

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DEPARTMENT OF LABOR AND	:	
INDUSTRY, BUREAU OF WORKERS'	:	
COMPENSATION,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2582 C.D. 1998
	:	
WORKERS' COMPENSATION	:	Submitted: March 19, 1999
APPEAL BOARD (SURGEST),	:	
	:	
Respondent	:	

BEFORE: HONORABLE JOSEPH T. DOYLE, President Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

**OPINION BY
PRESIDENT JUDGE DOYLE**

FILED: October 28, 1999

The Bureau of Workers' Compensation (Bureau) appeals from an order of the Workers' Compensation Appeal Board (Board) affirming an order of a Workers' Compensation Judge (WCJ) which had granted the fatal claim petition of Eva Surgest (Widow), the widow of Earl C. Surgest, and also granted the claim petition of Earl C. Surgest (Claimant) filed under Section 301(i) of the Occupational Disease Act.¹

¹ Act of June 21, 1939, P.L. 566, as amended, 77 P.S. §1401(i). The fatal claim petition filed under the Workers' Compensation Act, Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§1-1041.4, is not before the Court.

Claimant worked in various foundries until 1975.² On December 18, 1987, Mr. Suggest filed a claim petition under the Occupational Disease Act alleging that, as of April 9, 1976, he became totally disabled as a result of silicosis caused by his exposure to silicone particles while working. Section 301(g) of the Occupational Disease Act, 77 P.S. §1401(g), provides a statutory mechanism whereby the Commonwealth becomes a party and ultimately compensates disabled claimants who meet specified eligibility requirements.³ There is no dispute among the parties that Mr. Suggest meets these eligibility requirements. The Commonwealth filed a timely answer denying the allegations and petitioned to join Shenango, Inc. as a defendant because, the Commonwealth alleged, Claimant's disability would have been caused by more than five years of exposure, and, as a result, the Commonwealth was only responsible for 60% of any compensation due to Claimant, and Shenango, Inc. was responsible for the remaining 40%. Claimant's

² The record does not indicate the exact duration of Claimant's employment with each foundry, although he testified that he last worked for Shenango, Inc. from 1956 to 1975.

³ Section 301(g) specifically provides:

The employer liable for the compensation provided by this article shall be the employer in whose employment the employe was last exposed to the hazard of the occupational disease claimed, regardless of the length of time of such last exposure: Provided, That when a claimant alleges that disability or death was due to silicosis, anthraco-silicosis, coal worker's pneumoconiosis, asbestosis or any other occupational disease which developed to the point of disablement only after an exposure of five or more years, the only employer liable shall be the last employer in whose employment the employe was last exposed to the hazard of such occupational disease during a period of six months or more: And provided further, That in those cases where disability or death is not conclusively proven to be the result of such last exposure, all compensation shall be paid by the Commonwealth.

77 P.S. §1401(g).

petition was assigned to a WCJ, but, during the pendency of the proceedings, on January 29, 1988, Claimant passed away.

Following hearings before the WCJ on September 19, 1994, the WCJ issued a decision granting Claimant's claim petition, concluding that Claimant had established that, as of April 9, 1976, Claimant was totally disabled due to work-related silicosis, and the WCJ granted benefits as of that date.

On appeal, the Commonwealth argues that the WCJ incorrectly granted benefits retroactive to the date on which he found that Claimant was totally disabled, April 9, 1976. The Commonwealth asserts that a claimant may only receive benefits under Section 315 of the Occupational Disease Act, 77 P.S. §1415, for the time period following the filing of his claim petition, December 18, 1987, and for no time prior thereto.

Before addressing this issue, however, we must deal with a threshold question of whether this Court has jurisdiction to hear the appeal because it involves an issue under the Occupational Disease Act. Although neither party has raised this issue, it is well settled that the Court may raise the issue of jurisdiction sua sponte. Pennsylvania National Guard v. Workmen's Compensation Appeal Board (Greenwood), 437 A.2d 494 (Pa. Cmwlth. 1981).

Section 427 of the Occupational Disease Act, 77 P.S. §1527, provides, in relevant part, as follows:

Any party may appeal from any action of the board on matters of law to the court of common pleas of the county in which the

employee was last employed prior to his disability or death or of the county in which the adverse party resides or has a permanent place of business, or, by agreement of the parties, to the court of common pleas of any other county of this Commonwealth.

77 P.S. §1527. Section 933(a)(i)(iv) of the Judicial Code, 42 Pa. C.S. §933(a)(i)(iv), also reflects this jurisdictional principle. That Section provides as follows:

(a) General rule.--Except as otherwise prescribed by any general rule adopted pursuant to section 503 (relating to reassignment of matters), each court of common pleas shall have jurisdiction of appeals from final orders of government agencies in the following cases:

.....

(iv) Determinations of the Workers' Compensation Appeal Board appealable under the act of June 21, 1939 (P.L. 566, No. 284), known as The Pennsylvania Occupational Disease Act.

42 Pa. C.S. §933(a). Indeed, this Court has held that it lacks jurisdiction to adjudicate such an appeal and that the proper Court is the Court of Common Pleas. Nye v. Workmen's Compensation Appeal Board, 401 A.2d 873 (Pa. Cmwlth. 1979).

Although we conclude that we lack jurisdiction to adjudicate the instant appeal, we are not obligated to dismiss the action; rather the appropriate action is to transfer the matter to the Court which does have jurisdiction to adjudicate the appeal. Pa. R.A.P. 751(a); Section 5103 of the Judicial Code, 42 Pa. C.S. §5103. The address of Claimant's last employer, Shenango, Inc. which is indicated on Claimant's claim petition is Pittsburgh, Pennsylvania, which is located in

Allegheny County. Therefore, the Court of Common Pleas of Allegheny County would be a court of proper jurisdiction. We note, however, that Section 427 of the Occupational Disease Act provides that jurisdiction may properly be placed in several Courts of Common Pleas, depending on the residence of the employer, the employee or by agreement of the parties. Accordingly, although we note that the Court of Common Pleas of Allegheny County does possess jurisdiction, jurisdiction does not exclusively reside there and the parties may agree to another county. Unfortunately, there is no statutory provision which would allow the parties to agree to vest this Court with jurisdiction.

JOSEPH T. DOYLE, President Judge

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ORDER

NOW, October 28, 1999 , the appeal in the above-captioned matter is hereby transferred, pursuant to Pennsylvania Rule of Appellate Procedure 751(a) and Section 5103 of the Judicial Code, to the Court of Common Pleas of Allegheny County unless the parties to this action shall notify the Court, within 30 days of the entry of this order, that they have agreed to transfer the appeal to a different court, consistent with the attached opinion, in which case it shall be transferred to the agreed-upon court. The Chief Clerk shall certify to the Prothonotary of the court to which this action is transferred a photocopy of the docket entries of the above appeal and transmit to him forthwith the record in appeal.

Jurisdiction relinquished.

JOSEPH T. DOYLE, President Judge