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THE NEW TRIAL OF COMPENSATION CASES

The Workmen's Compensation Law of the Commonwealth of Pennsylvania is a humanitarian act and always has been interpreted very liberally in the interests of the parties concerned to the end that substantial justice may be given to both the employer and the employee; and therefore very generous provisions for reconsideration and review have been made in order that the ever changing condition of the claimant and the resulting disability, as well as the status of dependents, may be justly taken care of by adjusting from time to time the compensation payable for injuries sustained by an employee while in the course of his employment.

Section 413 of the act, as amended by the act of April 13, 1927, P. L. 186, page 194, has to do with matters of review and reconsideration in order that these adjustments may be equitably made in the interests of all parties concerned. This section is usually referred to as the limitation amendment act of 1927 and it is to this amended section that we direct our consideration.

It must be constantly kept in mind that while this is but one section of the act, nevertheless it is divided into two paragraphs and each paragraph must be treated separately and by itself as if the same were a distinct section of the law, and said section has been construed by our appellate courts as if each paragraph were in fact a separate and distinct section of the law.

THE FIRST PARAGRAPH

The first paragraph of the section has to do with one line of cases and has no reference or application whatsoever to the character of cases governed by the second paragraph of the act.

The first paragraph of the section provides for petitions to review, modify or set aside an original or supplemental *agreement*, upon petition filed with the Board, upon the allegation contained in the petition that the agreement was procured by *fraud, coercion* or other *improper conduct* of a party; or when the same is founded upon a *mistake of law or of fact.*

It will be noticed that this paragraph of the section applies only to agreements and is somewhat more narrow in its scope than the second paragraph of the section hereinafter considered.

This paragraph is not affected by the limitation contained in the act of April 13, 1927, and evidently is only quoted in the act of 1927 by reason of the fact that it constitutes a part of the whole section No. 413, and for that reason was necessarily cited by the legislature in amending the second paragraph of said section. This paragraph, therefore, is governed by the law as it existed at and before the amendment of April 13, 1927. It, therefore, becomes necessary to know the extent and provisions of the law relative to said matter as they were prior to the amendment.

In construing this paragraph, as well as the second paragraph of the section, the opinions and rulings of law by the appellate courts on the paragraph must be read into the section and considered in connection therewith, as such court rulings now constitute a large part of the scope and application of the section.

In brief, the following is the law governing petitions to review agreements for the reasons above cited, to-wit: Petitions to review agreements upon the grounds of fraud, improper conduct or mistake of law or of fact, can be entertained and heard at any time within three hundred

weeks after disability begins if the disability be partial, and within five hundred weeks after disability begins if the disability be total. This constitutes the potential life of the agreement or the duration of time for which the agreement may run, namely, three hundred weeks for partial disability and five hundred weeks for total disability. Consequently, a petition, if filed by either the employer or its insurance carrier or a petition filed by the claimant, after the expiration of the periods above mentioned, is barred by the statute of limitations and neither the Referee nor the State Workmen's Compensation Board can entertain the same.

In considering the agreements to be reviewed under this paragraph it is well to remember that the final receipt is always considered a part of the agreement, and if the final receipt be procured by fraud, coercion or other improper conduct of a party, or is signed through a mistake of law or of fact in precisely the same manner as the execution of the agreement under the same circumstances, such constitutes a legal reason for reviewing the agreement. Therefore, in determining the paragraph under which your remedy lies, the parties or their counsel should first determine whether or not the signing of the agreement or the execution of the final receipt was procured by fraud, coercion or other improper conduct of a party, or the final receipt executed under a mistake of law or of fact, and if so then your remedy is under the first paragraph of the section as above stated. If not, then your remedy, if you have one, is under the second paragraph of the section.

THE SECOND PARAGRAPH

The provisions of the second paragraph of this section have to do only with petitions to modify, reinstate, suspend or terminate an original or supplemental *agreement* or an *award* upon petition filed by either party with the Board upon proof that the disability of an injured employee has *increased, decreased, recurred* or has *temporarily or finally ceased;* or that the status of any dependent has changed.

It will be noted that this paragraph concerns either agreement or award, while the first paragraph above considered has to do only with agreements, and the provisions of this paragraph are never available to either party for fraud, coercion or mistake of law or of fact but are available only for the reasons above mentioned.

It must also be kept in mind that the limitation contained in the act of April 13, 1927, applies only to this last mentioned paragraph, and petition therefore to review either an agreement or an award upon the grounds provided in said paragraph are subject to the following limitation:

> "Provided that, except in the case of eye injury, an agreement or an award can be reviewed, modified or reinstated only during the time such agreement or award has to run if for a definite period, and, except in the case of eye injury, no agreement or award shall be reviewed or modified or reinstated unless a petition is filed with the Board within one year after the date of the last payment of compensation, with or without an agreement."

Prior to this amendment for any ground whatsoever petitions for review could be filed and entertained within the potential life of the agreement or award, but the amendment, except in eye cases, limits the application of the second paragraph of the section to *one year* after the date of the *last payment of compensation*. If the petition to review the agreement or award is for the reasons contained in the second paragraph, then your first inquiry must be: "When was the last payment of compensation made?" If within one year, then the petition may be entertained. If not, then it must be dismissed.

