

Floodgates Now Potentially Open for Disability Reinstatement Petitions

PUBLISHED ON
June 8, 2018

When the Pennsylvania Supreme Court [declared impairment ratings to be unconstitutional in *Protz*](#), it did not specifically say who could benefit from the decision and how. The Commonwealth Court has now answered those questions in this week's [*Whitfield v. WCAB \(Tenet Health System Hahnemann LLC\)*](#) decision.

In *Whitfield*, the claimant suffered a work-related injury in 2002. She underwent an impairment rating evaluation (IRE) four years later. The workers' compensation judge modified the claimant's disability status from total to partial disability as of the date of the IRE in an order dated June 1, 2009. The claimant did not raise the constitutionality of the IRE before the judge during the litigation over the IRE and the claimant used all her 500 weeks of disability. Within three years of the date of the last payment to her, she filed a petition seeking reinstatement of total disability benefits because of *Protz*.

The employer argued that the claimant's benefits should not be reinstated because she had already received the 500 weeks of partial disability benefits and she never challenged the constitutionality of the IRE provisions during the original litigation. The Commonwealth Court rejected these arguments. The court did not focus on retroactivity or whether the claimant had earlier preserved her constitutionality argument, but focused on whether the claimant could seek reinstatement. The court explained that a claimant can file a reinstatement petition either during the 500 weeks of partial disability or within three years of the date of the last payment of compensation.

In *Whitfield*, the claimant filed her reinstatement petition within three years after the date of the most recent payment of her partial disability. Therefore, the claimant only needed to testify that her work-related injury continued. The court found that the workers' compensation judge did not make a credible decision on the claimant's testimony that she continued to suffer from her work-related injury. It remanded the case for the judge to make such a decision.

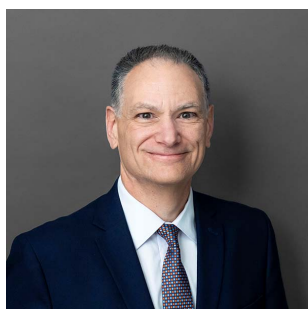
The effects of this decision could be far-reaching within the state's worker's compensation process:

- A claimant will be able to file a petition to seek reinstatement of total disability benefits after an IRE so long as the claimant files the petition during the 500 weeks of partial disability or within three years from the date of the last payment of compensation.
- If there is no agreement between the parties, a claimant must prove that his or her work-related injury continues. This can simply be done by having the claimant testify.
- If total disability benefits are reinstated, they are reinstated as of the date the claimant filed the reinstatement petition, not back to the date of the IRE.

Based on this week's decision, we anticipate claimants will be emboldened to file petitions to reinstate total disability benefits or change their benefit classification from partial disability to total disability.

If you need assistance interpreting the *Whitfield* decision, [please contact me](#) or [Josh Schwartz](#).

:



Michael J. Crocenzi

Partner

Tel: (717) 814-5417

Email: mcrocenzi@barley.com