

**[J-153-2004]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**EASTERN DISTRICT**

**CAPPY, C.J., CASTILLE, NIGRO, NEWMAN, SAYLOR, EAKIN, BAER, JJ.**

COMMONWEALTH OF PENNSYLVANIA, :	No. 23 EAP 2004
DEPARTMENT OF LABOR & INDUSTRY, :	
BUREAU OF WORKERS' :	Appeal from the Order of Commonwealth
COMPENSATION :	Court entered on 6/6/2003 at 185 CD
	: 2003 (reargument denied on 7/28/2003)
	: reversing the WCAB Order entered on
v. :	12/24/2002 at A01-3543
	:
	:
WORKERS' COMPENSATION APPEAL :	
BOARD (EXEL LOGISTICS) :	
	:
APPEAL OF: EXEL LOGISTICS :	ARGUED: October 18, 2004

**OPINION**

**MR. JUSTICE EAKIN**

**DECIDED: December 30, 2005**

Exel Logistics appeals from the order of the Commonwealth Court reversing the order of the Workers' Compensation Appeal Board (WCAB), which granted Supersedeas Fund reimbursement. We affirm.

Appellant issued a notice of compensation payable after claimant sustained a work-related shoulder injury while employed at appellant's business in May, 1993. In August, 1997, pursuant to § 306(f.1)(8)<sup>1</sup> of the Workers' Compensation Act, appellant filed a petition

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<sup>1</sup> Section 306(f.1)(8) provides:

If the employe shall refuse reasonable services of health care providers, surgical, medical and hospital services, treatment, medicines and supplies, (continued...)

for forfeiture, alleging claimant refused reasonable medical treatment, and requested a supersedeas while its petition was pending. In January, 1998, the Workers' Compensation Judge (WCJ) denied appellant's request for supersedeas; appellant continued to pay compensation and medical benefits. In January, 1999, the WCJ granted appellant's petition for forfeiture for the period July 14, 1995, through September 30, 1998, finding claimant refused reasonable medical treatment.

Appellant filed a petition for Supersedeas Fund reimbursement, requesting \$17,798.67 in compensation and \$1,375.25 in medical bills paid while its forfeiture petition was pending. The WCJ denied appellant's petition, finding it did not fulfill the requirements for Supersedeas Fund reimbursement because the request for forfeiture was made pursuant to § 306(f.1)(8), and not pursuant to §§ 413<sup>2</sup> or 430<sup>3</sup> of the Act. The WCAB,

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(...continued)

he shall forfeit all rights to compensation for any injury or increase in his incapacity shown to have resulted from such refusal.

77 P.S. § 531(8).

<sup>2</sup> Section 413 provides:

(1) The filing of a petition to terminate, suspend or modify a notice of compensation payable or a compensation agreement or award as provided in this section shall automatically operate as a request for a supersedeas to suspend the payment of compensation fixed in the agreement or the award where the petition alleges that the employee has fully recovered and is accompanied by an affidavit of a physician on a form prescribed by the department to that effect, which is based upon an examination made within twenty-one days of the filing of the petition. A special supersedeas hearing before a workers' compensation judge shall be held within twenty-one days of the assignment of such petition....

(2) In any other case, a petition to terminate, suspend or modify a compensation agreement or other payment arrangement or award as provided in this section shall not automatically operate as a supersedeas but may be designated as a request for a supersedeas, which may then be  
(continued...)

however, granted appellant's request for Supersedeas Fund reimbursement, concluding the request fell under § 430. The Commonwealth Court reversed, holding § 443<sup>4</sup> specifically provides for Supersedeas Fund reimbursement only where the request was under §§ 413 or 430; § 306(f.1)(8) itself does not allow for reimbursement. Bureau of Workers' Comp. v. Workers' Comp. Appeal Bd. (Exel Logistics), 827 A.2d 529, 533 (Pa. Cmwlth. 2003). We granted review to consider the application of § 443 in the context of forfeiture petitions under § 306(f.1)(8).

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(...continued)

granted at the discretion of the workers' compensation judge hearing the case....

77 P.S. § 774.

<sup>3</sup> Section 430 provides:

(a) The lien of any judgment entered upon any award shall not be divested by any appeal.

(b) Any insurer or employer who terminates, decreases or refuses to make any payment provided for in the decision without filing a petition and being granted a supersedeas shall be subject to a penalty as provided in section 435, except in the case of payments terminated as provided in section 434.

77 P.S. § 971.

<sup>4</sup> Section 443 provides:

If, in any case in which a supersedeas has been requested and denied under the provisions of section 413 or section 430, payments of compensation are made as a result thereof and upon the final outcome of the proceedings, it is determined that such compensation was not, in fact, payable, the insurer who has made such payments shall be reimbursed therefor....

77 P.S. § 999(a).

This Court's appellate review in workers' compensation matters is limited to determining whether an error of law was committed, whether constitutional rights were violated, whether practices or procedures of a Commonwealth agency were followed, and whether necessary findings of fact are supported by substantial evidence. 2 Pa.C.S. § 704; Hannaberry HVAC v. Workers' Compensation Appeal Bd. (Snyder, Jr.), 834 A.2d 524, 527 (Pa. 2003). In examining questions of law, our scope of review is plenary. Daniels v. Workers' Compensation Appeal Bd. (Tristate Transp.), 828 A.2d 1043, 1046-1047 (Pa. 2003).

Appellant argues the Commonwealth Court's decision is unreasonable and absurd in that it allows an injured worker to refuse reasonable medical treatment without the loss of benefits and penalizes an employer by disallowing Supersedeas Fund reimbursement, thus leaving an employer no possibility of monetary recovery. Appellant contends forfeiture petitions under § 306(f.1)(8) have been equated with suspension petitions under § 413, and that the result here conflicts with the Commonwealth Court's own precedent.

