; therefore, the only issue on remand pertains to who or what entity is liable for the benefits awarded by the WCJ in the February 2010 Decision.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Perry County Construction Company,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1208 C.D. 2011
	:	
Workers' Compensation Appeal Board	:	
(M.C., a minor child of John T. Collins,	:	
Dec'd),	:	
	:	
Respondent	:	

ORDER

NOW, September 18, 2012, the Order of the Workers' Compensation Appeal Board (Board) is **VACATED** and this matter is **REMANDED** to the Board for further **REMAND** to the Workers' Compensation Judge for additional findings of fact and conclusions of law based on the existing record as to whether F. Eric Thebes had notice of his individual liability and whom or what entity is liable as the employer for the benefits awarded by the granting of the fatal claim petition.

Jurisdiction relinquished.

RENÉE COHN JUBELIRER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Perry County Construction Company, :
Petitioner :
 : No. 1208 C.D. 2011
v. :
 : Submitted: April 20, 2012
Workers' Compensation Appeal Board :
(M.C., a minor child of John T. Collins, :
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BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

DISSENTING OPINION
BY JUDGE McCULLOUGH

FILED: September 18, 2012

I must respectfully dissent from the Majority's decision because I believe that: (1) Employer waived its due process claims regarding personal jurisdiction and notice because its appeal was untimely; and (2) even if Employer had not waived its due process claims, the claims lack merit.

In essence, Employer argues that the Board erred in affirming the WCJ's decision because both the Board and the WCJ lacked personal jurisdiction over F. Eric Thebes. Employer also contends that F. Eric Thebes' due process rights were violated by the "correction" to Conclusion of Law No. 4 contained in the March 29th amended decision because it constituted a substantive change to the WCJ's February 4th decision and resulted in a judgment against F. Eric Thebes as a new defendant not previously named as a party in the case.

Initially, I agree with the Board that the WCJ properly corrected Conclusion of Law No. 4 pursuant to Section 131.112 of the Special Rules, 34 Pa. Code §131.112, and thus did not violate Employer's due process rights. The WCJ issued his initial decision and order on February 4, 2010. On page one therein, the WCJ refers to Employer as "F. Eric Thebes, t/d/b/a Perry Construction Company (hereinafter, 'PCC' or 'Defendant')." (WCJ's op. at 1.) Further down the same page, the WCJ again refers to Employer as "[t]he defendant, F. Eric Thebes, t/d/b/a Perry Construction Company." (Id.) Throughout the remainder of the opinion, the WCJ refers to Employer as either "PCC" or "defendant." (Id. at 1, 6-9, 16.) More importantly, in the order granting benefits and awarding attorney's fees, the WCJ specifically referred to Employer as "Defendant" thereby referencing "F. Eric Thebes, t/d/b/a Perry Construction Company." (Id. at 16.) Conclusion of Law No. 4 stated that: "[Decedent] was electrocuted and subsequently died in Perry County, PA, while in the employ of Perry Construction, Inc." The amended order simply corrected what was really a typographical error when it noted:

B.) A typographical error was located and must be corrected. Paragraph 4 of the Conclusions of Law circulated February 4, 2010 should read:

"The record in this case clearly establishes that [Decedent] was electrocuted and subsequently died in Perry County, PA, while in the employ of F. Eric Thebes, t/d/b/a Perry County Construction."

(Amended Decision at 1) (italics in original and amendment underlined).

Employer did not appeal the February 4, 2010 order.¹ If Employer believed that the WCJ improperly identified Employer in the original decision and order, it should have raised the issue at that time. Further, the March 29, 2010 amended decision did not extend the appeal period of the February 4, 2010 decision. Section 131.112(c) of the Special Rules, 34 Pa. Code §131.112(c) specifically provides that “[n]either the request for correction nor the corrected decision and order will extend the appeal period of the original decision and order as to any part of that decision and order which is not the subject of the request for correction or amendment.” Employer did not appeal the WCJ’s decision until April 19, 2010, well after the twenty-day appeal period.

Employer’s failure to timely appeal the WCJ’s February 4, 2010 decision, or that portion of the March 29, 2010 amended decision relating to modification of the WCJ’s order, deprived the Board of jurisdiction to consider the due process claims regarding personal jurisdiction and notice with respect to that discussed at that portion of the modified order. See Pittsburgh Moose Lodge #46 v.

