



Reimbursement is only authorized for compensation paid as a result of denial of a supersedeas under Sections 413 and 430 of the Act. Both of those provisions involve the obligation of an employer to pay benefits when an employer is attempting to modify benefits or a claimant is awarded benefits.

Dept. of Labor and Industry v. WCAB (Excelsior Insurance), 987 A.2d 855, 865 (Pa. Cmwlth. 2010) (Pellegrini, J., dissenting) (emphasis added). Section 443 clearly states for reimbursement to occur, there must have been a denial of supersedeas under §§ 413 and 430. Section 413 deals with treating a petition to terminate, modify, or suspend benefits as an automatic request for supersedeas when the petition alleges the claimant has fully recovered; § 430 provides the filing of an appeal from an adverse decision of the WCJ does not operate as a request for supersedeas — a separate petition must be filed. These situations encompass an employer’s attempt to modify benefits already being paid or to challenge the award of benefits; they do not deal with the situation here, where the employer (or its insurer) is recouping its lien from a third-party settlement under § 319.

Another criterion for reimbursement is the ultimate determination the compensation was not payable. Here, the disputed amount was, as the Commonwealth Court dissent noted, “costs that must be borne by an employer to obtain the ability to not have to pay compensation.” Id.

Accordingly, I would hold the payments for which Employer’s Insurer sought supersedeas reimbursement were not compensation and thus not reimbursable, and would reverse the Commonwealth Court’s decision.

Mr. Chief Justice Castille joins the dissenting opinion.