The Commonwealth Court has held where a claimant forfeits his right to compensation by refusing reasonable medical treatment, a petition for suspension of benefits is properly granted. See Litak v. Workmen's Comp. Appeal Bd. (Comcast Cablevision), 624 A.2d 773, 775 (Pa. Cmwth. 1993); see also Davis v. Workers' Comp. Appeal Bd. (Acme Markets, Inc.), 711 A.2d 1096 (Pa. Cmwth. 1998) (grant of suspension petition filed in accordance with § 413 proper where reasonable treatment refused by claimant); Stuart Painting Co. v. Workmen's Comp. Appeal Bd. (Asvestas), 611 A.2d 787 (Pa. Cmwth. 1992) (suspension of benefits for claimant's refusal to submit to reasonable medical services); Donton v. Workmen's Comp. Appeal Bd. (Prestolite Battery), 557 A.2d 450 (Pa. Cmwth. 1989) (suspension of compensation proper for refusal of reasonable treatment).

These cases reflect a sometimes casual use of the term “suspension.” While each turns on the claimant’s refusal of reasonable treatment as required by § 306, each specifically deals with a petition for suspension. None of these cases hold that a petition alleging the forfeiture of the right to compensation is the same as a petition seeking suspension of benefits. A claimant forfeits his right to benefits when he refuses reasonable medical services for his work-related injuries. See 77 P.S. § 531(8). An employer may seek a suspension of benefits for other reasons, however, such as an improvement in earning power altering a claimant’s need for benefits. See Pieper v. Ametek-Thermox Instruments Div., 584 A.2d 301, 304-05 (Pa. 1990) (“A ‘suspension of benefits’ is supported by a finding that the earning power of the claimant is no longer affected by his disability, whether it arises from his employer offering suitable replacement employment, or from the ability of the claimant to secure other suitable employment that provides equal or greater compensation.”). Forfeiture is based on the claimant’s own unwillingness to receive treatment rather than a change in status. With forfeiture, there is no requirement of a change which alters a claimant’s right to benefits, as exists with a suspension of benefits. Because appellant’s petition was under the forfeiture section, it was not a suspension petition, and cannot fall under § 413; thus, appellant is not entitled to reimbursement from the Supersedeas Fund.

Further, contrary to the conclusion of the WCAB, a forfeiture petition does not fall under § 430. Section 430 prohibits an employer from terminating, decreasing, or refusing to make a payment after benefits have been awarded without first filing and being granted a supersedeas. An employer filing a forfeiture petition, however, is not contesting disability but rather is alleging a claimant has forfeited his right to benefits by refusing reasonable medical treatment.

Appellant contends Commonwealth Court precedent has permitted Supersedeas Fund relief for petitions filed under § 306(f)<sup>5</sup> of the Act for medical expenses ultimately determined to have been erroneously paid. Dep't of Labor and Indus. v. Workmen's Comp. Appeal Bd. (Commercial Union Ins. Co.), 586 A.2d 496, 499 (Pa. Cmwlth. 1991), aff'd per curiam, 619 A.2d 1356 (Pa. 1993), and Ins. Co. of N. Am. v. Workmen's Comp. Appeal Bd. (Kline and Packard Press), 586 A.2d 500, 502-03 (Pa. Cmwlth. 1991), aff'd per curiam, 619 A.2d 1356 (Pa. 1993), decided that compensation under § 443 of the Act was deemed to include medical expenses and thus, reimbursement could be obtained from the Supersedeas Fund for such expenses. Once again, we are not persuaded by these decisions that a petition for forfeiture is the equivalent to a petition for suspension or termination under § 413 or § 430, and find the plain language of § 443 does not authorize reimbursement to employers seeking relief under § 306(f) of the Act.

Section 443(b) of the Act speaks of the establishment of the Supersedeas Fund with the purpose of providing moneys for payments pursuant to § 443(a). See 77 P.S. § 999(b). Looking at the plain language of subsection (a), the supersedeas must have been requested under § 413 or § 430, to warrant reimbursement. See id., § 999(a). Simply put,

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<sup>5</sup> At the time Dep't of Labor and Indus. v. Workmen's Comp. Appeal Bd. (Commercial Union Ins. Co.), 586 A.2d 496 (Pa. Cmwlth. 1991), aff'd per curiam, 619 A.2d 1356 (Pa. 1993), and Ins. Co. of N. Am. v. Workmen's Comp. Appeal Bd. (Kline and Packard Press), 586 A.2d 500 (Pa. Cmwlth. 1991), aff'd per curiam, 619 A.2d 1356 (Pa. 1993), were decided, § 306(f) read:

The employer shall have the right to petition the department for review of the necessity or frequency of treatment or reasonableness of fees for services provided.... Such a petition shall in no event act as a supersedeas, and during the pendency of any such petition the employer shall pay all medical bills if the physician or other practitioner... files a report or reports as required by subparagraph (I) of paragraph (2) of this subsection.

77 P.S. § 531.

§ 443 does not authorize reimbursement for a § 306(f) claim, and the language of § 306(f) itself does not allow supersedeas reimbursement. Based on the plain language of the statute, Supersedeas Fund reimbursement is not available for petitions filed under § 306(f.1)(8).

Order affirmed.

Mr. Chief Justice Cappy and Messrs. Justice Nigro and Saylor join the opinion. Madame Justice Newman files a dissenting opinion in which Messrs. Justice Castille and Baer join.