

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James Yelverton, Jr.,	:
Petitioner	:
	:
v.	: No. 1669 C.D. 2007
	: Submitted: January 25, 2008
Workers' Compensation Appeal	:
Board (Department of Public	:
Welfare and State Workers	:
Insurance Fund),	:
Respondents	:

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE DAN PELLEGRINI, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE PELLEGRINI

FILED: February 12, 2008

James Yelverton, Jr. (Claimant) appeals an order of the Workers' Compensation Appeal Board (Board) affirming the Workers' Compensation Judge's (WCJ) denial of his claim petition for a 30-year old work injury because his claim petition was untimely filed. In his *pro se* petition, Claimant asks this Court to find that the Board committed an error of law in affirming the decision of the WCJ because his employer unintentionally lulled him into a false sense of security concerning the filing of his claim. For the following reasons, we affirm the decision of the Board.

In his claim petition, Claimant alleged that was employed by the Commonwealth of Pennsylvania, Department of Public Welfare (Employer) at the Haverford State Hospital from 1976 through 1978. Claimant worked as a Food Service Worker I. One of his duties was to carry five-gallon milk containers and place those containers in a dispenser above a counter. On April 15, 1976, Claimant sustained an injury to his left wrist while lifting one of the milk containers. Claimant informed his supervisor who wrote up an injury report which was submitted to the office manager. Claimant sought medical treatment, and he was purportedly given a light-duty work slip by his physician and placed on light-duty work. In March 1978, Claimant was terminated by Employer.<sup>1</sup>

On August 15, 2006, Claimant filed a claim petition seeking workers' compensation benefits for his 1976 work-related injury. Employer filed an answer to his claim and raised a defense of failure to file the claim within the three-year statute of repose. Because correspondence existed in which Claimant acknowledged that he had not filed a claim petition at any time within three years after the date of injury, the WCJ denied the claim petition because Section 315 of the Pennsylvania Workers' Compensation Act (Act), Act of June 2, 1915 P.L. 736 *as amended*, 77 P.S. §602, required that a claim petition be filed within three years of the date of injury.<sup>2</sup>

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<sup>1</sup> Claimant was also arrested and incarcerated in 1978 and formally sentenced in 1979. Claimant states that for the last 29 years, he has been actively litigating his criminal case as a *pro se* litigant and was, therefore, unable to file a claim petition for workers' compensation.

<sup>2</sup> A hearing was held on September 28, 2006, at which Claimant was not present because he remained incarcerated in the State Correctional Institute.

Claimant appealed that decision to the Board, which affirmed the WCJ's decision. This appeal by Claimant followed.<sup>3</sup>

On appeal, Claimant argues that he did not file his claim petition within the three years required by the Act because he was lulled into a false sense of security regarding his claim by Employer.<sup>4</sup> Claimant maintains that he was under the impression that notifying Employer that he was injured was sufficient to receive workers' compensation because all paperwork regarding injuries was normally given to the office manager to be filed. Claimant, therefore, believed that his claim had been filed by the office manager and personnel office. Because Employer never informed Claimant about his right to file for workers' compensation and he only *recently* became aware of the fact that no claim petition had ever been filed, he contends that the time limitation in Section 315 was tolled.<sup>5</sup>

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<sup>3</sup> Our scope of review in a workers' compensation appeal is limited to determining whether an error of law was committed, constitutional rights were violated or whether necessary findings of fact are supported by substantial evidence. *Kocis v. Workmen's Compensation Appeal Board (Department of Labor and Industry)*, 733 A.2d 699 (Pa. Cmwlth. 1999).

<sup>4</sup> Claimant also argues that he was erroneously held to the standards of pleadings of those drafted by an attorney when he was a *pro se* litigant with regard to strict adherence to filing deadlines. However, we have consistently held that a *pro se* litigant is not absolved from complying with procedural rules such as timely filing; therefore, Claimant is not excused from complying with the procedural rules set out in the Workers' Compensation Act.

<sup>5</sup> We have long recognized that Section 315 of the Act is a statute of repose. It provides in pertinent part that:

[I]n cases of personal injury all claims for compensation shall be forever barred, unless, within three years after the injury, the parties shall have agreed upon the compensation payable under this article; or unless within three years after the injury, one of the parties shall have filed a petition as provided in article four hereof.

**(Footnote continued on next page...)**

To toll the time limitation set forth in Section 315, the claimant must show by clear and precise evidence that the employer or its insurance carrier lulled the claimant into a false sense of security concerning the filing of his claim. Section 315 is tolled even if the acts are unintentional. *See McDevitt v. Workmen's Compensation Appeal Board (Ron Davison Chevrolet)*, 525 A.2d 1242 (Pa. Cmwlth. 1987); *Dudley v. Workmen's Compensation Appeal Board (Township of Marple, et. al.)*, 471 A.2d 169 (Pa. Cmwlth. 1984). In this case, Claimant did not offer any basis to establish that Employer lulled him into a false sense of security because he did not indicate that Employer made false statements to him regarding his claim or indicated that it would file his claim on his behalf. Because Claimant's petition was filed 30 years after the date of the work injury, 10 times the three years provided for in Section 315 of the Act, the WCJ correctly dismissed his appeal.

Accordingly, the order of the Workers' Compensation Appeal Board is affirmed.

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DAN PELLEGRINI, JUDGE

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**(continued...)**

Unlike a statute of limitations, which merely extinguishes a remedy or cause of action, Section 315 of the Act cancels *all* potential rights under the Act if no action is taken within three years of the date of the injury. *Bellefonte Area School District v. Workmen's Compensation Appeal Board (Morgan)*, 627 A.2d 250 (Pa. Cmwlth. 1993).

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**ORDER**

AND NOW, this 12<sup>th</sup> day of February, 2008, the August 7, 2007 order of the Workers' Compensation Board of Appeal is affirmed.

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DAN PELLEGRINI, JUDGE