

**Work injuries are inevitable and costly.**

**The key is to minimize your liability through expeditious and strategic legal representation. Burns White delivers positive outcomes for our clients.**

**That's what we do—and we have the case law to prove it.**

**Torijano v. WCAB (In A Flash Plumbing), --- A.3d --- (Pa. Cmwlth. 2017); 2017 WL 3722013**

**Matter:** A claimant sustained a low-back strain while at work, and was reassigned to light-duty work. He was asked to call in to the office before jobs to be directed to the day's assignments. When he failed to call in, he was reprimanded, and asked to sign a paper confirming the reprimand was discussed. The claimant became upset and refused to return to work—even upon receiving medical clearance, and being told that light-duty work remained available. The employer filed a Suspension Petition based on the claimant receiving a specific job offer and refusing to return.

**Resolution:** At hearings before the WCJ, the employer presented evidence showing that work was available to the claimant, even if restrictions were necessary, and that the only reason he was not working was because of the reprimand, not the work injury. The WCJ found in favor of the defendant, and the Board affirmed the WCJ. On appeal, the Commonwealth Court wrote there was substantial evidence indicating the claimant's loss of earnings was a result of his own actions, and not his work-related injury, and affirmed the Board's Order.

**Moumen v. WCAB (Supreme Mid Atlantic Trucking), --- A.3d --- (Pa. Cmwlth. 2017); 2017 WL 3746513**

**Matter:** A claimant filed a petition alleging he suffered a work-related hernia injury. While the petition was eventually denied and all appeals failed, the claimant filed a Review Petition asserting that the injury was incorrectly described, and that a low-back injury should have been included on his original petition. During pendency of this Petition, the employer filed two Motions to Dismiss the Review Petition.

**Resolution:** The WCJ granted both Petitions to Dismiss, finding there must be an accepted injury through an NCP, Agreement, or Decision. Since no such accepted injury existed, there was no accepted injury that could be corrected via a Review Petition. The WCJ also found that his claim was barred by res judicata, because he was attempting to re-litigate the merits of his Claim Petition through the Review Petition. The Board affirmed.

On appeal, the Commonwealth Court noted that the claimant was aware of his back injury, and failed to include it in the original Claim Petition. Further, he did not file a separate petition to identify the back injury, and to clarify the original petition. The Court also found that the claimant's Review Petition was barred by technical res judicata. The Board's rulings were upheld.

**Morocho v. WCAB (Home Equity Renovations, Inc.), --- A.3d --- (Pa. Cmwlth. 2017); 2017 WL 3297483**

**Matter:** A claimant suffered injuries to his right hand—including to his right index finger—using a table saw at work. He filed Claim Petitions alleging, among other things, specific loss of use of his right index finger, offering testimony and medical records which detailed the surgery performed. Limited mobility, confirmed by a medical expert, resulted in the claimant's inability to do construction work. The WCJ found that the claimant had lost the use of his right index finger, for all intents and purposes, and awarded specific loss benefits to the injured man.

**Resolution:** On appeal, the Board reversed the WCJ's award because claimant's expert did not address the permanency of his loss, i.e., the expert's documentation described the diagnosis, but did not detail whether the disability was permanent. Once appealed to the Commonwealth Court, the Court noted that the claimant's expert did not explain the factual significance of the diagnosis as it related to the permanency of claimant's condition, and that the expert's opinion was not a statement of medical fact, but a legal conclusion. Therefore, because the claimant failed to present medical evidence to support the permanent loss of function of his index finger, he could not meet his burden of proof, and the Commonwealth Court affirmed the Board's decision.

**Morales v. WCAB (School District of Philadelphia), --- A.3d --- (Pa. Cmwlth. 2017); 2017 WL 3722552**

**Matter:** A claimant suffered a work-related injury, hurting her left shoulder, and alleging cervical sprain/strains. Her benefits were suspended via Notice of Suspension based on her return to work. Nearly two years later, she filed a:

- Review Petition, alleging an incorrect description of injury
- Review Medical Treatment and/or Billing Petition, alleging that medical bills were unpaid
- Penalty Petition, alleging her employer had violated the Act


In response, the employer filed a Termination Petition, alleging the claimant was fully recovered from her work injury.

**Resolution:** Following testimony and submission of medical records, the WCJ denied the claimant's Review Petition, Review Medical Treatment Petition, and Penalty Petition, and granted employer's Termination Petition. In granting the Termination Petition, the WCJ accepted the opinion of employer's expert that the claimant was fully recovered. Because it was also determined that her medical bills were not submitted within the allotted time period, the WCJ concluded that she failed to prove the bills were unpaid, and determined that the employer did not violate the Act.

On appeal, the Commonwealth Court affirmed the WCJ's rulings related to the Termination Petition, finding the defendant's expert based his opinion of recover on the question of whether or not the accepted injuries continued to disable the claimant. However, the Court felt that evidence concerning the claimant's Medical Bill Petition required further proceedings, and remanded on that issue alone. In all other respects, the WCAB's decision was affirmed.

**D&R Construction v. WCAB (Suarez, Travelers Insurance Company, Uninsured Employer's Guarantee Fund, and TNL Development), --- A.3d --- (Pa. Cmwlth. 2017); 2017 WL 3254789**

**Matter:** A claimant filed a Claim Petition alleging he sustained an injury working for D&R Construction. The defendants denied such an injury occurred, specifically arguing that the claimant was an independent contractor, and not an employee of D&R. The WCJ found that the claimant was an independent contractor and denied the Claim Petition. However, based on the interpretation of the Construction Workplace Misclassification Act (CWMA),



the WCAB determined that the claimant was not an independent contractor. The defendant's appeal to the Commonwealth Court was limited to the issue of whether the Board erred in applying the CWMA retroactively to determine whether he was an independent contractor, and if the Board erred in considering the CWMA as guidance for application of the common law analysis to determine what qualifies as an independent contractor.

**Resolution:** The Commonwealth Court noted there was no dispute that the injury occurred before the enactment of the CWMA, and that the claimant's petition was filed before the CWMA was effective. The statute could not be applied if it affected the claimant's substantive rights retroactively, or if the legislature did not intend it to be retroactive. The Court wrote that the CWMA alters elements of proof required to establish an independent contractor's status in the construction industry, thereby directly affecting whether a purported employer will be responsible for the injury, which is a substantive change. Additionally, the CWMA contained no language expressly stating that it would be applied retroactively; therefore, it was an error for the Board to apply the CWMA retroactively. The Court noted that "the law in effect on claimant's date of injury is the controlling law under which to determine claimant's entitlement to benefits, and subsequent changes to the law which affect a claimant's substantive rights may not be applied retroactively unless the legislature states so."