All petitions to review, whether under the first or second paragraph of the amended section, must be sustained by competent evidence sufficient to convince the Referee or the Board, by the fair weight or preponderance of the evidence, that the allegations of the petitions have been substantially proven; and the courts will not disturb such findings of fact if the same is supported by any competent evi-

dence, as the Referee and the State Workmen's Compensation Board are the fact finding agencies, and the courts will only review the same for the purpose of determining whether the record contains any competent evidence to support the findings. Even if the court, had it been finding the facts from the evidence, would have arrived at a different conclusion, contrary to the findings of the Referee or the Board, yet the court is without authority to disturb such findings, but its authority is confined to the sole question of determining whether or not there was any competent evidence to support the Referee's findings of fact.

It has been repeatedly held by the appellate courts, as well as by our courts of Common Pleas, that it is immaterial whether or not the petition has been filed under the appropriate and proper paragraph of the section. If the evidence produced at the hearing be sufficient to have sustained the proper allegations under the proper and appropriate paragraph of the section, and if the facts placed upon the record entitles the petitioner to relief under either paragraph of the section, then the Referee or the Board will treat the petition as if the same had been filed under the appropriate paragraph of the section and as if the allegations in the petition were in harmony with the actual evidence given by the witnesses, the important and controlling element being the proofs rather than the allegations.

This generous ruling was made necessary by reason of the fact that it was the purpose and intent of the legislature, in the enactment of our compensation laws, to make it possible for any injured employee to procure his compensation without the expense of procuring legal counsel, and the further fact that numerous claimants prepare their own petitions, file the same and conduct their cases without the benefit of legal counsel. Therefore the courts have held that the important thing is the proofs rather than the allegations. Therefore, if a claimant file his petition for a review of his agreement upon the grounds of an increase of disability or a recurrence of disability, and the evidence establishes that his agreement was executed through fraud or mistake of law or of fact, then his case is proceed-

ed with under the first paragraph of the section although the petition was filed under the second paragraph of the section.

The principal appellate court authorities for the above interpretation of the section will be found in the following published opinions: *Johnston v. Jeddo Highland Coal Company, 99 Pa. Super. Ct. 94; DeJoseph v. Standard Steel Car Company, etc., 99 Pa. Super. Ct. 497; Zavatskie v. Philadelphia & Reading Coal & Iron Company, 103 Pa. Super. Ct. 598; and opinion of Chairman Dale, Workmen's Compensation Board, in the case of Fred Godfried v. Rockhill Coal & Iron Company, opinion filed June 24, 1932.*

It is also well to be cognizant of the rights and remedies afforded to either employee or employer, following a decision of the Referee on petitions aforesaid, and what is the proper remedy if a party be dissatisfied with the order of the Referee or the Board.

For some years it has been a mooted question whether or not a compensation agreement once made continues in effect in all subsequent proceedings, or whether or not it is merged in a definitive award or disallowance or order of termination, upon petition of either party, to terminate or modify such agreement in any particular. In other words, what becomes of the agreement when it is modified or terminated or otherwise disposed of?

This question has been disposed of in the case of *Putt v. Laher Ice Cream Company*, by the Superior Court of Pennsylvania in an opinion by Justice Baldridge filed July 14, 1932, as follows:

> "When the appellants exercised their right and petitioned for a modification of the agreement under the second paragraph of section 413, the order entered upon such application was an award. It was the result not of agreement by the parties but was the official act of the Referee; an agreement was no longer in existence, the amount payable therefor was under the award. The first paragraph quoted applies only to the reviewing, etc., of an original or supplemental agree-

ment and does not relate to an award. If there was a dissatisfaction with the award the appropriate remedy was by an appeal."

This decision, and other cases with similar rulings, necessitate to some extent a change in former procedure when actions are brought to terminate or modify existing compensation agreements. Whatever follows is definitive in its nature and entirely wipes out and destroys the prior agreement. An award or disallowance or order of termination takes its place and the only remedy thereafter is an appeal within the statutory period or petition for rehearing within one year. In this connection it should be observed that a rehearing has reference to the last order, award or disallowance, and in any case the running of the time, to-wit: one year, would commence from the date on which the Referee published disallowance, or, if appealed, the date of its affirmance by the Board.

As formerly stated, the distinction between the scope of the first paragraph of the section and the second paragraph of the section must be constantly kept in mind, since the first paragraph has to do only with agreements, and so long as the agreement has not been destroyed the same may be reviewed within the statutory period for the grounds of fraud, coercion, improper conduct of a party or for mistake of fact or of law; but when the matter to be reconsidered is either originally an award or is an award by reason of the modification or termination of an agreement, as above mentioned, then the remedy is exclusively under the second paragraph of the section. When any party to the record is dissatisfied with the disposition of the case by the Referee or by the Board on appeal, then the only remedies remaining to such dissatisfied litigant are by appeal or petition for rehearing within the statutory periods.

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