¹ Pursuant to section 423(a) of the Workers’ Compensation Act (Act), Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §853, Employer had twenty days to appeal the February 4, 2010 order. This section provides:

Any party in interest may, within twenty days after notice of a [WCJ]’s adjudication shall have been served upon him, take an appeal to the board on the ground: (1) that the adjudication is not in conformity with the terms of this act, or that the [WCJ] committed any other error of law; (2) that the findings of fact and adjudication was unwarranted by sufficient, competent evidence or was procured by fraud, coercion, or other improper conduct of any party in interest. The board may, upon cause shown, extend the time provided in this article for taking such appeal or for the filing of an answer or other pleading.

Workmen's Compensation Appeal Board (Griece), 530 A.2d 982 (Pa. Cmwlth. 1987); Fritz v. Workmen's Compensation Appeal Board (Kim Manufacturing Co., Inc.), 527 A.2d 636 (Pa. Cmwlth. 1987). Due process rights relating to personal jurisdiction and lack of notice, like most constitutional rights, may be waived when they are not raised in a timely manner. Wagner v. Wagner, 564 Pa. 448, 768 A.2d 1112 (2001); Wallace v. Pennsylvania Board of Probation and Parole, 548 A.2d 1291 (Pa. Cmwlth. 1988). Further, when the rules that govern personal jurisdiction are not followed, frequently the right is lost, rendering the failure to file a timely objection to personal jurisdiction a waiver of the objection. Wagner, supra. In this case, I agree with the Board that Employer waived its argument by failing to appeal the WCJ's original decision within twenty days and that the Board therefore lacked jurisdiction to entertain Employer's appeal.

Even if Employer's appeal had been timely, and thus not resulted in waiver, Employer's argument is without merit. F. Eric Thebes personally participated throughout the entire proceeding. To this end, F. Eric Thebes submitted answers to Claimant's interrogatories and responses to a request for production of documents, answered new matter and new matter cross-claim, submitted supplemental responses to Claimant's interrogatories, and appeared and testified at the hearings before the WCJ. (Claimant's Exhibits C-24, C-25, C-26) The WCJ specifically identified the defendant in this matter as "F. Eric Thebes, t/d/b/a Perry County Construction" on two occasions. Moreover, the WCJ noted that: "[w]hether Perry Construction Co. is merely Mr. Thebes doing business under a fictitious name or a business corporation, it fits within the statutory definition of 'employer'..." (WCJ's op. at 10.) Thebes himself testified before the WCJ that he formed Perry County Construction forty years earlier and that, although it was incorporated at one

time, it was subsequently unincorporated. (N.T. 1/22/08 at 13-16.) Although Thebes was unsure of the company's status at the time of Decedent's death, he stated that he had been the sole owner of the company for a number of years at that time. (Id.) Moreover, Thebes' bookkeeper, Bonnie Caltwrighter, testified that she paid Thebes' personal and business expenses out of the same checking account during that time period. (N.T. 1/21/09 at 81, 84.)

Thus, when viewed in a light most favorable to Claimant, there was no separate corporate veil to pierce in this case. See section 103 of the Act, 77 P.S. §21 ("The term 'employer,' as used in this act, is declared to be synonymous with master, and to include natural persons, partnerships, joint-stock companies, corporations for profit, corporations not for profit, municipal corporations, the Commonwealth, and all government agencies created by it."); Glidden Company, Inc. v. Department of Labor and Industry, 700 A.2d 555, 558 (Pa. Cmwlth. 1997), appeal denied, 553 Pa. 684, 717 A.2d 535 (1998) ("[A] sole proprietorship has no existence separate and apart from its owner, while a corporation is an independent entity, whose legal status is unaffected by changes in the ownership of its stock. Thus, in a sole proprietorship, the owner/sole proprietor *is* the employer [under section 4 of the Unemployment Compensation Law, Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §753], as he or she personally holds both the assets and liabilities of the business, including contractual rights and duties. 'The sole proprietor is solely liable for all the debts of the business....'" (citations and footnotes omitted and emphasis in original). See also Leprino Foods Company v. Gress Poultry, Inc., 379 F. Supp.2d 650, 655 (M.D. Pa. 2005) ("[T]he purpose of the Fictitious Names Act [54 Pa.C.S. §§301-332] is to protect persons giving credit in reliance on the assumed or

fictitious name and to definitively establish the identity of the individuals owning the business....”) (citation omitted).

In sum, Employer’s failure to appeal the WCJ’s original February 4th decision or the modification of the WCJ’s order in the March 29th amended decision and Mr. Thebes’ personal participation in the entire proceedings resulted in a waiver of his due process personal jurisdiction and notice claims; the WCJ’s amendment to Conclusion of Law No. 4 did not change the prior decision or extend the appeal period of that decision; and thus the Board did not err in affirming the WCJ’s decision in this case.

Accordingly, I would affirm.

PATRICIA A. McCULLOUGH, Judge